

DEBT: STUDENT LEGAL SAYS DON'T IGNORE IT

Before the Sheriff comes a knocking, take some simple steps to address debt. Solicitor Nina Lau says ignoring the problem won't make it go away.

If you have borrowed money, bought something with finance, have a loan or a credit card debt or owe money for bills or accounts, you have a legal responsibility to repay the money you owe. You should not avoid your responsibility to repay your debts. What is a letter of demand?

This is a letter from the creditor (the person/company who says you owe money) that demands that you pay a set amount by a specified date or court proceedings will be started. A letter of demand is not from the court.

When you get a letter of demand, check the amount is correct. If you disagree with the amount, or there are not enough details, write a letter (date it and keep a copy!) to the creditor asking for a detailed breakdown of money owed. Keep copies of all letters you write to the creditor.

How to respond to the letter of demand

1. Refuse to pay. Make sure you don't ignore it, because your creditor can then begin legal proceedings and you will have to pay the legal and court costs if you lose in court
2. Negotiate with the creditor if you can't pay the full amount by either:
 - a) asking for more time to pay;
 - b) asking to pay in installments;
 - c) offering to pay a reduced amount to finalise the debt;
 - d) requesting that the debt be written off
3. Solving disputes out of court
4. Pay in full

Solving the dispute out of court
This is where informal negotiation does not work. You may be able to contact a community justice centre if your dispute is with another person. Community justice centres offer a free mediation service.

What is a statement of claim?

If you receive a Statement of Claim—don't ignore it! This is a document issued by the Local Court. It means the creditor has started legal proceedings to recover money from you.

If you receive a Statement of Claim, you have 28 days from the date you received it to respond to the Local Court.

How to respond to a statement of claim

1. File a defence
2. Agree to pay part of the debt.
3. File a cross claim
4. Apply for voluntary bankruptcy.

IMPORTANT: You should be aware that if you ignore the statement of claim, the creditor may get default judgment against you without you attending court or even being notified. Once there is default judgment against you, the plaintiff can take action to recover from you the money you owe.

The court Decision

If the Court makes an order that you must pay a debt, this order remains in force for at least 12 years. This means the creditor has at least 12 years to take further action to recover money owed by you. The creditor can make you pay the debt by doing any of the following to recover the money:

Examination Notice: This notice requires you to either answer questions about your income and/or provide specified documents about your income and finances. If you do not provide this, you can be ordered to attend court for examination about your financial circumstances;

Garnishee order: The judgment creditor can ask the Court to "garnishee" your wages or bank account. This is a court order telling your employer or bank manager to give the money that you owe to the judgment creditor from your wages or from your bank account;

Writ for levy of property: This is a court order allowing a Sheriff's Officer to remove items from your home to the value of the debt in order to pay off the debt.

The Sheriff's Officer cannot force entry to your home but if denied entry, can obtain a court order to enter your premises; and/or

Bankruptcy: If the judgment debt is \$5,000 or more, the creditor can apply to the Federal Court to have you declared bankrupt. If you receive a Bankruptcy Notice you should seek advice from either a financial counselor or lawyer immediately.

Your Rights!

Financial hardship: If the debt is with a credit provider and you are experiencing financial hardship and/or have a dispute about the debt, you have some legal rights that can be enforced and/or investigated for free. Contact your credit provider about this.

Feeling harassed?

You have a right not to be harassed even if you are pursued for debt. If your debt is with a credit provider and you feel you are being harassed you can complain to Australian Securities Investment Commission (ASIC). Remember: being harassed is not a reason not to pay a debt that you owe.

NOTE: Some of this info is from ASIC MoneySmart website and LegalAid website

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UWS Student Legal Service is a joint venture between Macquarie Legal Centre and UWS. Located at the UWS Parramatta Community Justice Clinic at Parramatta Local Court it provides advice to currently enrolled UWS students through SSAF funds.

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