

FINANCIAL COUNSELLING FACT SHEET #6

DO I HAVE TO PAY AN OLD DEBT?

A debt may be 'Statute Barred' (too old to pursue) because the Limitations of Actions Act 1958 (Vic) places a time limit on how long a creditor has to take legal action to recover a debt.

Six Year Limitation Period

For most debts, a creditor must begin court action to recover the debt within six years of the date you:

- last made a payment
- admitted in writing that you owe the money.

15 Year Limitation Period

The creditor has 15 years to collect the debt if:

- a court judgement has been entered
- the debt relates to a mortgage over property

If someone wants you to pay and you think it could be a statute barred debt:

- DO NOT accept a debt collector's word that you owe the debt
- DO NOT agree the money is owed
- DO NOT make any payments

If you make a payment or admit you owe the money the debt will not be considered statute barred.

What you should do:

- DO keep a record of any contact about the debt, including the date and time of any conversation and who you spoke to
- DO ask for copies of documents showing that the six-year time limit has not been exceeded, including any contract and court documents. If they ask for your request in writing, refer to the sample letter Asking For Proof below
- DO seek assistance from a financial counsellor and advise the debt collector that you are doing this.

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How do I know if court action has been taken?

The creditor would have applied to the Magistrates' Court to have a court order made against you to confirm that you owe the money. This is called default judgment. You can find out if judgement has been entered by:

- calling the Magistrates' Court on 03 9628 7777 (if judgement was entered in Victoria)
- asking the debt collector to provide you with the judgement information and checking with the related court
- getting and checking a copy of your credit report.

What if the debt collector can't prove the money is still owed?

In order for the debt collector to collect any money they must prove that the debt is still owed by you. To do this, they must provide evidence that:

- you are the person who originally took up the contract
- it is less than six years since you made a payment, or 15 years if a judgement has been entered; or
- you have admitted you owe the money within the limitation periods.

A debt collector cannot force you to pay. Do not make any payment or admit to owing the debt. Ask for help. You can advise the debt collector of your plan to seek the assistance of a financial counsellor and ask them to wait until you are able to do so.

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Sample Letter – Asking For Proof

**You will need to amend the letters below to reflect the unique circumstances of your case. Delete anything which does not apply in your situation.*

Your address

Date

Creditor's Address/fax/email

Dear Sir/Madam

Account details:

Dear Sir/Madam

Re: Your claim for payment (put in their reference number if you have it.)

I refer to your demand for payment in relation to above.

Please provide me with all documents which you rely on to demand payment and assert that any limitation period under the Limitations of Actions Act 1958 (Vic) has not expired, including:

1. Contract documents
2. Account statements
3. Invoices
4. Court judgments (if applicable)
5. Notices of assignment (if applicable)

I do not acknowledge any debt in relation to the above matter and this letter is not to be interpreted as doing so.

Yours faithfully

(Your Name)