

Sample Letter – Financial Hardship – Credit Law

[Date]

[Credit provider]

[Credit provider's internal dispute resolution contact person] (*find the details using the "search for members" link at www.fos.org.au or www.cosl.com.au*)

[Credit provider's address]

Dear [credit provider's internal dispute resolution person]

Request for change on the grounds of hardship

[Client name]

[Type of loan] Account no. [number]

I/we am/are in financial hardship following the floods/cyclones in Queensland.

I/we wish to apply to you for a variation of the above loan contract on the grounds of hardship under s. 72 of the *National Credit Code (Schedule 1 of National Consumer Credit Protection Act 2009)* ("NCC").

I/we assume you will stay all enforcement action while you consider this application. If this is not possible, please let me/us know immediately in writing.

Section 72 of the NCC sets out the general principle that a debtor who is unable, reasonably, because of illness, unemployment, or other reasonable cause to meet their obligations under a credit contract but reasonably expects to be able to repay the debt if the contract is changed in the ways described, may apply to the lender for such a change.

1. Financial Hardship due to Reasonable Cause (Flooding/Cyclone)

I/We have been in financial hardship because of the severe flooding/cyclone damage that occurred in {town/region/city/town} on {dates}. It has meant that: [use where applicable]

- › My house has been inundated by floodwater to [depth]
- › My house has been affected by floodwater/cyclone
- › My property/possessions have been damaged or destroyed following the floods/cyclone
- › I have been unable to attend work/have been stood down or laid off as a result of the floodwater/cyclone.

[Give details of what has occurred, what it has meant for you in terms of employment, and how long you think it will take to clean things up and get back to normal]

2. Expectation of being able to reasonably repay the loan if the variation is granted

I/we expect to be able to reasonably repay the loan if the requested variation below is granted. I/we have been paying loan repayments of \$x per fortnight/per month while I/we have been in hardship.

I/we have now returned to work and can now afford the scheduled repayments on the loan. OR

I/we expect to return to work on [give date or number of months] at which point I/we will be able to afford the scheduled loan repayments. OR

I/we expect to have finished the flood/cyclone clean up in x months and will be able to afford the scheduled loan repayments two months after that date.

3. The requested change to the contract

I/we request the following change to my/our contract:

A reduction of the amount of each repayment to \$x per week/fortnight/month. This change is requested for [number] months. The term of the loan will be extended and any arrears will be added to the loan (capitalised). AND/OR

Postponing the repayment due on / / so that it is now due on / / . AND/OR

Postponing the repayments due between / / and / / and extending the term of the loan.

In support of my application, I/we provide the following income and expenditure details:

- › Current income is \$x per week/fortnight/month
- › Current major expenses are:
 - › Car: \$x per week/fortnight/month
 - › Other loan repayments: \$x per week/fortnight/month

I/we assume that you will not continue to charge default fees, default interest or make an adverse credit report listing while my/our hardship request is being considered.

As can be seen from the above information, I/we will be able to discharge my/our obligations under the above contract if you agree to the proposed change. I/we ask that you consider this application as a matter of urgency.

I/we await your reply in writing within 21 days of the date of this letter.

Yours sincerely

[Your signature]

[Your name]

Sample Letter - No Credit Law applying

[Date]

[Credit provider]

[Credit provider's internal dispute resolution contact person] (*find the details using the "search for members" link at www.fos.org.au or www.cosl.com.au*)

[Credit provider's address]

Dear [credit provider's internal dispute resolution person]

Request for change on the grounds of hardship

[Client name]

[Type of loan] Account no. [number]

I/we wish to apply to you for a variation of the above loan contract on the grounds of hardship.

[Choose one of the options below if applicable:]

[Where the credit provider is a bank and is a subscriber to the Code of Banking Practice (check if they are a subscriber at www.codecompliance.org.au):]

I/we refer to the bank's commitment to:

"... try to help you overcome your financial difficulties with any credit facility you have with us. We could, for example, work with you to develop a repayment plan. If, at the time, the hardship variation provisions of the Uniform Consumer Credit Code could apply to your circumstances, we will inform you about them." (s. 25.2 of the Code of Banking Practice).

OR

[Where the credit provider is a credit union or building society:]

I/we refer to the commitment of the credit union/building society to:

Relieving Mortgage Stress – A common approach for assisting borrowers facing financial hardship (Media Release from the Federal Treasurer, 5 April 2009).

[If the credit union or building society is a subscriber to Mutual Banking Code of Practice (check if they are a subscriber at www.abacus.org.au):]

I/we also refer to the commitment of the credit union/building society to:

"... work with you in a constructive way if you experience genuine difficulties meeting your financial commitments to us. With your agreement and commitment, we will try to assist you to overcome those difficulties. We will do this whether or not you have a right to seek a hardship variation or change under consumer credit laws." (s. 24.1 of the Mutual Banking Code of Practice).

[Where the non-bank lender is a member of the Mortgage and Finance Association of Australia (check at www.mfaa.com.au):]

I/we also refer to your commitments under ss. 65–72 of the Mortgage and Finance Association of Australia Code of Practice.

I/we assume you will stay all enforcement action while you consider this application. If this is not possible, please let me/us know immediately in writing.

My financial hardship

I/we have been in financial hardship because of the severe flooding/cyclone that occurred in {town/region/city/town} on {dates}. It has meant that: [use where applicable]

- › My house has been inundated by floodwater to [depth]
- › My house has been affected by floodwater/cyclone
- › My property/possessions have been damaged or destroyed following the floods/cyclone
- › I have been unable to attend work/have been stood down or laid off as a result of the floodwater/cyclone.

The requested change:

I request the following change to my/our contract:

[Choose from any of the following:]

- › A reduction of the amount of each repayment to \$x per week/fortnight/month. This change is requested for [number] months with no interest to be charged during this time. The term of the loan will be extended and any arrears will be added to the loan (capitalised).
- › A moratorium on repayments for [number] months with the arrears to be capitalised with no interest to be charged during this time.

In support of my application, I/we provide the following income and expenditure details:

- › Current income is \$x per week/fortnight/month
- › Mortgage: \$x per week/fortnight/month
- › Other loan repayments: \$x per week/fortnight/month

Please send a detailed Financial Statement of Position for me/us to complete if required.

I/we assume that you will not continue to charge default fees, default interest or make an adverse listing on my/our credit report while my/our hardship request is being considered.

I/we ask that you consider this application as a matter of urgency.

Yours sincerely

[Your signature]

[Your name]