

Do I have to pay an old debt?

by Consumer Action - Friday, March 18, 2016

<https://help.consumeraction.org.au/do-i-have-to-pay-an-old-debt/>

Key Messages:

There are time limits for taking legal action. This means that your debts may become too old for a creditor to successfully take legal action against you.

Get advice before making payment or acknowledging an old debt – in some circumstances these actions may start the limitation period all over again and your debt will no longer be statute barred.

A debt may be statute barred (too old to pursue) because the *Limitations of Actions Act 1958* (Vic) places a limit on the time a creditor has to take legal action to recover a debt.

There are a number of reasons for having a time limit on a creditor taking legal action, including:

as time goes by, relevant evidence is likely to be lost;
it is oppressive, even “cruel”, to a defendant to allow an action to be brought long after the circumstances which gave rise to it have passed.^[i]

If a creditor starts court action against you, and the debt is statute barred, you will have a complete defence to the action.

If you tell a creditor that you believe a debt is statute barred, the creditor will be unlikely to start any court action against you.

The *Privacy (Credit Reporting) Code 2014* a credit reporting body must, upon request, remove default information that relates to a statute-barred debt.^[ii]

6 year limitation period

For most debts, a creditor must begin court action to recover the debt within 6 years of the date:

that you last made a payment; or
that you admitted in writing that you owed the debt.

The limitation period starts from the *latest* event in the above list.^[iii]

15 year limitation period

The creditor has more than 6 years to collect the debt including if:

a court judgment has been entered, in which case a 15 year limitation period applies for *new actions* (such as some bankruptcy proceedings);[\[iv\]](#)
the debt relates to a mortgage over property in which case a 15 year limitation period applies. [\[v\]](#)

These are complex issues and getting advice is recommended.

Requesting proof

Unless you are sure an old debt is not statute barred:

do not admit that you owe the debt;
do not make a payment;
do not accept a creditor's word that you owe the debt.

You should request details of the alleged debt and seek advice immediately.

Refer to our sample letter: *Asking for proof* below.

Once you have received the information from creditor, get advice from one of the listed contacts to make sure you know your rights.

Taking action

If you believe that an old debt is statute barred get advice and then send a letter to the creditor telling them this. Refer to our sample letter below: *Alleging a debt is statute barred*

Refer to our factsheet *I'm being hassled by a debt collector* for what to do if you are being hassled by a debt collector.

If you have paid or acknowledged an old debt

If a creditor represents that legal action will or may be taken when a defence at law applies, this may be misleading and deceptive or unconscionable if the debtor has not had the opportunity to obtain legal advice.

Seek legal advice to find out whether you can argue that because the conduct of the creditor you should still have the benefit of the debt being statute barred.

Collection House v Taylor [\[vi\]](#)

Taylor was contacted about a 10 year old debt by a debt collector acting on behalf Collection House. The debt collector said that if payment was not made legal action may be an option. Taylor didn't know that the debt was statute barred.

Taylor agreed she would pay \$4,500 on her credit card immediately, and that she would arrange a \$500 increase in her credit card limit in order to pay the balance.

Taylor took legal action to get her money back. The Supreme Court found that Collection House had engaged in unconscionable conduct.

If the creditor takes legal action

If the creditor takes legal action, get legal advice immediately: see *Further Information* below. Short time limits apply to take action.

It is up to you to raise the defence that the debt is statute barred if you think it applies. If you do nothing, the creditor might get a court judgment (that you must repay the debt).

The creditor will then have up to 15 years – or possibly more – to enforce the judgment.

In cases where the debt arises out of a credit contract, a complaint to the [Australian Financial Complaints Authority](#) before judgement is entered will have the effect of stopping actual or threatened legal action in relation to credit debts.

If you do nothing, a court judgment will be entered against you.

Sample Letters

An example of a letter [requesting proof that a debt is owed](#).

An example of a letter [alleging a debt is statute barred](#).

Further information

Australian Financial Complaints Authority

Tel: 1800 931 678

<http://www.afca.org.au>

National Debt Helpline

Telephone: 1800 007 007

www.ndh.org.au

Warning: This fact sheet is for information only and should not be relied upon as legal advice. This information applies only in Victoria and was updated on 6 June 2017.

Image from [Alan Cleaver](#).

[\[i\] Brisbane South Regional Health Authority v Taylor 186 CLR 541](#)

[\[ii\]](#) paragraph 20.6, Privacy (Credit Reporting) Code 2014 (Version 1.2)

[\[iii\]](#) Limitation of Action Act 1958 (Vic) s 5(1) and 24 – 26

[\[iv\]](#) Limitation of Action Act 1958 (Vic) s 5(4), see *Dennehy v Reasonable Endeavours Pty Ltd* [2003] FCAFC 158

[\[v\]](#) Limitation of Action Act 1958 (Vic) s 20

[\[vi\]](#) [Collection House Limited v Taylor \[2004\] VSC 49 \(3 March 2004\)](#)

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