



## STEP-BY-STEP GUIDE TO APPLYING FOR A HARDSHIP VARIATION For contracts signed on or after 1 March 2013

*Disclaimer: Consumer Credit Legal Service (WA) Inc. produced this information as a general guide only. The information is not legal advice. You may ring us on (08) 9221 7066 for more help.*

If you are experiencing financial hardship, you can apply to the lender to vary payments due under your credit contract. An application to vary a credit contract can be done by writing a letter to your lender requesting that they vary or change your credit contract. This is called a hardship variation application (**Hardship Variation Application**). Use our sample Hardship Variation Letter to write to your lender (available through the link in Step 2 below).

*If you have received legal or court documents from the lender, you may wish to contact us for advice on (08) 9221 7066 before following this guide any further.*

### Step 1: Do your research

We recommend that you read our [Hardship Variation Fact Sheet](#) to familiarise yourself with hardship variations and read our [Hardship Variation Flow Chart](#) to see the procedure that the lender must take after receiving your Hardship Variation Application.

### Step 2: Write to your lender

The best way to make a Hardship Variation Application is to write a letter to your lender. Click here to generate your own [Sample Hardship Variation Letter](#).

#### **Before you write the Hardship Variation Application, consider:**

1. How have your circumstances changed to cause you financial hardship?
2. When do you expect your circumstances to improve?
3. What are you doing to improve your circumstances?
4. What variations/changes do you seek?

Be very clear about what you want to propose to the lender. For example you could request to vary or change the contract by:

- reducing the regular repayment amount due and having the arrears (the amount you were due to pay but did not pay) added to the loan contract to extend the term of the contract;
- postponement of payments due for a period of time and the arrears added to the loan contract to extend the term of the contract;
- postponement of payments due (this means you will make higher payments later); and
- postponement of payments due while you sell your property.

If you are unsure of what variations or changes you can or should seek, you may wish to see a financial counsellor. [Click here](#) to read more about financial counsellors on our website.

### **Why should you give your Hardship Variation Application in writing?**

Putting your Hardship Variation Application in writing:

1. allows you to set out what variations or changes you want and the reasons why the lender should grant your request for a variation.
2. makes it easier to prove that you applied for a hardship variation if the lender does not grant your request for a variation.

Send the Hardship Variation Application (ie, the letter) by post and by email or fax to ensure that the lender receives it. Keep a copy of the letter you send to the lender.

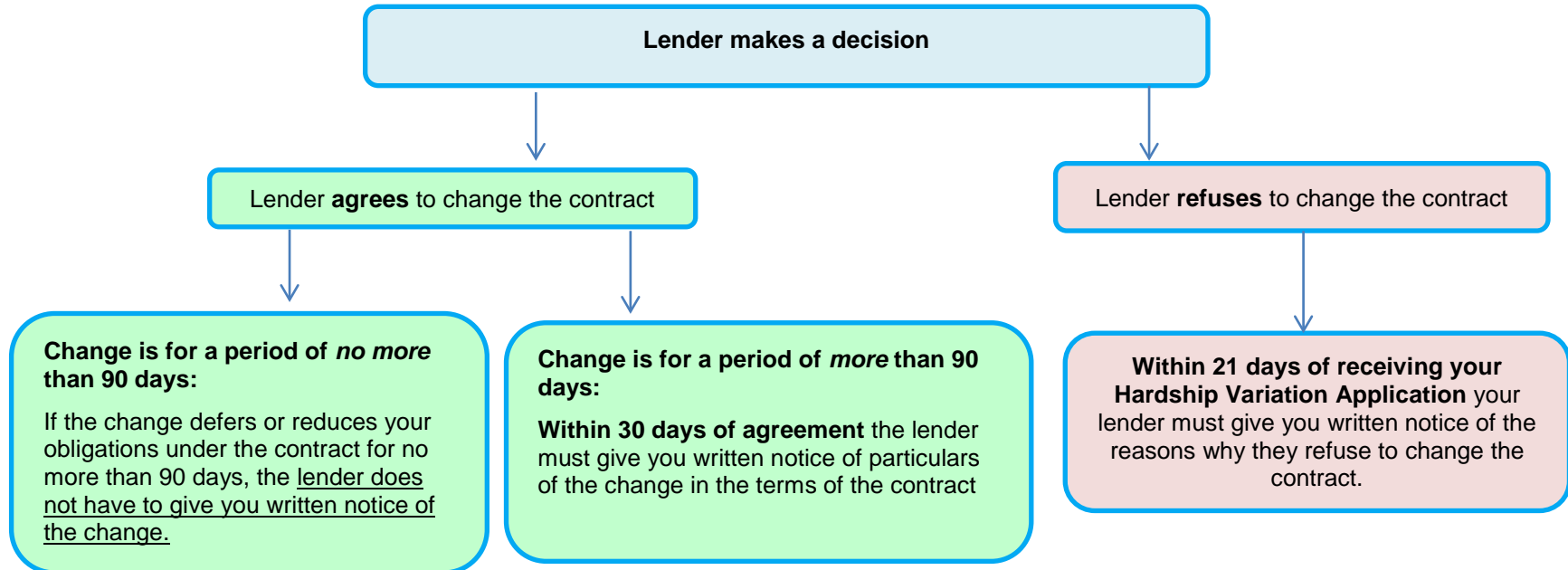
### **Step 3: Wait for a response to your Hardship Variation Application from your lender**

The lender has two options:

- (a) The lender makes a decision based on the information available to them (see the Option A flow chart under below); or
- (b) Within 21 days after receiving your Hardship Variation Application, your lender may ask you for more information in order to consider your request (see the Option B flow chart below).

### Option A – The lender makes a decision without requesting further information

The following flow chart applies where the lender makes a decision about your Hardship Variation Application without requesting further information from you.



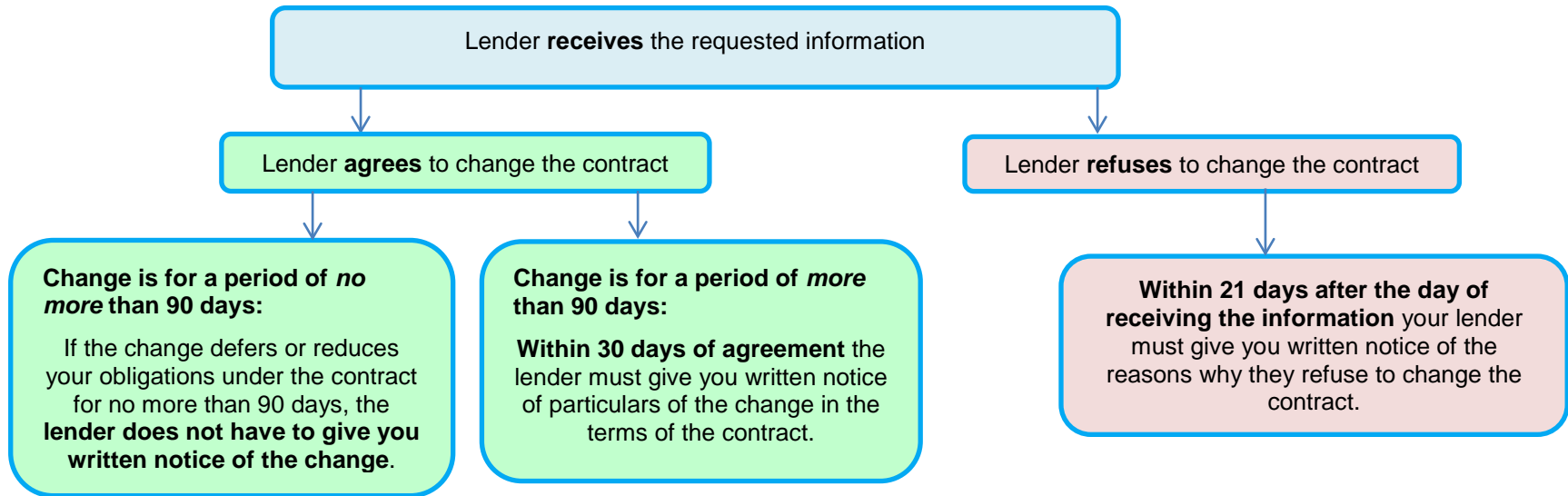
### Option B – The lender requests more information

The following flow chart applies where the lender requests further information from you to assess your Hardship Variation Application. You can either

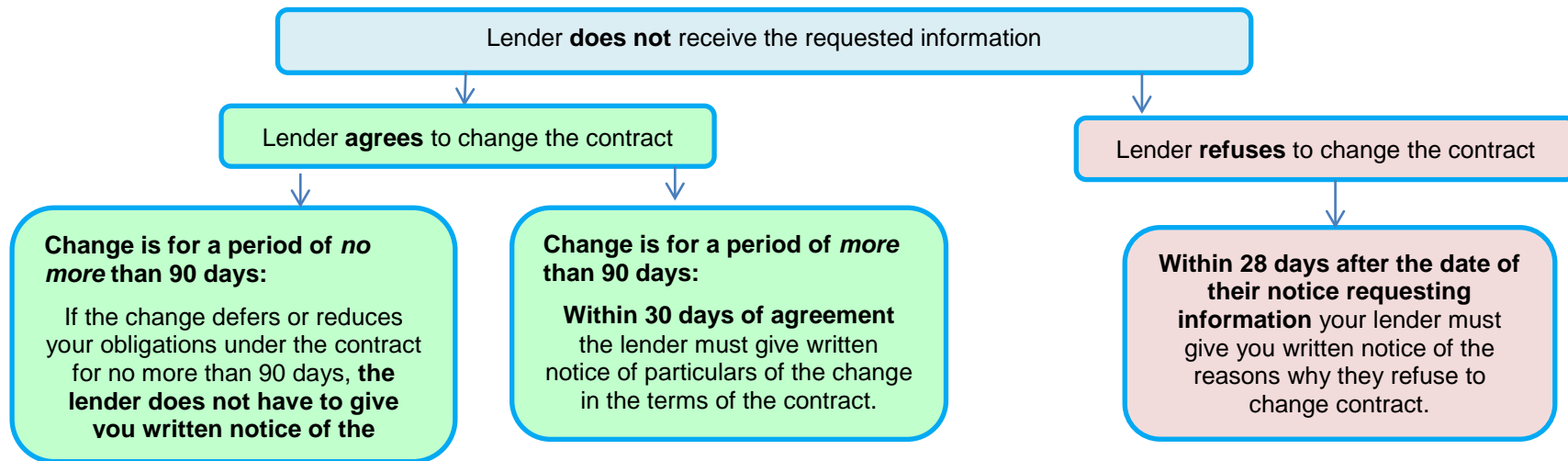
- (a) Provide the information; or
- (b) Do not provide the information.

See the flow chart below and the flow chart on the following page for each option.

The following flow chart applies where you **have provided** the requested information to the lender:



The following flow chart is where you **have not provided** the requested information to the lender:



#### Step 4: What to do if your lender refuses to change your credit contract or you do not receive a response?

You may lodge a complaint with your lender's external dispute resolution service, the Australian Financial Complaints Authority (AFCA), their contact details are below.

#### Step 5: If there is no resolution at the Ombudsman service or if you have approached the Ombudsman and you are still unable to get your credit contract varied, what can you do?

It may be possible to apply to the Federal Magistrates Court for a court ordered variation. For an application for a court ordered variation to be successful, the *National Credit Code* requires that each of the 2 criteria below is met:

1. the credit was borrowed by you as an individual; and
2. the credit was provided for personal, domestic or household use.

Residential investment loans entered into after 1 March 2013 may also be eligible for a court ordered variation.

If the above criteria are met, a court ordered variation will likely be granted if an application is made to the Federal Magistrates Court. Making an application to the court can be costly and time consuming. You may be eligible for free legal services. Please contact us for more information.

If you do not meet the above 2 criteria you will be unable to get a court ordered variation.

**If you are considering this option, you may wish to contact us for legal advice.**

**For further information contact or check out:**

Consumer Credit Legal Service (WA) Inc.

Website: [www.cclswa.org.au](http://www.cclswa.org.au)

Advice line number: (08) 9221 7066

Financial Counsellors' Association of Western Australia

Website: [www.financialcounsellors.org](http://www.financialcounsellors.org)

Telephone number: 1800 007 007

Australian Financial Complaints Authority

Website: [www.afca.org.au](http://www.afca.org.au)

Telephone number: 1800 931 678