



# Financial Rights

LEGAL CENTRE

FACT SHEET



Financial Rights Legal Centre  
ABN 40 506 635 273

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## DEBT AGREEMENT BROKERS

This fact sheet is for information only. We strongly recommend that you get legal advice about your situation.

### WHAT IS A DEBT AGREEMENT?

A Debt Agreement is an option for dealing with insolvency under the Bankruptcy Act. It is not the same as bankruptcy, but it can have many similar consequences – like stopping you from getting a loan in the future, or making it more difficult to enter into contracts for phone and internet services. A Debt Agreement should not be entered lightly.

### WHO MIGHT SUGGEST I ENTER A DEBT AGREEMENT?

There are many services out there offering help for people in debt. You will find them on the internet and see or hear them advertised on television and radio. Many of these services are commercially operated and will charge you for their help, usually after enticing you with a free consultation. You may contact a service for help with fixing your credit report, or for debt consolidation, or just some advice, and end up being offered a Debt Agreement. This Fact Sheet is about services which steer you into Debt Agreements under the Bankruptcy Act.

Debt Agreements are supposed to be set up and managed by registered Debt Agreement Administrators, but this is not always the case. Many different services advise people to enter Debt Agreements, and may also do all the paperwork to set them up. In this Fact Sheet we refer to those services as Debt Agreement Brokers.

### WHAT USUALLY HAPPENS WHEN I AM OFFERED A DEBT AGREEMENT?

Many services offer free consultations over the phone. They may then suggest that entering into a Debt Agreement is your best option or only option (whether or not this is true). They will promote the Debt Agreement as very attractive because it means you will only have “one easy payment” and you will stop paying interest.

The consultant might suggest that you:

1. authorise them to start taking direct debits from your account and;
2. stop paying your debt.

They will then send you large amounts of documents to sign,

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including an agreement to pay their fees. These fees are normally payable even if you do not ultimately enter into a Debt Agreement. Your creditors may refuse to accept the agreement (they have to vote on it) or you may change your mind. You will not usually be guaranteed a refund.

The documents they send you will include a Debt Agreement Proposal and a Statement of Affairs that will be lodged with the Australian Financial Security Authority (AFSA).

Sometimes you may have to pay the service for many months before you receive this paperwork. In the meantime your debts may be growing and your creditors may take enforcement action like engaging a debt collector, listing a default on your credit report, or suing you in a court. This will make your situation worse, but pressure from creditors is not a good reason to enter a Debt Agreement.

## SHOULD I SIGN UP TO DEBT AGREEMENT?

Financial Rights strongly recommends that you **DO NOT** sign up to a Debt Agreement without first seeking independent advice from a free accredited financial counsellor. Our Fact Sheet on [Debt Agreements](#) gives more information.

### CASE STUDY

Ariana was in her twenties and working full time. She had about \$40,000 in debts and a car loan. After a brief illness and a family dispute, she felt stressed and unable to cope. She was over limit on two credit cards and \$1,500 in arrears on a personal loan. She responded to an ad for debt help and was recommended a Debt Agreement. Under the terms of the agreement which went for 4 years, she had to pay \$41,500 (\$882 per month) which included a \$1900 upfront fee, \$10,800 in ongoing fees and \$1,300 to the government. Only \$27,500 went to her creditors. She had second thoughts several times before the deal was made but the consultant insisted that she was doing the right thing.

She was later disappointed to find that she had trouble getting rental premises, or getting connected to Foxtel. Looking back she thinks she could have managed to get back on track with just some advice and support to make arrangements with her creditors. She wasn't even that far behind.

Some of the risks of entering a Debt Agreement are:

1. When the Debt Agreement Proposal and Statement of Affairs are lodged with AFSA you will have committed an act of bankruptcy. This may be enough for one of your creditors to make you bankrupt if the agreement does not go ahead. If the Debt



Agreement goes ahead it will stay on your credit report for at least 5 years (and often longer).

2. If your creditors accept your Debt Agreement proposal, you will need to pay for the entire agreement (which may be for up to 5 years or more) to get the benefit of the reduction in your debts, and interest. During this time, there will be restrictions on your ability to get credit and other limitations.
3. If you cannot pay and you do not finish the Debt Agreement you will have to pay the whole amount of your original debts, plus back-dated interest. You will get credit for any amounts paid towards your debts under the agreement, but the upfront fees, and the ongoing fees taken from every payment you make, will be lost.
4. Many people who enter into a Debt Agreement find some years later that they are still struggling and end up filing for bankruptcy when they probably should have done this in the first place and it would now be over. For others, their financial problems may have been only temporary but they are stuck with all the consequences of a Debt Agreement for years to come.

The dangers of using a Debt Agreement Broker in particular are:

1. Debt Agreement Brokers are currently not bound by any statutory regimes or licensing requirements. They do not have an Australian Financial Services License or a Credit License. Unlike Debt Agreement Administrators, they are not regulated by AFSA. In short, no-one is keeping an eye on what they are up to.
2. Most Debt Agreement Brokers provide specialised debt solutions, without appropriate qualifications. This means the debt solutions they are offering may not be suitable, affordable or sustainable. They may tell you to pay a debt you don't owe!

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**HOT TIP!** Both Debt Agreement Administrators and Debt Agreement Brokers only get paid when you agree to propose a Debt Agreement. Make sure it is the best option for you – not them.

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## WHAT ARE THE ALTERNATIVES TO ENTERING A DEBT AGREEMENT?

1. [ASIC's Budget Planner](#) is a helpful calculator to work out where your income is going.
2. If you are going through financial hardship (for example, because you have been sick, unemployed, or suffering from a relationship



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breakdown), you can contact your creditors and ask for financial hardship assistance. All financial service providers and telecommunication and electricity providers have obligations to provide reasonable hardship assistance. See our [Financial Hardship Fact Sheet](#) for more information.

3. If you are having financial difficulties, and can't sort it out yourself, contact a financial counsellor as soon as possible. You can talk about your options over the phone, or be referred to a face to face financial counsellor, if you call 1800 007 007. Financial counsellors are funded by the government and do not charge for their services. They have no reason to recommend one option over another except what is best for you.
4. If your financial situation is really bad and things are not likely to improve you may be better off considering bankruptcy. A financial counsellor can talk to you about bankruptcy.

Some people may benefit from a debt agreement – for example, if you have an asset to protect like your home that you could not keep if you went bankrupt. If you are considering signing up you should think through the following:

1. Speak to a financial counsellor and consider the pros and cons. There is also information about Debt Agreements on the AFSA website ([www.afsa.gov.au](http://www.afsa.gov.au)).
2. Specifically ask the consultant about their fee structure, including any establishment fees, ongoing fees and cancellation fees. Ask them to send a schedule of the fees before you sign up.
3. Ask for a copy of their contract before you sign up or agree to direct debits.
4. If possible, do not stop making your payments to creditors. If this is not possible, talk to your creditors about getting a hardship variation so that you do not go backwards while you are deciding what to.
5. Think about the long term impacts. Debt Agreements can last between 2 and 5 years (or even longer). Are you going to maintain those payments for that long? Perhaps you would be better off to sell your asset(s) and start fresh, without insolvency on your record.

## HELP! I HAVE ALREADY SIGNED UP AND I AM NOT HAPPY WITH THE SERVICE!

As a general rule, once you have signed up to a contract, it can be difficult to get out.

If a Debt Agreement Proposal and the Statement of Affairs has already

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been lodged with AFSA you will have to act quickly if you want to stop the process (contact AFSA on 1300 364 785 and tell them you want to withdraw your proposal). If the creditors have already accepted the proposal it will be too late to get out of the Debt Agreement but you can still complain about the service that set it up.

You should follow the steps outlined below if you want to cancel your contract with the Debt Agreement Broker or Administrator and raise a dispute:

1. Check your contract. You may fall under a 'cooling off' period, or there may be a provision for termination. However you may be liable for cancellation fees or fees until the termination date.
2. Get legal advice regarding your prospects of success in cancelling your contract and/or obtaining a refund. For free and independent legal advice call the Credit & Debt Hotline on 1800 007 007. Try and have a copy of your contract when you call for advice.

Whether you terminate the contract and pay nothing further or seek a refund of the fees already paid will depend on the facts of your individual case.

You could potentially make a claim under the Australian Consumer Law, arguing that:

- i. the services rendered were not fit for your stated purpose
- ii. the Debt Agreement Broker or Administrator engaged in misleading and deceptive conduct or
- iii. Unconscionable conduct
- iv. the contract included unfair contract terms

All of these arguments are complicated and can be hard to establish.

3. Contact the Debt Agreement Broker and raise a dispute. This can include you asking to cancel your contract, or asking for a refund of fees paid. Some Debt Agreement Brokers may be members of either the Financial Ombudsman Service (FOS) ([www.fos.org.au](http://www.fos.org.au), 1800 367 287) or the Credit and Investments Ombudsman (CIO) ([www.cio.org.au](http://www.cio.org.au), 1800 138 422). If so, you can find the relevant contact details for the Debt Agreement Broker's dispute resolution officer from either Ombudsman.

If you are unable to resolve the dispute with the Debt Agreement Broker and they are a member of an External Dispute Resolution (EDR) scheme, you can lodge a dispute with either FOS or CIO. You can lodge a dispute online.

4. Take the Debt Agreement Broker to a Tribunal or Court. If the Debt Agreement Broker is not a member of an EDR scheme (they do not have to be), and you are unable to negotiate a settlement

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with them, you can take the matter through to NSW Civil and Administrative Tribunal (NCAT) or Court (or a similar court or tribunal in another state). If you are considering this option, we strongly advise you obtain legal advice before doing so, as there are considerable risks, including payment of costs if you are unsuccessful.

5. Make a complaint to the Australian Securities and Investment Commission (ASIC), the regulator. Although ASIC is only likely to intervene if a number of consumers are affected, it is still important to keep ASIC informed of problems. A complaint can be made at [www.asic.gov.au](http://www.asic.gov.au)

## NEED SOME MORE HELP?

Need some more help? Call the **Credit & Debt Hotline** on 1800 007 007 for free legal advice or financial counselling help. See [Fact Sheet: Getting Help](#) for a list of additional resources.

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