

## Debt Agreements

This fact sheet is for information only. You should get professional advice about your personal situation.

### Main ideas

- Debt agreements are marketed heavily, but may not be the best way out of debt for you.
- There are 2 types of debt agreements:
  - Part 9 or Part IX Debt agreements are an 'act of bankruptcy' – know the consequences
  - Informal debt agreements are simply an agreement between you and your creditor/s
- Debt agreements can be expensive, with high up-front fees.
- There are often better options than debt agreements.
- Financial counsellors can help. Their services are free.

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## **Debt agreements – pay back less than you owe, but there's a cost**

A debt agreement is when your unsecured creditors (the people and companies you owe money to) agree to settle your debts for less than you owe.

### **Debt agreements are not always the easiest or best way out of debt.**

Debt agreement advertisements try to make debt agreements sound as attractive as possible. They say things like 'you only have one easy monthly payment to make', or 'consolidate all your loans into one', or 'never pay interest again'. Some offer a free first consultation, but that may be aimed at getting you to sign up.

There are two types of debt agreements:

1. An informal or negotiated debt agreement.
2. A Part 9 (or Part IX) debt agreement.

Both types of agreements are arranged by a company or broker who will charge you fees. You will be locked into paying your creditors according to the agreement, and there are consequences if you don't keep to the agreement.

## **Alternatives to debt agreements**

**Talk with a free financial counsellor before signing up to a debt agreement.**

### **Keep paying**

You may be able to increase your income or reduce what you spend to free up money to pay your debts. Living to a strict budget can be tough, but may be better than tying yourself up in a debt agreement.

You may be able to refinance to a lower interest rate. For example, you may be able to

refinance your home loan, borrowing a little more to pay out your credit cards. (If you do this, cut up the cards so you don't build up more debt.)

[See the MoneySmart website for some helpful tips about budgeting.](#)

## **Negotiate with your creditors**

If you are in financial hardship, you may be able to ask for a hardship arrangement. Read our fact sheet about Financial Hardship. You may be able to reduce your interest rate, or reduce or postpone your repayments for a time.

Negotiating with your creditors is free – you don't need to pay an administrator. And hardship arrangements are only recorded on your credit report for one year. [Read our Credit Reports fact sheet.](#)

A free financial counsellor can help you negotiate with creditors.

## **Consider bankruptcy**

If you don't have any assets, if you are not paying off your home, and if you are not a company director, bankruptcy may be better than a debt agreement. Bankruptcy can give you a complete fresh start, but there are some downsides.

Bankruptcy wipes out most of your debts and you will have no ongoing repayments. (Some types of debts are not covered by bankruptcy.)

You may need to make some contribution to pay off your debts if your income is over a certain amount. Bankruptcy usually lasts for 3 years (up to 8 years in some circumstances). [Read our fact sheet about Bankruptcy for more details.](#)

Talk with a free financial counsellor if you are considering bankruptcy.

## **Informal debt agreements**

An informal or negotiated debt agreement is not a form of bankruptcy. It is simply an agreement, so it can take different forms.

You pay a company to negotiate with your creditors (who you owe money to) for you. This may involve offering a reduced lump sum payment, a payment plan, reduction of interest or fees. Your creditors will decide whether or not to accept your proposal.

The company will charge you fees for their services for setting this agreement up. This may be an upfront sum, or instalments over time.

There may be payment handling fees or management fees over the course of the agreement

– if they will be taking payments from you to pay towards each of your creditors.

How all of this is recorded on your credit report depends on what you end up negotiating in the agreement – [read our Credit Reports fact sheet](#).

Companies offering informal debt agreements should be a member of the Australian Financial Complaints Authority, a free and independent dispute resolution service.

Before entering an informal debt agreement, consider:

- Can you avoid the fees by negotiating yourself, or with the support of a free financial counsellor? Financial counsellors can sometimes negotiate agreements on your behalf. They cannot receive payments from you to pass onto your creditors. But they can tell you about easy ways to make regular payments (for example, by setting up direct debits that come out on your payday).
- How much are the fees and when do you need to pay?
- What do you do if one or more lenders refuse your offer? Do you still need to pay fees, and how much?
- What qualifications do the staff have and how experienced are they?
- Is the company a member of any free and independent dispute resolution schemes like the Australian Financial Complaints Authority ([you can check on the AFCA website for a list of their members](#)). This can be very important if something goes wrong.
- Are you comfortable with the strategy behind the negotiations, and have the benefits and risks of that strategy been explained to you? For example, if they want you to stop payments while they negotiate, the risks to you may include being charged default interest or fees, credit report impacts, or legal action starting.

## Part 9 or Part IX debt agreements

A debt agreement is a formal agreement under the Bankruptcy Act. It is an ‘act of bankruptcy’ and can be very risky if you own assets or have high income. It can seriously affect your credit report.

You pay what you agree over time. There is a maximum of 3 years (or 5 years if you own a home). A secured loan, for example, a mortgage or car loan, cannot be part of a debt agreement.

A Part 9 debt agreement must be organised and managed by a **debt agreement administrator**. The administrator must be registered with the Australian Financial Security Authority (AFSA). You pay the administrator the agreed amount, and they pay it to your creditors. The administrator charges fees for their services – usually a set-up fee and an ongoing management fee.

Other people might try to get you to sign up to a debt agreement. These people or

companies act as **debt agreement brokers**.

## Be wary of debt agreement brokers

Brokers collect your information, complete some of the paperwork, and pass it on to a registered administrator. You pay a fee for this, or they get money from the repayments you make, or they may get paid both ways.

Sometimes the person arranging the agreement might suggest you stop paying your creditors so you can pay their fee. This is risky! There is no guarantee the agreement will go ahead, you are unlikely to get a refund, and you will get further behind with your debts.

## The downside of Part 9 debt agreements

You are usually asked to pay an up-front fee, even before your creditors agree to the arrangement. Sometimes this can be thousands of dollars. You rarely get that money back if the agreement does not go ahead.

A debt agreement is different to bankruptcy, but it can have similar consequences.

- Proposing a debt agreement is an 'act of bankruptcy'. If the proposal is not accepted, or is ended early, your creditors can use it to make you bankrupt.
- Proposing a debt agreement will tell your creditors what assets you have. They may reject the proposal and try to make you bankrupt so they can force you to sell the assets.
  - If an agreement goes ahead, it will be listed on the National Personal Insolvency Register and on your credit report for at least 5 years. This can make it difficult to get credit, telco services, and a rental property.
  - If the debt agreement is not completed in full (all payments made), your creditors can chase you for the original debt and back-dated interest. You may end up in a worse situation.
  - A debt agreement does not cover loans where there is a security. You will need to keep paying your home mortgage and car loan separately, if you have these.
  - You may not be able to work in some professions or trades.
  - Debt agreements can be expensive to propose and run. Administrator's fees can be very high.
  - A debt agreement may not solve your financial problems. You may still end up going bankrupt.

## How Part 9 debt agreements can help

- In a debt agreement, you are not forced to sell assets to pay your debts. If you own or are paying off your home, or have other significant assets, a debt agreement may be helpful.

- In a debt agreement, your creditors stop charging interest and agree to being paid less than you owe. A debt agreement also stops collection activities.
- You can be a company director while you are in a debt agreement. You cannot be a company director while in bankruptcy or a personal insolvency agreement.

## The Part 9 debt agreement process

To enter a debt agreement you must:

- Be insolvent (unable to pay your debts when they are due).
- In the past 10 years not been bankrupt, entered a debt agreement, or had a personal insolvency arrangement.
- Have total unsecured debts of less than \$137,537.40 (as at September 2023)
- Have after tax income less than \$103,153.05 (as at September 2023)
- Have property of value less than \$275,074.80 (as at September 2022). Generally, property includes anything you own except household furniture, tools of trade, and a low value car.

[Updated figures can be found on the Australian Financial Security Authority website.](#)

### Step 1: You are given information

The company arranging the agreement will give you information about how a debt agreement will benefit you, the consequences (including that it is an act of bankruptcy), any alternatives and where you can get advice.

[Read more information about debt agreements at the Australian Financial Security Authority website.](#)

### Step 2: Lodge the proposal with AFSA

The debt agreement administrator or broker will help you complete 3 forms:

1. debt agreement proposal
2. explanatory statement
3. statement of affairs.

Your proposal must be accurate and list all your assets and debts. It can be an offence to give false or misleading information. **The forms must be received by AFSA within 14 days of being signed.**

AFSA checks that:

- you are eligible to enter a debt agreement
- the debt agreement administrator is eligible to administer debt agreements

- the debt agreement administrator certifies that the proposed agreement is affordable and sustainable
- there is no sign that you will be in undue hardship if you enter the debt agreement.

AFSA may call you to check the information on the form or answer any questions they have.

### **Step 3. Proposal is sent to creditors to vote on**

AFSA sends the proposal and explanatory statement to your creditors.

Creditors assess the proposal and vote. The debt agreement administrator answers any questions they have.

A secured creditor (for example, if you have a car or home loan) can vote and get payments on the unsecured part of their debt (for example, if you owe more on your home loan than the property is worth).

During the voting period, creditors cannot demand payment of the debt but can start or continue legal action. Any judgment they get cannot be enforced without the leave (permission) of the Court.

### **Step 4. ASFA counts the votes**

For a proposal to be accepted, AFSA must receive 'yes' votes from a majority of your creditors who are owed at least 50% of your total debt between them. If the majority vote 'yes', the creditors who vote 'no' are also bound by the debt agreement.

**If the proposal is accepted**, the debt agreement administrator will:

- collect payments from you
- keep creditors and you informed
- pay creditors
- report any potential offences against the Bankruptcy Act
- tell AFSA when the debt agreement is completed, or when you have been in default for 6 months to terminate the agreement.

**If the proposal is not accepted:**

- Creditors can start recovery action. They can also add interest since your last repayment, covering the period while the debt agreement was being prepared and considered.
- Creditors can issue a Creditor's Petition to make you bankrupt. This is because your debt agreement proposal is an 'act of bankruptcy'. **Get legal advice immediately if you receive a Creditor's Petition.**

## Changing a debt agreement

You can change or end a debt agreement if the majority in value of your creditors agree.

If your situation changes and you can't complete the debt agreement, talk to your debt agreement administrator about changing the debt agreement. For example:

- You can ask for the debt agreement to finish now, successfully, without further payment. Sometimes your creditors will agree to finalise the debts, especially if you have already paid a good portion of the agreement.
- You can ask to reduce your payments.
- You can ask to extend the term of the agreement – but you cannot go beyond 3 years from when you first started the agreement (or 5 years if you own a home).

This is called a 'variation proposal'. Your creditors will vote on whether they will agree.

## Defaulting on a debt agreement

The debt agreement is automatically terminated if:

- you are more than 6 months behind on your repayments, or
- you have not made all repayments within 6 months of the end date of the agreement.

If the debt agreement is terminated:

- Creditors can start recovery action against you for the whole amount owed, not just the amount in the agreement. They can include back-dated interest.
- Creditors can issue a Creditor's Petition to make you bankrupt.
- Your default on the debt agreement will be recorded on the National Personal Insolvency Index.

## Complaining about a debt agreement

You may want to complain about the behaviour of the debt agreement administrator or broker. For example, you may want to complain if the administrator or broker:

- demands you pay fees for the ongoing administration of the debt agreement before it has been accepted by creditors. (They can charge a set-up fee even if the proposal is not accepted.)
- gives you misleading information about entering a debt agreement
- does not properly managing your debt agreement
- encourages you to propose a debt agreement that you cannot afford
- encourages you to not fully disclose your financial position



- doesn't answer your questions or doesn't respond to complaints
- engages in illegal conduct.

Complain directly to your administrator first. If they do not respond satisfactorily, complain to:

- 'Bankruptcy Regulation' at Australian Financial Security Australia (AFSA). [The AFSA website explains how to complain.](#)
- [Australian Financial Complaints Authority](#) (afca.org.au). [Read our factsheet about Financial Complaints to AFCA.](#)
- [Australian Restructuring Insolvency and Turnaround Association.](#)

If your complaint is about a person or organisation that is not a regulated debt agreement administrator, get legal advice and complain to AFSA and [ASIC](#).

You may be able to get a court order, in some circumstances, to get out of the debt agreement. **Get legal advice before considering this.**

## Need more help?

[For a list of other resources, visit our Useful Links page.](#)

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