

Information Sheet 3 - Part 9 (or a Part 1X) Debt Agreement Proposal

You don't have to remain miserable and in debt. Life's not meant to be like that. Debt can be fixed, so don't be depressed or bullied about it. Get on with your life.

You can fix your debt problem by going bankrupt or entering into what is called a Debt Agreement Proposal. I'll tell you a bit about both here.

How a Debt Agreement Proposal was supposed to work is that it should be a bit like a consolidation loan, except your creditors are bunched together, and in effect they each individually provide the loan. This is all arranged through a Debt Agreement Promoter or a Debt Agreement Administrator (sometimes they are one and the same)

Through the Debt Agreement Proposal you should tell them what you can afford to pay, how long you can afford to do it for, and how much you can pay back. I've got a worksheet for this a bit further on, see how you go..Interest sometimes gets frozen, and the balance that you owe may sometimes be reduced.

They generally don't charge you any more interest, and sometimes they discount the loan balance that you pay back. When it's all worked out and put to your creditors, some will say yes, some will say no, but if enough say yes, then the others are stuck with it. Similarly, if enough say no, then it doesn't happen. You can try one more time.

Later you may find that it is unaffordable and so you may decide that you want to change the arrangement, or you just want out. You don't have to make the payments. It's as simple as that. If you don't make any payments for 6 months then the debt agreement is automatically cancelled. That's the law.

In some circumstances however, Debt Agreements could be a way to save the house. Another way to save the house, and this may surprise you, could be to go bankrupt. To find out more about this simply go to the website that I've written on this, www.bankruptcyandhouses.com.au

As I've said earlier, to make this offer, you first have to work out what you can afford, and for how long can you afford it.

My suggestion is that it should be for no more than about 3 years or so. 3 years is the normal period for a bankruptcy, and that's your sorting out your debt alternative. A bit further on I've included a work sheet to help you to do this.

What you decide to offer doesn't have to be the full amount of the debt either, if you can't afford to do so.

Your offer is formerly put to your creditors and if enough of them agree to it, the rest have to accept it too, they can't demand more, now or later. If not enough of them say yes the first time, then you can try again with a different offer, but you can only do this twice.

In your formal offer you'll have appointed a Debt Agreement Administrator. I am not a Debt Agreement Administrator, nor do I recommend any particular person or firm.
What if creditors say no?

If your creditors say no to your offer or offers, then your fall-back position is that you can go bankrupt. Then your creditors run the risk of losing out all together. So, when you think about it, despite all the worry that you've had and the bullying that you might have received, you really are the one in charge.

What's also good about this is that your creditors have to stop ringing you up and writing to you and sending you bills, they've now got to deal with your Debt Agreement Administrator, or your bankruptcy trustee.

At the end of the period of say 3 years or whatever period that has been agreed to, if you've done what you've said that you would do, then you'll be out of debt, even though you haven't paid off in full what you owed.

A bit further on I'll try and help you to work out what repayment commitment that you can afford, and for how long that's practical. I've come across some debt agreements where people have agreed to a period of 5, 6 or 7 years. Later the people involved have found me and told me that that's proved to be too hard, and asked me if I can help them to fix it (yes I can).

Why 3 years?

If you didn't know it before, 3 years is the period that a bankruptcy normally runs for. After 3 years, (and often during the 3 years), a bankrupt can keep everything that he/she earns (including their car, and quite often their house) so my question is, why should a Debt Agreement keep you poor?

Entering into a Debt Agreement, in legal terms, is much the same as going bankrupt in many respects. As with a bankruptcy, it's a black mark on your credit rating file with the credit rating agencies for 7 years, and for life with the government's data base, the National Personal Insolvency Index, the NPII. A lot of people don't realize that.
Contact me

If you then want to talk to me about your situation, just call 1300 794 492, say that you'd like to have a chat to Fred or Steve about a Debt Agreement Proposal and/or a bankruptcy. Leave your return phone number and email address please, and I'll be sent your message. I'll call you back when I get it.

If you'd prefer to email me at hello@fredappleton.com.au first, then be sure to include a return phone number please. "at a rate that you can afford"

Your offer will be to pay your ordinary unsecured creditors what you can afford, over a period of time, generally with any further interest frozen, and as the government says, with the repayments intended to be "at a rate that you can afford".

Quite often this means that your debt is not repaid in full, but that's ok.

If your offer is accepted by enough of the creditors, and they represent a majority of the amount of the debt, then they all have to stop chasing you to repay what they say that you owe them. The phone calls and letters stop, they get off your back.

Grandma to the rescue.

Sometimes somebody like grandma may be prepared to fund say 25% of the debt, as a one off payment. That can be your offer. If accepted you'd probably then have to privately square up with grandma.

A real life problem is that "at a rate that you can afford" doesn't seem to always happen. It's a hard world. Lots of people seem to get talked into paying more. That's when, for some people, the government's good idea behind debt agreements, can become unstuck.

From feedback that I get, it can be soul destroying if you end up signing up for a Debt Agreement Proposal that is not "at a rate that you can afford".

Real Life

Hi my name is ----- and I am seriously looking into bankruptcy. I am currently in a debt agreement and have been for 2 years now, and i dont seem to be getting far despite the struggle. After the banks where done they took everything. I have nothing of value except this debt agreement and once everything is paid weekly also very little to live on, and I am now pregnant and wont be able to keep this up.I am really interested in what you have to offeras i feel its the best chance for me in my life.

and another

I am currently in a debt agreement proposal with but still find myself struggling to pay that off.

There can be big money in debt. Unfortunately some of the people who promote Debt Agreements seem to make more money by getting a one through the system. That seems to be their bottom line, they don't seem to be interested in working out one that you can comfortably afford.

Creditors can sometimes play hard ball too, but if you accept that you're in charge, because your bottom line will be bankruptcy, then that puts them between a rock and a hard place.

Causes of debt

I'm so often told that debt has been caused by a period of ill health, or a marriage or relationship breakdown, or a period of unemployment or under-employment. Debt in turn can also cause ill health and relationship breakdowns. With a bit of knowledge and help with debt, you'll see that it can be fixed.

Worksheet

Let's now take a look at how to work out what you can afford as a repayment. You'll soon see for yourself whether being tied up to a Debt Agreement could mean that it's a long time to remain poor and be tied up to your dead end debt.

This is the list of your expected expenses amounts for the next 12 months that the government asks you to supply if you apply for a Debt Agreement Proposal. It also includes a comment or two by me:

Rent (yearly)

\$

Mortgage payment (yearly)

\$

Rates (yearly)

\$

Home maintenance (yearly estimate)

\$

Board (yearly)

\$

Food, yearly, including groceries and take away

\$

Phone +mobile+internet (yearly estimate)

\$

Entertainment, pay TV (yearly estimate)

\$

Electricity, gas, water (yearly estimate)

\$

Health insurance (yearly)

\$

Medical/chemist (yearly estimate)

\$

Car payments to secured creditor (years repayment)

\$

Car fuel, registration, insurance, maintenance (yearly estimate)

\$

Transport, fares to work etc (yearly estimate)

\$

Other insurance (yearly estimate)

\$

School fees and expenses (year's estimate)

\$

Child care (yearly estimate)

\$

Child support and maintenance (for a year)

\$

Other expenses for children eg sport, music, lessons,
presents, special treats (Dreamworld etc) (yearly estimate)

\$

Clothes, shoes, hairdressing (yearly estimate)

\$

Incidentals: e.g. cigarettes, books, magazines (yearly estimate)

\$

Other payments to secured creditors and rental payments
for household goods (yearly estimate)

\$

Other household expenses:

To what you were going to write here I think that you should add about \$100 to \$150 per week for savings. You're always going to need something for unexpected expenses (going to grandma's funeral, an engagement present etc). You're also going to need to be able to start saving again so that you can get back on your feet and on with your life. (Income tax might be another expense that you'll need to factor in You'll see below that in getting the details of your income, the government want after tax details. Also, the government is telling us that with things like Global Warming measures and Emissions Trading Schemes .which are going to come along, prices will go up. So build in a buffer.

\$

Total of your Estimated Expenses

\$

Divide that answer by 52 if you get paid weekly, by 26 if you get paid fortnightly, or by 12 if you get paid monthly, so that you can see how it shapes up against the amount of your pay that you've got available to spend, which is the amount that goes into your bank.

This is real life, don't kid yourself. Include special needs expenditure in Other Household Expenses. See if there's enough fat left over for a Debt Agreement, if not, face up to it.

Now, let's look at what the government want you to disclose about your likely after tax income over the next 12 months. It is going to allow you to be able to propose a repayment arrangement "at the rate that you can afford".

Wages and regular allowances (after tax), that is, banked \$
\$

Other allowances: overtime, fringe benefits (banked)
\$

Centrelink benefits (banked)
\$

After tax Rent (net of expenses), investment interest, dividends
\$

After tax Income from second jobs (banked)
\$

Child/Spouse Maintenance received
\$

Other
\$

Total After Tax Income
\$

Additional Support

You don't really need to seek this out, but they also ask if you are likely to be able to get \$\$\$ or some \$\$\$ value support from elsewhere (mum and dad) to help you meet your Debt Agreement repayments, week in week out, year in, year out. If so, they want to know:

Free rent and or board show details
\$

\$\$\$\$ funds from partner or spouse show details
\$

\$\$\$\$ funds from somebody else show details
\$

\$\$\$\$\$ value from somebody else show details
\$

\$

From all of this, you should be able to get some idea as to what amount that you think that you can afford to pay towards a Debt Agreement Proposal, weekly or fortnightly or monthly, year in and year out.

Don't despair about what you see. If it's not working then the bottom line to get you out of this debt trouble is bankruptcy. You'll read about that in a minute.

Income minimum amounts in Bankruptcy

An inconsistency between what the government says in dealing with bankruptcy and debt agreements is that, although there are no upper limits, with bankruptcy they actually state what minimum amounts that a bankrupt can earn and keep, net after tax and if applicable, after child support payments. Remember these are minimum, not maximum.

These minimum amounts are called Threshold Amounts, and they currently (April 2010) start at \$849.60 per week for people with no dependants, \$1,002.76 per week if you have 1 dependant, \$1,079.25 per week if you have 2 dependants, \$1,121.74 per week if you have 3 dependants, \$1,138.73 per week if you have 4 dependants, and \$1155.73 per week if you have over 4 dependants.

Remember, if this is now a consideration, these are minimum amounts and you can keep them in full. As a bankrupt you can earn as much as you like, there's just a sharing formula once you pass these amounts.

If you get over these net after tax and after child support minimum amounts then you simply retain half of the excess, and pay the other half into your bankruptcy for the normal 3 years of your bankruptcy, or for as long as you remain bankrupt.

A dependant for bankruptcy purposes is currently someone in Australia who is dependent on you but who earns no more than \$3030 per annum. This figure changes quarterly.

In talking about bankruptcy and the 50% contribution to be made to your bankruptcy if your net income is above the Threshold amounts, the government actually says this "The purpose is to require bankrupts who can afford to do so to pay contributions towards their (bankrupt) estate....."

The "who can afford to do so" isn't there for what you tie yourself up to pay under Debt Agreements. Nor are any amounts mentioned. With Debt Agreements you're at the mercy of the market place. And that's at a time while you are in such a worried and vulnerable state.

Factor in whether or not you're the sort of person "who can afford to do so" when you do the earlier mentioned worksheets, as you consider a Debt Agreement Proposal. If you're not, I won't agree to help you put together a Debt Agreement Proposal.

A better use of your money

I think that you could ask yourself would this Debt Agreement Proposal repayment money be better used in getting you back some quality of life time again. Would it be better used in putting together a deposit for a house sometime down the track?

Try not to let your debt worries damage your health, or cause you to lose a lot of sleep, to put off a needed annual holiday, and/or create a lot of stress in the family. If it will, it's not worth it.

Moving on now, here's a bit more information about your debt that you might not know.

What is your debt?

What you think is your debt, may in fact have been on-sold at a big discount, to what I call the second hand debt salesmen. These are often the people who ring you up.

If you knew that it had been on sold, and for how much, then perhaps you may be inclined to make a different decision as to how much you really owe and so should feel that you want to pay off.

For example, say you owed \$10,000 and your debt had been on-sold to a second hand debt collection company for \$1,500, how much would you feel that you should offer to pay to the second hand debt collection salesman's company? Remember, the bank or whoever you originally owed the money to, by on-selling the debt, now consider that they've been paid.

It seems that a Debt Agreement also provides a nice little (big really) earner to the Debt Agreement promoters and their salespeople.

People who seek me out after they've had a bad experience with debt agreements almost always tell me that they feel

that they've mostly wasted a year or so of the time that could have been better used in going bankrupt and so get out of debt and back on their feet and on with their lives a bit quicker.

Debt Agreement Administrator's fee

Once the Debt Agreement Administrator takes over the administration of your agreement then their fee is generally a percentage of what you pay in. You generally don't have to pay anything extra.

You've got to wonder, the more that you can be talked into repaying per week, the bigger the % amount becomes.

I hear of debt agreement salesmen coming to your home and working out one repayment amount for you, to only later phone you back and tell you that the final repayment figure that they've negotiated with your creditors is more. If something like that happens, it's then your call. Don't forget, you're in charge.

Don't get me wrong.

Don't get me wrong. Sometimes if I think that they'd be better off, I ask people if they have considered entering into a Debt Agreement.

In September 2009 I was contacted by a Financial Counsellor and asked if I would look at a matter being advised on. I did, and one of my recommendations was that the client consider entering into a Debt Agreement Proposal. I did say however that in that instance the client should not accept a repayment commitment of over \$100 a week. That's all I thought that the client could comfortably afford.

Financial Counsellor referral.

(If you're a Financial Counsellor and you'd like me to have a look at any bankruptcy or debt agreement matter before you, then send me an email. My email address for this sort of enquiry is hello@fredappleton.com.au

Your credit rating and the NPII.

Debt Agreements and bankruptcy damage your credit rating with the credit rating agencies just the same, and you currently appear for life on the government's database called the National Personal Insolvency Index. It's also known as the NPII.

Although they make it out to be, in reality I don't think that the NPII entry is such a big deal for most of us. For some years I've had the impression that it's more just an attempt at petty old fashioned punishment and discrimination.

Having said that I was a bit pleased, and you might say vindicated, when in May of 2009 the Federal Attorney General's Department, in commenting on bankruptcy law, actually stated that things like this appeared to be just punishment, and not helpful in allowing people in debt to get back on their feet and on with their life.

A few months later when they next talked about it, that sort of thinking had disappeared from view. I wonder who didn't like it, and had enough clout to sink it. Nevertheless, that doesn't mean that it's not true.

An actual matter

In an actual matter that crossed my desk in October 2009, I was able to do the sums for someone who had a debt of \$40,000 and was about to sign up to a Debt Agreement.

It worked out that over the 4 year Debt Agreement term proposed, the total amount to be paid by this person, including the Debt Agreement salesman's fees, would be about \$42,500.

The person then chose bankruptcy when I was able to show that the sums came out showing that the amount that would be paid over 3 years, including my fee of about \$400, would be about \$24,000.

Roughly, I think that in this case, under a Debt Agreement the banks would have got back about \$30,000 of the \$42,500 cost, whilst under a bankruptcy they would have got back about \$20,000 of the \$24,000 cost. Another scenario, a Composition in Bankruptcy.

Earlier on I talked about grandma providing you with funds to make a once only lump sum repayment offer.

Whilst thinking about a Debt Agreement, be aware that in bankruptcy there's a scenario for this called a Composition, much the same as in Debt Agreements, but I expect that the settlement figure could be less.

It would mean that you go bankrupt, then a few weeks or months later the offer would be made through a Bankruptcy Trustee like Alan Nicholls. Alan would do the negotiating on your behalf, and he'd attend to the paperwork. You'll read about Alan elsewhere in this website. I'll get him to talk to you about a Composition if you think that grandma could help.

With the offer being accepted and the money paid, your bankruptcy would be discharged. I think that you'd probably be looking at 3 to 6 months from go to whoe.

If this is of interest, email your details to Alan at alan@nichollSCO.com.au and we'll look into it further. Include your contact phone number in your email please. Also, tell him that you read about Compositions on this website please. I don't get anything out of you telling him this except that it helps to keep him happy paying the rent so to speak. [More General Information on Debt Agreements.](#)

If a majority in value of your creditors accepts your Debt Agreement Proposal, then it becomes a legal document. Your creditors stop pestering you, and they can't send the sheriff around to seize your billiard table or whatever, nor can they garnishee your income or the money in your bank account.

You can however later cancel a Debt Agreement if you want to, and go bankrupt. An email to hello@fredappleton.com.au or a call to 1300. 794 492 and ask for Fred or Steve. [How to automatically cancel a Debt Agreement.](#)

If you don't make any payments for 6 months, then your Debt Agreement is automatically cancelled. Then you're back to square 1, you'll start to get hassled again etc. You can of course then go bankrupt. Your creditors won't harass you in this 6 months period.

You can cancel it quicker than that though if you want to. .
[Debt Agreement Parameters](#)

The parameters put into place by the government for a Debt Agreement Proposal are that it is for people who are insolvent, which means that basically you are unable to pay your debts as and when they fall due, and that in the last 10 years, you haven't been bankrupt or have already had a Debt Agreement, or been involved in what is called a Part X Personal Insolvency Agreement. (This last thing is for bigger situations than cannot be handled by Debt Agreements).

Also, in the next 12 months you don't expect your after tax income to be more than \$66,284.40 pa, or you can't have assets of more than \$88,379.20 (I presume that this is net), and your unsecured debts are not more than the same figure.

What is an unsecured debt is a bit of a minefield but basically, as well as the ordinary understanding of that term, it includes any shortfall between what is an assets value and what you owe on it (by a mortgage or a Bill of Sale)

These parameters change each March and September. Currently, the government is thinking of increasing them by 20%.

I sometimes come across people with overwhelming debt who are being harassed to death by the Debt Collectors, or

they can see what's coming. For their own particular reason they tell me that they do not want to go bankrupt.

I'm often told that if they were given time, some of these people feel that they can see better days ahead. Some examples that I am told are that they expect to be a beneficiary of a will soon, they are worried about losing their redundancy or long service pay, they worry about losing their home and other assets, and losing their capacity to be a director of a Ltd or Pty Ltd company.

Debt Agreements may be a better alternative to bankruptcy in these cases, however, I'll comment on each one.
Beneficiary of a will.

I've commented on this elsewhere in the website. My immediate suggestion is to see if grandma or whoever it is, will change the will naming somebody else to get your share, instead of you.

The other option is, go bankrupt, but with a plan to look at a Composition in bankruptcy as mentioned earlier. The plan is to "buy your way out of bankruptcy" within a few months, by making a lump sum offer.
Redundancy and Long Service Leave.

Long service leave is simply income, and the very worst case scenario is that in bankruptcy you'd lose half of it. With a Debt Agreement I think that you could expect your creditors to want some or all of it once you received it.

I think that a redundancy payment is an asset in bankruptcy, so your trustee would want it. In a Debt Agreement Proposal, I think that your creditors would want it too, unless you entered into one before receiving the money.
Houses and Other Assets.

A bankrupt's \$\$\$\$ equity in a house can sometimes be rescued by bankruptcy. I cover this in the website www.bankruptcyandhouses.com.au

With a Debt Agreement Proposal, I think that your creditors might want you to do something like borrow against your equity or something like that so that they can get their money back quicker. Some might want you to sell the house. I don't think that there's any hard and fast rule.

Other assets like a boat or a racehorse would have to be sold by a bankruptcy trustee. It would be up to your creditors in a Debt Agreement Proposal to come back to you and tell you what they want you to do. I think that they'd want you to say goodbye to the racehorse.
Directorships.

You can't be a director or have a management roll in an incorporated company while you are a bankrupt. I'm not aware of this restriction if you are in a Debt Agreement Proposal.
Overseas Travel.

A Debt Agreement Proposal places no restrictions or hassles on you as regards overseas travel. In reality, bankruptcy rarely does either, but it's a fear issue used by others who want to sell you a Debt Agreement Proposal.

As a bankrupt, if you wish to travel overseas then you have to get the permission of your Bankruptcy Trustee first. Whilst there is a procedure to be followed to get this permission, it does not seem to present any difficulties. This topic is covered in more detail in Bankruptcy Information Note 4.
Contact me

For help on this issue either just phone me on 1300 794 492 and ask for Fred or Steve. Leave me your phone number and email address. I'll call you back and then ask you to return my call. Or you can email me at fred@fredappleton.com.au

Thanks for reading all this. Now go on to Information Note 4.

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var sc_project=6037008;  
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