Debt Agreements:

Remedy or Racket?

November 2005

Consumer Credit Legal Service Inc

&

Eastern Access Community Health

Produced with funding from the Consumer Credit Fund

About Consumer Credit Legal Service Inc 'CCLS'

Consumer Credit Legal Service Inc ('CCLS') is a community legal centre that provides advice, and legal representation to consumers in relation to consumer credit matters.

CCLS also aims to influence industry practice and Government policy through policy work, research and advocacy.

CCLS is funded by Legal Aid and Consumer Affairs Victoria, and this project was funded through the Victorian Consumer Credit Fund.

Website: http://www.ccls.org.au

Email: info@ccls.org.au

Telephone: (03) 9670 5088

Facsimile: (03) 9670 7205

About Eastern Access Community Health 'EACH'

Eastern Access Community Health (EACH) delivers a range of community health services that improve the physical, mental and social well-being of individuals, families and communities in Melbourne's eastern suburbs. Part of the EACH service provision is Financial Counselling. The EACH Financial Counselling team assists low income, marginalised consumers who are experiencing financial difficulty. This free, independent, confidential service provides an overall assessment of consumers' financial situations; explores options for money and debt management; and supports consumers to pursue the option they choose.

Further information about Eastern Access Community Health is available at www.each.com.au or the Financial Counselling team can be contacted on **03 9871 1800**.

Currency

The law referred to in this report is current as at 30 November 2005.

EXECUTIVE SUMMARY

Consumers in Debt

The inability to afford debt payments can contribute to a range of problems for consumers, for example non-payment of utilities or rent (and potential disconnection and/or eviction), relationship problems and health problems.

Consumers who are unable to meet their financial obligations often do not understand the nature of all their commitments or what options might be available. The options available for overcommitted, low income consumers are limited – and each has its own negative consequences. However, a lack of understanding of the nature of their situation often leads consumers to panic – and makes them susceptible to demands from creditors and debt collectors – and to businesses offering them a 'quick fix'[1].

Options available might include selling property, obtaining help from family, challenging a credit contract (for example where credit was provided unfairly or irresponsibly), informal payment arrangements with creditors, or one of two options available under the *Bankruptcy Act*. Free community based financial counselling services[2] can assist consumers to evaluate all the options available, and can provide information, advocacy and support.

Bankruptcy is one option available to some of these consumers. Once someone is bankrupt creditors cannot collect most unsecured debts, the bankrupt's necessary household good are protected, and those on low incomes are not required to make contributions from income.

There are significant disadvantages of bankruptcy including that some regard it as a social stigma to have been a bankrupt, it can restrict participation in a business and it affects a person's ability to obtain credit in the future.

Debt Agreements ('Agreements') were introduced under Part IX of the *Bankruptcy Act* in 1996 as an alternative to bankruptcy. They were intended to be a flexible, low cost option for low income debtors with few assets.

Under Part IX of the *Bankruptcy Act*, a debtor can make a repayment proposal ('Proposal') to creditors. If accepted by a majority of creditors it becomes an agreement binding on all creditors ('Agreement'). Any person, including the debtor can administer an Agreement (arrange to make the Proposal to creditors and collect and distribute payments to creditors). The debt agreement administrator ('Administrator') can charge fees 'up front' and as a deduction from payments.

Community based financial counsellors have assisted many consumers who have reported problems with debt agreements. Anecdotal evidence indicates that many fail because they are unsustainable – often from inception – due to the debtor's inability to meet the payments.

The money to be made from Agreements has created a new industry, which has generated advertising and marketing that targets consumers in financial difficulty, and promotes the benefits of Agreements – often to the exclusion of other options that might be available.

---

[1] This might be an offer of a consolidation loan, or Part IX Debt Agreement for example.
[2] These free services are usually Government funded.

Many Agreements fail before they are concluded. Since the commencement of Part IX, the annual rate of Agreements exiting the system due to termination (failure) has ranged from 60% to 75%, and preliminary data from 2004/05 suggests a failure rate of approximately 45%.

Community based financial counsellors do not generally take on the role of Administrator for a range of reasons, including concerns about holding clients' monies and potential conflicts with their advocacy role. However financial counsellors do occasionally assist debtors to propose Agreements where appropriate for the debtor.

This Project

This project includes interviews with a range of stakeholders, a review of a number of case studies from financial counsellors and legal advice services, interviews with 12 debtors who have experienced problems with Agreements, and discussion of public data on Agreements.

The project did not attempt to undertake comprehensive research on the experiences of all consumers who have had Agreements. However, it provides insight into why many Agreements fail, highlights the practices of some Administrators, and complements other research that has been undertaken into the operation of Agreements.

Key Findings:

The key identified causes of problems debtors experienced with Agreements are:

- Inadequate information about Agreements given to debtors prior to signing an Agreement proposal;
- Lack of information provided to debtors about other possible options;
- Lack of information given to debtors about the effect of an Agreement on their credit report;
- Lack of trained and/or experienced Administrators;
- Poor service provided by Administrators;
- Aggressive marketing and pressure selling of Agreements by Administrators;
- Unsustainability of many Agreements from the start;
- Misleading conduct by some Administrators; and
- Excessive fees charged by some Administrators.

The project findings support the view that there is a need to review Part IX of the *Bankruptcy Act*, to determine how it might be possible to maintain an alternative to bankruptcy for low income debtors, while removing financial incentives for 'selling' Agreements without appropriate evaluation of the debtor's situation and without providing the debtor with other alternatives.

Recommendations

1. The Bankruptcy Act 1966 should be amended to ensure that ITSA has the authority to regulate the entire Agreement process including advertising, and selling practices, whether by a Administrator or any other person involved in selling or arranging Agreements;

2. Regulation of Part IX Agreements should include the development of performance standards which define the obligations of Administrators and their staff including their brokers, agents or any other person involved in selling or arranging Agreements;

3. Regulation should require Administrators (and any person selling or arranging Agreements) to explain other options available (including Bankruptcy).

4. Regulation should require Administrators to be responsible for the conduct of any person marketing, or selling Agreements that they subsequently administer;

5. Regulation should require Administrators to assess capacity to pay, and inform debtors of the range of options available as part of the Agreement process;

6. Penalties for failure to provide required information or unfair conduct by Administrators should include the re-imbursement of payments made by debtors, and Administrators becoming ineligible to operate; and

7. ITSA should be required to assess the viability of an Agreement (including capacity to pay) as part of the acceptance process.

8. ITSA should be required to review and regulate the fee structure and stop preferential payments to Administrators.

Contents

1 INTRODUCTION

1.1 Background

1.1.1 Consumer Debt

With the increase in the availability of credit, and household debt levels, more consumers have become financially overcommitted. Some of these consumers are on low incomes and have no assets of value, leaving them unable to manage their way out of financial difficulty.

The inability to afford debt payments can contribute to other problems, for example non-payment (and potential disconnection) of utilities, non-payment of rent (and potential eviction), relationship problems and mental and physical health problems. There are usually some options available for low income debtors in difficulty, although each will have its own negative consequences.

These options include challenging a credit contract (for example where credit was provided unfairly or irresponsibly), selling property, obtaining help from family, informal payment arrangements with creditors, or one of two options available under the *Bankruptcy Act*.

Community based financial counsellors can provide an assessment of the debtor's overall financial situation, an explanation of the options available, support and advocacy (including assistance negotiating with creditors). Such services are free, and most are Government funded.

1.1.2 Bankruptcy

While bankruptcy is often associated with small business failure, or the fall of 'high flyers', an increasing number of low income consumers have been declaring themselves bankrupt over the last 10-20 years.

The advantage of bankruptcy for these consumers is that most unsecured debts are not able to be collected by creditors, no payments are required from a low income bankrupt's income, and necessary household goods cannot be taken and sold by creditors or the trustee in bankruptcy. There are some significant disadvantages including the stigma felt by some consumers, and the impact that bankruptcy can have on borrowing in the future.

1.1.3 Debt Agreements (under Part IX of the *Bankruptcy Act*)

While it has always been possible to enter into a formal arrangement under Part X of the *Bankruptcy Act* (now a Personal Insolvency Agreement) involving regular payments, or payment from sale of assets etc. as an alternative to bankruptcy, the costs of a Personal Insolvency Agreement are prohibitive for low income debtors.

Debt Agreements ('Agreements') were introduced under Part IX of the *Bankruptcy Act* in 1996 as an alternative to bankruptcy for low income consumers. The legislature intended that Agreements would provide a low cost, flexible alternative to bankruptcy for low income/low asset debtors with low levels of indebtedness. Any person, including the debtor or a relative or friend, can act as a Debt Agreement Administrator ('Administrator') of an Agreement. However, the practice is that the vast majority of Administrators are commercial businesses set up for that purpose.

1.2 Previous research

The following ITSA research projects are discussed briefly in ***Appendix A****:*

- Empower Group (for ITSA), Insolvency and Trustee Service Australia: Debt Agreement Debtor Research – Report October 2004, ITSA;
- Empower Group (For ITSA), Part IX debt agreements: A survey of debtors who proposed a debt agreement between August and October 2002;
- Michael Johnston (for ITSA), Review of Debt Agreements under Part IX of the Bankruptcy Act, 11 May 2001;
- Insolvency and Trustee Service Australia, Report on Analysis of Debt Agreements, July 2000; and
- David Bergman, Regulation of Debt Agreement Administrators under the Bankruptcy Act, 9 September 2004.

1.3 Our Project

The high failure rate of Agreements raises a number of questions about the suitability of Agreements for some debtors and the practices of some Administrators. This project aimed to complement other research into Debt Agreements by examining the experiences of debtors who experienced problems, and of some stakeholders.

This project differs from the above research projects because it focuses on problems experienced by debtors with Agreements. There is no attempt to determine how wide spread these problems are. The research was primarily qualitative and our aim was to obtain an in-depth understanding of debtor experiences. The sample group was not large, nor was it representative of all debtors who enter into Agreements. Despite this, the experiences of financial counsellors and debtors who participated in the research provide valuable information about the problems some debtors are experiencing with Agreements.

Project Objectives

This project aimed to:

- Research and report on the problems experienced by debtors with Agreements;
- Research and report on the experiences of financial counsellors with Agreements;
- Document common problems; and
- Propose changes required to address these problems.

The project also sought comment from:

- Creditor peak bodies; and
- The Administrator industry.

1.3.1 Conducting the Project

The research project was conducted by Consumer Credit Legal Services (CCLS) and Eastern Access Community Health (EACH). The project was managed by Jan Pentland, Financial Counsellor at EACH and overseen by Carolyn Bond, Manager, CCLS.

Research activities were undertaken by:

- Chris Povey
- Penelope Hill
- Jan Pentland
- Emma Asscher
- Melanie Kelly
- Carolyn Bond

Consultation on the project was undertaken by a Reference Group of financial counsellors at EACH:

- Jackie Bramwell
- Peter Gartlan
- Carolyn Joy
- Kay Dilger

Nicola Howell, of the Centre for Consumer Credit Law in Queensland also provided valuable initial input into the project.

2 PROJECT DESCRIPTION

The primary focus of this project was to analyse existing information about the experiences of Victorian financial counsellors and their clients with Agreements, and to conduct and analyse in-depth interviews with some debtors including reviewing their Agreement documents.

The project also sought information and comments from creditors' peak bodies, Administrators, and the Debt Agreement Practitioners Association (DAPA). The Project reviewed previous research, relevant literature, and legislation.

2.1 Groups Surveyed

2.1.1 Debtors

The experiences of callers to Credit Helpline (Vic), a telephone advice service for debtors and financial counsellors, who contacted the service with problems relating to Agreements, are the source of the case studies set out in ***Appendix B***.

In-depth interviews were conducted with 12 debtors who had originally presented to financial counsellors or Credit Helpline. Their Agreement documents were also examined. The outcome of the interviews forms ***Appendix C***.

2.1.2 Financial Counsellors

Financial counsellors in Victoria were surveyed about their experience of Agreements and Administrators.

2.1.3 Creditor Peak Bodies

Representatives of three peak bodies for creditors; the Australian Bankers Association ('ABA'), the Credit Union Services Corporation (Australia) Ltd ('CUSCAL') and the Australian Finance Conference ('AFC'), were surveyed about their members' experiences with Agreements.

2.1.4 Debt Agreement Administrators

The President of the newly formed Debt Agreement Practitioners Association (DAPA) was interviewed.

Four Administrators completed a survey and participated in telephone discussions. Of the four Administrators based in Victoria, two participated in the survey and the other two either were not undertaking any or very few Agreements. One of them was surveyed and the other participated in a telephone discussion.

Three other Administrators were invited to complete the survey but declined.

3 ABOUT DEBT AGREEMENTS

3.1 What are Debt Agreements

Debt Agreements were developed as a low cost, flexible alternative to bankruptcy for low income/low asset debtors with low debt levels, and were intended to deliver increased returns to creditors while requiring minimal administrative resources. Agreements were introduced into the *Bankruptcy Act* on 16 December 1996 after several years of exploration of alternatives to bankruptcy for low income debtors:

> *'The purpose of debt agreements is to provide a viable, low cost alternative to bankruptcy for low income debtors with little or no property, few creditors and low levels of liabilities, for whom entry to a Part X administration is not possible because of inability to meet set up costs. It is intended to channel debtors who would otherwise become bankrupt out of bankruptcy, where creditors may not get any return by way of dividends.'* [3]

To propose an Agreement to creditors as an alternative to bankruptcy, a debtor must be insolvent, i.e. unable to pay debts as they fall due, and meet certain criteria including:

- After tax income of less than a prescribed amount (currently about $55,719-30);
- Unsecured debts of less than a prescribed amount (currently about $74,292-40);
- Have not in the last 10 years been bankrupt, entered a debt agreement or given an authority under Part X of the Bankruptcy Act 1966; and
- Have no ownership of property valued at more than a prescribed amount (currently about $74,292-40).

The Agreement can propose:

- A moratorium on payments of debt/s for a period; or
- A transfer of property from the debtor to creditors in full or part payment of debt/s; or
- Payment of less than the full amount owed on the debt/s; or
- Periodic payments on the debt/s over a period of time.

The most common proposal made and accepted is the option of regular repayments on the debt/s for a specified period of time. On receiving a debtor's Agreement proposal, ITSA determines whether the debtor meets the criteria and if so, accepts the proposal, and submits it to creditors for consideration.

[3] *(The Explanatory Memorandum for the Bankruptcy Legislation Amendment Bill 1996).*

At the time the proposal is accepted by ITSA (before being put to creditors) the proposal is recorded on the National Personal Insolvency Index (NPII). This information is public information, and is recorded on the individual's credit report. It remains on the credit report for 7 years, and is available to any credit provider if an application for credit is made.

The proposal is accepted if a majority of creditors with a minimum of 75% of the value of debts owed vote in favour of it. Once accepted, the Agreement is a binding contract under the *Bankruptcy Act* and other enforcement action to collect the debt/s must stop.

While debtors can administer their Agreement themselves or have a family member or have a friend administer it, by far the most common method of administration is by a commercial Administrator who usually receives a fee for setting up the Agreement and an ongoing fee for administration of the Agreement.

3.2 Debt Agreement Statistics 1996 – 2005

3.2.1 Agreements proposed, accepted and rejected

Introduced in December 1996, only 48 Agreements were registered in 1996/97 and numbers proposed and accepted remained reasonably low for several years: 354 accepted by creditors in 1997/98; 507 in 1998/99; 801 in 99/00 and 1234 in 00/01. However, with increased advertising by fee charging Administrators, numbers rose to 3294 in 01/02; 4550 in 02/03 and to 5487 in 03/04. However, recent ITSA data indicates the first fall in Agreements entering the system with slightly lower numbers proposed but 32% of those being rejected by creditors leading to a 14% fall in Agreement numbers for 2004/05.

Year	***Debt agreement proposals received by Official Receiver***	***Debt agreements made (accepted by creditors)***	***Debt agreements rejected as percentage of those proposed***	***Increase in debt agreements from previous year***
1996-1997	123	48	61%	
1997-1998	583	354	39%	629%
1998-1999	811	507	37%	43%
1999-2000	1157	801	31%	58%
2000-2001	2239	1234	45%	54%
2001-2002	5647	3294	42%	167%
2002-2003	6476	4550	30%	38%
2003-2004	7043	5487	22%	21%
2004-2005	6941	4739	32%	-14%

Source*: Annual Reports, www.itsa.gov.au, 14/11/05*

In terms of state based data, Queensland has the largest number of Administrators registered on the ITSA data base (19 out of 38) and the largest number of Agreements in actual numbers and in percentage of population.

Number of debt agreements based on State of residence of the debtor

	NSW/ACT	Vic	Qld	SA/NT	WA	Tas	Total
2004/2005	1240	1070	1700	280	343	124	4757
2003/2004	1445	1322	1878	324	400	113	5482

***Source**: Review of Debt Agreements under Part IX of the Bankruptcy Act 1966, 22/8/05*

3.2.2 Debtor profile

The profile of debtors undertaking an Agreement is that of very low income earners with low debt levels. Very few have assets which would vest in a trustee in bankruptcy if the debtor were to bankrupt.

ITSA's data shows that the profile of debtors who undertook Agreements in 2003 is:

- 65% had a gross income of less than $30,000 in the year prior to the Agreement;
- 61% owed unsecured creditors less than $20,000 with 25% of these owing less than $10,000;
- 79% received advice from a commercial Administrator;
- Only 17% received advice from a financial counsellor;
- 75% were employed (whereas 40% of bankrupts were employed in 2003);
- 82.5% had no realisable assets; and
- Only 5% were either home owners or in the process of purchasing a home which was a substantial decrease from the 16% in this category in the previous profile period

Source: ITSA Profile of Debtors 2003

3.2.3 Termination Rates

Since the commencement of Agreements, more debtors have exited the Agreement regime by a termination of the Agreement, than by a successful completion of the Agreement. In 2004/05, 45% of debtors who exited the Part IX regime did so because their Agreements failed; in previous years the termination rate was 60%, 75%, 72%, 67%, 70% and 62%.

Termination rate

	Finalised During Year	***Terminated During Year***	***Total Exiting Part IX***	***% Exiting Due to Failure***
1998/99	45	73	118	62%
1999/00	73	169	242	70%
2000/01	116	236	352	67%
2001/02	141	366	507	72%
2002/03	350	1060	1410	75%
2003/04	864	1274	2138	60%
2004/05	1607	1315	2922	45%

Source*: Annual Reports on www.itsa.gov.au, 14/11/05*

4 REGULATORY FRAMEWORK

4.1 Bankruptcy Act

The *Bankruptcy Act 1996* as amended ("the Act") is the legislation covering Agreements and Administrators. The Act provides a procedure for filing Proposals with ITSA and for voting in relation to Proposals, it also provides a procedure for terminating an Agreement. The Act does not regulate how Administrators advertise or how Administrators are trained.

The *Bankruptcy Legislation Amendment Act* 2002, which came into operation on 5 May 2003 introduced some regulation for Administrators. It enabled the Inspector General in Bankruptcy to investigate the conduct of Administrators, outlined a fee charging schedule requirement, and set disqualifying criteria for Administrators. Some investigations of Administrators have been undertaken by ITSA's Bankruptcy Regulation Branch since these amendments to the *Bankruptcy Act* came into operation.

One outcome of the new regulation has been the disqualification of Steve Grant, a Queensland based Administrator trading nationally as 'Debtless' on 22 February 2005. This resulted in ITSA taking over the administration of the Agreements where Grant was Administrator (more than 800 Agreements). Grant filed for bankruptcy on 4 May 2005 with $967,000 in unsecured debts. It seems that there is a shortfall of several hundred thousand dollars owing to creditors from Agreement payments (payments made by debtors to Grant as their Agreement Administrator).

4.2 Trade Practices Act – unfair behaviour and misleading conduct

The *Trade Practices Act 1974* regulates (among other things) unfair trader behaviour and misleading and deceptive conduct by traders. The marketing of Debt Agreements therefore is regulated by the *Trade Practices Act*, which is administered by the Australian Competition and Consumer Commission (ACCC).

Following the *Financial Services Reform Act 2002*, misleading and deceptive conduct in relation to financial services is now regulated by ASIC under the *Corporations Act 2001*.

4.3 *State & Territory Fair Trading Acts*

State and Territory Fair Trading legislation generally mirror the consumer protection provisions of the *Trade Practices Act 1974* (regulating misleading and unconscionable conduct for example). Some States' legislation (for example Victoria) provides specific protections for contracts signed in the home, even if contact is first made by telephone. This provides consumers in those states the right to cancel any contract with the Administrator within a short period of time.

5 ISSUES ARISING

Issues that arose from the research, including review of case studies; interviews and surveys are:

- Inadequate information given to consumers prior to signing an Agreement proposal, including lack of information about other possible options;
- Lack of information given to debtors about the effect of an Agreement on their credit report;
- Inexperienced and untrained Administrators;
- Poor service provided by Administrators;
- Aggressive marketing and pressure selling of Agreements;
- Unsustainability of Agreements;
- High fees;
- Misleading conduct by some Administrators;
- Poor outcomes for debtors; and
- High level of failures and terminations.

5.1 *Terminations*

The high rate of failure of Agreements is outlines at **3.2.3.** At the Financial Counsellors' Association of Queensland Conference in March 2005, the ITSA Official Receiver for Queensland stated in his presentation that nationally in 2003, 346 Agreements were completed and 1060 were terminated; 75% of Agreements exited the system because they were not working (in Queensland it was 78%). He went on to say that in 2004, 60% of Agreements exited the system because they were not working (58% in Queensland).

The ITSA Issues Paper released in September 2005 as part of the Review of Debt Agreements comments as follows[4]:

> *'...up to 50% of proposals are terminated...'*

[4] Review of Debt Agreements Under Part IX of the Bankruptcy Act 1966: Issues Paper, Itsa, [2005]

'During the 2004-05 year, 1314 debt agreements were terminated. In the previous year, 1274 agreements were terminated. The major reason for creditors seeking termination is that they have not received a dividend as expected and have not approached the administrator for an explanation It is often suggested that the reason for the high termination rate is that debtors are encouraged to make proposals which are unsustainable.'

On page '12':

'…a debtor whose agreement is terminated may find that they have made significant payments most of which have been used in paying the administrator's fees which means that their debts are re-instated and they owe almost as much as they did at the start of the agreement.'

Additional to the high number of Agreements terminated, there seem to be a significant number of Agreements where payments are not being made, yet they are not terminated. The Annual Report by the Inspector General in Bankruptcy on the operation of the Bankruptcy Act, 2004/05 shows at Table 28 that 8.9% of Agreements entered into in 1997-98 and 10.1% in 1998-99 are still active, 6 and 7 years after being put into effect. The Issues Paper at page 12 states that:

'It appears that, in many cases, debtors are not complying with agreements but no action is taken to terminate these agreements.'

5.2 Marketing

Many of the advertisements on television, radio and in local newspaper give the strong message that Agreements are the only answer to debt problems. Then this emotive advertising is often followed up by high pressure selling within the home.

An example of a local newspaper advertisement provided by an interviewee:

Bloody Debt
Let Us Help

"We All Have it That's Life"

If you are experiencing difficulties
or behind on payments, credit cards,
personal loans, old phone bills etc

A Registered Debt Agreement can be
Consolidated Through Government
Legislation at No Interest.

Contact [Administrator B]
We remove all your debt and collectors worries.

Along with the aggressive advertising of Agreements and pressure selling within the home it appears that debtors who contact Administrators are not informed by the Administrator of the range of options which may be available to them. Generally, they are simply told that an Agreement is the answer and signed up quickly, often with considerable pressure to sign up even if they express the wish for time to consider.

The Issues Paper at page '7' states:

> *'Debt agreement administrators and their brokers are not necessarily experienced in financial counselling, or may have an interest in promoting particular outcomes, and may not be in a position to provide advice on these other alternatives.'*

- Of the 12 debtors interviewed in depth for the research, 11 (92%) did not have their options explored; and
- Of the 28 Credit Helpline cases, not knowing their range of options was a problem for 20 (71%).

While it is ITSA's responsibility to ensure that debtors understand the implications of bankruptcy and other arrangements under the bankruptcy regime, and to ensure knowledge of other options for debtors contemplating bankruptcy, the Issues Paper at page 7 acknowledges that:

> *'In practice, this obligation is discharged by requiring the debtor to sign an acknowledgement in the proposal form to the effect that they have received and read the prescribed information. Copies of the prescribed information are also available to administrators and their agents who are encouraged to use it when dealing with debtors. ITSA's research found that 81% of debtors who had a proposal accepted recalled receiving the prescribed information and 76% said that the administrator or agent took them through the information and explained it to them.'*

From our project, it seems that Administrators in many cases do not explain the options and implications set out in the 24 page "Bankruptcy and other insolvency options: Prescribed Information booklet". The debtors we interviewed stated that the time Administrators spent with them ranged from less than 30 minutes, often less than an hour and in some cases about two hours.

Creditors have also expressed concerns about Agreements and Administrators including:

- The practices of Administrators at the 'front end';
- Poor service to creditors and debtors once an Agreement is in place;
- Fee structures; and
- Doubts about the debtor's best offer being proposed.

5.3 Unsustainability

The high failure rate of Agreements supports a finding that that many Agreements are not sustainable from the outset. With all of the 12 project in-depth-interviewees (100%), the Agreement was clearly unsustainable from the outset; in the 28 Credit Helpline cases, 17 (61%), also appeared on review to be unsustainable.

5.4 Poor outcomes for debtors

The Issues Paper at page 1. states:

> *'Many debtors now look to debt agreements as a way to avoid bankruptcy rather than simply as an alternative route to take. These agreements were designed to provide choice to debtors who can afford to make some payments to their creditors thereby providing them with an opportunity to take greater control over their financial affairs. In this regard, they have the potential to provide rehabilitation for debtors in financial distress which is a key objective of the personal insolvency system.'*

Sadly, this has not been the outcome for many debtors. The project case studies show that desperate debtors are attracted to an Agreement by slick advertising, signed up to an Agreement by fast talking salespeople, often in their own homes and then abandoned to struggle with unaffordable repayments which include substantial upfront and on-going fees to Administrators. It is not surprising that so many of them fail, and these debtors are left in an even worse position.

> *'As administrators generally take the bulk of their fees prior to paying creditors, a debtor whose agreement is terminated may find that they have made significant payments most of which have been used in paying the administrator's fees which means that their debts are reinstated and they owe almost as much as they did at the start of the agreement.[5] '*

5.5 Fees

Debtors are often confused about what if any fees are payable and then later shocked to find out how much the fees actually are. The Issues Paper at page 11. states:

> *'In practice, debt agreement proposals typically propose that 20-25% of payments made by the debt(sic) are paid in fees and 75-80% to creditors. The actual proportion taken as fees is higher. This is because up to 50% of proposals are terminated and, in a majority of those cases, any money received will be taken in fees and no dividends will be received by creditors. In 2003-04, of $35.9m received from debtors, $11.4m was taken as fees and $20.8m was paid as dividends.'*

[5] ibid

From ITSA's data, 32% of debtors' payments went to Administrators, but it is actually more than that as this figure does not take into account the often considerable amounts paid to Administrators at the front end before the proposal is lodged with ITSA[6]:

> *'There have also been concerns raised about fees charged by Administrators in relation to setting up a debt agreement (including making a debt agreement proposal and providing advice associated with that). Debtors will be liable for these fees if the debt agreement proposal is not accepted. In 2004-05, 32% of proposals were not accepted by creditors. This debt will be in addition to the debtor's continuing liability for debts covered by the proposal. The debtor will have ceased paying these debts during the voting period and will have additional arrears to deal with if the proposal is not accepted.'*

5.6 Misleading information and poor service

Our project identified a range of problems for debtors with the service provided by Administrators; from misleading information given initially to lack of response to issues arising later in the administration of the Agreement.

One of the potentially misleading statements on Agreements comes from the selective way the *Bankruptcy Act* is quoted in Administrator information and advertising materials:

Section 185J(1) of the *Bankruptcy Act* provides that when details of a debt agreement are entered in the National Personal Insolvency Index, the debtor is released from provable debts from which the debtor would have been released if he or she had been discharged from bankruptcy immediately after the details were entered in the Index.

The Act goes on to say that the release ceases to operate if the Agreement is terminated or declared void by a Court, but this information is not part of the advertising of Administrators.

Further examples of misleading information by Administrators are:

- Mention of 'consolidation' in a way that leads debtors to believe they are getting a loan consolidation;
- Mention of Government legislation in a way that leads debtors to believe that the administration of Agreements is a Government program;
- Use of Centrepay leading debtors to think Agreements are sanctioned by Government; and
- Misinformation on the implications of debt and debt collection, which frighten debtors.

Many debtors do not understand that the effect on their credit record and therefore their capacity to access credit will be much the same if they enter an Agreement as if they were to bankrupt. In fact, many debtors are not given any information on the effect of an Agreement on their credit record, or are given incorrect or incomplete information.

[6] ibid

While these are examples of 'front end' inaccurate or incomplete information, many debtors who enter into an Agreement then experience very poor follow up service. They are often not assisted with problems that arise, and are unable to get regular statements of the progress of their Agreement when they are making payments despite paying on-going fees.

Creditors have also raised problems with the service provision of Administrators and ITSA's Issues Paper at page '13. acknowledges that:

> *'An issue frequently raised by debtors is the lack of regular information from administrators about progress of the agreement.'*

5.6.1 Current ACCC Action

On 14 April 2004 the Australian Competition and Consumer Commission ('ACCC') issued Federal Court proceedings against Fox Symes and Associates Pty Ltd.

The matter is ongoing. Further details can be obtained at:

http://www.accc.gov.au/content/index.phtml/itemId/585988/fromItemId/684968

5.6.2 Notation of Part IX Debt Agreements on credit reports

Many debtors who consider bankruptcy as a last resort initially reject this option because they are concerned about the effect on their credit record. Agreements (and bankruptcies) are recorded on ITSA's National Personal Insolvency Index ('NPII'). Agreements (and bankruptcies) are also recorded on the debtor's credit record for seven years, with the information taken directly from the NPII.

Debtors contacted for this project were either given no information about the effect of the Agreement on their credit record or were given inaccurate or incomplete information.

> ***Belinda***: *'He might have said something like it will be listed but it won't be as a bankrupt.'*
>
> ***Elaine***: *'He said he would write me a letter later on if I wanted to get credit or a home loan later on once I paid it, about 3 years… If I bankrupted it took 8 years, my credit report would have black mark for 8 years. … I thought that the debt agreement meant that I didn't have a black mark against my name.'*
>
> ***Fergus***: *'I was led to believe that I would still have a credit rating… He said you are not declared bankrupt. He didn't go too much into it… I thought good I don't lose my credit rating and since then I have found out that it is a form of bankruptcy. If I even had half an idea there is no way I would have gone forward.'*
>
> ***Kate***: *'My main reason for doing Part IX was to keep my credit report in good condition.'*

Many debtors are devastated to learn that their Agreement appears on their credit report as an arrangement under the bankruptcy regime and that it has a similar effect on their ability to access credit as if they had bankrupted. An additional concern for some debtors has been that an Agreement is recorded on the NPII at the time ITSA accepts the proposal so whether creditors accept or reject the proposal, the debtor's credit record is notated and affected for 7 years, the same period as if the debtor entered voluntary bankruptcy.

> **A financial counsellor's client said:** *'I paid back all my debts. It was a big effort but I wanted to feel like a normal human being again. But then I applied for a credit card and they said "No" because I'd been bankrupt!'* (Interview with financial counsellor, 28/7/05.)

6 RESEARCH RESULTS

6.1 Debtors' experiences

6.1.1 Marketing of Agreements

As part of the project, we interviewed 12 debtors in depth about their experience with Agreements and Administrators. The interviews showed problems at the 'front end' with Agreements when debtors saw an advertisement on television or in the local paper or heard it on the radio, rang a number, had a brief conversation, agreed to a 'consultant' visiting their home and were then signed up to an Agreement at that first visit.

> ***Belinda*** saw an advertisement in the local paper and was reassured and thought it *'... sounded reputable because of the mention of government legislation... '* (Belinda's Administrator's document states that it was a "government supervised program"). In fact, her debt situation was exacerbated by the proposed Agreement.

Unfortunately, despite the May 2003 introduction of some regulation by ITSA of Administrators, ITSA's regulatory powers do not cover actions of Administrators or their salespersons before the Agreement proposal is accepted by ITSA.

Some debtors receive an unsolicited letter in the mail when Court action goes onto the public record. Incomplete and inaccurate information often frightens debtors into contacting an Administrator who visits them in their home and signs them up to an Agreement. An unsolicited Administrator's letter sent to a Victorian debtor in July 2005 who had a Magistrates' Court Judgement entered against him said:

'This judgement is very likely to seriously affect your credit rating.

Further, if this judgement is not paid the creditor may take further legal and other measures, which may include but not be limited to:

- ***The creditor seeking a Garnishee Order against your wages***
- ***The creditor referring the matter to a Sheriff who may take your personal belongings***
- ***The creditor instigating proceedings to Bankrupt you.'***

In fact, the judgment had already affected the debtor's credit rating. Entering into an Agreement only makes a debtor's credit report worse because it is noted for 7 years under the bankruptcy regime whereas a court judgement in noted on a credit report for 5 years.

> ***Fergus****: was attracted to the advertising for an Administrator: I saw an ad on TV when they were running that big ad campaign. I saw it a few times, I wanted to consolidate and budget. I quoted my ideas and they said they could help… [The ad was] husband and wife, wife says now life is a lot easier and we are able to manage money, they are very happy now, able to enjoy life more… Seeing the ad on TV I was quite confident and pleased with myself dealing with a professional organisation.*

But the reality was somewhat different, with Fergus being given inaccurate advice on top of the 'hard sell' of a visit to his home and him signing up on the night after an inadequate and inaccurate explanation of what an Agreement actually was.

Others of our interviewees were also misled by the marketing approach of Administrators:

> ***Heather*** *saw a television advertisement which said: "it's not a loan, it's not bankruptcy, if you're having problems and you've tried everything else"…I had seen it a few times and came across it in the TV guide … after speaking with my husband we said let's give them a try. They made it sound like they got in touch with your creditors and gave you a special telephone number and call number so creditors would not keep on ringing you.*

> ***Jean*** *was misled by an Administrator when she got a flyer in her letterbox It said "sick of those bloody debts". This caught my eye… I rang a guy in Queensland and said I was having problems. He sent a bloke from a nearby town who really didn't know much at all but he just filled out forms… He said he was a government authorised administrator… He said this is the government's way of trying to avoid bankruptcy… When he said government authorised I thought it has got to be ok.*

> ***Kate*** *said: I saw an ad on TV when I was living in Sydney: "we can help you consolidate all loans into one", it sounded really good.*

The 'hard sell' of the advertising followed through with home visits (8 out of our 12 interviewees) and pressure to sign up straight away:

> ***Belinda****: You had to sign it on the night.*

***Grant**: I signed at my house, one sales rep… [He spent] about 45 minutes to an hour… He wrote it all out and just swung it over the table for me to sign straight away… I just assumed he knew what he was doing.*

***Ian**: One person came out to my home, about mid to late 40s. [He spent] 30 mins to 45 mins. He had some bits of paper and said just read this and see if you understand this… The next day after I'd already signed up I did talk to someone else and they mentioned to me then that they could have done the same service for nothing whereas this mob actually charged something for their services. That made me think about things and think maybe I'd jumped into it too quick.*

***Jean**: Another guy came to the house who really didn't know anything about it. He was in the house only long enough to fill out the forms, 10 minutes…*

***Kate**: One middle-aged guy visited [my home]. [He spent] less than one hour. He made it sound really good.*

6.1.2 Information and service provided by Administrators

The information provided to debtors at all points in their contact with Administrators and their salespeople was often inadequate particularly about what other options might be considered. Or it was incomplete or inaccurate with resulting confusion among debtors as to what they were signing up to in an Agreement.

***Elaine**: I just thought they'd speak to all my creditors and pay it for me and I would pay them back.*

***Fergus**: I thought they would set me up with a consolidation plan and I would pay them once a fortnight.*

***Heather**. There was no proper explanation, if there was we would have sent him on his merry way… [The Administrator] didn't give me any written documents at all…At the time I thought it was normal, I was just glad there was somewhere to take the burden off me. I realise this was stupid now…*

***Kate**: I felt kind of a bit rushed with the advice. I asked him if I could incorporate the computer loan in the agreement, then after everything was signed the computer loan wasn't in it. He said "I told you" but he hadn't told me about it. - It seems that debtors do not have all their options explored when they are dealing with an Administrator.*

***Ann**: They didn't mention bankruptcy. I mentioned bankruptcy to them…They said you have to have so much debt before you bankrupt and you are under that. (This advice is wrong)*

***Belinda**: We didn't go into bankruptcy… [In bankruptcy] I knew I would be able to keep the car but I wasn't sure of everything else (i.e. main features of bankruptcy) and wasn't sure if I'd be able to rent.*

***Elaine**: The only way I found out about how to get a financial counsellor was when I wanted to go bankrupt and got all the papers.*

__Grant__: He sort of made it sound like enough, but he didn't give any of the technical information that we have found out later on. He didn't go into any information about bankruptcy at all.

__Ian__: The only thing I can recall is that when I mentioned that I was going to see someone else that he said that they would only tell you to go through bankruptcy… I was pretty confused then and still am a bit confused about what has happened…He said he would go back to whoever he was talking through, some mob in Queensland, he said you would probably have to pay something out of the dollar… It was all new to me and I wasn't really sure of everything. I didn't really know which way to go. I suppose I should have gone to see someone else to get it a bit more in my head, but he came out and I just done it there and then.

Our interviewees experienced very poor follow up service in their dealings with their Administrators; their phone calls were not returned, queries on fees and other matters went unanswered, requests for information and statements on their Agreements were ignored:

Quote from Ann from a letter to ITSA:

'Creditors are constantly calling me asking when they are going to start receiving payments, a number of creditors haven't received any payments at all to my knowledge. I have contacted [Administrator A] I believe over 20 times to request information on who is being paid and what is the state of my account. I have had no response either written or oral. I was always on the phone to [Administrator A]… They were quite nasty at times. When I rang to tell them…that I needed them to freeze up my payments coming out of my accounts, they said they would send a letter for me to sign. They took money out again and left me owing the bank. I rang back again and they said there was nothing to state that I rang them.'

__Fergus__: I rang up the card the bloke gave me. I got the floor director. I was quite stressed. His quote was: "Don't stress it will be alright. Don't worry about it. You stress too much." I only rang a few times. There was never any help or any assistance or what they could do to help… They are looking out for themselves. They don't care about the consumer at all.

__Grant__: I rang when the job fell through. He said not much you can do, that I was sort of stuck with it.

__Ian__: After that guy left the only contact I had was in the mail. I think once I did try to get through to them but they said they couldn't do anything. I told them because of the direct debit out of our bank I was going a bit spastic. I said 'you bastards' and cancelled the account.

__Claire__: [Administrator C] should have been chasing ITSA as to why the agreement was not voted on… I rang ITSA and found out that the papers hadn't gone out to creditors. I was getting letters from creditors saying make payments. [Administrator C] said to send a copy of the letters to them but they didn't do anything…

__Belinda__: I didn't know that they could change the agreement after I had signed it. I signed an agreement, which would let me pay $90 per fortnight over 5 years. [The Administrator] altered it so I would have to pay $130 approximately over 3 years. They whited out my information and that's when I got real shirty and got help. I burst into tears,…went to get help. They even altered some of my expenses so it would fit into my pension… I did ring the head office of [Administrator B] and he said his reasons for altering the length of the term was that the creditors wouldn't accept the payments over 5 years.

6.1.3 Fees charged by Administrators

Debtors' confusion about how much they would be paying in fees is evident from our in-depth interviews.

> ***Fergus**: [The fees] were going up and down. At one stage it was $170 and then $230, [I] didn't know the total amount of fees. They said first off you have to pay a fee that will start for the first 13 fortnights and then the commencement date for deductions for the agreement. I did have a piece of paper with the number of payments for the fee but I was never told the total fee. (In fact Fergus paid $1710 in Agreement payments but only $120 was paid to his creditors; the remaining $1590 was taken by the Administrator in fees.) Now I am back to square one and worse off than when I first started. After terminating the Agreement with the help of a financial counsellor and paying many hundreds of dollars in default fees to his bank, Fergus lodged his voluntary bankruptcy papers.*
>
> ***The client of an outer eastern Melbourne financial counsellor** (interview 27/8/05) says: 'I was paying through the Administrator. I started owing $23,450 and paid $18,000 over 2 years then stopped because I lost my job and couldn't pay. Now creditors say I owe $9,450! How can that be?'*

The primary concern of the largely commission based salesperson who signs the debtor up in their home to an Agreement appears to be to make the sale and so, if fees are explained it is often not fully or in a way that the debtor understands as evidenced by Heather's experience.

> ***Heather**: They said they were going to work out how much I was to pay creditors. The only thing they said about their fees was that there would be a fee of $900 from payments but if rejected that money would be refunded. ...*

Heather hadn't understood that the $900 she was told by the salesman was for doing the Proposal and there would then be an additional fee for the administration of the Agreement:

> *'My jaw just dropped when he rang and said this amount [$4,085 in fees], something that really upset me. I thought what about the $900! I didn't say anything to him at the time. I was just horrified.'*

Ultimately, Heather was unable to sustain the Agreement and it was terminated.

Of the amounts she paid during and before the Agreement, very little went to her creditors:

> *'I had paid $2,800 to them, but only $300 to creditors to my dismay.'*
>
> ***Ann**: They told me a small once off small fee. However, the appointment agreement shows a $672 application fee and the Proposal shows another $2424 for "putting the agreement into effect". I assumed it was around $60 (sic) in total. I have it written down somewhere here. Application fee as stated on the documents was $672.*
>
> ***Belinda**: I was paying direct from my pension, I thought it must be legit because no one could get to the pension.*

6.1.4 Financial sustainability of Debt Agreements

Of the 12 debtors interviewed in-depth, 11 of the Agreements were unsustainable from the outset. In many instances, the fees paid to the Administrator had in fact exacerbated the indebtedness. Often, the Agreements were set up in such a way that scheduled payments increased over the term of the Agreement and if barely sustainable at the outset, these payment increases often tipped the debtor into deficit in their budget and the Agreement failed.

> ***Claire****: I am more in debt now than when I started.*
>
> ***Belinda****: I had already prepared a budget for him to copy, a list of expenses, he picked and chose what was to go on the form. He said to decrease this to fit in with the budget, like for kids clothing and fuel. There was no luxury items, no entertainment, no going out …*
>
> ***Don*** *did not enter into the debt agreement because the Administrator wanted his wife to sign a letter saying she agreed to make repayments until Don got employment. I did not enter into the agreement because I didn't want to get my wife to guarantee payments … and when you did the budgets you were left with nothing.*
>
> ***Grant****: I was meant to be starting work but the job fell through. He told me to put down the salary even though I hadn't actually started. He didn't really prepare a budget, only on the sheet that he had to do for the agreement. He didn't leave a copy for me to use. At the time he signed the Agreement, Grant actually had no income but he was encouraged to put down what he may earn IF he got the job he'd applied for.*

Debtors report many instances of salespersons manipulating the Proposal to meet what they think creditors will require to accept it, including leaving debts off, underestimating living expenses, overestimating income.

> ***Jean****: If you are on wages and you have spiralling credit card and other debts are under control, sure, a Part IX agreement is a good idea but you really need to look at the whole situation. They need to be made to fill out a proper statement of affairs rather than which debt you want to wipe. He should have had the facts. A $22,000 credit card debt is not to be sneezed at and to get to $22,000 your need to have other debts too. Every debt needs to be listed whether or not you include it in the debt agreement.*
>
> ***Kate****: The payments were unrealistic at the start and I was lied to about all going in as one, that is the computer loan being included.*

When debtors are desperate to resolve the pressure from their creditors and their debt situation, they may not prioritise their essential expenses where there will be serious consequences if payments are not made. Not paying the rent leads eventually to eviction; not paying utilities can lead to families having gas, electricity and telephone cut off and water restricted. Financial counsellors report many instances of debtors maintaining payments on their Agreement but needing to access emergency relief for food and essential service payments. Ultimately, the considerable costs of addressing these situations such as rehousing families who are evicted is born by the taxpayer.

The client of an outer eastern Melbourne suburb reports: *'Our family is in emergency housing now because we couldn't pay the rent, but we are still up to date with the Agreement.'*

This family was told by the sales person for an Administrator that if they completed the Agreement, they would be personally referred to a lender for a home loan with no deposit needed.
(Interview with financial counsellor 28/7/05)

For some debtors, an Agreement simply adds to their stress with serious consequences:

Ann: *When I looked at the plan I thought this was fantastic. It leaves me with money… It looked good on paper but it didn't work because I still had the debts of Ministry rent, gas, electricity and phones because I was behind in payments from the start. I was in a position where I was robbing Peter to pay Paul... I had a nervous breakdown.*

Quote from Ann's letter to ITSA *– drafted with assistance of a financial counsellor and dated 18/8/04 ..original budget, which was completed by an Administrator, was not manageable and became non-existent within weeks. Given that I had rent arrears that I had advised the Administrator about but that was not considered at all. I advised the Administrator in my initial interview with them that my income was more than likely to drop and that my pension was going to reduce by more than half…son turned 16 and I lost his pension…*

Ian: *Well at the time I suppose I didn't really know what I was going through, things just got worse after that and I couldn't cope with what I set up. Living the way I was things just seemed to get worse and worse, always no money, never could do anything. Had to put yourself in a corner and do nothing, just the pressure of everything got the better of me and I couldn't handle it.*

Kate: *I had lost my job and had all the bills and wanted them consolidated to make it easier… I made payments for a year and half but struggled. I went without a lot. I was behind on bills, had to borrow from friends.*

6.1.5 Survey of Victorian Financial Counsellors

As part of this research, Victorian financial counsellors were surveyed about their experiences with Agreements and Administrators. Of the 145 Agreements seen by the 24 financial counsellors who responded to the survey, only 23 (15%) were assessed as being appropriate. These views are consistent with the experience of Gregory Mowle, a Queensland financial counsellor who managed a community based Agreement service for 2 years, from October 2002 to September 2004 ***(see 6.4.3)***

Financial counsellors thought that Agreements were not appropriate because:

- Debtors' incomes were too low – agreements were not affordable;
- Debtors were not informed of all their options;
- Fees were too high and debtors were often not aware of this;
- Debtors were not aware that their credit rating would be affected; and
- Debtors didn't understand what an Agreement actually was.

In the small percentage of cases where an Agreement was appropriate, the reasons were:

- Assets at risk could be protected;
- Debtor had sufficient income to service the Agreement; and
- Debtor wanted to avoid bankruptcy.

Financial counsellors' experiences with Administrators included:

- Evasive and unco-operative;
- Interested only in getting their fees – Administrator fees a priority, creditors get little or nothing;
- Reluctant to assist in terminating Agreement when it is not working;
- Inappropriate, misleading advice given to clients;
- Poor follow up service; and
- Agreement proposal form information was manipulated;

Improvements suggested by financial counsellors included:

- Ensure debtors have had independent alternative advice;
- More regulation of Administrators;
- Lower fees;
- No preferential payments to Administrators;
- Realistic assessment of debtors' capacity to pay;
- Raise income and assets thresholds;
- Not recorded on NPII (and therefore not on credit record);
- Creditors accepting debtors' best offer even if it only 10 cents in the dollar;
- Easier process for debtors to terminate an Agreement if it's not working;
- No fee charging Administrators;
- No commission based sales agents; and
- Ensure debtors understand full options and implications;

6.2 Creditors

Creditors appear to be becoming less likely to accept the reduced amounts offered through Agreements, even though this may be the most a debtor can pay. This may be in part due to a lack of confidence in some Administrators, but also reflects the approach of some creditors to demand unrealistic sums from debtors in hardship.

Most of the banks now have hardship teams with some of them receiving training from the financial counselling sector on how to effectively deal with low income, marginalised customers and customers experiencing financial hardship. Given this, banks may prefer to deal with these customers themselves initially and refer them to free, independent financial counselling services as appropriate.

Credit unions have long expressed that their preference is early contact by their customers experiencing financial hardship to try to resolve debt problems rather than the rapid proposal of Agreements by Administrators.

6.2.1 The Credit Union Services Corporation (Australia) Ltd

The Credit Union Services Corporation (Australia) Ltd (CUSCAL) and its member credit unions is represented on the Bankruptcy Reform Consultative Forum ("the Forum"). In that Forum, CUSCAL has regularly expressed credit union concerns about Agreements and Administrators. While credit unions support Agreements as a flexible, low cost alternative to bankruptcy, they see many areas of urgent reform required to make Part IX operate effectively.

CUSCAL's concerns and the concerns of their member credit unions include:

- Deceptive advertising by Administrators;
- The need for greater regulation of Administrators;
- The process whereby Administrators use advertising to attract vulnerable debtors, then after brief; phone contact, at a home visit, the debtor is signed up to an Agreement;
- The practice of some Administrators of using agents/franchisees;
- The 'related entities' structure of some businesses where one entity sells the Agreement and a related entity undertakes the administration;
- The fees charged by Administrators including upfront as well as administration fees;
- The high termination rate of Agreements and the Administrators' fees structure where creditors receive little or no payments; and
- The irregularity with which Administrators make payments to creditors when debtors are paying them regularly.

6.2.2 The Australian Bankers Association

The Australian Bankers Association (ABA) represents its member banks on the Forum. Debt Agreements have been a major area of discussion by banks, particularly the collection areas, since their introduction in 1996.

Feedback from ABA members to the Forum is that Agreement proposals to banks have increased markedly in the last few years due to:

- The ease at which a proposal can be made;
- The changing attitude of the public towards Agreements and the reduced stigma such agreements now carry; and
- The increased promotion of such proposals through Administrator advertising.

The banks believe that while many genuine Agreement proposals are made, there is a growing number where the primary aim is to earn income for Administrators and/or reduced payments for debtors. They are concerned by proposals to repay debts at 75 cents in the dollar over two year periods where a small increase in the term would return full payment to creditors. In other proposals, the amount to be repaid including Administrator fees is higher than payment of the debts in full. Banks are asked to accept reduced payment of the debt plus no interest charging which they believe in some instances amounts to an interest free loan application rather than a genuine debt reduction proposal.

The ABA also queries some proposals and whether genuine hardship is present for some debtors. The information provided in a proposal does not always agree with financial information held by the bank.

While the banks believe that there is a place for Agreements under Part IX of the *Bankruptcy Act* they believe that in many cases, the Administrators need to improve the process of Agreement proposals. The banks believe that ITSA needs to scrutinise proposals more stringently to ensure that the best possible proposal to provide the best possible return to creditors is being made. Also the banks believe an important improvement would be to improve information provided to creditors upon which they could base their decision.

6.2.3 The Australian Finance Conference

The Australian Finance Conference (AFC) represents finance companies and other non-bank players in the financial services industry on the Forum. The AFC view is that while there is a belief that creditors don't accept Agreements and insist on high returns that are unsustainable, the fundamental flaw appears to be in the way that Administrators are operating. Anecdotal feedback from AFC members is that Administrators set up Agreements that are not sustainable but a loophole in their operation enables the Administrators to be paid most of their fees while creditors receive little or nothing.

Creditors are not regularly updated with information on the status of the Agreement as to whether the debtor is making the required payments. Payments to creditors are made at 3 to 6 month intervals if at all, and by the time a creditor has identified that payments are not being received through the Agreement process, the debtor is in even greater arrears, contact may have been lost and the recovery of the debt is made even more difficult.

This information is confirmed from contact with one irate creditor whose experience had been that 8 out of 10 of the Agreements which his company was dealing with were ultimately terminated with creditors receiving little or nothing. His primary concern matches that of financial counsellors: sales agents for Administrators are signing debtors up to Agreements which are unsustainable from the outset. *(Interview with creditor 4/4/05)*

He cited one case where the Agreement commenced in January 2004, no payments were made to creditors and the Administrator then requested termination of the Agreement in February 2005. When the creditor queried the Administrator, the attitude of the Administrator was *"it's too hard; we can't find him; we've got our fees; we want it terminated."*

Creditors had received no payments, had been unable to pursue the debtor for 14 months which had added to the statute of limitations period, and the debtor had over a year to disappear.

Additionally, AFC creditors identify problems with the Agreement documentation which does not match their own information on the debtor and leads them to doubt whether the debtor's best offer is being made through the Agreement proposal.

6.3 Debt Agreement Administrators

In September 2005 there were 38 Administrators operating in Australia with half being based in Queensland.

	NSW/ACT	Vic	Qld	SA/NT	WA	Tas	Total
Number of active business Debt Agreement Administrators (DAAs)	5	4	19	3	4	3	**38**
Number of DAAs Inspected	4	3	11	1	3	2	**24**
No. of Administrations Inspected	57	21	64	4	20	10	**176**
No. of DAAs declared ineligible*	1		1				**2**

Two Administrators have been declared ineligible in the last year;
***Source**: Review of Debt Agreements under Part IX of the Bankruptcy Act, 22/8/05*

6.3.1 Survey of Administrators

As part of this research, all four Victorian Administrators were interviewed. Australian Debt and Insolvency Solutions (ADIS) and Debt Assist based in Victoria were surveyed and interviewed. Debt Assist has significant radio advertising while ADIS relies on letters to debtors with Court Judgments and personal referrals. Both ADIS and Debt Assist have self reported high levels of acceptance of Agreement proposals by ITSA and creditors; they also report high levels of success in terms of debtors maintaining payments.

Of those Administrators who operate nationally, Australian Debt Counsellors (ADC) based in Tasmania, Fox Symes and Associates (FSA) based in NSW, RDA Creditfix, Phillip Aggs and Co. and Credit Counsellors Australia (CCA) based in Queensland were approached to undertake the survey. ADC and CCA participated in the survey but Fox Symes, Phillip Aggs and RDA Credifix declined.

Survey results:

	CCA	Debt Assist	ADC	ADIS
Marketing	TV mainly	Radio, newspapers, leaflets	Newspapers, Referrals from ITSA,	Write to Victorians who have a

		Yellow pages, Word of mouth	existing clients, solicitors, accountants and financial counsellors	Court Judgement entered, ITSA website, Referrals from clients and financial counsellors
Assessment	Telephone conversation, then field officer visits their home	Telephone assessment then appointment at their home or our office	Telephone for non-local clients, Office appointment or home visit for locals	See 60% of clients at office, 30% at home and 10% by telephone
Related entities?	#No, the group does the broking and administration	Yes, refer appropriate clients to mortgage brokers	No – Agreements are only 50% of our business	No
Agents or franchisees?	#No	No	No	No
Assist clients to bankrupt? Charge?	No	Yes Charge from \$220 to \$550	Yes Charge is \$165	No – refer to financial counsellor
Fee structure	Commercial in confidence	\$660 to \$880 for proposal plus 16.5% of collections for administration	\$275 to \$550 for proposal plus \$650 to \$5000 of collections for administration	\$550 for proposal plus 8% to 20% of collections for administration
Payments made to creditors	Quarterly	Quarterly	Monthly	6 monthly – quarterly for GE

While CCA have answered that they do not have related entities or use agents or franchisees, their group structure indicates that CCA is the marketing/selling arm of four companies and uses 'brokers' to sell agreements over the phone or by home visits to debtors. CCA have been particularly active in marketing to defence services personnel.

Additional comments made in the survey from CCA:

New Administrators are entering the industry, which do not have the systems and qualified personnel to manage debt agreements. I would like to add that very little cooperation is being received from FCs (financial counsellors) to encourage individuals to undertake DA (Agreements) and often debtors have been provided with wrong information from FCs in respect to DA. Some FCs do not have the experience and *necessary qualifications to provide proper advice to debtors. Moreover, hardly any cooperation was received from FCs after creating the Debt Agreement Practitioners Association.*

From Debt Assist:

The intention of the legislation is a good one. It does appear that some Administrators have contaminated the process and made it hard for ethical operators to provide a good and much needed service. These operators have set up antagonism toward all Administrators from creditors and financial counsellors. Some banks and credit organisations seem determined to use their muscle to defeat the system.

From ADC:

Agreements are fulfilling a need and providing a satisfactory return to creditors whilst providing some rehabilitation for debtors.

And from ADIS:

Agreements need to be administered properly. More regulation is needed. There is nothing stopping (a disqualified Administrator) from operating as an agent or broker for an Administrator.

6.3.2 Lifeline Brisbane Debt Agreement Service

As a response to the conduct of commercial Administrators, Lifeline in Queensland operated a Debt Agreement service in Brisbane for 2 years, from October 2002 to September 2004. A financial counsellor who worked for Lifeline Brisbane as part of their free financial counselling service became the manager of the Advantage Debt Management Service (ADMS).

Consistent with the church based welfare agency in which it was based and the philosophy of the financial counselling sector, ADMS kept overhead expenses to a minimum by only advertising on the ITSA website, through financial counselling sector networks and by word of mouth. It did not use agents, franchisees or brokers to sell Agreements.

ADMS only set up Agreements for debtors where:

- Their financial situation had been fully assessed;
- All options and implications had been fully explored; and
- An Agreement was the preferred and appropriate option.

ADMS received specific Agreement referrals from financial counselling services across Australia by telephone and email, including referrals from Lifeline's own financial counselling service where an Agreement was the appropriate option. ADMS found that an Agreement was the appropriate option for only about 5% of the clients presenting at the Lifeline Brisbane financial counselling service. This is consistent with the financial counselling sector's beliefs and experience. It is in direct contrast to the practices of commercial Administrators where an Agreement is often the only option presented or pursued.

Of the debtors presenting, ADMS found that generally Agreements were not an appropriate or sustainable option for low income debtors without seizable assets; but could work for wage earners who wanted to avoid bankruptcy or had assets to protect.

ADMS did not charge debtors a fee for an initial contact, to explore their situation or to undertake an Agreement proposal. No fees were charged if the proposal was not accepted either by ITSA for processing or by the creditors in the voting process. However, to cover administration costs, a negotiable amount of up to 15% of the return to creditors was retained by ADMS.

7 CONCLUSION

The inability to afford debt payments can contribute to a range of problems for consumers. Debtors who are unable to meet their financial obligations often do not understand the nature of all their commitments or what options might be available. A lack of understanding of the nature of their situation often leads consumers to panic and makes them susceptible to demands from creditors and debt collectors and to businesses offering them a 'quick fix'.

Free and independent community based financial counselling services can assist consumers to evaluate all the options available, and can provide information, advocacy and support. However, lack of resources for this sector resulting in scarcity of service provision and long waiting lists can lead desperate debtors to search for other answers.

While commercial Administrators can respond quickly, this assistance is neither free nor free of conflict of interest resulting in many Agreements failing, leaving debtors disillusioned and disempowered, often in a worse financial situation.

ITSA's own research (Johnston, 2001) reported on the large amount of evidence that indicates debtors are entering into Agreements that are unrealistic or inappropriate and considers early termination rates, commenting that this is *'...probably more symptomatic of the existence of unsound agreements rather than external causes of failure at work'.*

This 2001 ITSA report based on information gathered between 1996 and 2000, also analyses the emergence of Administrators and notes stakeholder claims of the following unethical or inappropriate conduct that included:

- *"Doctoring" information (income, assets and liabilities) in a statement of affairs in order to satisfy eligibility criteria;*

- *Failure to disclose creditors in a statement of affairs who are known to vote against debt agreement proposals;*
- *Repeatedly charging set up fees for successive and unrealistic debt agreement proposals;*
- *Cessation of any meaningful administration work once fees are recouped;*
- *Taking "set up" fees from administration funds and outside the terms of the debt agreement;*
- *Inducing proposals from debtors at all cost notwithstanding that they are unrealistic or inappropriate.*

Our project identified many of the same issues, and while the *Bankruptcy Legislation Amendment Act 2002* which was implemented from 5 May 2003, addressed some of these issues, fundamental problems remain. Identified problems, particularly at the 'front end' of Agreements including the marketing and signing up of vulnerable debtors were not addressed and continue to blight the Part IX Debt Agreement regime.

The insolvency regime serves three stakeholder groups: debtors who seek relief from an untenable debt situation; creditors who seek to recover what can be recovered from these situations at minimum cost to them; and Australian society which is not served well by having debtors immobilised by debts they can't pay.

The *Bankruptcy Act 1966* has the difficult task of balancing the needs of the stakeholders and generally provides a fair outcome for all. However, the unregulated introduction of Part IX Debt Agreements has seen many outcomes which do not deliver a good result for any of these three stakeholders, but has delivered business opportunities for some at the expense of vulnerable debtors.

8 RECOMMENDATIONS:

1. The *Bankruptcy Act 1966* should be amended to ensure that ITSA has the authority to regulate the entire Agreement process including advertising, and selling practices, whether by a Administrator or any other person involved in selling or arranging Agreements;

2. Regulation of Part IX Agreements should include the development of performance standards which define the obligations of Administrators and their staff including their brokers, agents or any other person involved in selling or arranging Agreements;

3. Regulation should require Administrators (and any person selling or arranging Agreements) to explain other options available (including Bankruptcy);

4. Regulation should require Administrators to be responsible for the conduct of any person marketing, or selling Agreements that they subsequently administer;

5. Regulation should require Administrators to assess capacity to pay, and inform debtors of the range of options available as part of the Agreement process;

6. Penalties for failure to provide required information or unfair conduct by Administrators should include the re-imbursement of payments made by debtors, and Administrators becoming ineligible to operate;

7. ITSA should be required to assess the viability of an Agreement (including capacity to pay) as part of the acceptance process; and

8. ITSA should be required to review and regulate the fee structure and stop preferential payments to Administrators.

APPENDIX

Appendix A

The following research projects are discussed briefly below:

- Empower Group (for ITSA), Insolvency and Trustee Service Australia: Debt Agreement Debtor Research – Report October 2004, ITSA;
- Empower Group (For ITSA), Part IX debt agreements: A survey of debtors who proposed a debt agreement between August and October 2002;
- Michael Johnston (for ITSA), Review of Debt Agreements under Part IX of the Bankruptcy Act, 11 May 2001;
- Insolvency and Trustee Service Australia, Report on Analysis of Debt Agreements, July 2000; and
- David Bergman, Regulation of Debt Agreement Administrators under the Bankruptcy Act, 9 September 2004.

Debt Agreement Debtor Research – Report, October 2004

Date: October 2004

Author: The Empower Group

Scope: This research is based on surveys of 211 debtors who had Debt Agreements approved between 1 February 2002 and 30 June 2002. Objectives of this research include debtor feedback about experiences before and after approval of the Agreement together with suggestions and recommendations for improvement of the process. The research does not deal with debtors who lodged and paid for an Agreement proposal that was subsequently refused.

The research was conducted by telephone survey using questions that involved a majority of either 'yes / no' answers or other multiple choice responses. ITSA said on its release that the Report showed that 'debt agreements are having a generally positive effect both as a viable option for debtors to avoid bankruptcy and providing a good level of return to creditors'[7] *ITSA based this statement on key findings of the Report that:*

- 77% of debtors claimed that debt agreements helped them solve financial difficulties and the same percentage said that the debt agreement assisted them manage their household budget; and
- 83% of debtors rated the overall performance by their administrator as acceptable or above.

The Report also included the following findings:

- 66% of debtors did not seek independent advice before entering their debt agreement;
- 80% of debtors were not encouraged to talk to a financial counsellor before entering their debt agreement;
- 85% of debtors were not encouraged to talk to any other professionals to assist with problems that contributed to financial difficulties; and
- Despite the low percentage of debtors encouraged to seek independent advice 83% of those debtors who spoke to other professionals in relation to personal problems contributing to financial difficulties found it useful.

Given the high percentage of debtors relying solely on Administrators for advice, only 55% of debtors received assistance from the Administrator with personal budgeting or managing finances.

[7] ITSA, ITSA releases new research on debt agreements, 22/10/04

Part IX Debt Agreements: A survey of debtors who proposed a debt agreement between August and October 2003

Date: 20 March 2003 (date of press release, releasing paper)

Author: The Empower Group, for ITSA

Scope: This report was based on surveys of 50 debtors who had a debt agreement either 'accepted' or 'rejected' between August and October 2003.

Structure: Report based on survey with accompanying press release.

Results: The press release claims that 'The ITSA research released today shows the vast majority of debtors (95 per cent) found debt agreements to be an effective way of resolving their financial difficulties and managing their responsibilities to creditors.'[i] The ITSA review of debt agreements conducted in the year 2000 indicated in the final (shortened) year of consideration from 1 July 1999 to 31 May 2000 that 53% of debt agreements failed between 7 to 12 months.

Some of the negative findings of the report include:

- 27% of accepted debtors and 22% of rejected creditors were not advised that their details would be placed on public insolvency register;
- 21% of accepted debtors and 14% of rejected debtors advised that they had not been advised that their credit rating would be affected;
- 27% of accepted debtors and 38% of rejected debtors were not advised of what would happen if a proposal was not accepted;
- 67% of accepted debtors and 63% of rejected debtors were advised to stop paying creditors after lodging a debt agreement proposal; and
- 26% of accepted debtors and 12% of rejected debtors were not advised of debt administrator fees

Review of Debt Agreements under Part IX of the Bankruptcy Act

Date: 11 May 2001

Author: Michael Johnston (for "ITSA")

Scope & Structure: This report appears to have been largely based on surveys sent to both "stakeholders" and "debtors".

Results: The report starts by considering whether debt agreements have provided a low cost alternative for debtors who want to avoid bankruptcy. It states '*The vast majority of survey respondents said that they particularly chose debt agreements to avoid bankruptcy. Of those with completed agreements, almost all (89%) are pleased to have used the process to settle their debts.*'[ii]

The report makes various recommendations to improve acceptance and rejection procedures including requiring debtors to supply budgets or other financial data to demonstrate the ability to meet debt agreement obligations. The report later considers the large amount of evidence that indicates debtors are entering into agreements that are unrealistic or inappropriate. The report considers early termination rates and comments that this is 'probably more symptomatic of the existence of unsound agreements rather than external causes of failure at work'[iii]. It is also remarked that 'Some stakeholders said that a lot of agreements are doomed to fail because debtors, either unwittingly or deliberately, make offers which they cannot meet'[iv] and that 'Insufficient income and over commitment is given as the major reason for failure of those agreements which suggests improper planning by the debtors concerned.'[v]

There are recommendations in relation to terminating debt agreements including possible auto termination and termination by ITSA of an administrator. It is suggested that an administrator have the power to recommend a variation that can be accepted by default or that where variation is not accepted that termination automatically occurs.

This report also analyses the emergence of debt agreement administrators and notes stakeholder claims of the following unethical or inappropriate conduct that included:

- "Doctoring" information (income, assets and liabilities) in a statement of affairs in order to satisfy eligibility criteria;
- Failure to disclose creditors in a statement of affairs who are known to vote against debt agreement proposals;
- Repeatedly charging set up fees for successive and unrealistic debt agreement proposals;
- Cessation of any meaningful administration work once fees are recouped;
- Taking "set up" fees from administration funds and outside the terms of the debt agreement; and
- Inducing proposals from debtors at all cost notwithstanding that they are unrealistic or inappropriate.[vi]

This report was based on information gathered between 1996 and 2000. Our research has identified many of the same issues.

The report notes that 'There is no obligation for an administrator to notify ITSA of completion (or termination) and the NPII record for some debtors is no doubt deficient.[vii]

Report on Analysis of Debt Agreements

Date: July 2000

Author: Insolvency and Trustee Service Australia

Scope: An analysis of 'characteristics' of debt agreements from 16 December 1996 to 31 May 2000. structure/ Analysis of ITSA data considering issues such as the number of debt agreement proposals made; proposals accepted; estimated rates of return on accepted agreements; proposed duration of debt agreements; state and territory of debtors; administration of debt agreements; termination of debt agreements; debt agreements completed and the incidence of bankruptcy following either rejection of a debt agreement proposal or termination of a debt agreement.

Results: It is interesting to note the growth in numbers of debt agreements from 40 debt agreements between 1996 - 1997 to 800 debt agreements between 1999 - 2000. Further the report indicates a growing acceptance by creditors rising from 41% to 79% during the same period. The report indicates that the majority of debt agreements are between 25 and 48 months.

Regulation of Debt Agreement Administrators under the *Bankruptcy Act*

Date: 9 September 2004

Author: David Bergman

Scope: 'Since the current regulatory regime was established, ITSA's Bankruptcy Regulation branch has inspected all major debt agreement administrators.[viii]

Results: This report discusses the new regulatory regime for debt agreement administrators introduced on 5 May 2003 and generally details some of the findings from the inspection of debt agreement administrators.

After outlining the new regulatory framework relating to debt agreement administrators, the report details some concerns with accounting practices of some administrators including:

- *'concerns about some administrators who maintain a single account for all debt agreements they are handling without being properly able to account for each agreement individually'[ix];*
- *similar concerns about mixing debt agreement funds with funds held for other purposes – [where] once again, the concern arises because administrators may have difficulty in accounting for funds in relation to each individual agreement[x]; and*
- *'a small number of cases in which administrators have apparently used funds received from debtors for their own purpose with the intention of repaying it later'.*[xi]

The report recommends that greater obligations be introduced.

---

[1] News Release – Research Shows Debt Agreements are Working, p1
[1] Review of Debt Agreements under Part IX of the *Bankruptcy Act*, p8
[1] Review of Debt Agreements under Part IX of the *Bankruptcy Act*, p11
[1] Review of Debt Agreements under Part IX of the *Bankruptcy Act*, p11
[1] Review of Debt Agreements under Part IX of the *Bankruptcy Act*, p11
[1] Review of Debt Agreements under Part IX of the *Bankruptcy Act*, p27
[1] Review of Debt Agreements under Part IX of the *Bankruptcy Act*, p11
[1] Bergman, Regulation of Debt Agreement Administrators under the Bankruptcy Act, p1
[1] ibid
[1] ibid
[1] ibid

Appendix B

Credit Helpline Case Studies

The following Agreement case studies are the experiences of consumers who have contacted Credit Helpline8 for advice from 2001 to 2004. The case studies have been organised below in order of the year they came to the service and the issues evident in each case study are in bold. All names of individuals in the case studies have been changed.

[8] Credit Helpline (Victoria) Limited was a free telephone advice service for debts and community workers that operated from 1995 to February 2005.

Terminology

The term *"Administrator"* in these case studies refers to the **Debt Agreement Administrator under the Part IX Debt Agreement.** In some cases a separate but related company is responsible for the initial sale of the agreement to the consumer. The term "Administrator" is also used in reference to these companies.

2001

Carol was on a disability support pension. Carol's mother informed Credit Helpline that Carol had made decisions such as calling a tarot reading phone service repeatedly. Carol had accumulated a total debt of over $6,000. Carol has entered into a Debt Agreement arranged by an Administrator. The Administrator arranged a Debt Agreement, which committed most of Carol's disability support pension towards paying off her debts. The Administrator did not look at the issues of a person with a disability's capacity to contract or over-commitment and whether these issues should be raised with the creditors prior to Carol entering into a Debt Agreement.

Issues: *Other options not explored*
Unsustainable from outset

2002

Frank entered into a Debt Agreement that was organised by an Administrator. The Administrator did not make any payments to the creditors until 12 months after Frank signed up to the agreement. Frank realised he couldn't afford the payments under the agreement about eighteen months into the agreement and wanted to cancel the agreement and declare himself bankrupt, he also wanted to recover the $2,500 he had already paid to the Administrator, almost all of which had been received as Administrator's fees.

Issues: *Delay of payments to creditors*
Up-front and on-going fees
Unsustainable from outset

2002

Gail had a total debt of $14,000. Gail had called an Administrator in response to the Administrator's advertisement. The Administrator came to her house and persuaded Gail to sign documents. Gail told the Administrator she didn't want to sign until she had discussed it with her parents, but the Administrator said that he had a long way to drive and would rather do it right away. Gail was not sure what she signed as the Administrator had not given her any copies. However, Gail knew that she did sign a direct debit authority. The Administrator told Gail that the Administrator services would cost her $900 – Gail said to the Administrator that she couldn't afford that amount. The Administrator then told Gail that if she wanted to cancel the agreement, all she had to do was ring the Administrator. She had not been able to get through on the phone to the Administrator and she did not have an address for the Administrator.

Issues: *In home sales*

Hard sell
Debtor not understanding implications
Poor follow up service
Up-front and on-going fees
Direct debits
Unsustainable from outset

2002

Karen signed up with an Administrator to enter into a Debt Agreement at her home. Karen had debts of $8,000. The Administrator told her they would charge her $675 over 3 years (although this is probably the proposal fee and administration will be additional). Karen had no assets and was on a disability pension. Karen's debt was mainly credit card. The Administrator also advised Karen that after 3 years her credit report would be the same as it was when she left school.

Issues: *In home sales*
Inaccurate advice about credit report
Other options not explored
Unsustainable from outset

2002

Natalie entered into a Debt Agreement organised by an Administrator after seeing the Administrator's television advertisements. The Administrator charged Natalie $500. Natalie was on a pension and had 6 children and could not afford to make the payments under the agreement. After entering the Debt Agreement Natalie went to a financial counsellor for assistance in paying her utility debts - the Administrator had told Natalie that these debts could not be included in the agreement. Natalie's total income was $663 per week (pension to cover single mother, 6 children). Natalie's total debts under the Debt Agreement were $3,000 on books for her children, a mobile phone debt of $1400 and $650 for another phone bill. The debts which the Administrator advised her to seek assistance elsewhere for were: Water $1081 and Electricity $871. Natalie cannot afford to make the payments under the Debt Agreement especially given the size of her utility debts.

Issues: *Advertising*
Other options not explored
Unsustainable from outset

2002

Oliver had a total debt of $23,000 and entered into a Debt Agreement with an Administrator. Oliver had paid the Administrator $1,000 in fees. Oliver had no assets. One of Oliver's debts was a secured car loan that was not included under the Debt Agreement. Oliver had to make payments of $180 per fortnight under the secured loan. Oliver could not afford to pay the secured loan repayments and to pay the contributions under the Debt Agreement. Oliver wondered whether bankruptcy may have been a better option.

Issues: *Other options not explored*
Up-front and on-going fees
Unsustainable from outset

2002

Pamela was off work for 2 months and as a result had several unmanageable debts. Pamela's immediate problem when she contacted Credit Helpline for advice was that she had no income and therefore no food. She had seen Centrelink who advised her that she would have to wait 3 or 4 weeks for a payment. She hadn't claimed Centrelink earlier because she thought that she would be back at work very soon. Pamela said she had arranged a Debt Agreement through an Administrator for her credit card debt and personal loan and now regretted doing this. Pamela was paying the Administrator $200 per fortnight towards the Administrator's fee, but the agreement had not yet been finalised – the creditors had not yet voted on the agreement. The Administrator's total fee was going to be $4,000. Pamela did not own a house, and had no other assets. The Administrator had not told Pamela that the Debt Agreement would be listed on her credit report for 7 years.

Issues: *Other options not explored*
Up-front and on-going fees
Notation of Agreement on credit report – debtor not told

2002

Patricia contacted an Administrator after getting behind in her home loan and seeing the Administrator's advertisement. The Administrator visited Patricia at her home. Patricia asked the Administrator specifically 'Will this go on my credit rating?' She was told 'No'. Patricia's other concern with the Administrator was that the Administrator pressured her to sign a blank form. When Patricia received the completed form, she realised that the Administrator had charged her a fee of $2,224 – the Administrator had told her that the fee would be around $300. The Administrator didn't explain bankruptcy as an option to Patricia and at the time she felt it was not an option because she wanted to keep her home. Patricia had about $10,000 in debts at the time of the Debt Agreement.

After Patricia entered the Debt Agreement she was still in financial difficulties. Patricia eventually had to sell her home, which gave her enough to pay out her mortgage and pay the Administrator and most of her debts and get a car. Patricia said that the worst thing about the Debt Agreement was the amount of payments per week which she couldn't really afford.

Patricia's financial counsellor has said to Patricia that if she had come to him before she entered into the Debt Agreement, he would have considered a Debt Agreement as an option, but not for the amount per week she was locked into paying, because she clearly couldn't afford this amount.

Issues: *In home sales*
Other options not explored
Inaccurate advice
Up-front and on-going fees
Fees exacerbate indebtedness
Unsustainable from outset
Notation of Agreement on credit report – debtor given false information

2002

Ellen entered into a Debt Agreement for a $12,000 debt. Ellen's Administrator had assured her that the Debt Agreement would never be listed on her credit report. Ellen would never have entered the Debt Agreement if she had known it would be listed on her credit report. Ellen applied for a home loan, but the loan was then declined because of her credit report.

Issues: *Inaccurate advice*
Different entities – administrator and 'consultant'
Notation of Agreement on credit report – debtor given false information

2002

Hugh was a year in advance in his payments under his Debt Agreement. In 2001 one of Hugh's creditors under the agreement put a default listing on Hugh's credit report. As a result Hugh's application for refinance of other debts was declined. Hugh hadn't realised that his Debt Agreement would be listed on his credit report.

Issues: *Notation of Agreement on credit report – debtor not told*

2003

Xavier went to an Administrator a couple of years ago and got a Part IX Debt Agreement (though he thought he was just consolidating debts) and had been paying for nearly 2 years. He had to pay a $600 fee upfront and was told that his credit report would be unaffected, but he now realises that this is not the case. The Administrator didn't tell him that a Debt Agreement would be listed for 7 years his on credit report. Xavier had made nearly $3,000 in payments.

Issues: *Did not understand Debt Agreement*
Notation of Agreement on credit report – debtor not told

2003

Rachel was a 79 years old pensioner who owned her own house with no mortgage. Rachel had around $21,000 in credit card debt after obtaining the cards to help out her son (Sam). Three of the cards were with banks and one card was with a major finance company. Sam was a gambler. Rachel had bank savings of around $20,000. After Rachel was unable to manage the payments on the credit cards, Sam organised an appointment with an Administrator for Rachel. Rachel and Sam went to the appointment with the Administrator together. At the appointment with the Administrator, Sam did all the talking and Rachel just signed the papers put in front of her. Rachel is now having trouble making the payments under the Debt Agreement – Rachel has to pay $400 per month under the agreement and she has an income of $833 per month.

Issues: *Other options not explored*
Debtor not understanding implications of Agreement
Unsustainable from outset

2003

Anna had been in financial difficulty for several months due to her and her husband adopting a baby, and Anna being out of work for a few months as a result. Anna had returned to work and her husband was also working. They had two car loans and mortgage plus credit card payments. Since Anna recommenced work they had been paying extra on all loans that had fallen into arrears. They had received default notices in relation to both car loans. One creditor had told Anna that if she didn't put money in the account immediately they would repossess the car. Anna saw an Administrator. From Anna's description it appears that Anna and her husband entered into a Part IX Debt Agreement, though Anna describes it as a 'consolidation'. A proposal had been put to the creditors, and Anna was waiting for a decision. The Administrator said that the Debt Agreement would affect Anna and her husband's credit report but didn't explain that it would be listed for 7 years. The Debt Agreement is only in relation to unsecured debts which amount to nearly $30,000.

Issues: *Other options not explored*
Inaccurate advice

2003

Carol entered into a Debt Agreement through an Administrator. The agreement was accepted, but due to domestic violence issues Carol had been unable to honour the agreement. She hadn't paid for about 3 or 4 months. Carol worked and earns about $50,000 p.a. Creditors were chasing her. She owned her car outright. It was worth about $16,000. Carol owned her house jointly with husband and they owed $95,000. The market value of the house was $185,000. Carol's husband was living in the house. Carol wanted to get a consolidation loan to pay out creditors and her family. Carol was aware that the Debt Agreement was listed on her credit report. Carol's creditors were threatening to sue and bankrupt her. Carol thought the Debt Agreement paid 80c in dollar. Carol recently received a letter from the Administrator informing her that the agreement had been discontinued.

Issues: *Other options not explored*

2003

John entered into a Debt Agreement through an Administrator two and a half years ago. John didn't realise what a Part IX Debt Agreement involved – he thought it was simply consolidating 3 or 4 loans. John was not in default on the loans at time he entered into the Debt Agreement. The Debt Agreement is now paid out. John and his fiancé wanted to apply for a loan for a car. The Administrator said that the Agreement could be shown on credit report as paid out. John was only aware of his Agreement being listed on his credit report after unsuccessfully applying for a home loan one and a half years ago. The Administrator originally said they would have John's credit report amended to reflect fact that agreement was paid out. This has not happened. Had John known about the credit report listing, he would never have signed up with the Administrator. John wasn't in default on his loans. He thought they were just going to be consolidated.

Issues: *Other options not explored*
Debtor not understanding implications of Agreement
Inaccurate advice
Poor follow up service
Notation of Agreement on credit report – debtor not told

2003

Tracy did not want to go bankrupt so she entered into a Debt Agreement to resolve her debt problems. Since entering the agreement Tracy's expenses had risen (rent etc) and she was left with $66 at the end of the week for food etc. Tracy rang her Administrator and asked for her payments to be reduced but the Administrator said Tracy could only do so for six payments. Tracy was unemployed and was unemployed when she entered into the Debt Agreement. The Administrator told Tracy that the Debt Agreement would be listed on her credit report. However, Tracy thought the listing would only be for three years. Tracy had no assets other than a car under finance. Tracy's car was worth virtually nothing because it was not roadworthy.

Issues: *Unsustainable from outset*

2003

Mr and Mrs Underwood had drafted a Debt Agreement proposal through an Administrator. The proposal offered 75c in the dollar that would result in payments of $250 per week. After organising this offer, Mr and Mrs Underwood rang the Administrator and said that they couldn't afford that amount and asked for it to be changed to $125 per week. Mr and Mrs Underwood had debts of around $70,000. The debts included 4 unsecured personal loans and 3 credit cards. All the credit cards were with banks. One of the cards came by way of an unsolicited offer with a $10,000 limit. Both Mr and Mrs Underwood were on low incomes, they were renting and had a car worth less than $5,500. There were a number of options available to them such as disputing possible maladministration with the bank/s and bankruptcy. After speaking to Credit Helpline Mr and Mrs Underwood withdrew their Debt Agreement proposal.

Issues: *Other options not explored*
Unsustainable from outset

2003

Vera had a Part IX Debt Agreement in place. The agreement involved fortnightly deductions for the Administrator and creditors. The Administrator took two payments one week apart, which caused a dishonour fee. Vera was waiting for the Administrator to re-credit this fee to her account as she needed the money. Vera had credit card debts of $5,400. She was not working and had no assets. The arrangement was that $4,200 was to be paid to creditors and $1445 to the Administrator. Vera asked if she could put off two payments to pay car registration. The Administrator said that was possible and then changed their mind.

Issues: *Other options not explored*
Poor follow up service

Up-front and on-going fees
Unsustainable from outset

2003

A Financial Counsellor was assisting a woman, Yasmine, who was unemployed and approached an Administrator and was signed up to a Debt Agreement. Yasmine had no assets and $20,000 of debt. One debt was for a secured car loan. The Administrator was harassing the client for payment of an $850 fee.

Issues: *Other options not explored*
Up-front and on-going fees
Unsustainable from outset

2004

Fiona and her husband were $1,000 behind in repayments on their home loan. They were separated but Fiona hoped to reconcile. There were currently tenants living in the family home, who had not been making the repayments on the home loan as Fiona had thought they were. Fiona's husband had applied for early access to superannuation but they were still $1,000 in arrears. Fiona and her husband were farmers. Fiona had 4 children. Fiona was hoping to hold on to the house. Fiona and her husband had other debts including her husband's credit card debt of $15,000. Fiona's husband was working, although he did have a period of unemployment. Fiona said that she and her husband 'consolidated' their credit card debts through an Administrator. A secured loan was mistakenly included on the Debt Agreement. Fiona said she and her husband were not informed that the Part IX Debt Agreement would go on their credit report. Fiona and her husband went to a solicitor with their grievances in relation to the Administrator. This was at a cost of $1600. The Administrator subsequently renegotiated their Debt Agreement, however Fiona and her husband were just starting to get behind on that agreement.

Issues: *Inaccurate advice*
Debtors not understanding Agreement
Unsustainable from outset
Notation of Agreement on credit report – debtors not told

2004

Natalie accrued debts of approximately $13,000 prior to her marriage in 2002. Since her marriage all loans had been under her husband's name because she had a bad credit rating. Natalie entered into a Part IX Debt Agreement in March 2002 through an Administrator. Natalie said she had wanted to get rid of the problem, as she was worried and couldn't sleep. Natalie said she was thinking of bankrupting. She had no assets of value. She was, however, getting divorced and there were assets of the marriage including the family home. These assets were currently in her husband's name.

Issues: *Other options not explored*

2004

Emma was in crisis accommodation, a motel. She had outstanding debts arising from the break-up of her relationship. Many of the debts from the relationship were in her name. Emma worked full-time, but on a low income. She couldn't afford private rental but housing agencies said her income was too high for her to qualify for assistance. Emma's $10,000 car loan was in default and Emma expected the creditor to repossess the vehicle. Her mother was co-borrower on the loan. Emma needed her car to go to work. About a year ago the client entered into a Part IX Debt Agreement through an Administrator in relation to credit card and telephone debts.

Issues: *Other options not explored*
Unsustainable from outset

2004

George had about $21,000 of credit card debt. He was renting and the market value of his car was about $5,000. He had no income and relied on his wife's income. Credit card debts were in his name only. George saw the Administrator sales representative and he had said he wanted a letter from George's wife saying she would accept responsibility for her husband's debts. George did not want to bankrupt. The Administrator offered creditors 98 cents in the dollar. George was unable to service the agreement. George had signed forms for direct debit payments but the Administrator representative wanted a letter from his wife and the wife's account details to set up the direct debit payments.

Issues: *Other options not explored*
Poor advice
Unsustainable from outset

2004

Diane was a 20-year-old single parent with a 4 and a half-year-old child. Her total income was $761 per fortnight, from Centrelink. She had had a Centrelink advance which was being repaid at $21 per fortnight. Diane had entered into a Part IX Debt Agreement through an Administrator.

Diane had several unsecured debts of around $9,000 in total. The proposal offered between 70 and 75 cents in the dollar for creditors. The total amount to be repaid to unsecured creditors was just over $7,000. Total fees, expenses and disbursements were $2,300. Under the agreement Diane was to make payments fortnightly of $96 initially. Over time these payments were to increase to $128 and then $250. The Administrator had told Diane she would probably be working by the time the $250 payments were due and that therefore she would be able to manage this payment amount. The initial fortnightly budget prepared by the Administrator provided for just $40 for food. Diane had no assets of value. Diane had a motor vehicle that was under finance purchased two years ago for $5,000.

The Debt Agreement assumed that Diane would be qualified as a hairdresser by the time the payments were to be increased to $250 per fortnight, and would be able to find work. However, she was unable to complete her course because she could not afford the course fees. Diane says she would consider her options, and probably wait for one or more of her creditors to terminate the Debt Agreement.

Issues: *Other options not explored*
Poor advice
Up-front and on-going fees
Unsustainable from outset
Payment increases

2004

Helen wanted to know how to terminate a Debt Agreement with the Administrator. Helen was on Centrelink benefits and wanted to go bankrupt. Helen rang ITSA and asked them what she had to do to end her agreement. She was advised to ring the Administrator and tell them she wanted to terminate. Helen did this and was told that she had to put another proposal to creditors that she could afford.

Issues: *Other options not explored*
Inaccurate advice
Unsustainable from outset

2004

Mr and Mrs Kirk went to a debt Administrator in Brisbane and a Debt Agreement was drawn up. Mr and Mrs Kirk had realised that they couldn't keep up payments. Their solicitor had written to ITSA asking them to terminate the agreement. Mr and Mrs Kirk had paid $1500 to the Administrator for administration fees. Mrs and Mrs Kirk thought that they were getting assistance in consolidating debts. They didn't know that there would be a fee for this. They didn't know they were entering into a Part IX Debt Agreement.

Issues: *Other options not explored*
Inaccurate advice
Debtors not understanding Agreement
Up-front and on-going fees

2004

Lyn had debts including credit card debt and $7,000 debt in relation to a car accident. Lyn was renting. She was running her own business but she said the business was going poorly. Lyn was on unemployment benefits for a long time prior to this. Lyn entered into a Part IX Debt Agreement through an Administrator but said she cannot afford to keep up the payments.

Issues: *Other options not explored*
Unsustainable from outset

2004

Paul had debt and contacted an Administrator to obtain a consolidation loan. They advertised that they do consolidation loans. Paul said he was misled and that the Administrator lied to him, as it was not a consolidation loan but a Part IX Debt Agreement. Paul said the Agreement was listed as a bankruptcy on his credit file although he did not proceed with the Agreement.

Issues: *Inaccurate and poor advice*
Notation of Agreement on credit report

Appendix C

Interviewee Situation Summaries

The Interviewees below entered into, or considered entering into, Agreements between 2002 and 2005. Names of interviewees have been changed.

Terminology

The term "*Administrator*" in these interview summaries refers to the **Debt Agreement Administrator under the Part IX Debt Agreement.** In some cases a separate but related company is responsible for the initial sale of the agreement to the consumer. The term "Administrator" is also used in reference to these companies. Where the employee of the Administrator company in contact with the consumer is performing a sales role rather than an Administrator role they are referred to as a *"sales representative"* of the Administrator.

ANN – Administrator A

In late 2003 when she entered into the Debt Agreement, Ann had an income of $400 per week. This income comprised Centrelink payments and casual work. Ann was aware that her income would drop in April the following year because she would cease to receive Centrelink payments for her teenage son. She predicted her weekly income would fall to around $254 per week: *'I was losing my son's pension April next year and said my finances would change and I might not be able to pay them as much.'*

Ann signed up to a Part IX Debt Agreement after a sales representative from **Administrator A** came to her home. At the time of signing the agreement Ann had total debts of **$9,698**. The debts were all unsecured including credit card and mobile phone debts. The Agreement provided for Ann to pay 75 cents in the dollar to creditors, being in total $7,274. In addition to the $7,274 payable under the agreement Ann was liable to pay **an initial fee of $672** to **Administrator A** and further **administrative fees** of **$2,424 (a total of $3,096 in fees).** To complete the agreement, Ann would have to pay out **$10,370** in total.

Ann's understanding of the fees differed radically from the actual fees set out in the agreement: *'They told me a small once off small fee. I assumed it was around $60 in total. I have it written down somewhere here…'* Under the agreement the initial fee to **Administrator A** was to be paid via direct debit payments before any payments were to be made under the Agreement itself. If the Agreement was to fall over in the early stages creditors were unlikely to receive any payments. The agreement proved to be unsustainable from the outset and inevitably failed in the early stages.

Ann paid almost $1,000 to the Administrator but no payments were made to creditors.

Administrator A's sales representative did prepare a budget: *'When I looked at the plan I thought this was fantastic. It leaves me with money ...It looked good on paper but it didn't work because I still had the debts of Ministry rent, gas, electricity and phones because I was behind in payments from the start. I was in a position where I was robbing Peter to pay Paul ... I had a nervous breakdown.'* The budget included just $230 per month for food and $10 per month for transport: *'I lived on a very tight budget, we had steak when we went to visit someone.'*

Ann began fee payments to **Administrator A** of $48 per week. This resulted in a drop in disposable income to $352 per week.[9] Under the Agreement Ann's direct debit payments were to increase to $55 per week and eventually to $69 per week despite Ann's stated prediction that in April the following year her income was likely to drop to $254 per week.

> *'The first couple of weeks it was fine, but not after this. I asked them to freeze for a few months because I couldn't afford to pay them and I needed my payments to be dropped. They basically told me I couldn't be doing that... I rang them a few times and ended up getting them to drop payments to $60 per fortnight. Then they went right back up again without my notification.'*

When asked if other options had been explored, Belinda said:

> *'They didn't mention bankruptcy. I mentioned bankruptcy to them ... They said you have to have so much debt before you bankrupt and you are under that.'*

The Agreement was terminated with the assistance of a financial counsellor. With the agreement in place Ann states: *'I was not sleeping and getting further and further into debt.'* To others contemplating entering into a Part IX Debt Agreement she says: *'I would tell them to definitely go and seek advice from one, two, three, four people first. I definitely would not have gone through them.'*

Issues: *In home sales*
Hard sell
Other options not explores
Inaccurate advice
Lack of payments to creditors
Up-front and on-going fees
Direct debits
Unsustainable from outset
Payment increases

Outcome: *Subsequent bankruptcy*

[9] According to Henderson Poverty Lines Australia, December Quarter of 2003, for a single in labour force (parent plus 1) the Poverty Line is $388.30 per week or, where head not in the workforce $331.04 per week (for parent plus 1).

***BELINDA* - Administrator B**

At the time of entering into the Part IX Debt Agreement in late 2004 Belinda had a weekly income of $435. Belinda has a dependent child. Her income was made up of Centrelink payments and child support payments. Belinda had no assets of value.

Belinda contacted **Administrator B** after seeing their advertisement in the local newspaper.

> *'I had about $12,000 of debts that I was having extreme difficulty paying, from my marriage break-up and my own personal debts. I was receiving a whole lot of letters and phone calls saying they would take me to court. I didn't want to go bankrupt, didn't want the name and wanted for my own integrity to pay my debts'*

The advertisement stated:

Bloody Debt
Let Us Help

"We All Have it That's Life"

If you are experiencing difficulties
or behind on payments, credit cards,
personal loans, old phone bills etc

A Registered Debt Agreement can be
Consolidated Through Government
Legislation at No Interest.

Contact [Administrator B]
We remove all your debt and collectors worries.

Belinda thought that they **'…***sounded reputable because of the mention of government legislation…'* She contacted the company and a sales representative came to her house. The sales representative stayed a couple of hours and Belinda signed that night.

> *'I had already prepared a budget for him to copy, a list of expenses, he picked and chose what was to go on the form. He said to decrease this to fit in the budget, like for kid's clothing and fuel. There was no luxury items, no entertainment, no going out …'*

Although she had wanted time to think it over, Belinda said: *'You had to sign on the night.'*

> *'I thought it sounded terrific at the time. I said how much I could afford to pay… I was thrilled because I thought I could pay in 5 years. I was paying direct from my pension. I thought it must be*

legit because no one could get to the pension'. (Belinda was paying through Centrepay – a direct debit from her single parent pension with Centrelink)

Belinda had unsecured debts of **$11,404** including several credit card debts. Under the Agreement she was to pay 88 cents in the dollar, in total **$9,830** to creditors. There is some discrepancy on the documentation available in relation to total fees to the Administrator. The fees to the Administrator totalled somewhere between **$1,740** and **$1,764**. In addition there was an initial fee of **$979** (a total of **$2700** in fees). Under the agreement Belinda was to pay in total around **$12,500**.

When asked if other options had been explored, Belinda said:

> *'We didn't go into bankruptcy …(In bankruptcy) I knew I would be able to keep the car but I wasn't sure of everything else and wasn't sure if I'd be able to rent.'*

And in relation to notation of her credit record?

> *'He might have said something like it will be listed but it won't be as a bankrupt.'*

The Agreement fell over almost immediately after Belinda discovered that the fortnightly payments under the agreement were to be far in excess of what she had agreed to. Belinda states that the agreement she signed was for her to **pay $90 per fortnight over 5 years**. However she found that the Administrator had altered it so she would have to pay about **$130 per fortnight over 3 years**.

> *'I didn't know that they could change the agreement after I had signed it. I signed an agreement, which would let me pay $90 per fortnight over 5 years. (The Administrator) altered it so I would have to pay $130 approximately over 3 years. They whited out my information and that's when I got real shirty and got help. I burst into tears, and went to get help. They even altered some of my expenses so it would fit into my pension… I did ring up the head office of (Administrator B) and he said his reasons for altering the length of term was that the creditors wouldn't accept the payments over 5 years. I said why didn't you tell me at the time.'*

Belinda made just one payment of $130 under the agreement.

Issues: *Advertising*
In home sales
Other options not explored
Inaccurate advice and manipulation of information
Poor follow up service, including altering proposal without debtor's knowledge
Up-front and on-going fees
Centrepay
Unsustainable from outset

Outcome: <u>*Settled debts with assistance of a financial counsellor*</u>

***CLAIRE* – Administrator C**

Claire contacted **Administrator C** after seeing an advertisement in the local paper.

> *'Basically I thought I would be able to sort out my finances and that they would be under control. I really always managed to pay my bills, even though on the pension. Even though credit cards are not a good idea, I always paid.'*

The sales representative came to Claire's home. It took a couple of hours to fill out the forms and Claire signed the agreement that night. Claire had a weekly income of $415 comprising Centrelink payments and child support payments. Claire was buying her own home under a Government home loan program and she had 25.17% shared equity in the house at the time. Claire's unsecured debts were about $21,000. Under the Agreement Claire was to pay $12,480. Claire states that she thought the amount she had agreed to pay under the agreement was realistic at the start. However she states:

> *'I guess even at the end of that day I must admit I was startled when I sat down and looked at the figures.'*

The Agreement was for Claire to pay $60 per week. If the budget had been correct it would have left Claire with just $4 at the end of each week. Claire stopped making payments under the agreement when she discovered the agreement had not been put in place. Due to an error within ITSA, the proposal had not been sent to creditors to vote.

> *'(Administrator C) should have been chasing ITSA as to why the agreement was not voted on … I rang ITSA and found out that the papers hadn't gone out to creditors. I was getting letters from creditors saying make payments. (Administrator C) said to send a copy of letters to them but they didn't do anything …'*

With advocacy from a financial counsellor, due to their internal error, ITSA compensated Claire $660 for the fees she had paid **Administrator C**. However, she found that:

> *'I am more in debt now than when I started.'*

Issues: *In home sales*
Other options not explored
Poor follow up service
Unsustainable from outset
ITSA maladministration

Outcome: *Debtor sorting out finances with assistance from financial counsellor*

DON **– Administrator A**

Don did not enter into a Part IX Debt Agreement. Don contacted **Administrator A** in early 2004 after seeing an advertisement on television. However, he did not proceed with the Agreement because of a number of concerns he had about what was proposed.

After an initial call to **Administrator A** Don says he received 4 or 5 calls from their sales representative and finally agreed to let the sales representative come to his home. Don had:

> *'Thought it might have been a service where they negotiate debts on [his] behalf but on a more formal basis than a financial counselling service.'* He states: *'I didn't realise it was a full on money making scheme'.*

Don was initially interested in the Part IX Debt Agreement option.

> *'I don't want to go bankrupt. I probably could because I don't own a house and don't have assets. If I was 10 years younger and I had a mortgage I could see, you could get into it to save the house. It's a sort of catch 22 because if you have the income to manage then you won't be in trouble anyway. On TV you get the impression it is geared up for battlers, but you need the cash flow to service the agreement.'*

Don had credit card debts of $21,000 and was not working at the time. His only income was an annual family tax payment of $2,500. His wife was working and earning $34,000 per annum. The sales representative wanted Don's wife to sign a statement to the effect that she agreed to pay her husband's Debt Agreement repayments until Don returned to work. Don and his wife were unhappy with this. Other concerns of Don included:

> *'[The sales representative] did not leave a helpful budget, and didn't leave any information to work on. He did make a whole heap of scribbling which I can do myself and make it look like I have money left over. [The budget] was way too tightly geared especially with teenage kids. I spent nearly $1,000 on car repairs this Christmas. He hadn't allowed for any expenses like that.'*

Of the Agreement itself Don observes:

> *'It was really structured, started off making small payments. If you are on a really fine budget making it small makes it more likely that you will pay and not fall over. I did not enter into the agreement because I didn't want my wife to guarantee payments … and when you did the budgets you were left with nothing. They won't give a toss if it falls over later on.'*

The proposed Agreement was for Don to initially pay $130 per fortnight. This would then drop down to $110 per fortnight but over the 4-year period of the agreement the fortnightly payments would then begin to rise so that in the last 2 years of the agreement the fortnightly payments would be $210.

Issues: *In home sales*
Hard sell

Unsustainable from the outset

ELAINE **- Administrator B**

Elaine was in her early twenties when she entered into the Debt Agreement. After seeing an advertisement she contacted **Administrator B** and a sales representative came to her home. The sales representative stayed about 2 hours and Elaine signed the agreement that night.

> *'[My] mother was there too but they have six kids, only about two or three kids were there at the time, mother listened as much as she could… I just thought they'd speak to all my creditors and pay it for me and I would pay them back. He said he would write me a letter later on if a I wanted to get credit or a home loan later on once I paid it, about 3 years … If I bankrupted it took 8 years, my credit report would have a black mark for 8 years … I thought that the debt agreement meant that I didn't have a black mark against my name.'*

Elaine had not understood that her credit report would be affected for 7 years and says she had stated that she wished to avoid bankruptcy for that reason.

Elaine had total debts of **$8,060** comprised largely of credit card debt in the form of store cards. Under the Agreement she was to pay 90 cents in the dollar to creditors. Total fees to **Administrator B** were to be over **$1600** and included an initial fee of **$800** to be paid before payments under the Debt Agreement were to commence. Elaine was initially to make payments of $20 per week but these payments were quickly to **increase to around $70 per week**. At the time of entering into the agreement Elaine had a weekly income of $175 being Centrelink payments. The Administrator provided Elaine with a budget.

> *'At the start it sounded really good, $20 per week sounded really good, when I had a job I would call him and it would change…[I] couldn't afford to pay when I was on the benefits but I was supposed to try to get employed.'*

The budget allowed for just $20 per week for food. Elaine states:

> *'Maybe because I was living with my parents… I did smoke… I'm not sure maybe he put this [the $20 figure] down because he knew I was living with my parents.'*

Elaine was unable to afford to maintain the payments under the agreement. On reflection she states:

> *'Depending on how much debt, I probably wouldn't recommend going into the Agreement, but that is one company. I don't know about other companies. My friend went into bankruptcy at the same time as I did the Debt Agreement. I said at the time: 'Don't do that'. But now she is in a really good position with a new start. The only way I found out about a financial counsellor was when I wanted to go bankrupt and got all the papers.'*

Issues:

In home sales
Other options not explored
Debtor not understanding Agreement

Up-front and on-going fees
Unsustainable from outset
Payment increases
Notation on credit record – debtor not told

Outcome: Subsequent bankruptcy

***FERGUS* – Administrator A**

Fergus contacted **Administrator A** after seeing a television advertisement:

> *'I saw an ad on tv when they were running that big ad campaign. I saw it a few times, I wanted to consolidate and budget. I quoted my ideas and they said they could help … (The ad was) husband and wife, wife says now life is a lot easier and we are able to manage money, they are very happy now, able to enjoy life more … Seeing the ad on TV I was quite confident and pleased with myself dealing with a professional organisation.'*

At the time Fergus says that he could see that he was heading for trouble.

> *'My idea was to consolidate, put them into one basket and pay the one. [From the advertisement I thought the service would be] consolidating and budgeting; I thought they would set me up with a consolidation plan and I would pay them once a fortnight.'*

Now Fergus believes **Administrator A** was '*looking out for themselves, they don't care about the consumer at all'*.

Fergus did not understand that the Debt Agreement would impact on his credit report.

> *'I was led to believe that I would still have a credit rating … He said you are not declared bankrupt. He didn't go too much into it … I thought good, I don't lose my credit rating and since then I have found out it is a form of bankruptcy. If I even had half an idea there is no way I would have gone forward.'*

At the time of entering the agreement Fergus was on an annual income of around $40,000 per annum. His debts at the time were around $40,000. These included two car loans not included in the Agreement. The other debts were credit cards. Fergus was separated from his wife and the family home purchased by his wife prior to the marriage was in his wife's name, and she had two children from her previous relationship.

Fergus found the agreement unsustainable:

> *'The bank statements showed debit, debit, debit. I would get a print out of my account and $60 or $40 would be the most in the account. I would get a lot of late fees because of union trouble. If anything was left I would grab it and put it in my wallet; $60 would be all that was left for food and petrol. I used to dread going to the ATM and then the extra humiliation because I would be in arrears. It was one big roller coaster. It would build up and up. Very stressful.'*

'I rang up the card the bloke gave me. I was quite stressed. His quote was: "Don't stress it will be alright. Don't worry about it. You stress too much." I only rang a few times. There was never any help or any assistance or what they could do to help … they are looking out for themselves. They don't care about the consumer at all.'

Eventually the agreement fell over:

'I made a few payments under the agreement over a year and a half. I just got out of it with the help of a financial counsellor three and a half months ago.'

Fergus paid $1710 to the Administrator but only $120 had been paid to creditors at the time the Agreement was terminated.

'(The fees) were going up and down. At one stage it was $170 then $230, (I) didn't know the total amount of fees. They said first off you have to pay a fee that will start for the first 13 fortnights and then the commencement date for the deductions for the agreement. I did have a piece of paper with the number of payments for the fee but I was never told the total fee.'

Issues: *Advertising*
In home sales
Other options not explored
Inaccurate advice
Debtor not understanding Agreement
Delay or lack of payments to creditors
Poor follow up services
Up-front and on-going fees
Direct debits
Fees exacerbate indebtedness
Unsustainable from outset
Payment increases
Notation of Agreement on credit record – debtor not told

Outcome: Subsequent bankruptcy

GRANT **– Administrator D**

Grant stated he was not really happy with the Debt Agreement he entered into in late 2004 and not happy with the people who signed him up. He had contacted **Administrator D** after seeing an advertisement on television and at the time he '*thought it might have been a good idea, a better way out of debt than bankruptcy'*. The Administrator's sales representative spent 45 minutes to an hour at Grant's home.

'I signed at my house, one sales rep … (He spent) about 45 minutes to an hour … He wrote it all out and just swung it over the table for me to sign straight away … I just assumed he knew what he was doing.'

At the time of signing the agreement Grant had a projected income of $492 per week, but this was based on a prospective job that fell through. Grant's debts at the time were around $11,000 and included residual debt on a car loan and credit card and mobile phone debts. Grant was to pay $106 per week under the Agreement. He was unable to afford the payments.

Grant says he wasn't sure how much his creditors were to be paid under the agreement. In fact they were to be paid 79 cents in the dollar and in total around $8,600. **The Administrator's fees** under the agreement **were $2,379** and in addition there was **an initial fee** of **$1,000 (total fees of $3,379)**. Grant was aware of the initial fee and aware that it was to be paid first over a ten-week period before the agreement began.

Grant said that with the Administrator's sales representative's explanation:

> *'He sort of made it sound like enough, but he didn't give any of the technical information that we found out later on. He didn't go into any information about bankruptcy at all'*

He says that the sales representative did read out loud the section in the prescribed information about bankruptcy but says:

> *'I would have preferred to have a sit down and have a flick through it myself. He didn't really give us a chance to think about anything much at all.'*

And when the job on which the Administrator proposed the Agreement didn't eventuate:

> *'I rang him when the job fell through. He said not much you can do, that I was sort of stuck with it.'*

Grant now says that he can't see that there was any advantage for him in the Debt Agreement over bankruptcy.

Issues: *In home sales*
Hard sell
Other options not explored
Debtor not understanding Agreement
Up-front and on-going fees
Unsustainable from outset

Outcome: <u>*Subsequent bankruptcy*</u>.

***HEATHER* – Administrator A**

Heather contacted **Administrator A** after seeing an advertisement on television, which said: *"…it's not a loan, it's not bankruptcy, if you're having problems and you've tried everything else"* …

> *'I had seen it a few times and came across it in the TV guide … after speaking with my husband we said let's give them a try. They made it sound like they got in touch with your creditors and gave you a special telephone number and call number so creditors would not keep on ringing you.'*

The sales representative came to the house:

> *'There was no proper explanation, if there was we would have sent him on his merry way … (The Administrator) didn't give me any documents at all … At the time I thought it was normal, I was just glad there was someone there to take the burden off me. I realise this was stupid now …'*

Heather had unsecured debts of approximately $20,000 and under the Agreement creditors were to be paid around $12,300. In addition the **Administrator fees** were **$4,085**. Heather had only understood that there would be an **initial fee of $900 (total fees of $4,985)** and that if the Agreement was rejected that money would be refunded:

> *'They said they were going to work out how much I was to pay creditors. The only thing they said about their fees was that there would be a fee of $900 from payments but if rejected that money would be refunded … My jaw just dropped when [the Administrator representative] rang and said this amount of fees [$4,085], something that really upset me. I thought what about the $900! I didn't say anything to him at the time. I was just horrified."*

Even when the Agreement was terminated, Heather could not get clear information on what happened to the money she had paid:

> '*I had paid $2,800 to them, but only $300 to creditors to my dismay.'*

In fact, Heather paid $2,485 in total with $380 going to the creditors.

Heather was earning $28,000 per annum when she entered into the Agreement in 2002 but became unemployed shortly afterwards. Her husband was earning $35,000 per annum and the family home purchased by her husband several years before the marriage was in his name. When Heather was unable to meet the payments under the agreement after losing her job she was contacted by the Administrator. When Heather explained that she wasn't working, they said what about your husband? Heather sought to vary the Agreement and then eventually sought to terminate the agreement. The agreement was terminated in late 2004.

To other people thinking about Debt Agreements Heather says:

> *'I'd tell them not to even think about it. If someone had said to me there are other people such as financial counsellors, I would have gone straight to them. I would not have even touched these people. You only learn after you have been burnt. No one said to me there are other ways. I was virtually on my own. If anyone I knew was even thinking about going into a Debt Agreement I'd tell them about my experience and say don't do it.'*

Issues: *Advertising*
Other options not explored
Delay or lack of payments to creditors

Up-front and on-going fees
Unsustainable from outset

Outcome: Subsequent bankruptcy

***IAN* – Administrator D**

Ian had debts of approximately $30,000 including significant credit card debts and rang an Administrator:

> *'One person came out to my home, about mid to late 40s. (He spent) 30 mins to 45 mins. He had some bits of paper and said just read this and see if you understand this … The next day after I'd already signed up I did talk to someone else and they mentioned to me then that they could have done the same service for nothing whereas this mob actually charged something for their services. That made me think about things and maybe I'd jumped into it too quick.'*

Ian's income was made up of Centrelink payments of $230 per week as well as occasional causal work mowing lawns and cleaning. This casual work was included on the proposal as 'other income' of $50 per week but Ian says that it was probably only once every now and then. *'You might do one lawn every third week. It was just if friends ring up."*'

Not only did the agreement exaggerate Ian's income but also made no allowance for accommodation.

> *'At the time I was staying where my daughter was… I was there for 10 months. I was going to be staying with my daughter for 4 years and I thought I would stay with her but things didn't work out. She ended up moving town and I couldn't stay there on my own.'*

In terms of exploration of other options:

> *'The only thing I can recall is that when I mentioned that I was going to see someone else that he said that they would only tell you to go through bankruptcy … I was pretty confused then and still am a bit confused about what has happened … He said he would go back to whoever he was talking through, some mob in Queensland, he said you would probably have to pay something out of the dollar … It was all new to me and I wasn't really sure of everything. I didn't really know which way to go. I suppose I should have gone to see someone else to get it a bit more in my head, but he came out and I just done it there and then.'*

Ian was to make payments of $110 per week under the agreement but was unable to afford to maintain it:

'After that guy left the only contact I had was in the mail. I think once I did try to get through to them but they said they couldn't do anything. I told them because of the direct debit out of our bank I was going a bit spastic. I said "you bastards" and cancelled the account.'

'Well at the time I suppose I didn't really know what I was going through, things just got worse after that and I couldn't cope with what I set up. Living the way I was, things just seemed to get worse and worse. Always no money, never could do anything, had to put yourself in a corner and do nothing. Just the pressure of everything got the better of me and I couldn't handle it.'

Under the Debt Agreement Ian was to pay approximately 60 cents in the dollar to creditors, totalling $17,600. The fees to **Administrator D** under the Debt Agreement were **$4,626**. In addition there was an **initial fee** of **$1,100** to be paid prior to the Debt Agreement **(total fees of $5,726).**

Ian now believes bankruptcy would have been a better option for him.

'I would have done it [bankruptcy] straight away, definitely, with what I can understand now about all of it. I have so many bits of paper and I have been going through it all from time to time. [Bankruptcy] would have been easier. [My situation] was all new to me and I wasn't sure of everything. I didn't really know which way to go. I suppose I should have gone to see someone else to get it a bit more in my head but he came out and I just done it there and then. I jumped into it too quick, too sudden…'

Issues: *In home sales*
Other options not explored
Debtor not understanding Agreement
Up-front and on-going fees
Unsustainable from outset

Outcome: <u>*Subsequent bankruptcy*</u>

***JEAN* - Administrator B**

Jean got an Administrator's flyer in her letterbox:

'It said "sick of those bloody debts": This caught my eye … I rang a guy in Queensland and said I was having problems. He sent a bloke from a nearby town who really didn't know much at all but he just filled out the forms … He said he was a government authorised administrator … He said this is the government's way of trying to avoid bankruptcy … When he said government authorised I thought it was going to be ok.'

After the initial phone contact with the Administrator in Queensland: *"Another guy came to the house who really didn't know anything about it. He was in the house only long enough to fill out the forms, 10 minutes."*

Jean included on her Debt Agreement proposal just one debt of $22,000 for a credit card. However, she had other debts arising from a failed small business and these amounted to almost $140,000.

> *'I was struggling and my credit card was way over and I just couldn't make payments. I said I wanted to put the credit card on and he [the Administrator's sales representative] asked me what other debts I had. I said I was managing these…'*

Jean now says:

> *'In hindsight it was shabbily done. Even though I have been in business before I was panicking and clutching at straws. I'm usually fairly astute and I should have had more sense… If you are on wages and you have spiralling credit card debt and other debts under control, sure, a Part IX agreement is a good idea but you really need to look at the whole situation. They need to be made to fill out a proper Statement of Affairs rather than which debt you want to wipe. He should have had the facts. A $22,000 credit card debt is not to be sneezed at, and to get to $22,000 you need to have other debts too. Every debt needs to be listed whether or not you include it in the Debt Agreement or not.'*

Jean now believes bankruptcy would have been a more appropriate option in her case.

At the time of entering into the agreement she was self-employed and had an estimated annual income of $20,800.

Under the agreement Jean was to pay 88 cents in the dollar to her one creditor listed on the agreement, being in total $19,350. The fees to **Administrator B** under the agreement were **$2,698**. It also appears from the documentation there was an **initial fee** of **$1,484** to the Administrator (**total fees of $4,182**). Jean was to make weekly payments of $106 per week under the agreement but she was unable to afford to maintain the agreement and eventually sought to terminate the Agreement in order to be able to bankrupt.

Issues: *In home sales*
Other options not explored
Inaccurate advice
Up-front and on-going fees
Unsustainable from outset

Outcome: *Subsequent bankruptcy*

***KATE* – Administrator A**

Kate entered into a Debt Agreement through **Administrator A** after seeing their advertisement on television:

> *'I saw an ad on tv when I was living in Sydney: "we can help you consolidate all loans into one", it sounded really good'*

Then their sales representative stayed under an hour and Kate signed that night.

> *'One middle aged guy visited (my home). (He spent) less than one hour. He made it sound really good. He said a Debt Agreement was 'on the same terms as bankruptcy'. I cannot remember if he explained bankruptcy. He didn't say any other options, basically just saying how good the company was… I didn't understand bankruptcy. I thought they could take (the) car and stuff from the house. I felt a bit kind of rushed with the advice. I asked him if I could incorporate the computer loan in the agreement, then after everything was signed the computer loan wasn't in it. He said "I told you" but he hadn't told me about it.'*

She was also disappointed about another aspect:

> *'My main reason for doing Part IX was to keep my credit report in good condition.'*

At the time Kate had first contacted **Administrator A** she had lost her job. She had thought the Administrator would provide a "consolidation service". Kate's weekly income of $435 comprised Centrelink payments and child support payments. The Agreement proposal lists unsecured debts of around $22,400. Kate had a secured computer loan of $3,500 that she had understood from the sales representative was to be included in the Agreement but as a secured debt, it was not included:

> *'The payments were unrealistic from the start and I was lied to about all going in as one, that is the computer loan being included.'*

The fees to the **Administrator** under the Debt Agreement were **$5,365** as well as an **initial fee** of **$1,275 (total fees of $6,640)**. Kate had understood that the fees would be around $200.

> *'They didn't say how much they would charge, I thought the fee would be about $200. I think the rep. said it would be around $20 … I don't know who Debt Relief Services are. I don't know anything about the $5,365 fee to Debt Relief Services. I have never heard of Debt Relief Services…'*

Kate made payments under the agreement for about a year and a half: *"I had lost my job and had all the bills and wanted them to consolidate to make it easier … I had made payments for a year and a half but struggled. I went without a lot. I was behind on bills, had to borrow from friends."* Kate believes the payments of $85 per week (later to increase up to $126 per week) were unrealistic from the start.

Issues: *Advertising*
In home sales
Other options not explored
Inaccurate advice
Debtor not understanding Agreement
Up-front and on-going fees
Unsustainable from outset

Outcome: <u>*Subsequent bankruptcy*</u>

<u>*LAURIE* – Administrator E</u>

In March 2005, Laurie saw ad advertisement in his local newspaper and rang **Administrator E**. The Administrator spoke to him on the phone for less than half an hour: *"He spoke to me for about 10 minutes – got all the details down."* Laurie was asked his name, address and other personal details including the reasons for finding himself in financial difficulty. He also provided details of his income and what debts he owed and to whom.

At the time, Laurie was earning about $1200 per fortnight and owed debts of about $20,000 on two credit cards. His wife had been ill for several months leading to considerable medical expenses and travel costs as the family lives in the country. *'We tried to keep up with everything but things just got on top of us.'*" The Administrator also 'did a budget' with Laurie over the phone in the very short telephone conversation.

He was then sent some information in the mail, together with a Debt Agreement proposal already filled out for him to sign and a direct debit form to sign. The budget that was part of the proposal showed $60 per week for food for the couple, nothing for clothes or personal expenses and underestimated travel and medical costs which had led to the debt situation. While the proposal commenced with payments of $100 per week, after 6 months this increased to $155 per week despite Laurie's wife's diagnosis which would not allow her to return to work and the struggle the family was having to make ends meet.

The fees in the proposal included **preference payment of $990** for the proposal plus **administration fees of $4,415 (total fees of $5,405).**

Laurie continued to have creditors contacting him despite having returned the Agreement to the Administrator and decided to cancel the direct debit. Then, with the help of a financial counsellor, he had the Agreement terminated and lodged his bankruptcy papers. Laurie thinks he should have filed for bankruptcy in the first place but the only option presented to him by the Administrator was the Debt Agreement.

Issues: *Other options not explored*
Debtor not understanding Agreement
Poor follow up service
Up-front and on-going fees

Unsustainable from outset

Outcomes: _Subsequent bankruptcy._

Appendix D

LEGISLATION

Bankruptcy Act

The *Bankruptcy Act 1996* (as amended) is the major legislation covering Debt Agreements and Administrators. However, behaviour of Administrators prior to lodging an Agreement proposal with ITSA is not regulated under the Bankruptcy Act and this is a major flaw.

Debtors are ineligible to enter debt agreements where their income, unsecured debts or the debtor's property exceeds the threshold amount (s 185(4)(b)(c)(d)) *(see following section "Bankruptcy Act: regulatory changes 2003" for discussion of threshold amounts).* Debtors are also ineligible to enter debt agreements if they have been bankrupt or already been in a debt agreement or Part X(s 185(4)(a)).

Making a debt agreement: A debt agreement is made when the debtor's debt agreement proposal is accepted (185H). A debt agreement proposal may provide for any matter relating to the debtor's financial affairs (s 185C(3)) but must identify the debtor's property, specify how the property is to be dealt with (s 185C) and contain a statement of the debtor's affairs (s185D). Before a debt agreement proposal is accepted the Official Receiver is required to provide the debtor with information prescribed in the regulations (Bankruptcy Regulations 4.11(1)) which includes:

(a) Information about alternatives to bankruptcy;
(b) Information about the consequences of bankruptcy; and
(c) Information about sources of financial advice and guidance to persons facing or contemplating bankruptcy.

Debt agreement administrator: A debt agreement proposal may authorise a specific person (an 'administrator') to deal with identified property (s 185C(c)) and s 185C(2A) provides that the Official Receiver must refuse a debt agreement if the administrator is ineligible.

A person is ineligible to act as an administrator if they are:

(a) An undischarged bankrupt, insolvent, under administration or party to a debt agreement; or
(b) Prohibited by the Corporations Act from taking part in the management of a corporation; or
(c) Deregistered under the Corporations Act as a liquidator; or

(d) Convicted of a criminal offence involving fraud or dishonesty within 10 years before the appointment.

Regulation 9.06 specifies that in addition to other duties imposed by the Act that an administrator must:

(a) Keep accounts, books and records that are necessary to give a full and correct account of the administration or the debt agreement;
(b) Make those accounts, books and records available on request for inspection by the Inspector General under the Act;
(c) Answer any inquiries as required by the Inspector-General;
(d) Cooperate with any inquiry or investigation by the Inspector-General; and
(e) Deal with property in the manner specified in the debt agreement.

The Inspector General must tell the administrator in writing and request a response (within 28 days) if the Inspector General considers that the administrator has failed to properly carry out duties or cooperate (r 9.06(2)).

Processing a debt agreement: When processing a debt agreement proposal the Official Receiver must ask creditors to include information about each debt owed by the debtor (s185E(6)) with their statement including:

(a) The amount of the debt;
(b) Whether the creditor holds a security for the debt;
(c) If the creditor holds a security – the creditor's estimate of the value of the security and the value of the debt after deducting the value of the security;
(d) The transaction and the circumstances that gave rise to the debt;
(e) Whether the debt was assigned to the creditor;
(f) If the debt was assigned to the creditor – the value of the consideration that the creditor gave for the assignment; and
(g) Give to each creditor a summary of the debtor's statement of affairs.

When a proposal is accepted for processing by the Official Receiver it is recorded in the National Personal Insolvency Index ('NPII') and the creditor cannot enforce or apply for enforcement of a remedy against the debtor. (s185F).

A debt agreement is made when it has been accepted (s 185H) and a proposal can be accepted where a meeting of affected creditors passes a special resolution (s185B(1)) or where the Official Receiver writes to affected creditors and a majority of at least three-quarters in value of the creditors respond that the proposal should be accepted (s185(3)).

Effect of a debt agreement: When the details of a debt agreement are entered in the NPII the debtor is released from provable debts unless the agreement is terminated or declared void by the Court (BA 185J). While a debt agreement is in force and the details remain on the NPII a creditor cannot (s 185K):

(a) Present a creditors petition against the debtor; or
(b) Proceed with a creditor's petition presented before the debt agreement was listed on the NPII; or
(c) Enforce a remedy against the debtor's person or property, or start or take a fresh step in legal proceedings.

Debtors remain subject to enforcement in relation to maintenance agreements and orders and proceeds of crime law (s 185J(2)).

Varying a debt agreement: Either debtor or creditor may apply to the Official Receiver by written proposal to vary a debt agreement (s185M) and the Official receiver is required to process the proposal by either calling a meeting or writing to creditors in accordance with s 185A of the Act. This proposal requires approval by a special majority of creditors in accordance with s 185B of the Act.

Ending or terminating a debt agreement: A debt agreement ends when the obligations of the agreement have been discharged (s185 N). A debtor or creditor may apply by written proposal to terminate the agreement (s185P) and the Official Receiver is again required to either call a meeting or write to creditors to obtain a special resolution.

Either the debtor, creditor or Official Receiver can apply for an order terminating the debt agreement (s 185Q) however s 185Q(4) specifies that the Court may make the order terminating the debt agreement if it is satisfied that:

(a) The debtor failed to carry out a term of the agreement and it is in the creditor's interests to terminate the agreement; or

(b) Carrying out the agreement would cause injustice or undue delay to either the creditor or debtor; or for any other reason the agreement should be terminated and termination is in the creditors interests.

[i] News Release – Research Shows Debt Agreements are Working, p1
[ii] Review of Debt Agreements under Part IX of the Bankruptcy Act, p8
[iii] Review of Debt Agreements under Part IX of the Bankruptcy Act, p11
[iv] Review of Debt Agreements under Part IX of the Bankruptcy Act, p11
[v] Review of Debt Agreements under Part IX of the Bankruptcy Act, p11
[vi] Review of Debt Agreements under Part IX of the Bankruptcy Act, p27
[vii] Review of Debt Agreements under Part IX of the Bankruptcy Act, p11
[viii] Bergman, Regulation of Debt Agreement Administrators under the Bankruptcy Act, p1
[ix] ibid
[x] ibid
[xi] ibid