

Fresh start or false hope?

A look at the website advertising claims of
Debt Agreement administrators

A report by the Consumer Action Law Centre

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The Consumer Action Law Centre is an independent, not-for-profit consumer casework and policy organisation based in Melbourne, Australia.

www.consumeraction.org.au

Overview

Consumer Action's financial counselling practice, MoneyHelp, assists thousands of Victorians experiencing financial stress every year. MoneyHelp provides confidential and free financial counselling information to assist Victorians struggling with managing debt, bills and ongoing expenses. MoneyHelp is able to provide debtors with information about the various options given their circumstances—these might include the selling of property, obtaining help from family, checking Centrelink entitlements, getting legal advice to challenge a credit contract, informal payment arrangements with creditors in addition to options under the Bankruptcy Act.

One such option is a Debt Agreement under Part IX of the *Bankruptcy Act 1996* (Cth) (the **Bankruptcy Act**). A Debt Agreement shares many similarities with bankruptcy, but (unlike bankruptcy) it can be an appropriate option for those that want to protect an asset such as a family home. A Debt Agreement proposal provides details about how a debtor will pay outstanding debts. Our legal and financial counselling casework experience is that many people who have entered a Debt Agreement are unaware that it will be listed on a credit report for seven years and is likely to be viewed as an act of bankruptcy. Anecdotally, it appears that this misapprehension may be a significant driver for the popularity of Debt Agreements compared to ordinary bankruptcy.

In November 2012, Consumer Action made a submission to the *Review of Debt Agreements under the Bankruptcy Act 1966 Proposals Paper*, published by the Attorney General's Department. We looked at advertising by administrators of Debt Agreements, and found many businesses appear to overstate the differences between Debt Agreements and bankruptcy, or understate the consequences of entering a Debt Agreement relative to bankruptcy. Our submission argued that amendments to the *Bankruptcy Act 1966* be introduced to better regulate advertising by Debt Agreement administrators.

The Insolvency and Trustee Service Australia (ITSA) reports on the socioeconomic circumstances of insolvent debtors in the calendar year biennially. *Profiles of Debtors 2011* reports that Debt Agreement administrators are the major source of advice for 88 per cent of people entering a Debt Agreement.¹ Only 2 per cent of those people nominated a financial counsellor as their main source of advice. This heavy reliance on

¹ *Profiles of Debtors 2011*, p37 online at <https://www.itsa.gov.au/resources/statistics/profiles-of-debtors-documents/profiles-of-debtors-2011>

information provided by Debt Agreement administrators as a source of advice underscores the need for advertising by them to be clear, accurate and balanced.

In March 2013, Consumer Action surveyed the websites published by Debt Agreement administrators in Australia. Our review found that advertising commonly emphasised the stress of bankruptcy in comparison to the 'solution' provided by Debt Agreements. A range of other themes that may serve to confuse consumers and mislead them about the consequences of bankruptcy and Debt Agreements included:

- Highlighting the negative effects of bankruptcy, whilst downplaying similar consequences of undertaking a Debt Agreement—particularly the effect on credit report listings;
- Indicating that Debt Agreement administrators are balanced or independent advisers acting in the best interests of a consumer, while underplaying the fact that administrators charge for their services;
- Being extremely optimistic about what a Debt Agreement can achieve for someone in debt, such as the amount of debt that could be forgiven by creditors or the likelihood of saving assets;
- Not giving a balanced picture of the positives and negatives of applying for a Debt Agreement, usually simply not mentioning the negatives;
- Implying or claiming endorsement by the government or ITSA.
- Claiming that bankruptcy is stressful when anecdotal reports and other research indicates that bankruptcy relieves stress.²

² See for example J. Hartnett *Voluntary Bankruptcy as a Pathway to Recovery for Gamblers: A Financial Counsellor's Perspective*, in *Gambling Research: Journal of the National Association for Gambling Studies* (Australia), v.21, no.2, Nov 2009, p.53-59

About Debt Agreements

Debt Agreements were introduced under Part IX of the Bankruptcy Act in 1996 as a 'form of insolvency outside bankruptcy' for lower income consumers. The legislature intended that Debt Agreements would provide a low cost, simple form of insolvency for low income/low asset debtors with low levels of indebtedness. The second reading speech noted that the reform was in the context of a 'rise in the number of bankruptcies, most of which are attributed by the bankrupt to either unemployment or excessive use of credit'.³ Any person, including the debtor or a relative or friend, can act as a Debt Agreement Administrator (**Administrator**) of an Agreement. In practice, the vast majority of Administrators are commercial businesses set up for that purpose.⁴

People considering bankruptcy actually have a number of options available to them, including:

- bankruptcy;
- entering into a Debt Agreement;
- making a personal insolvency agreement under Part X of the Bankruptcy Act;⁵
- making informal arrangements with creditors; and
- declaration of intention to present a debtor's petition.⁶

The details of any Debt Agreement depend on the circumstances of the applicant and the willingness of the lenders to recover (at least some of) their money in the way proposed. Typically it involves the compromise of debts and the development of a repayment plan over three to four years, based on the debtor's capacity to pay. The agreement may require that applicants to:

- make payments from income for an agreed period of time;

³ Attorney-General Williams, Second Reading Speech—Bankruptcy Legislation Amendment Bill 1996, Hansard, 26 June 1996.

⁴ *Debt Agreements: Remedy or Racket?*, Consumer Credit Legal Service Inc and Eastern Access Community Health, 2005, p3. Online at <http://consumeraction.org.au/policy-report-debt-agreement-remedy-or-racket/>

⁵ Personal Insolvency Agreements provide a way for debtors to put a proposal to creditors to settle outstanding debts. PIAs are usually used by higher income debtors—lower income debtors are unlikely to have the financial resources to bargain for an agreement.

⁶ A debtor may present to ITSA a declaration of an intention to present a debtor's petition. This has the effect of stopping a creditor from taking enforcement action for 21 days to provide time to make arrangements. Financial counsellors don't consider this a practical option because of the short window of opportunity to do so.

- pay an agreed periodic payment to creditors;
- make a one-off lump sum payment in full and final settlement for debts;
- sell the debtors assets and pay all proceeds to creditors; or
- ask creditors for a temporary stop on payments owed them for a specified time.

According to ITSA, the government agency responsible for the administration and regulation of the personal insolvency system in Australia, 8,951 new Debt Agreements and 17,591 bankruptcies were registered in 2011-2012.⁷ ITSA's 2011 *Profile of Debtors* report found that Debt Agreements are the second largest category of personal insolvency activity in Australia, accounting for 26 per cent of total personal insolvency activity.⁸

Consequences of proposing a Debt Agreement

- A debtor who proposes a Debt Agreement commits an act of bankruptcy. A creditor can use this to apply to court to make the debtor bankrupt if the proposal is not accepted by creditors.
- The debtor's name and other details appear permanently on the National Personal Insolvency Index (NPII), a public record.
- The ability of the debtor to obtain further credit is affected. Details may also appear on a credit reporting agency's records for up to seven years.
- During the voting period creditors cannot take debt recovery action or enforce a remedy against the debtor or the debtor's property and must suspend deductions by garnishee on debtor's income.

Source: <https://www.itsa.gov.au/debtors/debt-agreement/consequences>
accessed 4 April 2013

⁷ ITSA, *Annual Report 2011-12*, available at: <https://www.itsa.gov.au/about-itsa/annual-report/annual-report-2011-12-1> p18.

⁸ ITSA, *Profile of Debtors 2011*, available at: <https://www.itsa.gov.au/resources/statistics/profiles-of-debtors-documents/profiles-of-debtors-2011> p30.

The consequences of a Debt Agreement

- The fact that the debtor has entered into a Debt Agreement will be recorded permanently on the NPII.
- The ability of the debtor to obtain further credit is affected. Details may also appear on a credit reporting agency's records for up to seven years.
- Most unsecured creditors are bound by the Debt Agreement and are paid in proportion to their debts.
- Unsecured creditors cannot take any action against the debtor or property of the debtor to collect their debts.
- The debtor is released from most unsecured debts only when they complete all their obligations and payments.
- Secured creditors may seize and sell any assets (e.g. a house) which the debtor has offered as security for credit if the debtor is in default.
- The agreement does not release another person from a debt jointly owed with the debtor.
- A debtor must disclose that s/he is a party to a Debt Agreement if incurring debt or obtaining goods and services in excess of the relevant indexed amount.
- If trading under a business name or assumed name (whether alone or in partnership) the Debt Agreement must be disclosed to all people dealing with the business.

Source: <https://www.itsa.gov.au/debtors/debt-agreement/consequences>
accessed 4 April 2013

The difference between Debt Agreements and bankruptcy

While a debtor who enters into a Debt Agreement is not considered bankrupt, making an application for a Debt Agreement is an act of bankruptcy, which means creditors can apply to bankrupt an individual if they do not accept the proposal.

While a Debt Agreement may sound less ominous than bankruptcy, for some debtors, entering into a Debt Agreement can be a worse option than going bankrupt. For example, if the debtor is below the income threshold required for contributions, bankruptcy can mean that they do not have to pay anything to their creditors. Further, the Bankruptcy Act and regulations provides that general household property (e.g. household furniture, whitegoods, electronic equipment), tools of trade, and motor vehicles used

as a means of transport (up to a value of around \$7,000) cannot be sold by the trustee.⁹ Given the difficulty in determining whether a Debt Agreement is more beneficial than bankruptcy, Victoria Legal Aid's "*Weighing it up: A consumer guide to bankruptcy*" recommends anyone considering a Debt Agreement speak with a financial counsellor before doing so.¹⁰

For many consumers who have little knowledge or understanding of the differences and consequences of a Debt Agreement, seeking what they think is an alternative to bankruptcy can be an attractive option. The marketing and promotion of Debt Agreements specifically focus on making an agreement sound like a more attractive, less ruinous option.

Debt Agreements and bankruptcy have a number of similar features:

- both are an act of bankruptcy under the Bankruptcy Act;
- both are listed on a credit agency listing for seven years;
- both result in a permanent listing on the National Personal Insolvency Index (NPII);¹¹
- both result in restrictions under the Bankruptcy Act for the period of the bankruptcy or Debt Agreement.

Listing on a credit report or on the NPII can have significant implications for access to credit, which is a key consideration for many consumers contemplating how to address their debts. Given the lack of understanding about these similar consequences for debtors, promoting Debt Agreements on the basis that they are "not bankruptcy" or are an "alternative to bankruptcy" may mislead debtors and lead many to use Debt Agreements despite it not being the most appropriate option.

Further, many of the purported advantages of Debt Agreements are either not advantages at all, or provide only marginal benefits. For example:

- *Bankruptcy limits ability to travel overseas*

⁹ *Bankruptcy Act 1966* (Cth), section 116(2)(b), (c) and (ca); *Bankruptcy Regulations*, r 6.03 ff.

¹⁰ Victorian Legal Aid, *Weighing it up*, April 2011, available at: <http://www.legalaid.vic.gov.au/717.htm>

¹¹ The Attorney General's *Review of Debt Agreements Under the Bankruptcy Act 1966 - Proposals Paper* has made a proposal to remove listings regarding Debt Agreements from the NPII after seven years, rather than recording them permanently. See:

<http://www.ag.gov.au/Consultations/Pages/ReviewofDebtAgreementsProposalspaper.aspx>

To our knowledge, bankrupts will rarely be prevented from travelling overseas by a trustee so most bankrupts will be unaffected (except for the inconvenience of applying for the trustee's approval).

- *Bankruptcy can threaten debtor's employment*

It appears to us that bankruptcy would be a threat to a debtor's employment in only a limited number of professions, and that a Debt Agreement may create exactly the same problems.¹² Professional bodies and/or trade associations may have certain conditions of membership for the duration of the bankruptcy or agreement. There may be different impacts where the debtor operates a business or is a director of a corporation.

Quick comparison of features between different types of personal insolvency administrations

FEATURE	BANKRUPTCY	DEBT AGREEMENT
Previous insolvency	While previous insolvency does not by itself make a person ineligible, ITSA may not accept the petition if the debtor was previously bankrupt <u>and</u> some other conditions are met	Must not have been a bankrupt, proposed a Personal Insolvency Agreement or made a Debt Agreement in the previous 10 years
Income threshold	No	Yes (presently \$75,498.15) ¹³
Asset threshold	No	Yes (presently 100,664.20) ¹⁴
Creditor agreement required	No	Yes (majority of voting creditors by value)
Period of administration /insolvency	3 years, but can be extended by trustee under certain conditions. Can also end early if debts are paid in full or creditors accept a settlement.	As per terms of the agreement

¹² ITSA *Comparison of Features of Personal Insolvency Administrations*, available at: <https://www.itsa.gov.au/debtors/comparison-of-options-1>

¹³ <https://www.itsa.gov.au/resources/fact-sheets/indexed-amounts> as at 04/04/2013

¹⁴ <https://www.itsa.gov.au/resources/fact-sheets/indexed-amounts> as at 04/04/2013

FEATURE	BANKRUPTCY	DEBT AGREEMENT
Impact on credit rating	Yes, for 7 years	Yes, for 7 years
Public record	Yes, permanent record on NPII	Yes, permanent record on NPII
Statutory filing fee	No	Yes
Statutory levies	A government levy is imposed on all receipts in the administration. Any interest earned on these receipts is also paid to government.	A government levy is imposed on all receipts in the administration. Any interest earned on these receipts is also paid to government.
Who can administer?	Registered Trustee or Official Trustee	Registered Debt Agreement Administrator, Registered Trustee, Official Trustee or another person (provided that person administers five or fewer Debt Agreements)
Act of bankruptcy	Presenting a debtors petition for bankruptcy is an <i>act of bankruptcy</i> and a creditor who is owed more than \$5000 can rely on this act to petition to the court to make the debtor bankrupt should the debtor's own petition not proceed.	Presenting a Debt Agreement proposal is an <i>act of bankruptcy</i> and a creditor who is owed more than \$5000 can rely on this act to petition to the court to make the debtor bankrupt should the Debt Agreement not proceed or be terminated.

Source: ITSA, *Personal Information for Debtors*, February 2012 p 24-25:
<https://www.itsa.gov.au/debtors/personal-insolvency-information-for-debtors>

Advertising of Debt Agreements and bankruptcy

The prohibition on misleading and deceptive conduct in the Australian Consumer Law is supplemented by specific regulation of information to be provided in the Bankruptcy Act. Additionally, a number of industry-based codes of practice have been developed to provide guidance to debt administrators on how to advertise their services.

The Australian Consumer Law prohibits conduct by a corporation that is or is likely to be misleading or deceptive—the onus is on the business to ensure consumers are not misled. As the ACCC states:

It makes no difference whether the business intended to mislead you or not. If the overall impression left by a business's advertisement, promotion, quotation, statement or other representation creates a misleading impression in your mind—such as to the price, value or the quality of any goods and services—then the behaviour is likely to breach the law.¹⁵

Disclosure requirements under the Bankruptcy Act require that a Debt Agreement administrator send the debtor's Debt Agreement proposal with a certificate stating that "the person has given the debtor the information prescribed under the regulations".¹⁶

The Bankruptcy Regulations 1996, regulation 9.01 requires that:

(1) For paragraph 185C (2D) (b) and subsection 185E (1) of the Act, the following information is prescribed:

- information about alternatives to entering into a Debt Agreement;
- information about the consequences of making a Debt Agreement proposal;
- information about sources of financial advice and guidance to persons facing or contemplating entering into a Debt Agreement;
- a statement that it is an act of bankruptcy for a debtor to give to the Official Receiver a Debt Agreement proposal.

(2) The information must be factual and objective.

Disclosure of information has been a keystone consumer protection in the Australian marketplace for financial services. However, information can only be an appropriate consumer protect tool for consumers when it is clear, unambiguous, does not omit relevant information, and is provided at the time the consumer needs it to make an informed decision. By the time that a Debt Agreement administrator needs to disclose such information, they will likely have engaged directly with the debtor through their marketing in order to convince them that its product—as opposed to bankruptcy or even hardship agreements with the help of financial counselor—is a better idea. It seems likely that many debtors form a view of what a Debt Agreement administrator is offering based on advertising and (as is commonly the case with financial services disclosure) disclosure statements given to them later are either not understood or not read at all.

¹⁵ ACCC, *False or misleading claims*, <http://www.accc.gov.au/consumers/misleading-claims-advertising/false-or-misleading-claims> accessed 4 April 2013

¹⁶ s 185C(2D)(b), *Bankruptcy Act 1996* (Cth).

Industry-specific guidance for the advertising of services by Debt Agreement Administrators is codified in the:

- Debt Agreement Administrators' Guidelines Relating to Advertising (**ITSA Guidelines**);
- Code of Professional Practice for Registered Debt Agreement Administrators (the **DAPA Code**, published by the Debt Agreement Practitioners Association); and
- Code of Professional Practice for Insolvency Practitioners (**the IPA Code**, developed by the Insolvency Practitioners Association).

The ITSA Guidelines, which appears to have been updated in 2013, outline the expectations of ITSA and best practice principles in relation to the advertising of Debt Agreement administrators. The ITSA Guidelines state that "advertisements may be misleading or deceptive even when there is no such intention (emphasis in original)".¹⁷

The ITSA Guidelines do include a number of examples of unacceptable advertising:

UNACCEPTABLE ADVERTISING	WHY IT IS UNACCEPTABLE
"STOP DEBT NOW. Commonwealth Government-guaranteed and regulated debt agreement will free you of debt forever."	The advertisement makes two incorrect claims: that the debt agreement is guaranteed by the Commonwealth Government and that a person who enters into a debt agreement will be released from all of his or her debts. A debt agreement will only release a debtor from unsecured debts incurred up to the time the debt agreement proposal is accepted for processing, and then only if the terms of the agreement are complied with and completed.
"If you complete the debt agreement you will get full release from only those creditors listed in the debt agreement."	This is factually incorrect and misrepresents the intention of the Bankruptcy Act.
"All stages of the debt agreement are legislated, monitored and facilitated by ITSA."	This misrepresents ITSA's involvement in the process and again uses ITSA's name as leverage to give assurance to the target audience.

¹⁷ ITSA Guideline Para 4.3

UNACCEPTABLE ADVERTISING	WHY IT IS UNACCEPTABLE
"Debt agreements show up more favourably on your credit record than a bankruptcy."	This is factually incorrect as there is no difference in the reporting of debt agreements and bankruptcies on a credit record. Also, the lending policies of banks and other credit providers are matters for the individual institutions.
"You can choose which debts to include and which ones to exclude, eg you will want to maintain electricity in your home so it may be best to exclude essential services."	This is factually incorrect and misrepresents the intention of the Bankruptcy Act.

As they relate to advertising conduct of Debt Agreement administrators, the DAPA Code and IPA Code are largely identical. Both Codes state that Members should not engage in 'misleading and deceptive conduct,'¹⁸ in their advertising, although the DAPA Code provides greater instruction on this general prohibition:

Members, in framing their advertisements should do so having regard for the misleading and deceptive conduct provisions of the Trade Practices Act, the ASIC Act, State consumer protection legislation and the Code. The misleading and deceptive conduct provisions require that a business must not in its business activities engage in any conduct that misleads or deceives or is likely to mislead or deceive consumers. As well as direct advertising, the requirement covers representations made during meetings with customers, over telephone, in brochures, and on websites.¹⁹

Both the IPA and DAPA Codes provide a similar list of 'misleading and deceptive conduct' which members 'must not' engage in:

- make claims in marketing material and then substantially change the arrangement unless there is fully informed consent;
- make negative remarks about fellow practitioners or their businesses as to their competence, professional practices or fees charged;
- claim endorsement of the DAPA/IPA except as may be permitted from time to time under the Constitution and Rules;
- claim association to or endorsement of the ITSA;

¹⁸ DAPA Code Para 8 (Page 11); IPA Code Para 11 (page 56)

¹⁹ DAPA Code Para 8 (Page 11)

- create false or unjustified expectations of favourable outcomes;
- imply the ability to influence any court, tribunal, regulatory agency or similar body or official;
- make self-laudatory statements that are not based on verifiable facts or which contain unidentified testimonials or endorsements or contain representations that would be likely to cause a reasonable person to misunderstand or be deceived; and
- abuse registered names or terms that are trademarks, lawfully registered to other persons or entities.²⁰

The guidance provided by these Codes is predominantly general in nature and is largely couched in 'negative' terms, setting out what Debt Administrators should not do in their advertising and promotion. Even so, our review finds evidence that these guidelines are being disregarded in some instances.

Such guidance can be compared to more specific, positive instruction, such as that which is given by ASIC in Regulatory Guide 234 on advertising financial product and services:

Advertisements for financial products and credit products should give a balanced message about the returns, features, benefits and risks associated with the product. Advertisements should not overstate the potential benefits (e.g. investment returns) or create unrealistic expectations by giving undue prominence to the benefits compared with the risks.²¹

The ASIC guidance includes almost 40 examples of good and bad practices, and is supported by the enforcement activity undertaken by ASIC relating to misleading and other unlawful advertising practices. ASIC reports that since July 2010, its actions have resulted in 117 advertisements across the financial services sector being withdrawn or remedied in response to concerns about poor practices and potentially misleading or deceptive conduct.

The absence of specificity in the current guidelines on Debt Agreement advertising means that they are unlikely to guide behaviour among administrators. While, as noted above, the ITSA Guidelines do provide some examples, these are in no way as extensive as those in the ASIC guidance. Further, the industry guidelines do not take the opportunity to

²⁰ DAPA Code Para 8.4 (Page 13); IPA Code Para 11.3 (Page 57)

²¹ ASIC, Regulatory Guide 234: Advertising financial products and services (including credit): Good practice guidance, para 234.33, available at: [http://www.asic.gov.au/asic/pdf/lib.nsf/LookupByFileName/rg234-published-15-November-2012.pdf/\\$file/rg234-published-15-November-2012.pdf](http://www.asic.gov.au/asic/pdf/lib.nsf/LookupByFileName/rg234-published-15-November-2012.pdf/$file/rg234-published-15-November-2012.pdf)

recognise that consumers who seek these services are vulnerable due to financial stress, and provide specific guidance accordingly. Guidance might, for example, prohibit use of the term ‘free consultation’ where debtors are required to pay a fee for a Debt Agreement, require disclosure of minimum costs that the business charges, and publish information about how many clients successfully meet all the conditions of their Debt Agreement.

How are Debt Agreement services being advertised?

Considering bankruptcy and its alternatives can be a difficult and often complex exercise. It is not simply an administrative decision, but often a difficult emotional decision for people already under significant stress. Our review looked at a number of Debt Agreement administrators in the Australian market, using some basic web searches such as the term “Debt Agreement Australia”, to see what messages were being directed at potential users of these services.

It is worth noting that of the eight we looked at in detail, only one website gave any indication of any costs for their services—in fact, many emphasised that the initial consultation was ‘free’.


The screenshot shows the Fox Symes website. At the top is a dark blue navigation bar with links: Home, Debt Solutions, Free Phone Consultation, Articles, Quick Links, and Contact Us. On the right of the bar are social media icons for YouTube (21), Facebook (131), and Twitter (131). Below the navigation bar is a large banner featuring a background image of a field at sunset. On the left of the banner is a blue 'Debt Solutions' dropdown menu with the following items: Budgeting Assistance, Informal Arrangement, Debt Consolidation Loan, Mortgage Refinance, Debt Agreement, Personal Insolvency Agreement, Bankruptcy Assistance, and Business Finance Solutions. To the right of the dropdown, the text 'We help 100,000 Australians each year.' is displayed. Further right, a dark blue box contains the text 'FREE Debt Assistance' followed by 'It only takes 15 seconds to find out if we can help you. Quick, confidential and no obligation.' Below this are two buttons: 'Enquire Online Now' (green) and 'Request a Callback' (blue), separated by the word 'OR'. Above the 'Request a Callback' button is the phone number '1300 361 204' and the text 'FOX SYMES FREE DEBT HOTLINE'. Below the banner is a section titled 'Is your debt getting out of control?' with a small disclaimer: 'Getting into debt is easy. Being able to control debt is difficult. If your debts have got out of control then you need help. Knowing where to get help can sometimes be a problem. Fox Symes can help you.' This section contains six cards, each with an icon and a question: 1. 'Drowning in Credit Card Debt?' with a credit card icon. 2. 'Thinking about Debt Consolidation?' with a puzzle piece icon. 3. 'Problems with Personal Loan Repayments?' with a stack of cash icon. 4. 'Struggling with Mortgage Repayments?' with a house icon. 5. 'Worried about Losing your Car?' with a car icon. 6. 'Are you Considering Bankruptcy?' with a pink envelope icon.

Source: <http://www.foxsymes.com.au/>

Fox Symes use online banner advertising and also appear to advertise heavily on daytime television. A range of services are listed in a ‘Debt Solutions’ category on their website, shown above in a drop down menu.


The front page offers six scenarios that would be common for consumers struggling with debt. It also emphasises that they offer “free” debt assistance. This could be misleading to potential clients, as actual services are not free, just the initial consultation to assess whether a fee-paying service can be provided.

[Home](#)
[Debt Solutions](#)
[Free Phone Consultation](#)
[Articles](#)
[Quick Links](#)
[Contact Us](#)



FOX SYMES DEBT SOLUTIONS
AUSTRALIA'S LARGEST PROVIDER OF DEBT SOLUTIONS

FOX SYMES FREE DEBT HOTLINE
1300 361 204



Talk to Fox Symes, resolve your debt and take financial control. We help over 100,000 Australians each year.

Bankruptcy Assistance

Like 11
Retweet 3

If you are in debt and are considering bankruptcy think before you act. Bankruptcy is a last resort and has serious consequences. There are various options to deal with unmanageable debts. Before you make any decision or take any steps talk to Fox Symes. There are alternatives.

Do I Need to Become Bankrupt?

Bankruptcy may seem an easy and attractive option if you want to deal quickly with your creditors. However it has consequences which you should know about before you consider taking this step. Find out from Fox Symes the other options which may be used to address your financial situation. You may not have to go bankrupt.

CONSIDERING BANKRUPTCY?

Bankruptcy has **SERIOUS** consequences.

Explore **ALL** your options.

CONTACT FOX SYMES TODAY

FREE Debt Analysis

It only takes **15 seconds** to find out if we can help you.

Quick, confidential and no obligation.

Enquire Online Now

OR

FREE Phone Consultation Australian residents only.

Source: <http://www.foxsymes.com.au/debt-solutions/bankruptcy>

The language used in the Bankruptcy Assistance page has a very grave tone and speaks of bankruptcy being “a last resort” and having “serious consequences”. By contrast, the Debt Agreements page refers to Debt Agreements being a solution, and provides practical examples that would give a sense of hope to people in financial stress, such as paying less than the full amounts owing. The abiding impression is that Debt Agreements will benefit debtors more than bankruptcy. The reality is that many people are better off taking the step and choosing bankruptcy, rather than delaying and paying extra costs with a Debt Agreement.



FOX SYMES DEBT SOLUTIONS
AUSTRALIA'S LARGEST PROVIDER OF DEBT SOLUTIONS

FOX SYMES FREE DEBT HOTLINE
1300 361 204



John & Jocelyn's creditors accepted 60c in the dollar as full & final settlement. Read their Debt Agreement case study.

Debt Agreement

Like 2
Retweet 1

[View the Debt Agreement Case Study](#)

If you are in debt then a debt agreement may be a solution for you. A debt agreement is a negotiated compromise with your creditors, which, if agreed to by your creditors becomes legally binding. Fox Symes is the largest provider of debt agreements in Australia.

Some examples of the kinds of proposals put in place are:

- A payment of less than the full amount of all or any of your debts.
- A moratorium on payment of your debts.
- A transfer of property from you to one or more of your creditors in full or part payment.
- Periodic payments of amounts out of your income to your creditors.

TAKE THE FIRST STEP

- ✓ Be in control
- ✓ Affordable repayments
- ✓ Become debt free

CONTACT FOX SYMES TODAY

FREE Debt Analysis

It only takes **15 seconds** to find out if we can help you.

Quick, confidential and no obligation.

Enquire Online Now

OR

FREE Phone Consultation Australian residents only.

Source: <http://www.foxsymes.com.au/debt-solutions/debt-agreement>

The page also poses a question “Is a Debt Agreement the same as going bankrupt?” and answers it: “No, a Debt Agreement is an alternative to bankruptcy. However by submitting a Debt Agreement proposal you are committing ‘an act of bankruptcy’.” It is a nuanced answer that is unlikely to be understood by consumers in troubled financial circumstances, and is likely to be confusing to the average reader. We think that Debt Agreements should explain the consequences clearly for each option.

Can you guarantee that my **creditors** will accept my debt agreement proposal?

No. It is your **creditors** who decide whether they accept or reject your proposal. **However as a debtor your responsibility is to make full and complete disclosure of your financial position, put forward the best offer you can and commit to complying with the terms of the proposal.**

Will I be able to make one payment per week to all my unsecured **creditors**?

Yes, we will set up a weekly payment system by way of direct bank debit.

Will a Debt Agreement affect my **credit** report?

Both the debt agreement proposal and the debt agreement are registered on the National Personal Insolvency Index (NPII). Veda Advantage, the **credit**-reporting agency uses the information on the NPII to advise any **creditors** that you are under a debt agreement and/or have submitted a debt agreement. A **creditor** can also register a default against your name with Veda Advantage. Your debt agreement will be listed on your **credit** report for a seven year period. During this time you may find it difficult to obtain **credit**.

Source: <http://www.foxsymes.com.au/debt-solutions/debt-agreement>

Fox Symes downplays the fact that a Debt Agreement is listed on a credit report by including the information at the bottom of the paragraph to answer this question. This is in a contrast to the earlier questions which are commonly posed up as yes/no answers.

Despite this, the information Fox Symes provides is the most clear and comprehensive information of all the sites we looked at.

Overall impression: Very focussed on “success” stories, the Fox Symes website leaves the impression that Debt Agreements are a genuine—and possibly even a free—option for most debtors.

Debt Negotiators

[Home](#) [About Us](#) [Debt Solutions](#) [Finance Solutions](#) [News/Articles](#) [FAQ](#) [Testimonials](#) [Contact Us](#)

Debt Agreement
Take control of your Debts

Contract


Free Debt Consultation
minimum \$10,000 debt
Please fill in the form below and we will get back to you within 48 hours.
*Full Name:
*Phone Number:
*Email Address:
*Post Code:
*Best Time for Contact:
*Your Current Debt:
Please note we only offer Debt Consultation to interests over \$10,000

*Property Owner:
☐ Yes ☐ No
 

Debt Agreements

Debt solutions for Australians

If you're in debt and are legitimately struggling to pay off your financial obligations, there is an alternative to filing for Bankruptcy. Improve your financial future with a Debt Agreement through Debt Negotiators, by consolidating your unsecured debts into one affordable repayment.

Having a bad credit history is blight on your finances, and can often deter lenders from approving your debt consolidation application. If you are in the red and cannot meet your repayments, and if you have previously been denied a mortgage refinance or debt consolidation because of your bad credit history, there is a solution for you!

Avoid bankruptcy with a Part 9 or Part 10 Debt Agreement

If you're struggling to make repayments to your creditors, Debt Negotiations can assist you in your application for a Part 9 or Part 10 debt agreement.

A Debt Agreement is a government regulated option for dealing with un-manageable debts and is an alternative to bankruptcy. All Debt Agreements are tailored around affordability and payments can be structured weekly, fortnightly, or monthly.

A Debt Agreement, if accepted, becomes a legally binding arrangement (under Part IX of the *Bankruptcy Act 1966* in Australia) between you and your creditors that can be facilitated by Debt Negotiators.



Source: <http://www.debtnegotiators.com.au/debt-solutions/debt-agreements/>

Debt Negotiator's statements about bankruptcy and Debt Agreements could cause confusion for readers because there is no clear statement that proposing a Debt Agreement is in fact an act of bankruptcy. One of the key sub-headings under the Debt Agreements page is "Avoid bankruptcy with a Part 9 or Part 10 Debt Agreement". Such advertising is an example of an administrator not clearly delineating the difference between a voluntary bankruptcy, and an act of bankruptcy by way of proposing a Debt Agreement.

Similarly, Debt Negotiators state that agreements "are tailored around affordability and payments can be structured weekly, fortnightly or monthly". In fact, agreements are negotiated, and rely on creditors agreeing to the terms proposed by a debtor. The implication that a payment agreement will be affordable for the consumer could create a misleading impression that a Debt Agreement is the appropriate solution for an individual, and that such a successful arrangement can always be or are generally achieved.

Debt Negotiators are trusted Bankruptcy strategists

If Debt Negotiators has exhausted all other viable avenues for your debt repayment and management, you may have to file for Bankruptcy. Debt Negotiators can help you through the process, advising on the best way to rectify your financial situation by filing for Bankruptcy.

Offering expert advice, guidance and support for those suffering from financial hardship and filing for Bankruptcy, Debt Negotiators uses this option as a last resort only and is dedicated to rectifying your situation by other means.

For more information on Bankruptcy and Debt Negotiators financial services, or to book an appointment please contact us today.

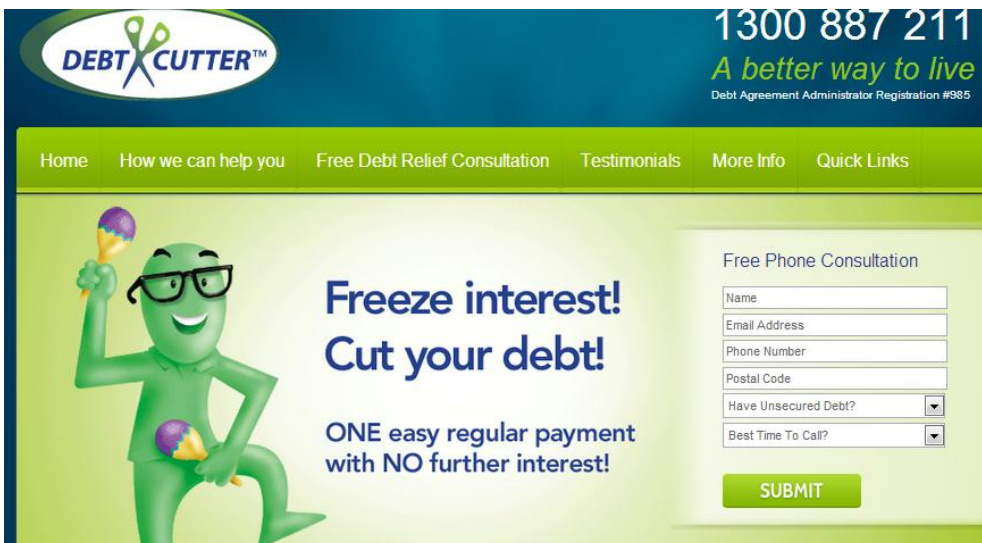
Source: <http://www.debtnegotiators.com.au/finance-solutions/bankruptcy-loans/>

Debt Negotiators also state their services are for people seeking an alternative to bankruptcy which is a 'last resort' to be considered after exhausting 'all other viable avenues'. It is not clear that bankruptcy might be more appropriate than a Debt Agreement in some circumstances and therefore it may be inappropriate to call 'last resort'.

Overall impression: That bankruptcy is avoidable—but if it's not, they'll still find a service to sell you.

Debt Cutter

Debt Cutter's website promotes its ability to freeze interest, simplify repayments, and cut debt in multiple places, including prominently on the front page. There is no mention of the fact that creditors must consent to this course of action, which could lead to a mistaken impression that the debtor has control over the repayment schedule.



The image shows the top section of the Debt Cutter website. At the top left is the logo, which consists of a pair of scissors cutting through a line, with the words "DEBT CUTTER" in a stylized font. To the right of the logo is the phone number "1300 887 211" and the tagline "A better way to live" in a green script font. Below the tagline is the text "Debt Agreement Administrator Registration #985". A green navigation bar contains the following links: "Home", "How we can help you", "Free Debt Relief Consultation", "Testimonials", "More Info", and "Quick Links". The main content area has a light green background. On the left is a cartoon character of a green man with glasses, holding two ice cream cones. To his right is the text "Freeze interest! Cut your debt!" in large blue letters, followed by "ONE easy regular payment with NO further interest!" in smaller blue letters. On the right side of the main content area is a "Free Phone Consultation" form with fields for Name, Email Address, Phone Number, and Postal Code. There are also two dropdown menus: "Have Unsecured Debt?" and "Best Time To Call?". A green "SUBMIT" button is at the bottom of the form.

1300 887 211
A better way to live
Debt Agreement Administrator Registration #985

Home How we can help you Free Debt Relief Consultation Testimonials More Info Quick Links

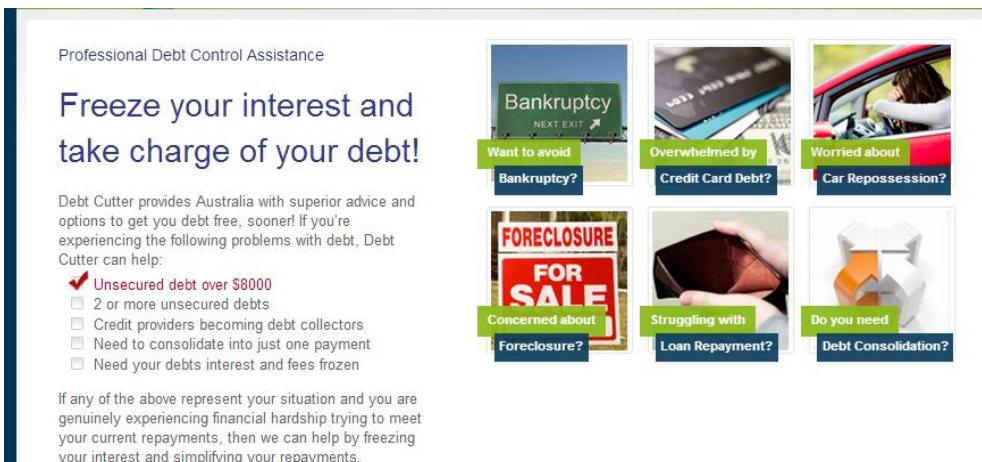
Freeze interest!
Cut your debt!

ONE easy regular payment
with NO further interest!

Free Phone Consultation

Name
Email Address
Phone Number
Postal Code
Have Unsecured Debt?
Best Time To Call?

SUBMIT



The image shows the main content area of the Debt Cutter website. On the left, under the heading "Professional Debt Control Assistance", is the text "Freeze your interest and take charge of your debt!". Below this is a paragraph stating that Debt Cutter provides superior advice and options to get debt free, sooner. It lists several problems with debt that Debt Cutter can help with: "Unsecured debt over \$8000", "2 or more unsecured debts", "Credit providers becoming debt collectors", "Need to consolidate into just one payment", and "Need your debts interest and fees frozen". There is a red checkmark icon next to the first item. Below the list is a paragraph stating that if any of the above represent the user's situation and they are genuinely experiencing financial hardship, then Debt Cutter can help by freezing their interest and simplifying their repayments. On the right side of the main content area is a grid of six images, each with a green label and a question. The images and labels are: "Bankruptcy" (with a green label "Want to avoid Bankruptcy?"), "Credit Card Debt" (with a green label "Overwhelmed by Credit Card Debt?"), "Car Repossession" (with a green label "Worried about Car Repossession?"), "Foreclosure" (with a green label "Concerned about Foreclosure?"), "Loan Repayment" (with a green label "Struggling with Loan Repayment?"), and "Debt Consolidation" (with a green label "Do you need Debt Consolidation?").

Professional Debt Control Assistance

Freeze your interest and
take charge of your debt!

Debt Cutter provides Australia with superior advice and options to get you debt free, sooner! If you're experiencing the following problems with debt, Debt Cutter can help:

- ✓ Unsecured debt over \$8000
- ☐ 2 or more unsecured debts
- ☐ Credit providers becoming debt collectors
- ☐ Need to consolidate into just one payment
- ☐ Need your debts interest and fees frozen

If any of the above represent your situation and you are genuinely experiencing financial hardship trying to meet your current repayments, then we can help by freezing your interest and simplifying your repayments.

Bankruptcy
NEXT EXIT
Want to avoid
Bankruptcy?

Overwhelmed by
Credit Card Debt?

Worried about
Car Repossession?

Concerned about
Foreclosure?

Struggling with
Loan Repayment?

Do you need
Debt Consolidation?

Source: <http://www.debtcutter.com.au/>

It also appears to dissuade consumers from negotiating directly with creditors themselves to achieve this outcome by referring to the ability of consumers to seek credit card debt forgiveness as "an unlikely scenario".

How do we reduce your debt?

At Debt Cutter, we offer a range of debt assistance programs that are designed to help ease your financial pressure. These include:

- Debt Agreements
- Debt Consolidation
- Debt Reduction
- Debt Management
- More Debt Solutions!

Rather than relying on the unlikely scenario of credit card debt forgiveness from your creditors, contact the experts at Debt Cutter today and work towards making yourself debt free today. We provide affordable, realistic debt management plans that are aimed at maximising your repayment potential.

Call us today to learn more on 1300 887 211!



Make a start in reducing your debt

MORE INFO

Source: <http://www.debtcutter.com.au/>

Debt Cutter states that a Debt Agreement can consolidate and freeze interest on "pending car or boat repossession" and "pending mortgage foreclosure". This might create an impression that a Debt Agreement is the best solution for everyone in the situation, as opposed to other options such as direct negotiations with creditors.

A Debt Agreement can consolidate and freeze interest on:

- Unsecured Personal Loans
- Credit Cards
- Disconnected phones/electric bills etc
- Centrelink overpayments
- Tax debt
- Pending Car or Boat Repossession*
- Pending Mortgage foreclosure*

**A Debt Agreement can free up your cash flow placing you in a better position to address any pending legal action or secured debt commitments.*

Source: <http://www.debtcutter.com.au/how-we-can-help-you.html>

These representations might also create the impression that a Debt Agreement is appropriate for secured debts, when in fact Debt Agreements can only be used for unsecured debts. The representations are asterisked, however, and a further explanation is given that "a Debt Agreement can free up your cash flow placing you in a better position to address any pending

legal action or secured debt commitments". Court decisions and regulatory guidance clearly state that asterisked disclaimers will be unlikely to be acceptable where headline representations are misleading.²²

Debt Cutter also implies that a Debt Agreement is of lesser consequence to the individual than a bankruptcy when it comes to listings on credit reports, claiming "The *Debt Agreement* does go on the public record and your commercial credit reference record. This does **not have the same connotations as a bankruptcy** and can be viewed in a **positive light as you have taken action** to clear your debts" (emphasis in original). We question whether this claim is likely to reflect the views of credit providers.

Watch the DC Television Commercial



You may still qualify for a Debt Agreement even if you:

- Are receiving Centrelink or Pension
- Have Court action threatened or pending
- Have a bad Credit record
- Are behind in Credit or Loan repayments

A Debt Agreement can't cover:

- Secured debts (i.e. something that can be repossessed if payments are not made)
- Current phone/utility bills
- Fines
- Current rent
- Child support
- HECS

The *Debt Agreement* does go on the public record and your commercial credit reference record. This does **not have the same connotations as a bankruptcy** and can be viewed in a **positive light as you have taken action** to clear your debts.

[Click here for further information](#) or arrange your **FREE phone consultation** or simply call Toll Free 1300 887 211 today.

Source: <http://www.debtcutter.com.au/how-we-can-help-you.html>

²² See, eg, ASIC's Regulatory Guide 234, paragraphs 234.47-234.53; see also *Australian Competition and Consumer Commission v TPG Internet Pty Ltd* [2011] FCA 1254.

Debt Cutter does not also advise that entering a Debt Agreement is also an act of bankruptcy, is placed on the NPII permanently, is listed on a credit report for seven years, and can act as a serious impediment to getting access to credit—all of significant consequence. In order to be balanced and accurate, these consequences should be clearly stated up front.

Overall impression? The key theme of the website is that debtors can reduce their debts through a Debt Agreement—with scant reference to consequence or risk to the debtor.

Credit Repair Australia

Credit Repair Australia's website promotes a range of services, including Debt Agreements in a clear and structured way to show consumers that a range of services are available to them. The incorrect description of bankruptcy as "a last resort if any of the above options [Debt Agreement, Personal Insolvency Agreement] aren't available" negates the otherwise useful impression set by the introductory text that states "the best solution depends on your situation".

The screenshot shows the Credit Repair Australia website. The header includes the company logo, a navigation menu with 'Our Services', 'Our Process', 'Why Us', 'Useful Articles', and 'Help & FAQs', and a contact section with a phone icon, the text 'CALL US ON... 13 FIXED (133 493)', and a 'Contact us' button. A gold seal with a checkmark is also present. The main content area is titled 'Debt solutions' and contains the text: 'Whatever your situation, Credit Repair Australia has a range of debt solutions that can help you get out of debt and take back control.' Below this, it states: 'The best solution depends on your situation. When you call us we can offer you a number of options to suit your individual situation. Our debt solutions include:'. The solutions are categorized into 'Formal debt solutions' and 'Informal debt solutions'. Under 'Formal debt solutions', there are three items: 'Debt Agreement' (described as the most popular debt solution), 'Personal Insolvency Agreement' (described as similar to a Debt Agreement), and 'Bankruptcy' (described as a last resort). Under 'Informal debt solutions', there is one item: 'Debt Consolidation' (described as a way of combining all loans into one). To the right of the main content, there is a green box with the text 'Find out which service is right for you' and a 'Contact us' button. Below this, there is a section titled 'Still have questions?' with a link to 'Visit the Help & FAQ'. At the bottom right, there is a photo of a man and a woman, with a quote: 'The people who work at Credit Repair Australia are very understanding, they have freed us up as a family.' and the names 'Annemarie and Jamie - VIC'.

Debt solutions

Whatever your situation, Credit Repair Australia has a range of debt solutions that can help you get out of debt and take back control.

The best solution depends on your situation. When you call us we can offer you a number of options to suit your individual situation. Our debt solutions include:

Formal debt solutions

- Debt Agreement**
The most popular debt solution, our Debt Agreement process allows you to make regular, affordable, payments to get out of debt (even if those payments add up to less than what you owe). [Read more >](#)
- Personal Insolvency Agreement**
Similar to a Debt Agreement, a Personal Insolvency Arrangement also allows you to make regular, affordable repayments, however is usually reserved for people who have over \$100k worth of debt. [Read more >](#)
- Bankruptcy**
A last resort if any of the above options aren't available, Bankruptcy may allow you to get out of debt without making any payments to your creditors. However you will have to hand over control of your financial affairs to a Trustee for a period of time. [Read more >](#)

Informal debt solutions

- Debt Consolidation**
A way of combining all of your loans into one. Debt Consolidation may reduce your regular repayment and your interest, making the payments easier to manage. [Read more >](#)


Find out which service is right for you

Our consultants can determine which service is best for your situation.

[Contact us](#)

Still have questions?

[Visit the Help & FAQ >](#)


"The people who work at Credit Repair Australia are very understanding, they have freed us up as a family."
Annemarie and Jamie - VIC

Source: <https://creditrepairaustralia.com/our-services/debt-solutions/>


Claims made about what a Debt Agreement can achieve for consumers are carefully worded to make realistic claims—for example you may be able to pay back less than the amount owed, and you may not have to pay interest. However, the first point made is that payments are based on "what you can afford", a claim which may not be achievable because it is contingent on what a creditor will accept. Vague claims that a Debt Agreement "could save

you thousands” can create expectations that may not be applicable to individual situations.

[Our services](#) | [Our process](#) | [Why us](#) | [User articles](#) | [Help on how](#) | [Credit License. See why](#)

Debt agreement


A debt agreement is a way of making regular payments towards your debts, at an amount you can afford. This amount can be less than your normal payments and could add up to less than what you owe.



01:04 HD

The benefits of a debt agreement include:

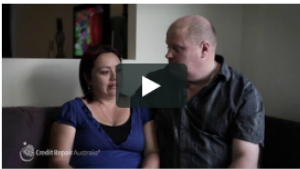
- ✓ Payments based on what you can **afford**
- ✓ You may be able to pay back **less than what you owe**
- ✓ You may not have to pay any more **interest**
- ✓ We speak to your creditors, so they can call us instead of you
- ✓ No more phone calls, letters or **harassment**
- ✓ **One simple payment** every week or fortnight
- ✓ Could **save** you thousands
- ✓ Get you back on your feet and **take control**




Can we help you? ✓

Still have questions?
[Visit the Help & FAQ](#)

Watch our debt solution video testimonial



[View more testimonials](#)



"I am able to pay what I can afford not the lump sum my creditors wanted. I can still have food in my mouth and have some sort of lifestyle thanks to Credit Repair Australia."

Bruce - VIC

Other debt options

- [Debt consolidation](#)
- [Debt settlement](#)
- [Creditor negotiation](#)

Source: <https://creditrepairaustralia.com/our-services/debt-solutions/debt-agreement/>

None of the information pages about “formal” debt solutions refers to that fact that entering into a Debt Agreement, Personal Insolvency Agreement, or bankruptcy will result in a listing on the National Personal Insolvency Index (NPII)—critical information that should help an individual decide whether or not to take this course of action. This information is only available by typing “NPII” into the Frequently Asked Questions search engine.

Search

Type a keyword or question here

NPII

Search

Filter by



Will a Personal Insolvency Agreement affect my credit rating?

A Personal Insolvency Agreement is listed on the National Personal Insolvency Index (NPII). Some credit reporting agencies may access the NPII and list the agreement on your personal credit file, therefore affecting your credit rating.

Will Bankruptcy affect my credit rating?


Bankruptcies are listed on the National Personal Insolvency Index (NPII). Some credit reporting agencies may access the NPII and list your Bankruptcy on your personal credit file, therefore affecting your credit rating.


Will a Debt Agreement affect my credit rating?

Both the Debt Agreement proposals and Debt Agreements are listed on the National Personal Insolvency Index (NPII). Some credit reporting agencies may access the NPII and list the agreement on your personal credit file, therefore affecting your credit rating. However if you are having trouble making payments, your credit rating is likely to already be affected or it may be just a matter of time before you have a bad credit rating. You may therefore want to focus on getting out of debt instead of worrying about your credit rating.

Source: <https://creditrepairaustralia.com/help-faq/search/?s=NPII>

Credit Repair Australia is another business that doesn't clearly explain that people can try negotiating with creditors themselves directly, without using an intermediary. In the category Informal Debt Solutions is a page about "Creditor Negotiations". Consumers may expect information on how to make informal arrangements by contacting their creditors, but instead the page describes the availability of what appears to be a fee-paying service.



Credit Repair Australia®
First Choice, for a Second Chance


 CALL US ON...
13 FIXED (133 493)

Contact us

[Our Services](#)
[Our Process](#)
[Why Us](#)
[Useful Articles](#)
[Help & FAQs](#)

The only credit restorer with an Australian Credit Licence. [See why >](#)



Creditor negotiation

Our creditor negotiation process involves changing the terms of your current loans to make them more manageable and affordable.

The benefits of creditor negotiation include:

- ✓ Lower interest rate
- ✓ Freezing payments, to get you back on your feet
- ✓ Extend the length of the loan to reduce repayments
- ✓ Lower payments
- ✓ Payment plan, even if the debts are in full demand
- ✓ Settling the debt for less than the full amount

If your creditors are demanding that you pay them the full amount, a creditor negotiation may result in a payment arrangement so you can pay them off over time.

Or if you are having trouble keeping up with repayments, a creditor negotiation may let you reduce the amount you're paying, give you a break on payments to allow you to catch up on some other payments or in some cases even offer a payment that is less than the full amount in order to erase the debt.

Our creditor negotiation process involves Credit Repair Australia conducting a full analysis of your financial situation and using this information to come to an arrangement that both you and your creditors are happy with.

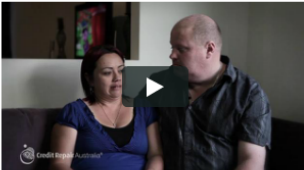
We have assisted thousands of Australians with successful creditor negotiations. To find out if we can help you negotiate better terms of your loans call us on **13 FIXED (133 493)** or get in touch on our [contact page >](#).

Can we help you? ✓


Still have questions?

[Visit the Help & FAQ >](#)

Watch our debt solution video testimonial



[View all testimonials](#)



"Credit Repair Australia explained the process and kept me updated. They did all the work and all the research. I would defiantly recommend them to other"

Source: <https://creditrepairaustralia.com/our-services/debt-solutions/creditor-negotiation/>

Finally, the use of a gold award logo at the top of each page is potentially confusing for users. It is not an award as might be expected, but an indicator that Credit Repair Australia has an Australian Credit Licence, a licence required by any business undertaking credit assistance activities within the meaning of national credit legislation.

Overall impression: Credit Repair Australia's website offers over-simplified information, without providing a realistic description of the consequences of entering into a Debt Agreement.

Debt Options

Debt Options publishes information about the role of ITSA on its website, stating that "all stages of the [debt] agreement will be monitored by ITSA". ITSA plays a role in monitoring the activities of Debt Agreement practitioners, but does not monitor "all stages" of the actual agreements, and to claim so could offer a sense of security to customers than is unfounded.



The screenshot shows the Debt Options website. The header features the 'debt options' logo and a banner image of four people in business attire sitting around a table, with the text 'free yourself from debt today!' and the phone number '1300 679 114'. Below the banner is a search bar. The left sidebar contains navigation links: 'HOME', 'Bankruptcy Options', 'Voluntary Bankruptcy', 'Commonwealth Debt Agreements', 'Personal Insolvency Agreements', and 'CONTACT'. The main content area is titled 'Part 9 Commonwealth Debt Agreements' and contains the following text:

Part IX Debt Agreements – Part IX Debt Agreement

Debt Agreements are often used as an alternative to going bankrupt. A Debt Agreement is used instead of going bankrupt and can save your assets. They make it possible for people to overcome financial hardship that is causing them to default on loan repayments or fixed expenses.

A Part IX Commonwealth Debt Agreement combines all existing debts into one consolidated debt. The debt or repayments that can be covered in a Part IX Debt Agreement are unsecured personal loans or debts. Some examples of these debts are: bills, overdrafts, credit card/store cards, school fees, personal loans, Tax debts and many more.

Any debt which has an asset attached to it can't be included in a Debt Agreement. So you will be required to meet your normal contractual payments for a car loan or a home loan but you should note that if you regrettably subsequently default on such loan or loans any shortfall after sale of the house or car by the credit provider would be covered by the Debt Agreement.

This type of Debt Agreement is regulated by the Federal Government, Insolvency & Trustee Service of Australia (ITSA). All stages of the agreement will be monitored by ITSA.

What the **Part IX Debt Agreement** offers is a way for you to make a weekly, fortnightly or monthly repayment that is assessed according to your budget, ie income less living expenses including mortgage and car payments, some entertainment, clothing etc.

Whatever is leftover is offered to your creditors via a formal Debt Agreement Proposal.

One immediate benefit of an accepted Debt Agreement is that it gives you relief from people who are chasing you for money now. Any legal action taken against you to recoup money will be ceased, and no more interest payments can be added by your creditors.

A Debt Agreement also does not attract interest charges, so all you will need to repay is the balance of your Debt Agreement.

Source: <http://www.debtoptions.com.au/part-ix-commonwealth-debt-agreements/>

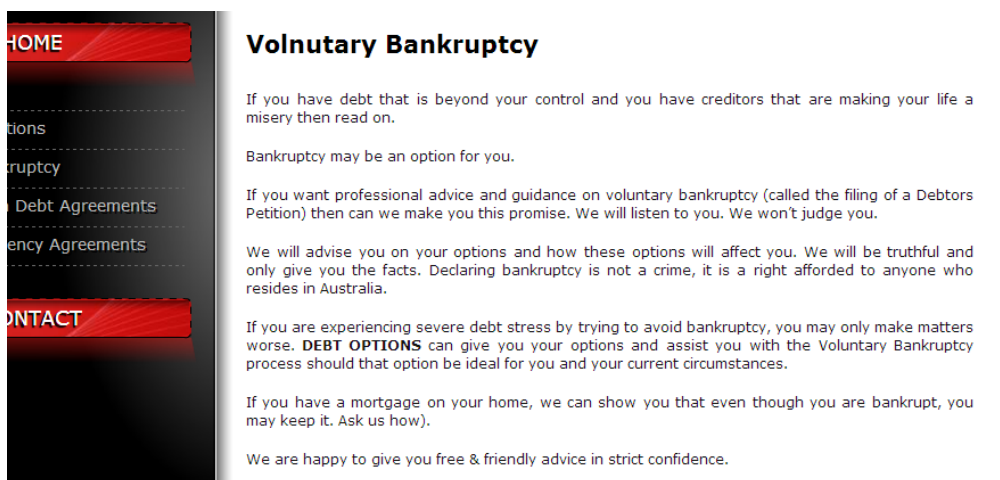
Debt Options lists a number of considerations for potential clients immediately after describing the services available and does so in clear terms. This is positive as keeping relevant information together allows potential customers to get a better idea of the pros and cons of the services offered.

SOME IMPORTANT POINTS TO CONSIDER BEFORE APPLYING FOR A DEBT AGREEMENT ARE

1. A Debt Agreement will appear on your credit history for seven years.
2. Your name will be listed on a National Personal Insolvency Index (NPII) forever. This is a record held by ITSA and they will charge a search fee to look up this information. This is different to your credit history records.
3. All unsecured debts must be declared in the Debt Agreement, you can't just pay off some of your debts.
4. It is not mandatory for the creditors you owe money to, to accept a Debt Agreement. If they do not accept it, **DEBT OPTIONS** will resubmit it with some changes based on their reasons for the rejection. It is extremely rare for a creditor to reject a debt agreement again and again.
5. Part IX Debt Agreements are very flexible. If you want to pay it off faster than agreed that is fine. There are no fees or charges for making additional repayments. You must however, always make your minimum payment.
6. A Debt Agreement needs a majority (ie, more than 50%) in the value of unsecured debts, to accept the Debt Agreement. Those who vote 'No' are legally bound by it if the majority vote is 'Yes'.

Source: <http://www.debtoptions.com.au/part-ix-commonwealth-debt-agreements/>

However, some of the information provided could give consumers unwarranted hope. For example, claims that “If you have a mortgage on your home, we can show you that even though you are bankrupt, you may keep it. Ask us how” encourages hope, despite the unlikelihood of this outcome eventuating. Claiming to provide “free and friendly advice in strict confidence” doesn’t make clear the grounds on which the claim is made.



HOME

tions

ruptcy

Debt Agreements

Agency Agreements

CONTACT

Voluntary Bankruptcy

If you have debt that is beyond your control and you have creditors that are making your life a misery then read on.

Bankruptcy may be an option for you.

If you want professional advice and guidance on voluntary bankruptcy (called the filing of a Debtors Petition) then can we make you this promise. We will listen to you. We won't judge you.

We will advise you on your options and how these options will affect you. We will be truthful and only give you the facts. Declaring bankruptcy is not a crime, it is a right afforded to anyone who resides in Australia.

If you are experiencing severe debt stress by trying to avoid bankruptcy, you may only make matters worse. **DEBT OPTIONS** can give you your options and assist you with the Voluntary Bankruptcy process should that option be ideal for you and your current circumstances.

If you have a mortgage on your home, we can show you that even though you are bankrupt, you may keep it. Ask us how).

We are happy to give you free & friendly advice in strict confidence.

Source: <http://www.debtoptions.com.au/voluntary-banckruptcy/>

Overall impression: The website itself sets information out clearly, and the tone is empathetic to potential clients' situations, with statements such as “We will listen to you. We won’t judge you”, and “bankruptcy is not a crime, it is a right”. Inaccurate claims about the role of ITSA, claims about keeping a home that may be unlikely to eventuate, and some unfortunate typographical errors, do detract from the website.

Debt Assist

Debt Assist's website provides detailed information that would allow consumers to make an informed choice about whether a Debt Agreement could meet their needs. In plain language, the main benefits and drawbacks are set out, including making clear that the making of an agreement is recorded on a credit file, and the need to ensure the agreement is tailored to the individual: "[T]here is no point making an offer that you cannot meet over the whole term of the agreement".



DEBT ASSIST
croft & gray

CALL 1300 857 651 NOW help is just one call away - take control

HOME ABOUT US **DEBT SOLUTIONS** HOW CAN WE HELP & FAQ APPLY NOW NEWS ARTICLES CONTACT US LINKS

DEBT AGREEMENTS, PART 9 DEBT AGREEMENT | DEBT ASSIST

Debt Agreements and Part 9 Debt Agreements

DEBT AGREEMENT ALSO KNOWN AS A PART IX

A debt agreement, once accepted by creditors, is a legally binding agreement between a debtor and their creditors. Debt agreements are a flexible alternative to bankruptcy. Although entering a debt agreement is an Act of bankruptcy the debtor is not recorded as a Bankrupt. The Benefits of a debt agreement are generally freezing the debt and eliminating any further interest payments on your debt and gaining protections offered by the bankruptcy Act. The downside is that your credit rating will be adversely affected as you will be listed on Commercial Credit reports for up to seven years and there is a permanent record of you entering and hopefully completing a debt agreement on the NPIL. (ie. The Government record at ITSA.)

APPLY NOW

*Name:

*Phone:

*Email:

Amount of Debt

Enter the code

V r v D z

Send

Source: <http://debtassist-px.rtrk.com.au/debt-solutions/debt-agreements>

Debt Assist is the only website we surveyed to provide information about the costs of their services. The prominence of the information is reduced however, because the sub-heading containing the pricing information is not in bold type, unlike other sub headings in this section. It also claims to discount charges for 'seriously disadvantaged clients'.

Set up fees

We charge between \$880 and \$1320 depending on the complexity and hence the extent of work involved in setting up the proposal. We also discount these amounts for seriously disadvantaged clients. Set up Fees are not paid upfront. They are paid progressively prior to your proposal being accepted by creditors. ITSA also requires a lodgement fee of \$191 which we collect from you and pass on to ITSA.

Set up fees are charged by administrators for –

- providing information to debtors about the options to deal with their unmanageable debt and the consequences;
- consider the alternatives including, Informal agreements, Refinancing, Personal Insolvency Agreement (part X) and Bankruptcy.
- Analyse debtors financial situation to seek opportunities to improve their financial circumstances
- Preparing and lodging the debt agreement proposal forms with ITSA from information provided by the debtor.
- Respond to creditors in relation to your debts prior to, during and after the debt agreement has been prepared and /or approved.
- Stopping garnishees on wages.

Fees to administer the debt agreement

Our ongoing Administration fee is 22.73% plus GST. We do not recover any other expenses out of the Debt Agreement as we believe these are costs of doing the business. This fee covers all aspects of managing your debt agreement from start to finish.

Source: <http://debtassist-px.rtrk.com.au/debt-solutions/debt-agreements>

Overall impression: Debt Assist's website provides useful consumer information that allows readers to make an informed choice, including fees and the consequences of undertaking a Debt Agreement. What is striking about Debt Assist is the absence of emotive, fearful language, and exhortations to avoid bankruptcy at all costs.

Debt Escape

Debt Escape's main website graphic is a sign pointing toward "Financial Freedom". The website text could provoke fears in readers by asking whether the reader is "concerned about" their financial situation, worried about assets they "worked so hard for", or "frightened at the prospect of bankruptcy". By giving an impression that negative outcomes are avoidable, and "financial freedom" is attainable, consumers could reasonably expect an outcome that Debt Escape may not deliver for them.

Debt Escape Call us today on 1300 661 671

Home About Us Success Stories Tips, Advice & Debt info Contact Us

Financial Freedom
NEXT EXIT

Financial Freedom at the Next Exit

Financial Freedom and Debt Relief in Australia through Debt Consolidation

1. Concerned About Your Financial Situation?
2. Worried about losing the assets you worked so hard for?
3. Frightened at the Prospect of Bankruptcy?
4. Weary of demands for money you do not have?

If you have said "yes" to any of these questions, Credit Counsellors Australasia can help solve your **debt problems!**

Get Legal Protection for Your Debts! We can show you how ...

Credit Counsellors Australasia is the most respected personal debt solutions & debt consolidation advisor in Australia and considered pre-eminent in its profession. Debt problems can be overwhelming and in such circumstances you will need the assistance of the best advisor available. This advisor should offer help after understanding your debt position. They should assess your situation quickly to obtain debt relief and ongoing peace of mind. There are a number of options available to those in financial distress dependant on personal circumstances to obtain debt relief.

We can provide this and our debt advice analysis and assessments are totally FREE of charge, free of obligation and confidentiality is guaranteed. Debt consolidation is one of the most sought after

Call us now **free** 1300 661 671

[Click here](#) and we'll call you back
powered by ClickCalling™

Enquire Now

Full Name* Email*

Mobile* Home Phone*

\$ Total Debt* Postcode*

Best time to call?

Your Message

[Submit](#)

Source: <http://www.debtescape.com.au/>

The questions posed on the main page appear to be hyperlinked to responses, but none are actually answered; they appear to be only a tool to encourage people to contact Debt Escape, which employs agents to visit homes of potential clients.

Debt Escape claims it can show how to 'Get Legal Protection for Your Debts'— a very broad claim that may mislead, or at the very least create unrealistic expectations amongst potential clients about what this service could achieve for them.

Debt Escape's registered company name "Credit Counsellors Australasia Pty Ltd" is stated prominently on the header of every page on the website. The term "credit counselling" risks creating an expectation that the service offered is similar to financial counsellors, who provide free, confidential and independent assistance to consumers in financial difficulty.

ASIC says that terms like "financial counsellor" and "financial counselling" can provide a misleading impression about the nature of the service offered to consumers.²³ Legislation came into effect on 1 March 2013 that restricts the use of the terms "financial counsellor" and "financial counselling" to organisations that provide financial counselling services as prescribed under the *National Consumer Credit Protection Regulations 2010*.

The screenshot displays the 'About' page of Debt Escape's website. The page is divided into two main columns. The left column contains text about the company's services, including a list of disciplines (Accounting, Commerce, Finance, Law, and Advanced Insolvency Law) and a section titled 'Our Debt Agency Can Help in Many Ways'. The right column features a large 'Enquire Now' form with fields for Full Name, Email, Mobile, Home Phone, Total Debt, and Postcode, along with a 'Submit' button. Below the form is a Facebook widget for 'Debt Escape - 1300 661 671 (Australia wide)'.

All About Debt Escape – Debt Mediators, Consolidators & Debt Agency
Credit Counsellors Australasia is a pre-eminent practitioner of personal insolvency solutions, in Australia. It is an ASIC registered provider of debt solutions. We are a debt agency that you can trust to help you get your life back on track when it comes to your finances.

Recognised as being the very best in its field Credit Counsellor's reputation for low cost debt relief, professional service, ethical standards and high acceptance rate of debt agreements is well known.

Credit Counsellors to whom you may turn for debt help are highly trained and empathic individuals with many years experience assisting thousands of Australians who have turned to this company for debt assistance.

We Are Experienced Debt Consolidators
Highly regarded in their chosen profession our Credit Counsellors are tertiary qualified in one or more of the following disciplines:

- Accounting
- Commerce
- Finance
- Law
- Advanced Insolvency Law.

Our Debt Agency Can Help in Many Ways
Debt relief can be accomplished in a number of ways based on a client's capacity to pay and Credit Counsellors Australasia is by far the best debt agency available to individuals faced with insurmountable debt problems.

We do not operate as:

- Debt negotiators
- Debt mediators
- Credit repair, or
- Debt cutters.

We do offer a solution to your debt problems based on legal principles that will protect you and your assets from your creditors whilst settling your debts over time, at an affordable rate and based on your genuine capacity to pay whilst still meeting your day to day commitments.

Enquire Now

Full Name* Email*

Mobile* Home Phone*

\$ Total Debt* Postcode*

Best time to call?

Your Message

Submit

Find us on Facebook

Debt Escape - 1300 661 671 (Australia wide)

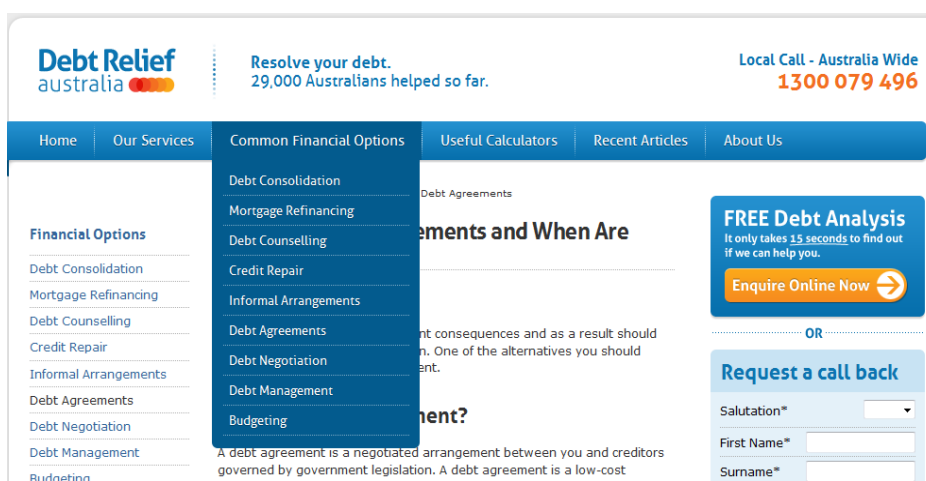
Source: <http://www.debtescape.com.au/about>

Overall impression: Debt Escape provides little specific information about what their actual services entail, instead relying on heavy use of the term "counsellors" which could easily cause confusion for consumers who are seeking free financial counselling services. Claims that Debt Escape provides "Legal Protection" for debts may also create unrealistic expectations amongst debtors who contact them for assistance

²³ ASIC, Regulatory Guidance 234, paragraph 234.99

Debt Relief Australia

Debt Relief Australia are a division of Fox Symes offering a range of financial services including Debt Agreements. Its website states that Debt Agreements “are proving to be an excellent alternative to bankruptcy”, without providing any specific information about bankruptcy, referring to it only as a ‘last option’ when outlining the benefits of Debt Agreements, and despite providing detailed information on other commonly proposed alternatives.



The screenshot shows the Debt Relief Australia website. The header includes the logo, a tagline 'Resolve your debt. 29,000 Australians helped so far.', and a local call number '1300 079 496'. The navigation bar has links for Home, Our Services, Common Financial Options, Useful Calculators, Recent Articles, and About Us. A sidebar on the left lists 'Financial Options' including Debt Consolidation, Mortgage Refinancing, Debt Counselling, Credit Repair, Informal Arrangements, Debt Agreements, Debt Negotiation, Debt Management, and Budgeting. The main content area shows a dropdown menu for 'Common Financial Options' with 'Debt Agreements' selected. Below the menu, there is a section titled 'Debt Agreements' with a brief description. To the right, there is a 'FREE Debt Analysis' box with a 'Enquire Online Now' button and a 'Request a call back' form with fields for Salutation, First Name, and Surname.

Source: <http://www.debtrelief.com.au/common-financial-options/debt-agreements>

Debt Relief Australia claims that Debt Agreements are best negotiated by experienced professionals. It uses the term “debt counsellors” which may conflate the services offered by debt administrators with financial counsellors. It also claims are that “your credit report is less affected than by a bankruptcy”—a statement likely to mislead debtors given that both Debt Agreements and bankruptcy are listed on a credit report for seven years.

What are the benefits of Debt Agreements?

Each year debt agreements are becoming increasingly more popular across Australia. Debt agreements are proving to be an excellent alternative to bankruptcy.

Debt agreements have many benefits to bankruptcy. Some of the benefits of debt agreements are:

- The interest accruing on your debt is frozen
- Your debt agreement administrator handles communication with your creditors
- Your credit report is less affected than by bankruptcy
- You pay a single regular repayment rather than juggling multiple repayments

Source: <http://www.debtrelief.com.au/common-financial-options/debt-agreements>

Overall impression: Much of the information about Debt Agreements is cursory, instead relying on a heavy emphasis on the importance of engaging commercial services—regardless of individual circumstances

Conclusion: Debt Agreement advertising needs closer attention

Consumer Action's casework suggests that many consumers are not choosing to enter into a Debt Agreement on the basis that it is the best option for their situation. Rather, many are entering into a Debt Agreement without fully understanding all the options and are struggling to maintain payments in circumstances where bankruptcy may be a better choice. Our view that this is due to, in part, the marketing of Debt Agreements which promotes awareness and emphasises this approach over other options such as bankruptcy. Other factors may also be at play, such as the incentives for administrators to place consumers in Debt Agreements rather than bankruptcy (for example, because administrators can extract a fee).

Websites of Debt Agreement administrators typically make statements to the effect that a Debt Agreement is not bankruptcy or is an 'alternative' to bankruptcy. This is possibly because ITSA itself describes Debt Agreements as a 'flexible alternative to bankruptcy'. We suggest that whilst this may have been the policy intent of the reform, it is not helping consumers make informed choices in their financial interests.

It is our view that in order to not be misleading, advertising by Debt Agreement administrators should clearly state that proposing a Debt Agreement proposal is itself an act of bankruptcy. If comparisons to bankruptcy are made, advertising should also clearly state the consequences of Debt Agreements and bankruptcy for debtors.

ITSA's Annual Report notes that it has "worked with registered Debt Agreement administrators to ensure the content of their websites was in accordance with Inspector-General Practice Guideline 1.1, to make sure balanced information is available to vulnerable debtors", particularly noting the need to emphasise the negative consequences of Debt Agreements—such as the effect on credit reporting records.²⁴

However, our review of websites shows significant variability in meeting these requirements and instances of businesses not complying with those requirements. Many of the websites we have reviewed contain representations that contain inaccurate information, are exaggerated, or are likely to leave consumers with an imbalanced view of the nature of the service.

²⁴ ITSA Annual Report 2011-2012, p4.

We consider that ITSA has an opportunity to act in three useful ways:

- Firstly, ITSA should cease describing Debt Agreements as "an alternative to bankruptcy".
- Secondly, ITSA should develop more extensive guidelines relating to advertising, such as those produced by ASIC in relation to advertising of financial products.
- Finally, the enforcement and compliance powers of ITSA should be examined to ensure they are adequate to drive compliance.

People considering a Debt Agreement are commonly vulnerable, financially stressed with few assets and on low incomes. It is essential for debtors in such situations to receive balanced and impartial advice and information about their options—our concern is that the widespread marketing by administrators of Debt Agreements inhibits this.