



Consumer Debt Factsheet

Part 9 Debt Agreements



What is a 'Part 9 Debt Agreement'?

A debt agreement is a legally binding agreement between you (the debtor) and your creditors (the companies you owe money to). Part 9 debt agreements are reached through negotiating a compromise with your creditors. Instead of being forced into bankruptcy, you can ask your creditors to agree to a scheme to settle your debts which you can afford to pay.

What does it mean?

A debt agreement is not the same as going bankrupt – it is an alternative to bankruptcy.

Debt agreements are flexible and can include a number of different options, such as:-

- Agreeing with your creditor(s) to pay less than the full amount of the debt(s) you owe
- A temporary suspension on paying your debt (a “moratorium”)
- A transfer of some of your property from you to your creditors in full or part payment of your debt
- A negotiated system of periodic payments out of your income which is set at a level you can afford.

It is important to maintain good relationships with your creditors. Continue talking with them to explain your situation and ask them to support your debt agreement proposal.

Who can enter into a debt agreement?

You (the debtor) can propose a Part 9 debt agreement if you:-

- Have not already been made bankrupt, have not used the debt agreement process, and have not been given authority under Part X of the Bankruptcy Act in the last 10 years, *and*
- Your income after tax is less than about \$52,907.40 per year, *and*
- You have unsecured debts of less than about \$70,543.20, *and*
- Your property not exempt under bankruptcy valued at less than about \$70,543.20, *and*
- You are insolvent (if you are unable to pay all your debts when they fall due).

Making a Part 9 debt agreement

To make a debt agreement, you need to make a formal proposal to all of your creditors. Your creditors can then choose whether to accept or reject the proposal. If you have more than one creditor, in order for your proposed debt agreement to be accepted, not all of your creditors need vote in favour of accepting the debt agreement. If the majority in number, and at least 75% of the dollar amount of those creditors who decide to vote, and are entitled to vote, vote in favour of the debt agreement, then the debt agreement will be accepted. Once you have submitted your debt agreement proposal, your creditors have 25 working days to vote to accept or reject the proposal (this is called the Deadline Date).

If your creditors reject your proposal, it *may* be able to be resubmit it but this depends on your creditors and the reasons why they rejected the proposal. Rejecting the proposal means your debts are revived so that your creditors can pursue you for payment and any interest which accrued during the 25 working days.

What is the ITSA?

The ITSA is the Insolvency and Trustee Service Australia and is responsible for reviewing your proposal to your creditors and the registration and facilitation of the agreement if it is accepted by your creditors. The ITSA has the option of rejecting your proposals if they think it is not in the best interest of your creditors, or if you are ineligible to submit a debt agreement proposal (see above).

What is the effect and consequences of a debt agreement?

If your proposed debt agreement is accepted by your creditors, it has the effect of freezing your provable unsecured debts (such as credit cards, store cards, medical bills and some personal loans). This can allow you to payback the outstanding debt over a longer period of time at a level which you can afford. Unsecured creditors are prevented from exercising the usual remedies to recover debts. Secured creditors (eg. House mortgage and car loans) are excluded from debt agreements.

The effect of a debt agreement is that you are released from all your provable debts and your creditors cannot take any further legal action against you. The release does not release anyone who was jointly liable with the debtor, release a guarantor of the debt or affect the rights of a secured creditor to deal with the security.

Who can prepare Part 9 Debt Agreements and how much does it cost?

Registered Trustees, Financial Counsellors and Debt Agreement Administrators can assist you to determine whether a Part 9 is the appropriate solution to your financial difficulties. Generally assistance is provided for a fee. Some practitioners do provide limited services and initial consultations for free.

You should be very cautious when approaching organisations to prepare Part 9 agreements. There is growing concern that Part 9 agreements are being exploited by greedy promoters. Independent financial counsellors are able to prepare Part 9 agreements for free. You should not pay organisations to prepare them for you. The following contacts will provide free assistance for debtors considering a Part 9 Agreement.

- **Lifeline Financial Counselling** – 07 3252 1900 (24 Hour Crisis Counselling – 13 11 14)
- **Insolvency and Trustee Service (ITSA)** – 07 3360 5444 or 1300 364 785

Alternatives to Part 9 Debt Agreements – Your Options

There are alternatives to Part 9 debt agreements. For example, if you still want to pay your debts, and you would be able to with some concession, it is often possible to negotiate an informal repayment deal that doesn't affect your credit rating.

Part 9 debt agreements can also have disadvantages over Bankruptcy. Under a debt agreement, you still have to pay the money back, it still negatively affects your credit rating and there is no possibility of an early discharge and it costs more than bankruptcy.

| Your Options | Informal Agreements | Part 9 Debt Agreement | Bankruptcy |
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| How much will this cost? | There are no costs associated with establishing an informal agreement. It is simply a matter of negotiating with your creditors directly. | This is more costly than an informal agreement. It is recommended that you seek advice from an independent financial counsellor. | This is more costly than an informal agreement. It is recommended that you seek advice from an independent financial counsellor. |
| Will this affect my credit rating? | An informal agreement with your creditor does not automatically affect your credit rating. However, if you have defaulted on the debt(s), your creditors can enter a default on your credit reference file. | This can have just as much effect as bankruptcy. Details of the debt agreement are entered into NPII and recorded on credit reference file for 7 years. | Bankruptcy has a major effect on your credit rating. You lose the right to obtain credit for 3 years and the effects can be more long-lasting. You may be refused home loans in the future and may have problems in obtaining rental accommodation. |
| What are the legal implications of this? | The informal nature of an informal agreement with your creditor(s) means that there are some doubts as to their enforceability. Informal agreements are only binding on those creditors who agree to them and your other creditors can continue to pursue you for the debt. | This has the advantage over an informal agreement of being registered and leaves less doubt as to its enforceability. | Bankruptcy means that you will be released from your debts. However, this can leave you with long term credit problems. It can also affect your ability to get rental accommodation and can also affect your ability to travel abroad. |

