

Credit Counsellors Australasia

Pty Limited

ACN: 101-96-043

 **Dealing with Debt**

 **The Consequences**

 **& Alternatives**



PRESENTATION

Speaker: Clifford Mearns

- Insolvency Practitioner and Registered Debt Agreement Administrator.
- Executive Chairman of SRMC Limited a national leader in debt agreement administration Cliff has been involved in consumer finance and credit management consultancy for many years and enjoys a sound understanding of both debtor and creditor positions as they relate to insolvency. He holds membership in the following professional associations:

CONTD :

- 👉 Debt Agreement Practitioners Association
- 👉 American Bankruptcy Institute
- 👉 Insolvency Practitioners Association Australia
- 👉 Institute of Company Directors
- 👉 Australian Institute of Management
- 👉 Australian Institute of Credit Management
- 👉 Mortgage & Finance Association of Australia

Other directorships include:

- 👉 Credit Counsellors Australasia Pty Limited
- 👉 Beneficial Insolvency Practices Pty Ltd
- 👉 Debt Agreement Practitioners Association
- 👉 SRMC Inc (USA)

OUR SERVICES

Credit Counsellors Australasia Pty Ltd

- ☞ The term “pre-eminent” has been used to describe this company’s position in the profession, by one of Australia’s leading financial gurus.
- ☞ The role of Credit Counsellors includes initial assessment of a client’s financial position leading to a suitable solution, informing individuals of alternatives available to them and were instructed drawing required documentation for submission to creditors. Initial interviews and assessments are totally free of charge, confidential and without obligation.



OUR SERVICES

- Counsellors are highly trained, tertiary qualified and experienced in their chosen profession.

Ethical standards are applied at all times in dealings with both debtor and creditor and a total professional service can be anticipated.

- This Company is highly regarded not only by debtors and creditors but also by its peers and external consulting agencies.
- Its main function is the initialisation of Part IX Debt Agreements but counsellors will refer clients to other sources including community based financial counsellors

OUR SERVICES

Beneficial Insolvency Practices (BIP)

Informal debt agreements between debtor and creditors is the function of this company.

Its officers are highly trained, tertiary qualified insolvency advisors who have established great rapport with major lending institutions and successfully concluded a large number of informal arrangements.

Its services are most sought after by those in financial distress who are unable to apply for and obtain relief by manner of a formal debt agreement but who still desire to avoid the hazards of bankruptcy.



OUR SERVICES

Informal agreements are compiled without the benefit of support of statute and rely on general common law agreement between the parties.

Major lending institutions have strongly supported the methods employed by BIP.

OUR SERVICES

SRMC Limited trading as Solvency Resolution Management Consultants

- A leader amongst its peers in matters of personal insolvency administration utilising high technology systems and procedures in its management role.
- Contributions are escrowed in trust, not just kept in a separate bank account.
- Externally audited annually by a registered auditor and managed daily by a qualified accountant clients may enjoy the peace of mind they truly deserve.
- Debt Agreement acceptance rate close to 100%
- Envidable association with all major national & international creditors.

OUR SERVICES (CONTD:)

- Highly experienced and well qualified Compliance Officers.
- Administering debt agreements nationally from every corner of Australia.
- Lead by one of the most experienced administrators in the profession.



CONTACTS



Main call centre:

1300-661-671
(Follow prompts)

Web address:

www.debtescape.com.au

Emails:

inquiry@debtescape.com.au

srmc@debtescape.com.au

Facsimile:

(07) 5555 5966

Address:

PO Box 5140
GCMC QLD 9726

Personal Unsecured Debt TYPES OF PERSONAL DEBT

- Credit Cards
- Store cards
- Merchant accounts
- Personal unsecured loans
- Taxation debt – PAYG
- Family loans
- School fees
- Bank overdraft
- Utilities – Gas, electricity, telephone
- Council rates
- Centrelink overpayments
- Child Support payments
- Rent – overdue or upon relocation
- Loss on vehicle repossession
- *Fines and penalties imposed by a Court.*



*Unsecured debt can only be remedied by civil court proceedings
– ie summons, then judgment.*

TYPES OF PERSONAL DEBT

● Personal *Secured* Debt

☞ Mortgage

☞ Motor vehicle

☞ Secured loans

A secured debt is one where the borrower stands to have the security repossessed if the agreed payments are not maintained.

● Joint Debt

Where two or more persons jointly borrow from a lender. Both become liable for the whole debt, not just their portion of it.

TYPES OF PERSONAL BUSINESS

☞ Sole Trader

An individual operating his or her own business – not as an incorporated company

- ★ Shop keeper
- ★ Hairdresser
- ★ Electrician
- ★ Plumber
- ★ Contractor or sub-contractor...etc

All of these individuals are likely to incur not only the usual debts mentioned before but will also incur debt related to the operation of their business:

- ★ Supplies to operate the business
- ★ Goods & Services Tax collected
- ★ Fuel accounts...etc

In a sole trader situation the individual is liable for all debts incurred in operating the business.

GETTING INTO DEBT

The Major Issues:

1. Loss of employment; or reduction in overtime hours previously relied upon
2. Illness or bereavement without adequate insurance covers
3. Poor financial skills leading to:
 - Overspending on personal needs & wants
 - Over commitment to contractual obligations
 - Failure to budget or maintain a set budget
 - Grand gestures to family & friends
4. Spending based on future expectations that fail to materialise
5. Relationship breakdown
6. Gambling



INSOLVENCY

What is “Insolvency”

Insolvency is the opposite state of “solvent”

The definition of “solvent” is:

A person who can settle his or her debts, as and when they fall due.

That definition implies that as an account is received into your household you should have the funds available to meet full payment on the due date.

The definition of “insolvency” is:

A person who is not solvent is insolvent.

By definition it implies that if you cannot meet your accounts as

PERSONAL BANKRUPTCY

 How does a person become a bankrupt?

Debtor's Petition: A person can file for their own bankruptcy by lodging a debtor's petition. This can be done by making an appointment with the Insolvency Trustee Service Australia in any capital city. There is no threshold on the amount of debt. ITSA make no charge to complete these documents.

Creditor's Petition: If there is debt due in sum of \$2000 or more a creditor who has obtained a civil court judgment in respect of such debt may have cause to issue a Bankruptcy Notice and if the debt remains unpaid then application may be made to the Court for sequestration of the debtor's estate and the debtor declared bankrupt.

CONSEQUENCES OF BANKRUPTCY

- ➡ A Trustee will be appointed to manage the bankrupt's financial affairs for the full term of the bankruptcy. Minimum 3 years. And, the Trustee is empowered to:
 - ➡ Investigate the financial affairs to ensure that no assets have been disposed of or transferred out of the bankrupt's possession that rightly belong to the creditors as a result of the bankruptcy. A trustee may inspect all financial transactions during the previous 5 years.
 - ➡ Difficulty may be encountered in:
 - ★ Obtaining normal utility services without paying a substantial bond
 - ★ Opening a bank account and if there is a financial instrument transaction in excess of \$4678 there must be a declaration by the bankrupt that the bankrupt is an undischarged bankrupt.

CONTD:

- ☞ Income will be assessed by the Trustee and if income exceeds certain thresholds then the bankrupt must pay any excess to the Trustee for distribution amongst the creditors.
- ☞ Bankrupts must surrender their passport and may only leave the country with the approval of the Trustee.
- ☞ Any property of the bankrupt in excess of those stipulated in Bankruptcy Regulations will be seized and sold by the Trustee.
- ☞ Property, even property jointly held, will be seized and sold.
- ☞ Personal details will be recorded on the National Personal Insolvency Index forever.
- ☞ Credit reference files will be annotated as to the bankruptcy for 7 years.
- ☞ It will be virtually impossible for the bankrupt to obtain credit during these 7 years.

THE ALTERNATIVES

- Manage Your Money Better
- Private Repayment Arrangements
- Informal Debt Agreement
- Part IX Debt Agreement
- Personal Insolvency Agreement

MANAGE YOUR MONEY BETTER

- * Only use one low interest credit card – or even better obtain a bank debit card and only use your own money.
- * If you get paid weekly – payout weekly, and don't sit around waiting for the bill to come in.
- * Most people have a good idea of how much a recurring debt will be. Most suppliers offer payment booklets or Australia Post facilities. Pay these accounts from each week's income – you may even end up in credit.

CONTD :

- Utility bills – electricity, gas, telephone
- Car insurance
- Car registration
- House & contents insurance
- Health insurance
- % off credit card balances and store cards.
- Car payment
- Mortgage
- Rent

PRIVATE REPAYMENT ARRANGEMENTS



Do Not Ignore Creditors !!

Creditors only want one thing.....their money.

- ☞ Try to make an arrangement to settle arrears in a rational manner and one that you can reasonably afford.
- ☞ Apply for hardship under the Uniform Consumer Credit Code.
- ☞ Speak with a community based financial counsellor and see if they can help make arrangements.

PRIVATE REPAYMENT ARRANGEMENTS (CONTD)

4. If you have assets that can be refinanced to pay out the debt think seriously about that avenue.
5. Check if family can assist with a medium to long term loan.
6. Is a second job an option?
7. Most importantly make sure to do the sums to see if you are totally over committed or if you can actually work yourself out of the muddle.

INFORMAL DEBT AGREEMENTS

Creditors generally are prepared to work with an insolvency advisor because the whole financial position is presented in a formal manner utilising accepted documentation.

An informal debt agreement is available to individuals who:

- Have been bankrupt in the previous 10 years
- Who earn too much to propose a formal debt agreement
- Who have had a previous formal agreement cancelled or terminated
- Whose debt level is beyond the thresholds imposed
- Those who cannot afford the fees of a trustee to propose a Personal Insolvency Agreement

PART IX DEBT AGREEMENT

👉 The Rules:

- ★ A proposer must be “insolvent” and must be able to show that insolvency
- ★ There are thresholds that must be met in regard to:

Income – currently no more than \$82,100 gross

Assets – must not exceed \$82,500.60 (as an individual)

Liabilities (unsecured) – must not exceed \$82,500.60 (as an individual)

- ★ You must *not* have:

👉 Been a bankrupt in the preceding 10 years

👉 Proposed a formal debt agreement in the preceding 10 years

👉 Executed a S188 (a formal admission of insolvency) in the preceding 10 years

PART IX DEBT AGREEMENT

☞ What Debt Can Be Included?

All unsecured debt including anticipated deficiencies on motor vehicle contracts mortgages or other secured goods *must be* declared and the total must be less than the liability threshold regulated. It is an offence to withhold information about a debt that is owed and not included.

- ★ Credit Cards
- ★ Store cards
- ★ Merchant accounts
- ★ Personal unsecured loans
- ★ Taxation debt – PAYG
- ★ Family loans
- ★ School fees
- ★ Bank overdraft
- ★ Utilities – Gas, electricity, telephone
- ★ Council rates
- ★ Centrelink overpayments
- ★ Child Support payments
- ★ Rent – overdue or upon relocation
- ★ Loss on vehicle repossession

Fines & penalties due to the Crown cannot be included as a debt

SETTING A BUDGET

A Proposal Must Be Accompanied By a Budget!!

Income (weekly, fortnightly or monthly) \$ X

Less

Itemised list of household expenses

Food

Fuel

Rent or mortgage

Car payment, insurance & registration

School fees

Rates & insurances (an all others) \$ Y

Disposable income \$ Z

Z = the amount that in normal circumstances you would be applying to the payment of unsecured debt, If the amount will not meet those expenses then you are insolvent!!

It is this amount however that will be used to settle your unsecured creditors.

Note: If “Z” falls into a negative position then it may be time to seriously consider the option of bankruptcy. That is “Y” adds up to be more than “X”

WHAT IS A REASONABLE OFFER?

☞ What Amount Will Creditors Accept In Settlement?

- Most major creditors have their own idea of what an acceptable offer is.
- The proposal will be based upon your capacity to pay calculated from disposable income available.
- Creditors will review your offer of settlement with an eye to what was disclosed to them at the time of seeking the original credit.
- The budget supplied will be reviewed and any anomalies challenged.
- Creditors will read & digest your explanation as to why and how you have arrived at a state of insolvency.
- Creditors will generally accept an offer based on capacity to pay provided the information provided to true, correct and verifiable.

PART IX BENEFITS

You Retain All Of Your Assets

- ☞ Secured debt payments, mortgage, car etc are allowed for in the budget.
 - ☞ Settlement is made over a period of time by installment payment.
 - ☞ All unsecured debt balances are frozen upon submission & ongoing interest ceases.
-
- ☞ You are free to go about your life, conduct a business and retain your passport.
 - ☞ Civil Court judgments cannot be executed upon.
 - ☞ Wage garnishees cease.

PART IX BENEFITS (CONTD)

- Contributions are paid to and administered by a registered Debt Agreement Administrator.
- Upon completion of all of the obligations to the agreement both the NPII and your credit reference file will be noted that you have honoured your undertaking.
- You will not suffer the indignity or consequences of a bankrupt.



PART IX DISADVANTAGES

Proposing a debt agreement is 'an act of bankruptcy'. That is to say that you are formally declaring that you are insolvent.

- ★ Your credit reference file will be annotated to this effect for a period of 7 years.
- ★ The NPII will be annotated with your personal details and the type of administration entered into – forever.
- ★ You will find it difficult to obtain credit from major lenders during the term of the administration.
- ★ If you fail to honour the arrangement made the agreement may be terminated by creditors and all of their rights and remedies will be revived including back dating interest due.
- ★ You cannot make another debt agreement in the following 10 year period.
- ★ If you fail in your attempts to meet the obligations imposed by the debt agreement then bankruptcy may be your only course.

WHAT IS NPII?

👉 A Federal Government Data Base.

The National Personal Insolvency Index is a data base maintained by the Insolvency Trustee Service Australia, an Executive Government Agency that oversees and regulates Australia's bankruptcy laws, trustees and administrators.

The data base is one of public information.

The public at large, generally, are unaware of this data base and seldom utilise its resources.

The cost of searching a name on the system is \$35 and somewhat prohibitive to both commercial and private enterprises.

Veda Advantage and Dun & Bradstreet in particular download new entries on a regular basis in order to update credit file information.

IN DEBT! – BUT WANT CREDIT!!

It is not unusual for those in debt who seek assistance to *escape* their financial crisis to bemoan the likelihood of future credit restrictions. Some refuse their position which simply is one of priority.

Q

“If I do a debt agreement will I be able to get a mortgage?”

A

Probably not during the course of administration.

Q

“Will I be able to keep a credit card?”

A

No, all of your creditors must be included into a proposal and they will cancel any ongoing credit. Obtain a debit card and use your own money.

However many people in debt agreements have been able to obtain credit with a supporting letter from their administrator, always based on capacity to meet the obligation, the currency of the contributions and the situation.

Before considering further credit there must be a realisation that past dealings haven't been up to par and current debt must be dealt with first and foremost.



THE STARTING POINT

Collate all of your *unsecured* accounts and list them down, one by one. Total the indebtedness.

Do not include debt due on credit or store cards or any other form of unsecured debt.

- ★ Ascertain the household income and deduct all of your expenses including car and mortgage or rental payments – include all expenses including gym, school fees, council rates and allow for known expected increases.
- ★ Deduct the known expenses from the income and arrive at your disposable income.
- ★ Arrive at how much is left over to be used to service payment of all unsecured debt.
- ★ If the amount left is insufficient to service the indebtedness then you are *insolvent*.
- ★ If there is sufficient to service the debts then you should adopt a plan to do just that and budget a payment method.
- ★ You know you're in trouble when demands and summons' start arriving or lenders halt, even temporarily, your credit facilities.

SEEK HELP FROM A PROFESSIONAL ADVISOR

PART IX - THE PROCESS

👉 Get Your Facts & Figures Right!

- ★ Contact a reputable Debt Agreement advisory service, a community based financial counsellor, your accountant or solicitor and place your plight before them for a professional assessment of the position.
- ★ Based on the advice received make a decision as to which method you believe to be in your best interests.
- ★ If you choose a Part IX Debt Agreement inquire as to who will be administering it.
- ★ You can check on the administrator by visiting ITSA website at www.itsa.gov.au.
- ★ Do not choose any advisory service that seeks full up front fees. Some will withhold your documents until the full fee has been paid and this will only incur you in delays and additional unnecessary interest charges. It is a fair proposition to settle out of pocket expenses.
- ★ Ask if they meet ITSA educational standards and if they are a *registered*

THE PROCESS – 2

👉 How Quickly Can I Get Relief ?

The process is relatively quick but speed in collating and formulating documents will rely solely on your participation.

- ★ There will be an initial consultation and the counsellor is required by law to fully inform you of both your obligations to a debt agreement and the alternatives available to you – much of this has been previously explained in this presentation.
- ★ There will be a financial assessment to show insolvency and this exercise can be dramatically diminished if you have all of your information ready.
- ★ Questions will be asked concerning how and why you have arrived at your insolvent state. Be totally forthright and honest irrespective of the circumstances. This interview and assessment should be absolutely confidential.
- ★ The process from interview to creditor acceptance or rejection should take no more than 40 days but you obtain relief from creditors' demands upon acceptance by ITSA for the processing procedure and

THE PROCESS – 3

👉 What Happens With My Documents.

- ★ A counsellor will prepare the presentation using standard ITSA forms.
- ★ They will be sent to you to read, digest, ensure you know what you're undertaking and signing.
- ★ After return the appointed administrator will closely examine the documents and if satisfied consent to act in writing and then direct the documents to ITSA.
- ★ ITSA officials will examine the offer made to creditors and if satisfied process those documents first entering personal details on the NPII. At this point all debts are frozen & interest stops accruing.
- ★ The proposal is circulated to all affected creditors and each creditor has 35 days in which to consider the proposal and either accept it or reject it.

Acceptance is made if 50% of creditors who vote, in value, agree. All of the other creditors are caught whether they agree or not – even if they fail to vote.

THE PROCESS – 4

What If Creditors Refuse My Proposal?

The national rejection rate currently stands at 17% of lodgments. Some administrators have an acceptance rate well over 90%. Rejection may depend upon a number of factors:

- ★ The creditor is of the opinion that you could make a higher offer of settlement.
- ★ Information supplied does not tally with information given at the time of granting credit.
- ★ The loan may be very new and a creditor is concerned that original information given may not have been given truthfully or the loan was not used for the purpose it was granted.
- ★ Rejection may not be the 'end of the road'. A new and further proposal can be made to try and satisfy the creditors' concerns. However all creditors must be treated equally and one creditor cannot be offered more than any other.
- ★ If further attempts are rejected then the only alternative may be bankruptcy or private arrangements with each creditor.

DEBT AGREEMENT

👉 Hurray!!! Creditors Accepted.

★ Now is not the time to go out and hike up further credit simply because you only have an installment payment to make – your circumstances may yet change again. Now is the time for frugality, a change in life style and adherence to the budget.

★ A debt agreement is not a joke. It is a very serious undertaking and creditors have shown their good faith in supporting you in this difficult time. They have forgone rightful interest and probably written off a portion of the principal. Your financial priority is to honour your obligation to this agreement.

★ Installment payments *must* be made as agreed so that your administrator can satisfy the creditors at the intervals monies have been promised.

★ If you fail to meet the contributions the debt agreement can be terminated and you will be no better off – much worse off in fact because creditors will back date all interest that they ceased and probably commence legal remedy for recovery.

THE ADMINISTRATOR

The Appointed Administrator *MUST*:

- ★ Meet the basic eligibility test of ITSA.
- ★ Hold qualifications as prescribed in Bankruptcy Regulations
- ★ Be currently registered as a Debt Agreement Administrator.
- ★ Place all of your contribution monies into a separate account for distribution to your creditors.
- ★ Provide you with information concerning your account at any time upon reasonable request.
- ★ Keep creditors informed as to the progress of your contributions and debt agreement obligations generally.
- ★ Inform creditors and ITSA at prescribed intervals if you fail to meet your obligations.

Thank You