**AVOIDING DEBT AGREEMENTS – THINK BEFORE YOU ACT**

 **(A FACTS SHEET prepared by the ADF FINANCIAL SERVICES CONSUMER CENTRE)**

 **Why should a ‘debt agreement’ be avoided?**

* Advertisements in the media which promise to reduce financial stress by consolidating a person’s debts into one manageable payment are quite common. However, these arrangements (often referred to as ‘debt agreements’) may be highly detrimental to an ADF member’s financial position and career.
* Legally speaking, entering into a ‘debt agreement’ is 'an act of bankruptcy' under Part IX of the Commonwealth Bankruptcy Act. Essentially, the debtor (the person who owes the debts) is saying to their unsecured creditors (the people to whom the money is owed) that they cannot pay their debts and instead is offering part payment in instalments over a period (commonly five years).
* This is done through a third party called a ‘debt agreement administrator’. Sometimes these fees can be so high that the debtor ends up paying out more than had they simply paid the debts without the ‘debt agreement’.
* The creditors vote on the proposed agreement and if a majority decide to accept the agreement it goes ahead and binds them all. The debtor, by proposing the agreement, is at the mercy of the creditors, because if the creditors vote to reject the agreement the debtor can be forced into bankruptcy. Likewise, if the debtor fails to comply with the terms of the agreement, the creditors can apply to have the person made bankrupt or take legal action for the entire sum owed plus interest.
* **For an ADF member, becoming bankrupt can spell the end of their career because of the flow on effects for their security clearance.**
* Even an ADF member who enters into a ‘debt agreement’ (thereby committing ‘an act of bankruptcy’) may be obliged to report the fact to AGSVA by submitting an SVA003 (Change of Circumstances). This may cause the member’s security clearance to be reviewed.

* Where the creditors accept the ‘debt agreement’ and the debtor makes all the payments, the debtor’s name will be placed on the National Personal Insolvency Index (NPII) for 5 years from the date the ‘debt agreement’ was made.  During this period, the debtor will find it harder or impossible to get other loans (especially at reasonable interest rate), restructure loans or even obtain rental accommodation. This could have a dramatic effect on the welfare of the member and family.

**What is the alternative to a debt agreement?**

* Besides filing for bankruptcy or waiting for creditors to take recovery and ultimately legal action, proactively seeking assistance from a financial counsellor is a sensible option. Financial counselling services (as opposed to debt agreement administrators) are free and are offered by not for profit organisations (for example, Anglicare, Salvos, Smith Family or MoneyHelp).
* Money Smart is a Government website that offers good advice on a number of financial matters; including how to budget and seek counselling services.
* Financial counsellors are often able to negotiate with creditors on the behalf of clients and establish manageable repayment plans. Sometimes, they can negotiate lower interest rates or even discounts without exposing their client to the potential risks of entering into a ‘debt agreement’ or filing for bankruptcy.
* Financial counsellors are also highly skilled at treating not just the symptom (the unmanageable level of debt) but also the cause by providing the client with the help, tools and information they need to get their finances under control permanently.

**Who can I contact?**

* A financial counsellor may be sourced at: [www.financialcounsellingaustralia.org.au](http://www.financialcounsellingaustralia.org.au).
* The Financial Rights Legal Centre ([www.financialrights.org.au](http://www.financialrights.org.au)) has an excellent Facts Sheet on the pitfalls of ‘debt agreements’.
* Money Smart [www.moneysmart.gov.au](http://www.moneysmart.gov.au)
* If you’d like to discuss the issues or would like a referral to an appropriate person, you can contact the ADF Financial Services Consumer Centre ([www.adfconsumer.gov.au](http://www.adfconsumer.gov.au)).