Bankruptcy & Personal Insolvency

Personal insolvency refers to the formal legal processes available to individuals who cannot pay their debts

Personal insolvency relates to individuals, not companies, and is governed by the Bankruptcy Act 1966. There are three primary formal options identified under this regime:

- Debt agreements;
- Personal insolvency agreements; and
- Bankruptcy.

Bankruptcy is generally the most common option, but depending on a person's debt profile, asset position, income and broader objectives, a Part IX Debt Agreement or Part X Personal Insolvency Agreement may in some circumstances prove a more suitable alternative.

When to Consider Bankruptcy & Personal Insolvency

Bankruptcy and Personal Insolvency should be considered where debts have become unmanageable, creditor pressure is escalating, repayments cannot be maintained, or formal enforcement action is underway or incoming. Seeking early advice from personal insolvency professionals is crucial, as the available options, and the consequences of each, can differ substantially depending on the circumstances of the individual in distress.

Bankruptcy



Eligibility

A person can apply for bankruptcy if they are unable to pay their debts when they are due and are present in Australia or have a residential or business connection to Australia. There is no minimum or maximum amount of debt or income required to be eligible, and there is no fee to apply for bankruptcy.

A creditor may also apply to bankrupt an individual by filing a creditor's petition with the Court, provided the individual is present in Australia or has the required residential, business or other connection to Australia. This most commonly occurs where the creditor has obtained a judgment debt of at least $10,000, served a bankruptcy notice on the debtor, and the debtor has failed to comply with that notice within 21 days. If the Court is satisfied that the legal requirements are met, it may make a sequestration order, which results in the individual becoming bankrupt.



Appointment and Administration

Bankruptcy may commence voluntarily, by the individual lodging a debtor's petition and statement of affairs, or involuntarily through a sequestration order made by the Court on the application of a creditor. Once bankruptcy begins, a trustee is appointed to manage the bankrupt estate, communicate with creditors and deal with divisible property. The trustee's role includes notifying creditors, gathering information about the bankrupt's affairs, investigating past transactions that may be recoverable and, where appropriate, realising assets for the benefit of creditors.

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Duration and Key Consequences

Bankruptcy generally lasts 3 years and 1 day, although it can be extended in some circumstances. During bankruptcy, compulsory income contributions may apply if income exceeds the statutory threshold, non-exempt assets may be realised by the trustee and written permission is required to travel overseas. Bankruptcy can affect a person's ability to obtain lines of credit or act as a director of a company. The name of the bankrupt will appear on the National Personal Insolvency Index permanently, and on credit reporting files for statutory periods. While bankruptcy can release a person from most debts, it does not release all debts. A bankruptcy can be annulled and end early through a Section 73 Composition proposal, however this process has a few stipulations to consider and requires a majority of creditors to vote in favour of the resolution.

Alternatives to Bankruptcy

Part IX Debt Agreement

A Part IX Debt Agreement is a legally binding agreement between an individual and their creditors to pay an amount of what they owe over time without becoming bankrupt. It is generally suited to individuals with lower levels of unsecured debt, assets and after-tax income, as strict eligibility thresholds apply. To be eligible, a person must be unable to pay their debts when due, must not have been bankrupt or in a debt agreement or personal insolvency agreement in the previous 10 years, and must fall within AFSA's indexed limits for unsecured debts, assets and after-tax income. A registered debt agreement administrator assists with the proposal, which is then sent to creditors to vote through the Official Receiver. If accepted and completed, the person is released from most unsecured debts, although the agreement carries formal consequences and appears on the public insolvency record for a limited period.

Part X Personal Insolvency Agreement

A Part X Personal Insolvency Agreement (PIA) is a more flexible formal agreement between an individual and their creditors. A trustee is appointed to take control of assets and present an offer to creditors, which may involve instalments, a lump sum or asset realisations. Unlike a debt agreement, there are no debt, asset or income limits to propose a PIA. Creditors consider the proposal at a meeting and, if accepted by special resolution, the agreement becomes binding and is administered by the trustee. A PIA may allow a person to retain assets, but also has significant consequences, including restrictions on managing a corporation until the agreement has effectuated and a permanent appearance on the public insolvency register.

Choosing the Right Way Forward

The appropriate pathway will depend on a person's income, asset profile, creditor mix, business interests and long-term objectives. Bankruptcy provides the cleanest reset, but Part IX and Part X arrangements may in some circumstances offer a better outcome by preserving assets or avoiding some of the restrictions that attach to bankruptcy. Each formal option carries consequences for credit, public records, business activities, property and future borrowing, which is why a careful assessment of the available alternatives is essential before any step is taken.



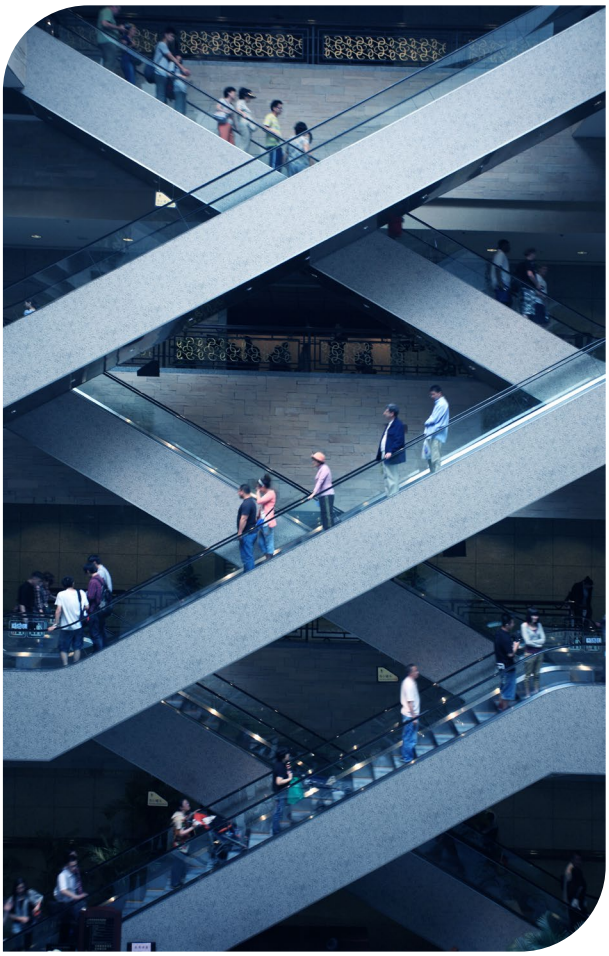
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How We Support You

Teneo provides clear, respectful and solutions-focused advice to individuals, sole traders, guarantors and their advisors facing financial distress. We assess the full picture of liabilities, assets, income and stakeholder pressures to determine whether bankruptcy, a Part IX Debt Agreement, a Part X Personal Insolvency Agreement or other negotiated outcome is the best approach.

We also support creditors where bankruptcy of an individual is being considered as an enforcement option. Where appropriate, we can consent to act as trustee if a creditor applies for, and the Court makes, a sequestration order. Once appointed, a trustee has strong investigative powers to review the bankrupt's financial affairs, obtain records, conduct Court examinations, identify assets and investigate potential recoveries for creditors. This gives creditors a structured process where other recovery steps have been unsuccessful. This can provide creditors with a structured process where other recovery steps have been unsuccessful.

Our strategy is tailored to the individual circumstances of each matter. We work closely with individuals, creditors and their legal, accounting and financial advisors where applicable to explain the available options, manage communications with stakeholders and support a structured path forward that is both practical and commercially viable.



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