

Personal Insolvency (Bankruptcy)



ADELAIDE
LEGAL
OUTREACH
SERVICE

Insolvency is commonly mistaken as being bankrupt. Bankruptcy is merely an option available to a person facing insolvency. Insolvency is the inability to pay debts when and as they fall due.

Bankruptcy

Where a person is **unable to meet their debt obligations**, they may **voluntary declare** or be **forced** into bankruptcy. A **Trustee** will **administer the assets** of the insolvent individual upon declaring bankruptcy.

- Most debts will be written off – allowing for a **fresh start**.
- Bankrupt for minimum of **3 years**.
- A number of other **negative consequences** to bankruptcy.

Alternatives to Bankruptcy

1. Informal Arrangements:

- **Agreement** with people whom debt is owed to **in writing**.
- **Negotiate a payment plan** that person facing personal insolvency may be able to meet.
- Does not involve **costs**.
- May be as simple as **writing a letter**.

2. Formal Arrangements (Part X Personal Insolvency Agreements)

- Offer to **pay in instalments** or a **lump sum** less than the full amount.
- Offer must be accepted by **special resolution** (people holding at least 75% of the total debt).
- No threshold limits to be eligible.
- Must have residential or business connection.

3. Debt Agreements (Part IV Debt Agreement)

- Available only if income, debt and assets are below a certain **threshold**.
- Offer to **pay in instalments**, a **lump sum** less than the full amount or for a **freeze** on debt to get back on feet.
- Offer must be accepted by **general resolution** (people holding at least 50% of the total debt).
- Benefit from release of debt obligations without negative consequences of bankruptcy.

4. 7 Day Moratorium

- Stop the people who are owed money from **garnisheeing wages** (an order from the court to take an amount from wages) for **seven days**.
- Stops bailiff or sheriff from **seizing assets** to recover debts **seven days**.
- Use time to **speak to creditors, consider options** and **seek advice**.

Financial Counselling

- It is recommended that a person facing personal insolvency seek **professional financial counselling**.
- You may contact the Baptist Care on **(08) 8118 5200** for more information on free community financial advisors.

For further information about your rights and responsibilities, contact the Adelaide Legal Outreach Service on **(08) 8118 5200** or email us at alos@adelaide.edu.au to arrange an interview.

This information sheet is intended as general guide only. Readers should not act on the basis of any material in this publication without getting legal advice about their own particular situation. The Adelaide Legal Outreach Service expressly disclaims any liability caused to any person in respect of any action taken in reliance on the contents of this publication.