



Compare the formal options

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Eligibility

	Bankruptcy	Debt agreement	Personal insolvency agreement
Australian connection	Must have a residential or business connection.	No residential or business connection required.	Must have residential or business connection.
Previous insolvency	While previous insolvency does not by itself make a person ineligible, the Official Receiver may not accept the petition if the debtor was previously bankrupt and some other conditions are met.	Must not have been a bankrupt, proposed a personal insolvency agreement or made a debt agreement in the previous 10 years.	Must not have proposed another personal insolvency agreement in the previous six months.
Income threshold	No	Yes, see Indexed amounts .	No
Asset threshold	No	Yes, see Indexed amounts .	No
Debt threshold	No	Yes, see Indexed amounts .	No

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Income, employment and trade

	Bankruptcy	Debt agreement	Personal insolvency agreement
Payments from income required?	Yes, mandatory payments required if income exceeds a statutory threshold. See Indexed amounts .	Yes, if the terms of the agreement require payments from income – this occurs in most cases.	Only if the terms of the agreement require payments from income.
Ability to continue to operate a business	It depends on the nature of the business and if the trustee sells the business assets. Key points include: <ul style="list-style-type: none"> • when a partner becomes bankrupt it dissolves an existing partnership • if trading under a business or assumed name after the date of bankruptcy, a bankrupt must disclose their bankruptcy to people dealing with the business. This includes bankrupts trading alone or jointly. 	Yes, unless terms of the agreement provide otherwise. If trading under a business name or assumed name (whether alone or in partnership) the debt agreement must be disclosed to all people dealing with the business.	Yes, if agreement allows for debtor to continue to operate the business.
Ability to be a director of, or otherwise manage, a corporation	No	Yes	Not until terms of agreement fully complied with.

Other employment restrictions	Professional bodies and/or trade associations may have certain conditions of membership for the duration of the bankruptcy. There may be restrictions on holding some statutory positions during the period of bankruptcy.	Professional bodies and/or trade associations may have certain conditions of membership for the duration of the agreement. There may be restrictions on holding some statutory positions during the period of the agreement.	Professional bodies and/or trade associations may have certain conditions of membership for the duration of the agreement. There may be restrictions on holding some statutory positions during the period of the agreement.
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Assets

	Bankruptcy	Debt agreements	Personal insolvency agreements
Ability to retain assets	No, unless it is exempt property (for example, household furniture, tools of trade up to a certain value).	Yes, unless terms of the agreement provide otherwise.	Yes, subject to the terms of the agreement.
Ability to retain assets acquired during the period of the agreement/bankruptcy	No, unless property being acquired is exempt property.	Yes	Yes
Can assets previously sold or transferred for less than market value be recovered?	Yes, subject to certain statutory conditions being met.	No	Not unless the agreement specifies that the antecedent transaction provisions of the Bankruptcy Act apply to the debtor.
Can payments made to creditors prior to the agreement/bankruptcy be recovered?	Yes, subject to certain statutory conditions being met.	No	Not unless the agreement specifies that the antecedent transaction provisions of the Bankruptcy Act apply to the debtor.

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Debts

	Bankruptcy	Debt agreements	Personal insolvency agreements
Unsecured debts	Unsecured creditors receive pro rata payment from funds recovered by the trustee after fees and costs have been deducted. There are some statutory priority payments to particular classes of creditors like employees.	All unsecured creditors receive pro rata payments.	Unsecured creditors can receive differential payment rates if the terms of the agreement provide for this. There are some statutory priority payments to particular classes of creditors like employees.
Secured debts	Rights of secured creditors are not affected. They can repossess asset if there is default in payment.	Rights of secured creditors are not affected. They can repossess asset if there is default in payment.	Rights of secured creditors are not affected. They can repossess assets if there is default in payment.
Release from debts	Upon discharge from bankruptcy, but not released from some types of debts.	Upon completing terms of agreement, but not released from some types of debts.	As per terms of the agreement, but not released from some types of debt.

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Restrictions

	Bankruptcy	Debt agreements	Personal insolvency agreements
Ability to travel overseas	Prior consent of trustee required. A fee is payable where the trustee is the Official Trustee.	No statutory restriction.	No statutory restriction.
Ability to travel within Australia	No statutory restriction.	No statutory restriction.	No statutory restriction.

Incurring further debt	Must disclose insolvency if incurring debt or obtaining goods and services in excess of a threshold. See Indexed amounts .	Must disclose the debt agreement if incurring debt or obtaining goods and services in excess of a threshold. See Indexed amounts .	No statutory restriction.
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Fees and charges

	Bankruptcy	Debt agreements	Personal insolvency agreements
Statutory filing fee	No.	Yes (see Fees and charges).	Yes (see Fees and charges).
Statutory levies	A government levy is imposed on all receipts in the administration. Any interest earned on these receipts is also paid to government. (See Fees and charges).	A government levy is imposed on all receipts in the administration. Any interest earned on these receipts is also paid to government. (See Fees and charges).	A government levy is imposed on all receipts in the administration. Any interest earned on these receipts is also paid to government. (See Fees and charges).
Fees for administration of the estate/s	Subject to creditor approval. Fees can be reviewed upon application to the Inspector-General. Note: Official Trustee's fees are set by statute. (See Fees and charges).	Subject to creditor approval. Note: Official Trustee's fees are set by statute. (See Fees and charges).	Subject to creditor approval. Fees can be reviewed upon application to the Inspector-General. Note: Official Trustee's fees are set by statute. (See Fees and charges).

This publication is a guide intended to provide general information and is not legal advice.

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