

## Personal Insolvency Agreement

A Personal Insolvency Agreement is similar to a Debt Agreement Proposal in Bankruptcy in that instead of going bankrupt, you try to come to a compromise with your (unsecured) creditors about paying your debts.

As in a bankruptcy or a Debt Agreement Proposal, if a Personal Insolvency Agreement is put in place, all interest on your unsecured debts ceases, and your (unsecured) creditors cannot pursue you through the courts to pay these debts, nor can they garnishee your salary or wages.

Unsecured creditors are those like a credit card debt, where none of your assets are tied up to the debt. If somebody else (like a parent) has given a personal guarantee to pay them, as sometimes happens with bank loans, then that loan becomes a secured debt.

The opposite to unsecured debts are secured debt, and as well as being the above personal guarantee situation, a secured debt is something like a car loan where the lender has taken out a Bill of Sale over the title to the car, so they can take it back and sell it if you fall behind with your repayments (not all car loans are secured in this way).

It's also like a bank mortgage, where the bank can take the house back and sell it if you fall behind with the payments.

Generally speaking, with a Personal Insolvency Agreement any further interest on your debt is frozen, and mostly you offer your creditors less than 100 cents in the dollar, or you ask for time to sell an asset (not as a fire sale) so that these funds can be used to pay your creditors in full and final payment.

A Personal Insolvency Agreement must have a registered trustee in charge of it. Nicholls & Co are registered trustees for this purpose. We will organize the necessary paperwork and meetings necessary to put this in place for you if you wish to proceed.

The most effective Personal Insolvency Agreement seems to be one where you are able to borrow a lump sum from somebody and offer your creditors say 10 to 20 cents in the dollar, straight away.

To the 10 to 20 cents in the dollar allow and additional amount for paying your trustee's fees and expenses, plus a tax to the government of 4% of the amount that you'll pay to your creditors.

Here now are some Frequently Asked Questions, and answers.

Are there income or ownership of asset thresholds which would bar me from entering into a Personal Insolvency Agreement, like there are with Debt Agreement Proposals?

No

Does a Personal Insolvency Agreement damage my credit rating?

Yes, just like with bankruptcy and a Debt Agreement Proposal, your credit rating is damaged for 7 years with the credit rating agencies, and your details are entered in the government's National Personal Insolvency Index for life.

Can I be a director of a company if I am in a Personal Insolvency Agreement?

No, not while its still current, but once it's completed you can be. **Formalizing a Personal Insolvency Agreement, and**

completing it can be very quick though, particularly if you're making a lump sum payment offer, and your offer is accepted. I talk more about this a bit further below.

What about my secured creditors, does it affect them?

No, you still have to pay them if you want to keep the asset that you are paying off.

What happens if things get tough, and I can't keep up my repayments under a Personal Insolvency Agreement?

If you've got a Personal Insolvency Agreement in place in which you're paying your creditors off over a period of time, and you fall behind, your creditors may approve a variation of the terms. If they don't then the Agreement will be cancelled and you'll be back to square 1. Bankruptcy may then be the only option left.

Are there any hard parts to a Personal Insolvency Agreement?

Yes, there are two hard parts. One is that you have to have a face to face meeting with your creditors at a formal meeting called by your trustee who will be in charge of your Personal Insolvency Agreement. This meeting votes to accept or reject your offer.

Your trustee would want the funds being offered and his fees and out of pocket expenses already in his trust account before calling this meeting. However, if the creditors accept then they can be paid within a day or so (which could be attractive to them), and steps can then be taken to finalize the formal parts of the whole thing.

This is a very good arrangement if you want something to happen very quickly. I'll cite you two examples.

You may be a director of a Pty Limited company. Well, as I've said earlier, you can't be a director if you're in a current Personal Insolvency Agreement, but if for a week or so you can appoint another person to be the director, and you then resign, and enter into a Personal Insolvency Agreement which can be finalized quickly, you will then be free to be re-appointed as a director again, and the other person can resign.

The second benefit to you if something like this could happen fairly quickly might be in a situation where you could see something happening down the track so to speak, like you getting a distribution from a will, or a big termination payment from your employment.

With a Personal Insolvency Agreement you could be able to have your debts sorted out this way before you become entitled to any windfall lump sum like this.

If you chose to struggle on and then eventually you go bankrupt, and the event happened during the three year term of your bankruptcy, then your bankruptcy trustee, by law, can claim what you owe your creditors, updated with whatever further interest may have accrued, plus generally a fair share as his fees. The government will also want their 4% of tax on the whole amount that is paid to the creditors. You can have what's left.

The second hard part, and this is really hard on you, is that with a Personal Insolvency Agreement, some personal and other details must be advertised in a local and national newspaper.

These personal details are your name and address, occupation, and if you have one, your business name.

I have known people who were keen to proceed with a Personal Insolvency Agreement to change their mind when told of this advertising requirement. They then considered that bankruptcy was a better option.

Would you like more information about Personal Insolvency Agreements?

Wherever you are in Australia I'd be very happy to discuss your position with you, no obligation of course. Initially just call me on 1300 794 492 and we'll have a chat about your situation. I may ask you to call me on my landline after that.

Alternatively you could email me at [alan@nichollsco.com.au](mailto:alan@nichollsco.com.au) in which you could set out your circumstances and I'll be back in touch and we'll see what can be done.