

# Personal Insolvency Information

JULY 2023, V2.0



## **Ministry of Business, Innovation and Employment (MBIE) Hīkina Whakatutuki – Lifting to make successful**

MBIE develops and delivers policy, services, advice and regulation to support economic growth and the prosperity and wellbeing of New Zealanders.

### **MORE INFORMATION**

Information, examples and answers to your questions about the topics covered here can be found on our website: [www.mbie.govt.nz](http://www.mbie.govt.nz).

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## How will my insolvency affect me?

All insolvency options affect your credit rating and may impact on your employment and financial activity.

- › Your bank can close your accounts or limit how you use them. Discuss this with your bank before you apply.
- › You may find it hard to get credit in the future, even after you've been discharged.
- › Your insolvency may affect your job. Discuss this with your employer before you apply.
- › Your insolvency may affect your family or business partner.
- › Your name will appear in the insolvency register, the NZ Gazette and credit reporting websites, in some cases permanently.

You must seriously consider these impacts before deciding to file for insolvency. We strongly encourage you to seek independent advice.

This booklet describes the insolvency options that are available to those in financial difficulty. To help you, we've included a comparison table (on page 12) that summarises the key points of each option. Definitions of some technical words are at the end of the booklet. We've *italicised* these words when first used in the main text.

### **Can I reach an agreement with *creditors* to avoid a formal insolvency procedure?**

If you can't pay your debts, you might still be able to avoid a formal insolvency procedure by reaching an agreement with your creditors. You can make a formal proposal to your creditors who will then vote on the proposal and if accepted, is enforceable on all creditors, including the creditors who don't vote or who vote against your proposal. The agreement could be a one off payment, a series of payments or a combination of both. A budget advisor, lawyer or accountant can help you.

# The insolvency options

You can choose the option that best matches your personal and financial circumstances.

## ■ OPTION 1: IF YOU OWE LESS THAN \$50,000

You may choose a Debt Repayment Order (DRO) if you owe less than \$50,000 in unsecured debt and can make regular payments towards your debts. You will still need to pay any secured debts, student loans, fines, criminal reparations or child support.

Once you are accepted into a DRO, creditors cannot add any more fees or costs to the amount you owe or take further action to recover their debt if you keep your payments up to date.

The repayment period is usually for 3 years. A *Debt Repayment Order Supervisor* will supervise your repayments during this time.

Before applying for a DRO, read pages 5-6 of this booklet.

## ■ OPTION 2: IF YOU OWE BETWEEN \$1,000 AND \$50,000

You may apply for a procedure called a **No Asset Procedure** (NAP) if you owe between \$1,000 and \$50,000 and have no assets or income left in your budget that could be used to repay part of your debt. The \$50,000 limit includes both secured and unsecured debt.

If you are accepted into a NAP you must continue to pay any student loans, fines and child support payments. You may also choose to continue to pay secured debts if you wish to retain the goods.

Before applying for a NAP, read pages 6-8 of this booklet.

## ■ OPTION 3: IF YOU OWE MORE THAN \$1,000

Choose the Bankruptcy option if you do not meet the criteria for the other options. The Official Assignee will sell your assets, and may collect payments from you to pay your creditors. You must continue to pay any fines and child support payments. On discharge you are released from your debts except any that were incurred by *fraud*.

Before applying for bankruptcy, read pages 8-11 of this booklet.

# How do I apply for an insolvency procedure?

1. Go to [www.insolvency.govt.nz](http://www.insolvency.govt.nz).
2. Login using your existing RealMe details or create a new login if you have not used our online system before.
3. Once logged on, follow the instructions.
4. Answer all the questions about your personal circumstances. When you have completed the application, the insolvency options available to you will be displayed.

For a DRO, you will need to select a supervisor to monitor your repayments. You should select your Debt Repayment Supervisor before you start the application process.

Don't forget to scan and attach the required supporting documents such as pay slips, bank statements or other documents that will help explain your situation.

Once you have submitted your application you will receive a verification form by email. You must sign it and scan it back to the email address provided in order for your application to be considered.

The application takes around an hour to complete.

It costs nothing to submit your application; however costs are recovered from money collected in the insolvency procedure.

## **What happens after I've submitted my application?**

Once the Insolvency and Trustee Service receives your signed verification, we will assess your application and may contact you if more information is required. Providing all information with your application or as soon as you are asked will mean your application can be processed as quickly as possible.

When we accept your application, you will receive notification and your name will appear on a public register on our website: [www.insolvency.govt.nz](http://www.insolvency.govt.nz).

# The options in more detail

This section has more details about the three options noted earlier in this booklet.

## ■ **OPTION 1: DEBT REPAYMENT ORDER**

A Debt Repayment Order (DRO) is a supervised repayment plan over a 3 year term.

You must owe less than \$50,000, not including secured debts, student loans, fines, reparations or child support.

When you are in a DRO and make your payments on time:

- › your creditors won't be able to add any further interest or charges to your debt
- › your creditors won't be able to take any further action against you.

Your supervisor will monitor your payments and communicate with you and your creditors. You should select a supervisor before you apply. A list of supervisors is on our website: [www.insolvency.govt.nz](http://www.insolvency.govt.nz).

### **Responsibilities during a DRO**

You must cooperate with your supervisor and the Official Assignee, including telling them both when you change your address, name, employment or income.

If you apply for credit of more than \$1,000, you must first tell the creditor that you are in a DRO. You should write to the creditor to ensure they understand your status. If you don't tell them, you will have committed an offence.

### **What debts must I still pay while subject to a DRO?**

While in a DRO you must also continue to pay any:

- › court fines and criminal reparation orders
- › child support and maintenance payments
- › student loans
- › debt incurred after you applied for the DRO, and
- › secured debts such as your mortgage, rates and hire purchase if you wish to keep the property the debts are secured over.

**What if my financial circumstances change?**

If your financial circumstances change, you can apply to have your Order changed or discharged.

**What happens to the money I pay?**

Your money is paid into the Official Assignee's trust account and used to repay your creditors and the costs of the supervisor and the Official Assignee.

**What happens if I miss a payment?**

If you miss a payment, the Official Assignee can cancel the Order. Once the Order is cancelled, your creditors can start action to recover the money you owe them. That money may include interest that they could not add while you were in the DRO. It is important that you keep in contact with your supervisor during your Order.

**What happens when my plan ends?**

When you have made all the payments required, you will be released from all debts that were included in your DRO and you are not liable to repay any further part of them. Your name is also removed from the public DRO register at that time.

**■ OPTION 2: NO ASSET PROCEDURE**

The No Asset Procedure (NAP) is a 12-month insolvency procedure which you can opt for if you:

- › have no surplus income to pay anything to your creditors
- › have no assets of value
- › have not sold or transferred any assets before you apply
- › have not been in a NAP or been bankrupt before
- › have total debts of more than \$1,000 and less than \$50,000 (excluding student loans, fines/reparations, child support or maintenance, but including any personal guarantees and debts owed as a trustee).

Before you apply for the NAP, we recommend that you ask a budget advisor for help. Being admitted into a NAP may significantly affect your future.



## **Responsibilities during a NAP**

You must cooperate fully with the Official Assignee. You must also tell the Official Assignee if you change your address, name, employment or income.

You must make sure the creditor knows about your NAP if you apply to:

- › get credit of more than \$100 after you've applied for a NAP; or
- › get credit of more than \$1,000 after you've been accepted into a NAP.

Write to the creditor to ensure they understand your status. If you don't tell them, you will have committed an offence.

A creditor can apply to the Official Assignee at any time during the 12-month period to have your NAP terminated. The Official Assignee may terminate your NAP if your financial position changes during the 12-month period.

## **What debts must I still pay?**

While in a NAP you must also continue to pay any:

- › court fines and criminal reparation orders
- › child support and maintenance payments
- › student loans
- › secured debts such as car loans or hire purchase if you want to keep the property that the debts are secured over
- › debt incurred after you applied to enter the NAP.

## **What happens to my bank account?**

The Official Assignee does not stop you having a bank account during your NAP. However, your bank may choose to close your account or limit the services.

## **Will my credit history be affected?**

Being in a NAP will affect your credit history for up to 5 years.

This is the length of time that your name will appear on the public Insolvency Register. Credit agencies also operate public websites and some of these agencies may keep your credit history for longer than 5 years.

### **What if creditors continue to chase me for repayment?**

Creditors are notified of your entry to a NAP within one working day. This means that they should stop contacting you soon. Once you've entered the NAP, you can tell any creditor to check your status on the Insolvency Register on our website: [www.insolvency.govt.nz](http://www.insolvency.govt.nz)

### **What happens when my NAP ends?**

At the end of your 12 month NAP you will be released from the debts that were included in the NAP unless those debts were incurred by fraud. If incurred by fraud, the creditor can recommence taking recovery action on their debt.

## **■ OPTION 3: BANKRUPTCY**

Bankruptcy usually lasts for 3 years. This will either be:

- › 3 years from the date you were accepted into bankruptcy; or
- › 3 years from when a fully completed *Statement of Affairs* is provided to the Official Assignee (where the Court made you bankrupt).

### **Responsibilities during bankruptcy**

Once you are bankrupt you must:

- › Co-operate fully with the Official Assignee, including giving them any information they request
- › complete a Statement of Affairs as soon as possible (if you were made bankrupt by the Court)
- › tell the Official Assignee when you change your address, name, employment or income
- › get the Official Assignee's consent if you wish to leave New Zealand (apply online at [www.insolvency.govt.nz](http://www.insolvency.govt.nz))
- › get the Official Assignee's consent to be self-employed, manage a business or be employed by a relative.

If you apply for credit of more than \$1,000, you must first tell the creditor that you are an undischarged bankrupt. Write to the creditor to ensure they understand your status. If you don't tell them, you will have committed an offence.

### **What debts must I still pay?**

While bankrupt you will still need to pay any:

- › court fines and criminal reparation orders
- › child support and maintenance payments
- › any debts that you incur after the date that you became bankrupt
- › secured debt where you decide to keep the goods.

### **What happens to my debts after I'm discharged from bankruptcy?**

Discharge from bankruptcy releases you from all debts included in your bankruptcy. This means that you no longer need to pay the debts, and the creditors can no longer chase you for repayment. However, if you incurred any debt fraudulently, you may not be released from those debts and these creditors may recommence action to recover their fraudulent debts.

### **What if my creditors continue to chase me for repayment?**

Creditors are notified of your entry to bankruptcy within 25 working days.

This means that they should stop contacting you soon. You can tell any creditor to check your status on the Insolvency Register on our website: [www.insolvency.govt.nz](http://www.insolvency.govt.nz)

### **What happens to my assets?**

Your assets (including any you gain during your bankruptcy) become the property of the Official Assignee who may sell them.

All assets remain the property of the Official Assignee until sold, even if you've been discharged from bankruptcy before this happens.

At the Official Assignee's discretion you will be able to keep:

- › necessary tools of trade
- › money up to a maximum of \$1,300
- › necessary household furniture and effects
- › a motor vehicle valued at \$6,500 or less.

If you transfer any asset (such as a car) to another person before your bankruptcy, the Official Assignee might cancel that transfer and recover the asset.

**What happens if I own my own home?**

If you own your home, it will be an asset in your bankruptcy even if you're still paying off your mortgage. You must continue to meet your mortgage payments until the Official Assignee decides whether to sell your house.

**What happens if I have Life Insurance?**

If you have life insurance that has a surrender value, the Official Assignee will seek to surrender the policy. If you have insurance that has a specific cover, such as death or illness, and that event happens during your bankruptcy, the Official Assignee will claim the insurance funds.

**What happens if I have funds in a KiwiSaver scheme?**

Funds in a KiwiSaver scheme are protected in bankruptcy. However, if you withdraw KiwiSaver funds other than for hardship or serious illness during your bankruptcy, that money will become the Official Assignee's property.

**What happens to jointly owned assets?**

Your share of a jointly owned asset will be part of your bankruptcy. The co-owner may be able to purchase the Official Assignee's share of the property.

**What happens to my income and bank account?**

The Official Assignee will assess whether you are able to make regular contributions from your income. You must keep the Official Assignee informed if your employment changes.

The Official Assignee does not stop you from having a bank account during your bankruptcy, and does not manage your money for you. However, your bank may choose to close your account or limit the services that they make available to you. You need to ask your bank how the bankruptcy will affect your accounts and how you use them.

**What happens to my partner's income?**

The Official Assignee will not claim your partner's income, although it will be considered when assessing your ability to make contributions.

**What happens to my tax refund?**

All tax refunds are an asset in your bankruptcy and Inland Revenue will send these to the Official Assignee if they relate to the period of your bankruptcy, even if you have already been discharged.

You will still receive Working for Family tax credits.

### **What happens if someone owes me money?**

Money owed to you will now be collected by the Official Assignee. The Official Assignee will try to recover the amount owed for the benefit of your creditors. You will need to send any documents you hold about the debt and payments to the Official Assignee.

### **Do I need consent from the Official Assignee to work?**

While you are bankrupt you need to obtain the consent of the Official Assignee if you:

- › are self-employed (including contracting or operating any business where you are responsible for paying tax, or where you employ one or more other people);
- › take part in managing or controlling any business or company (directly or indirectly);
- › are employed by a relative (or any company, trust or other entity owned, managed or controlled by a relative).

You will find the consent form in the 'Forms' section under the 'Help and Support' tab on our website: [www.insolvency.govt.nz](http://www.insolvency.govt.nz)

There may be conditions with the Official Assignee's consent and if you want to change any of the conditions, you will need the Official Assignee to agree in writing to the changes.

### **Can I travel overseas when I'm bankrupt?**

If you need to leave New Zealand while bankrupt, you will need to get the Official Assignee's consent. To apply, complete your request online at [www.insolvency.govt.nz](http://www.insolvency.govt.nz). You need to get this consent before you make your final bookings.

You need to submit your application at least 3 working days before you travel.

### **Will the bankruptcy affect my credit history?**

Your bankruptcy will affect your credit history for up to 7 years. This is the usual length of time that your name will appear on the public insolvency register. Credit agencies also operate public websites and some of these agencies may keep your credit history for longer than 7 years.

# Comparison table of the options

INSOLVENCY TYPE	DEBT REPAYMENT ORDER	NO ASSET PROCEDURE	BANKRUPTCY
<b>USUAL LENGTH OF INSOLVENCY:</b>	3 years.	1 year.	3 years.
<b>RESTRICTIONS TO ENTRY:</b>	<ul style="list-style-type: none"> <li>You can pay debts immediately.</li> <li>You owe more than \$50,000 of unsecured debts.</li> </ul>	<ul style="list-style-type: none"> <li>You owe less than \$1,000 or more than \$50,000 in total debts.</li> <li>You have realisable assets or can make repayments.</li> <li>You have been bankrupt or been in the NAP before.</li> </ul>	You owe less than \$1,000.
<b>WHILE IN THE PROCEDURE:</b>	You must not incur \$1,000 credit or more without disclosing your insolvency status.	<ul style="list-style-type: none"> <li>You must not incur \$100 credit or more without disclosing your insolvency status between applying for NAP and being accepted into NAP.</li> <li>You must not incur \$1,000 credit or more without disclosing your insolvency status after accepted.</li> </ul>	<ul style="list-style-type: none"> <li>You must not incur \$1,000 credit or more without disclosing your insolvency status.</li> <li>You must get the Official Assignee's consent to travel overseas.</li> <li>You must get the Official Assignee's consent before you can manage a company or be self-employed or be employed by a relative.</li> </ul>
<b>PUBLICATION ON ITS WEBSITE:</b>	Yes On the public DRO register for the period of the DRO.	Yes On public insolvency register for period of NAP plus 4 years.	Yes On public insolvency register for period of bankruptcy plus 4 years (or forever if you have multiple insolvencies).
<b>DEBTS THAT YOU REMAIN RESPONSIBLE FOR:</b>	<ul style="list-style-type: none"> <li>Maintenance Orders &amp; Child Support*.</li> <li>Court fines* &amp; Criminal reparations*.</li> <li>Student Loans*.</li> <li>Secured debt if you wish to keep the goods*.</li> </ul> (*not included in the \$50,000 debt limit above)	<ul style="list-style-type: none"> <li>Maintenance Orders &amp; Child Support*.</li> <li>Court fines* &amp; Criminal reparations*.</li> <li>Student Loans*.</li> <li>Secured debt if you keep secured property.</li> </ul> (*not included in the \$50,000 debt limit above).	<ul style="list-style-type: none"> <li>Maintenance Orders &amp; Child Support.</li> <li>Court fines &amp; Criminal reparations.</li> <li>Secured debt if you keep secured property.</li> </ul>
<b>ASSETS:</b>	Your assets are excluded unless you choose to include them in the DRO.	You can't have any assets of value when you enter a NAP. KiwiSaver is not considered an asset unless you're aged over 64.	All your realisable assets vest in the Official Assignee.
<b>FEES &amp; COSTS:</b>	\$102.22 fee + 10% of the contributions (taken from your regular payments).	No fee.	\$204.44 (debtor's application only) Official Assignee's costs (All fees and costs are recovered from monies collected in the bankruptcy)
<b>EFFECT ON CREDIT RATING:</b>	Your credit rating will be affected by your DRO and will show on credit reporting sites for up to 5 years.	Your NAP will show on credit reporting sites and credit checks for 5 years. This could affect your ability to get continued and new services (eg. banking, power, phone), or to find job security (including getting a job).	Your insolvency will show on credit reporting sites and credit checks for at least 7 years. This could affect your ability to get continued and new services (eg. banking, power, phone), or to find job security (including getting a job).

# Definitions

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## ▶ **Debt, Debtor and Creditor**

A debt is a specific sum of money that is owed. A person who owes a debt is called a debtor. The person they owe the debt to is called a creditor.

## ▶ **Discharge**

A discharge is when an insolvency procedure (Debt Repayment Order), No Asset Procedure, or Bankruptcy) is completed. The restrictions in place end, and nobody can continue to enforce the debts that were included. This generally happens 3 years after filing your Statement of Affairs for bankruptcy, 12 months after a debtor is accepted into the NAP or when the Debt Repayment Order is completed.

## ▶ **Fraud**

Wrongful or criminal activity resulting in financial gain.

## ▶ **Official Assignee**

The Official Assignee is the government official responsible for administering every No Asset Procedure (NAP), Debt Repayment Order (DRO), and Bankruptcies. The Official Assignee also makes orders for bankruptcy, NAPs, and DROs.

## ▶ **Secured debt**

Secured debt is where you have a formal agreement with the creditor that they can repossess something from you if you don't pay (such as your house if subject to a mortgage, or a computer on hire purchase).

The creditor has the right to repossess the asset if you fail to meet the terms of the agreement, no matter which insolvency option you choose.

▶ **Statement of Affairs**

A Statement of Affairs form is a document that applicants fill out when entering an insolvency procedure (NAP, DRO, Bankruptcy). The form notes details of the applicant's assets and liabilities.

▶ **Debt Repayment Order Supervisor**

A Supervisor is the person who monitors your Debt Repayment Order. They receive the claims of your creditors, make sure all contributions are received, and arrange to pay out creditors.

▶ **Termination**

A termination is where a NAP or DRO is cancelled if a person was wrongly accepted or becomes ineligible for the NAP or DRO during the order.

▶ **Trustee**

An individual person or member of a board given control to administer property for specific purposes.

▶ **Unsecured debt**

An unsecured debt is one where a creditor does not have the right to repossess and sell an asset towards repayment of the debt eg. a credit card account.



# Helpful Contacts

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It is recommended that you seek independent legal advice from lawyers, accountants and others in the legal, and budgeting and financial advice fields.

**Christians Against Poverty**

[www.capnz.org](http://www.capnz.org) or 0508 227 111

**Citizens Advice Bureau**

[www.cab.org.nz](http://www.cab.org.nz) or 0800 367 222

**Community Law Centres**

[www.communitylaw.org.nz](http://www.communitylaw.org.nz)

**Inland Revenue Department**

[www.ird.govt.nz](http://www.ird.govt.nz) or 0800 227 774

**Fincap**

[www.fincap.org.nz](http://www.fincap.org.nz)

Level 6, 330 Lambton Quay

PO Box 25332 Featherston Street  
6146, Wellington

04 471 1420

**Sorted website**

[www.sorted.org.nz](http://www.sorted.org.nz)

**Work and Income New Zealand  
(WINZ)**

[www.workandincome.govt.nz](http://www.workandincome.govt.nz)  
or 0800 559 009

If you have any questions  
please contact us:

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**Website: [www.insolvency.govt.nz](http://www.insolvency.govt.nz)**

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