



## Factsheet - Bankruptcy - General Principles

The law of bankruptcy is contained in the Bankruptcy Act 1966 (Cth), ["the Act"] which applies throughout Australia. Only natural persons can be made bankrupt. When a person becomes bankrupt, most of their property is taken over by either a registered trustee or the Official Trustee. A trustee can take most of a bankrupt's real estate and personal property situated in Australia or elsewhere, with some exceptions. A person will usually remain bankrupt for 3 years. Bankruptcy continues until discharge or annulment takes place. For some people, bankruptcy may be the best way to handle their debts. When considering bankruptcy, the advantages and disadvantages should be considered as well as all other options.

### *Advantages of Bankruptcy*

- bankruptcy wipes the slate clean and gives people a fresh start;
- some of the bankrupt's property comes under the protection of the Act and cannot be taken away to help pay their debts;
- demands from creditors generally stop once the person becomes bankrupt;
- all social security pensions and benefits are protected.

### *Disadvantages of Bankruptcy*

- a bankrupt's financial affairs and dealings are subject to thorough investigation;
- there is a set rate at which the bankrupt must contribute to their debts if they earn income;
- bankrupts will lose most of their valuable property;
- hire purchase companies may repossess the bankrupt's goods under bill of sale unless monthly payments are maintained;
- any savings or valuable goods acquired during the bankruptcy may be taken away;
- bankrupts must not obtain credit for \$4,145 (indexed), or more, from any one source without disclosing that they are bankrupt. To do so is an offence;
- bankrupts must not write a cheque or cheques for \$4,145 (indexed), or more, to pay for goods or services without disclosing the fact that they are bankrupt. To do so is an offence;
- an undischarged bankrupt has a duty to disclose the fact they are bankrupt if they trade under any business or assumed name;
- a bankrupt will still be liable for any court fines or maintenance debts;
- discharged bankrupts may have difficulty in obtaining unsecured credit in the future;
- fees are charged by the trustee in bankruptcy and paid from the sale of property;
- information on bankrupt persons is available on a computerised register of bankruptcies called the "National Personal Insolvency Index", which is a public record.

### *Property Protected from Bankruptcy*

- personal items;
- household property;
- tools of trade to a maximum value of \$3,000 (indexed);
- life assurance and superannuation policies;

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- damages and compensation payments;
  - motor vehicles - to a maximum value of \$5,900 (indexed) if the vehicle is owned solely by the bankrupt and \$11,800 (indexed) if the vehicle is jointly owned by two bankrupts;
  - goods subject to a bill of sale or other security;
  - goods on hire purchase and lease, but only where these are not subject to a bill of sale. Creditors can take action to repossess any goods subject to a bill of sale, where payments fall in arrears.

#### *A Bankrupt's Responsibilities*

All bankrupts have certain responsibilities to their trustee during their bankruptcy. These include: supplying all relevant information to their trustee; informing their trustee of any change of name, address, employment or income; making contributions from their income when a trustee issues an assessment; handing over their passport to their trustee and obtaining the permission of the Federal Court to travel overseas; disclosing their undischarged bankrupt status if applying for credit in excess of \$4,145; handing over all relevant books and documents if a business is bankrupt; ceasing to continue to be a director of a company or involved in the management unless first obtaining the court's permission; not trading under a business or assumed name without disclosing their undischarged bankrupt status.

#### *Action Available to Creditors*

If a person is declared bankrupt, the trustee will send a letter to each of the creditors. Unsecured creditors can take no further action to recover their debts other than to lodge a claim with the bankrupt's trustee. Secured creditors, mortgagees and bill of sale holders are entitled to enter into possession and sell the secured property if a debtor fails to make the required repayments. Any debts which a bankrupt incurs after he or she becomes bankrupt cannot be claimed in their bankruptcy. Creditors are able to take the usual legal actions to recover these debts.

#### **RELEVANT LEGISLATION**

Bankruptcy Act 1966 (Cth)

#### **CONTACTS**

Insolvency and Trustee Service Australia (ITSA)

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*The information contained in this factsheet is not legal advice. If you have a legal problem you should talk to a lawyer before making a decision about what to do. The information in this factsheet is written for people resident in, or affected by, the laws of Tasmania, Australia only. All questions concerning this factsheet to [info@legalaid.tas.gov.au](mailto:info@legalaid.tas.gov.au).*