

Bankruptcy

Anyone can talk to a lawyer for free at Tasmania Legal Aid.

To get free legal information call 1300 366 611, drop into our Hobart or Launceston office (no appointment necessary) or use the Legal Talk chat function on our website. We are open Monday to Friday, 9am to 5pm.

A lawyer can listen to your story and help identify the next steps you can take.

Bankruptcy is a legal process where a person has been assessed as not being able to pay their debts.

What happens when someone becomes bankrupt?

When a person becomes bankrupt, a bankruptcy trustee is appointed to manage the bankruptcy. A bankruptcy trustee in bankruptcy can be either the Official Trustee in bankruptcy as appointed by the Australian Financial Security Authority (AFSA) or a [registered trustee](#). A trustee can claim and sell some of a bankrupt's possessions or assets. This may include real estate and personal property situated in Australia or elsewhere, with some exceptions.

What are the advantages of bankruptcy?

For some people, bankruptcy may be the best way to manage their debts. Some of the advantages are that:

- it wipes the slate clean and gives you a fresh start with your money
- some of your property is protected by law and can't be taken away and sold to help pay your debts
- demands from the people you owe money to (creditors) generally stop once you become bankrupt
- all social security pensions and benefits are protected.

For more information, go to [Consequences of bankruptcy](#) on the Australian Financial Security Authority (AFSA) website.

What are the disadvantages of bankruptcy?

Some of the disadvantages of bankruptcy are that:

- your financial affairs and dealings are thoroughly investigated
- there is a [set amount](#) you must contribute to your debts from your income
- you will lose most of your valuable property
- hire purchase companies may repossess your goods under bill of sale unless you maintain monthly payments
- any savings or valuable goods you get during the bankruptcy may be taken away
- you must not get goods and services on credit for more than a [set amount](#) without disclosing that you are bankrupt – to do so is a criminal offence
- while you are bankrupt, you have a duty to disclose the fact that you are bankrupt if you trade under any business or assumed name
- you will still be liable for any court fines, child support, maintenance or HECS/HELP debts
- when you are discharged from bankruptcy and it ends, you might have difficulty in obtaining unsecured credit in the future
- fees are charged by the bankruptcy trustee and paid from the sale of property
- information on people who are bankrupt is available on the National Personal Insolvency Index, which is a public record
- it may affect your ability to travel

For more information, go to [Consequences of bankruptcy](#) on the Australian Financial Security Authority (AFSA) website.

What property is protected from bankruptcy?

Property that is protected from bankruptcy includes:

- personal items
- household property of a reasonable value
- tools of trade to a [set amount](#)
- money received during bankruptcy such as gifts and superannuation payments
- damages and compensation payments
- vehicles – the value of the vehicle (car or motorbike) minus the sum owing under finance cannot be more than a [set amount](#).

What are your responsibilities if you are bankrupt?

During the bankruptcy process, you are called a 'bankrupt'. As a bankrupt, you have certain responsibilities to your trustee during your bankruptcy. These include:

- supplying all relevant information to the trustee
- informing the trustee of any change of name, address, employment, income or inheritance
- making contributions from your income when the trustee issues an assessment
- handing over your passport to the trustee and obtaining the permission of the Federal Court to travel overseas
- disclosing your undischarged bankrupt status ('undischarged' means your bankruptcy hasn't ended) if you apply for credit above a [set amount](#)
- 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 your undischarged bankrupt status.

What can creditors do?

If you are declared bankrupt, the trustee will send a letter to each of your creditors (the people or businesses you owe money to). Unsecured creditors cannot take any further action to recover their debts other than to lodge a claim with the bankruptcy trustee. Secured creditors are entitled to take action to repossess property or goods if you do not make the required repayments. Any debts which you incur after you become bankrupt cannot be claimed in your bankruptcy. Creditors can take the usual legal actions to recover these debts.

How do I apply for bankruptcy?

You can apply for bankruptcy if you meet these 2 requirements:

- you cannot pay your debts when they are due
- you are present in Australia or have a residential or business connection to Australia.

There is no minimum or maximum amount of debt or income you need to be eligible for bankruptcy and there is no fee to apply to become bankrupt. If you are currently in a [debt agreement](#) and want to apply for bankruptcy, contact your administrator. You must end your debt agreement first before applying.

What is annulment?

An annulment is the cancellation of a bankruptcy. You can have your bankruptcy annulled if you:

- pay your debts in full
- arrange a 'composition', which is where your creditors (the person/company you owe money to) accept less than payment in full of what you owe them
- prove in court that you should not have become bankrupt, for example, someone stole your identity.

When does the bankruptcy end?

You don't need to apply to be discharged from bankruptcy. This is an automatic process, and it will end 3 years and 1 day after the bankruptcy started.

What else do I need to know?

For more information on bankruptcy and forms to use, go to the [Australian Financial Security Authority \(AFSA\) website](#).

This is written for people who live in or who are affected by the laws of Tasmania, Australia. The law changes all the time – this information is not legal advice. If you have a legal problem, you should talk to a lawyer before making a decision about what to do.