



Factsheet 20: Bankruptcy

Bankruptcy is a **process that provides protection to people who cannot repay their debts and cannot reach an arrangement with their creditors**. If you are bankrupt, creditors are generally unable to continue or start action to recover debts against you.

Generally you will be bankrupt for **three years** but this can be extended for five to eight years.

When you owe people money, you are known as a 'debtor'. The person you owe money to is known as a 'creditor'.

You can **voluntarily file** for bankruptcy, or a **court may make an order** making you bankrupt if a creditor or creditors to whom you owe \$5000 or more approach or petition the court.

The cost of filing for bankruptcy

There is no fee to apply to become bankrupt.

Who else can apply to make me bankrupt?

A creditor may apply to make you bankrupt if you owe them \$5000 or more. More than one creditor (people that you owe money to) can do this jointly if you owe them \$5000 or more in total.

How do I file for bankruptcy?

Complete and lodge a number of forms with the Australian Financial Services Authority (AFSA) or through a registered trustee. Those forms are: a debtor's petition, a statement of affairs, and an acknowledgement that the 'prescribed information' has been received and read. These forms, and a list of registered trustees in Australia, are all available online at www.afsa.gov.au.

What is the effect of going bankrupt?

If you become bankrupt, most of your debts will be covered and you will no longer have to repay them. There are exceptions (see below). In some cases, your trustee may sell your assets or use compulsory payments to help pay your debts.

1. When you become bankrupt, most of your property will generally be under the control of the a trustee who will manage your bankruptcy.
2. If you have any significant assets you would expect to have to surrender them for the benefit of your creditors. The creditor will usually recover the following assets:
 - a. Houses, land, farms and business premises,
 - b. Shares and investments,
 - c. Tax refunds for income earned before you became bankrupt,
 - d. Proceeds of a deceased estate where the person died before or during your bankruptcy,
 - e. Lottery winnings and other competition prizes.
3. You are still allowed to keep some assets while in bankruptcy:
 - a. Most ordinary household items,
 - b. Tools used to earn certain income,
 - c. Some vehicles,
 - d. Most balances in regulated superannuation funds and payments from those funds you went bankrupt,
 - e. Life insurance policies for you or your spouse, and the proceeds from these policies received after your bankruptcy,



- f. Compensation for personal injury and assets purchased wholly or substantially with such money,
 - g. Assets held by you in trust for someone else,
 - h. Awards of sentimental value to you (if creditors agree to this).
4. The fact that you have gone bankrupt will go on the National Personal Insolvency Index, which can be accessed by anyone, and will affect your credit rating.

What happens to my income?

You may earn any amount of income while you're bankrupt. You can also save any amount during your bankruptcy. However, if your after-tax income exceeds a [set amount](#), you may have to make compulsory payments. This amount changes with how many dependants you have.

Your trustee can use these payments to contribute to your debts and help pay them off. Compulsory income payments are usually 50% of the amount you earn above the income threshold.

Exceptions to bankruptcy protection

Filing for bankruptcy will protect you from certain creditors being able to continue or commence action to recover debts you owe them. However, bankruptcy does not affect certain debts (including:

- court imposed penalties and fines
- child support & maintenance
- HECS & HELP debts (government student loans)
- debts you incur after your bankruptcy begins
- unliquidated debts (e.g. a debt where you and your creditor are yet to determine the amount).
- debts incurred by means of fraud or fraudulent breach of trust). Even while you are bankrupt you will still have to pay those debts.

If a Centrelink overpayment occurs as a result of administrative error, it is included in debts discharged following bankruptcy.

A debt owed to the Australian Tax Office is released on bankruptcy, but if the Tax Commissioner issues a Statutory Garnishee over your wages prior to the date of bankruptcy, it will not be released.

Specialist advice should be obtained in these cases.

For more information see:

<https://www.afsa.gov.au/insolvency/i-cant-pay-my-debts/what-happens-my-debts-when-im-bankrupt/debt-comparison-table>

What are the implications of bankruptcy?

Bankruptcy is not a 'simple fix' to financial problems. It is a complex and serious situation with significant consequences and should not be entered lightly. Before declaring bankruptcy you should seek specialist advice.

- Bankruptcy may affect your income, employment and business

If you earn over a [set amount](#), you may need to make compulsory payments to your trustee. There may also be some restrictions on your employment and running a business.

- Bankruptcy does not release you from all debts
- It affects your ability to travel overseas

You must surrender your passport request permission from your trustee to travel overseas. It's an offence to travel overseas without consent in writing.

- Your name will permanently appear on the National Personal Insolvency Index (NPII)

The National Personal Insolvency Index is a searchable public register listing insolvency proceedings in Australia.

- Bankruptcy can affect your ability to obtain future credit

If you apply for credit over a [set amount](#), you must inform the credit provider of your bankruptcy.

- Your trustee may sell your assets
- You may lose the right to take or continue legal action

If you're involved in any legal action, you need to inform your trustee.



STREET LAW

Where can I get more information?

- Call Street Law for help on 6218 7995. We are a free legal service for people who are homeless or at risk of homelessness
- Call a financial counsellor such as Care Financial Counselling on 1800 007 007
- Contact the Australian Financial Security Authority on 1300 364 785
- Contact a private lawyer or financial advisor
- See <https://www.afsa.gov.au/>

Street Law acknowledges the Australian Financial Security Authority website as a source for much of the information contained in the factsheet.

The material in this fact sheet is intended as a general guide only. Readers should not act on the basis of any material in this publication without first getting legal advice about their particular situations.

If you would like more information, please contact Street Law on 1800 787 529 or info@streetlaw.org.au.

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