



Fact Sheet 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 \$10,000 or more approach or petition the court.

1. 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.

2. Who else can apply to make me bankrupt?

You can apply for bankruptcy if:

- You are unable to pay your debts when they are due; and
- You are present in Australia.

A creditor may apply to make you bankrupt if you owe them \$10,000 or more. More than one creditor (people that you owe money to) can do this jointly if you owe them \$10,000 or more in total.

3. The cost of filing for bankruptcy

There is no fee to apply to become bankrupt.

4. How do I file for bankruptcy?

To apply for bankruptcy you need to:

- create an Insolvency Services account;
- Prove your identity; and
- Complete and submit a bankruptcy Form through your Insolvency Services account.

5. What happens if I become 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 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. Items that are reasonably appropriate for the household,
 - c. Tools used to earn certain income,
 - d. Some vehicles,
 - e. Assets held by you in trust for someone else,
4. The fact that you have gone bankrupt will affect your credit rating.

6. 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 (<https://www.afsa.gov.au/insolvency/how-we-can-help/indexed-amounts-0>), 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.

7. How can bankruptcy affect my future?

Bankruptcy can affect:

- Future income;
- Future employment;
- Business;
- Ability to travel overseas;
- Ability to obtain future credit;
- Your rights to take legal action;
- Your trustee can sell your property; and
- Your name will appear on the National Personal Insolvency Index which is a public register.

8. When does Bankruptcy end?

Generally after 3 years. However, if an objection is made to your bankruptcy ending you could be bankrupt for 5 or 8 years.

9. 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:

- 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)
- House mortgages
- Business loans secured by a business asset
- Council rates
- Water rates
- Debts incurred by means of fraud or fraudulent breach of trust.

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>

10. Where can I get more information?

- Call Street Law for help on 6218 7900. 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 (02) 6257 1788
- Contact the Australian Financial Security Authority on 1300 364 785
- Contact the National Debt Hotline on 1300 007 007
- 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.