



## The consequences of individual bankruptcy

**Bankruptcy has serious consequences and should be avoided if at all possible.  
If you go bankrupt, it can affect you for the rest of your life.**

### What is bankruptcy?

Bankruptcy is one of the options available under the Bankruptcy Act to people who cannot pay their debts or cannot come to a satisfactory payment arrangement with the people they owe money to (their creditors). Bankruptcy offers legal protection from further action by creditors, but it has benefits and costs and imposes obligations and restrictions on the bankrupt. It should not be regarded as a 'get out of jail free' card.

### Who can apply for bankruptcy?

#### You:

- You can become bankrupt voluntarily and owing any amount of money;
- You can do this by filing the following documents with the Official Receiver, care of the Insolvency and Trustee Service Australia (ITSA): a Debtor's Petition, a Statement of Affairs, and a form acknowledging that you have read certain Prescribed Information (available at [www.itsa.gov.au](http://www.itsa.gov.au) by following the 'Bankruptcy' links);
- The law allows for a 7-day 'cooling off' period after you have filed for bankruptcy for you to obtain advice about your position and to consider the seriousness of this option.

#### A creditor:

- A creditor may also petition the Court for your bankruptcy;
- A creditor cannot make you bankrupt unless the creditor has obtained judgement against you and the debt is at least \$2,000.

### Who administers a bankruptcy?

Your bankruptcy will be administered:

- By the **Insolvency and Trustee Service Australia**, or
- By a **registered trustee** who agrees to administer your estate.

### What does a trustee do?

- Converts into cash any **assets** you have that are not protected from bankruptcy:
  - Protected property includes most household goods and furniture, personal effects, superannuation, limited tools of trade, and a motor vehicle worth up to \$6,000 (this amount is indexed each year);
- Ensures that you make **regular payments** to the trustee for the benefit of creditors if your after tax income is more than \$37,146.20 (this amount is also indexed):
  - The level of your payments depends on factors such as the number of your dependants and any child support being paid;
- Reports back to your creditors.

### How long does bankruptcy last?

- The usual period of a bankruptcy is 3 years from the date a Statement of Affairs is filed (the early discharge from bankruptcy is only available to existing bankruptcies prior to 5 May 2003);

- This period may be extended to 5 or even 8 years if you breach any of the conditions of bankruptcy and your trustee objects to your discharge as a result.

### Will anything change while you are bankrupt?

- **Credit**

If you borrow money or purchase goods on credit for an amount exceeding \$4,170.00 (this amount is indexed), it is an offence if you do not inform the person you are dealing with that you are an undischarged bankrupt.

- **Employment**

Your employer is not normally notified of your bankruptcy, unless you owe her or him money. Your bankruptcy may, however, prevent you from undertaking employment in certain occupations (such as the security industry) or from holding various licences, e.g. as a licensed builder.

- **Change of details**

You are required to inform your trustee of any changes to your name or address.

- **Travel**

Any person who is an undischarged bankrupt must obtain written permission from the Court or from his or her trustee before undertaking any overseas travel. Where consent is given to travel, the trustee may impose written conditions. Failure to return to Australia when requested by the trustee can result in the bankruptcy being extended, and also constitutes a criminal offence punishable by imprisonment.

### Different types of debt are handled in different ways in bankruptcy

#### *Example 1*

*Tracey is 26 years old. Her financial situation includes:*

- *A **HECS debt**;*
- *A **Centrelink debt**;*
- *Late **mobile phone bill** payments (unsecured debt);*
- ***Credit card bills** which she can't seem to pay off in full (unsecured debt);*
- *Overdue **car loan** payments (secured debt);*
- *Overdue **personal loan** payments. The loan is guaranteed by Tracey's stepfather.*

### Debts not covered by bankruptcy

Some debts are not covered by bankruptcy and so Tracey will still be liable for them. These debts include: fines for breaches of the law, debts arising from fraud, maintenance payments, Child Support, accumulated **HECS** (Higher Education Contribution Scheme) and **HELP** (Higher Education Loan Programme) debts and Student Supplement Loans. Debts owed to the Department of Social Security (**Centrelink**) may or may not be covered by bankruptcy, so Tracey will need to confirm with Centrelink whether or not her HECS debt is covered.

### Unsecured Debts

An **unsecured debt** is a debt that is not secured by any assets, such as Tracey's **credit card** debt, **mobile phone** bills or **personal loan**. Unsecured creditors generally do not have the right to take back the item you purchased from the funds advanced by them. If Tracey goes bankrupt, the credit card or mobile phone provider can take no further action against Tracey to recover the debts but may lodge claims in the bankruptcy.

### Secured Debts

A **secured debt** is a debt secured by an asset, such as a **bill of sale over a car**. This entitles the secured creditor to recover the property and sell it if you fall behind in payments. The lender of the car loan, as a creditor, may claim and re-sell Tracey's car and, if this does not cover the amount of the debt, the creditor is entitled to lodge a claim in the bankruptcy for any loss incurred.

## Guaranteed Debts

The lender of the personal loan is entitled to recover payment from Tracey's stepfather, the guarantor to the loan. Once the lender has been paid, Tracey's stepfather then becomes a creditor and is able to lodge a claim in Tracey's bankruptcy for the amount of the debt.

### Example 2

*Barry is 47 years old. His financial situation includes:*

- *Marriage to Jill; they have 3 children;*
- *Overdue payments for a **personal loan** held in joint names (unsecured debt);*
- *Overdue payments on **mortgage** on their house held in joint names (secured debt);*
- *Owns and operates a **lawn-mowing business**, which is in Barry's name only as a sole trader;*
- *Received a Porsche Boxster as a beneficiary of his father's deceased estate. Barry transferred the Porsche into his wife's name 3 months ago.*

## Loan in joint names

Generally for a **personal loan in joint names**, if one party (in this case, Barry) declares himself bankrupt, the other party (Jill) will still have a liability for the total outstanding amount which is incurred in their joint names.

## Mortgage in joint names

If you are declared bankrupt, your trustee may have to sell your house or property to find money to pay your creditors. A mortgage is a secured debt, so the financial institution which granted the mortgage is entitled to sell your property if you are unable to meet the mortgage repayments. Even if you were not in default with your mortgage repayments, but were declared bankrupt as a result of your inability to pay another debt, the fact that you have been declared bankrupt would be an event of default under the mortgage. If the sale does not realise enough money to repay the mortgage, the remaining amount will be a debt in your bankruptcy; if there is a profit, the extra money will be paid to your trustee.

Barry is only one of the joint owners of their house. If he becomes bankrupt, then his trustee will become registered as a 'tenant in common' of the house with Jill, the non-bankrupt owner, or will lodge a caveat on the title to protect Barry's interest in the house.

The trustee will first give Jill, as the non-bankrupt owner, an option to buy Barry's share of the net equity in the home from the trustee. If Jill cannot afford to buy Barry's share, she may agree with the trustee to sell the home. Both the trustee and the non-bankrupt owner will usually receive equal shares of any money left over after the mortgage and related expenses are paid. If Jill refuses to co-operate, the trustee can apply to the Court for an order that the property be sold and the proceeds be divided between Jill and the trustee.

## Operating a business

Barry can still operate a business while bankrupt. If Barry trades under an assumed name or business name other than his own name, either as a sole trader or in partnership, he must disclose his bankrupt status to every person with whom he is dealing. He cannot be a director of a company or be involved in its management without the permission of the Court.

## Transfer of assets prior to bankruptcy

The trustee has considerable powers to claim back property or money which Barry, as the bankrupt, may have transferred to others in order to avoid it falling into the hands of creditors. This is an offence under the

*Bankruptcy Act*, and the trustee's powers can include recovering assets which were transferred up to 5 years before the bankruptcy. Similar powers exist to claim back payments to creditors who may have had their debts paid in preference to other creditors shortly before Barry's bankruptcy.

### **What happens when you have discharged your bankruptcy?**

- **Debts incurred after bankruptcy**

You will still be responsible for any debts you incurred after you became bankrupt, i.e. from the date you file a Statement of Affairs.

- **Credit rating**

You will be listed as a bankrupt on a commercial credit reference record. This record is open to public search and your name will appear on it for 7 years from the commencement of your bankruptcy, even if your bankruptcy has been discharged since then.

- **National Personal Insolvency Index**

The ITSA records your bankruptcy on the National Personal Insolvency Index database. Your name will appear on this database forever.

- **Other difficulties**

Lenders may limit your ability to borrow money or buy things on credit; you may find it hard to rent, or get electricity, water or the telephone connected without paying a bond; and some banks will not let you operate a bank account or will restrict how you use an account. You may find it hard to get or renew insurance. Job opportunities may also be affected by your bankruptcy.

**We strongly suggest that you seek financial advice and consider all the options available to you before going bankrupt. It is important to be aware of all of the consequences of bankruptcy.**

### **For further information and financial advice, contact:**

- **ITSA**

- ITSA (Brisbane) (07) 3360 5444  
1300 364 785 (cost of a local call)  
[www.itsa.gov.au](http://www.itsa.gov.au)

- **Financial counselling services:**

- Lifeline (Brisbane) (07) 3250 1900  
[www.lifeline.org.au](http://www.lifeline.org.au)
- Salvation Army Moneycare (07) 3222 6621  
Counselling Service (Brisbane) [www.salvos.org.au](http://www.salvos.org.au) (follow the links to 'Our Services', 'Counselling' and 'Moneycare')

- **For referral to a community legal centre:**

- Legal Aid Queensland (07) 3238 3444  
1300 651 188 (cost of a local call)  
[www.legalaid.qld.gov.au](http://www.legalaid.qld.gov.au)
- Queensland Public Interest Law Clearing House  
Consumer Law Advice Clinic (07) 3012 9773  
[www.qpilch.org.au](http://www.qpilch.org.au)