

OVERVIEW OF BANKRUPTCY

WHAT IS BANKRUPTCY?

Bankruptcy is a legal process where you are unable to pay your debts. It can release you from most debts, provide relief and allow you to make a fresh start.

You can enter into voluntary bankruptcy, or it is possible that someone you owe money to can make you bankrupt through a court process. This is referred to as a Sequestration Order.

Bankruptcy normally lasts for 3 years and 1 day.

AM I ELIGIBLE FOR BANKRUPTCY?

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

- you're unable to pay your debts when they are due; and
- you're 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.

If you're currently in a debt agreement and want to apply for bankruptcy, contact your administrator. You must terminate your debt agreement first before applying.

DO I STILL HAVE TO PAY MY DEBTS?

It depends on the type of debt. Most unsecured debts such as credit cards and utility bills are covered in bankruptcy.

If you have a secured debt and want to keep that item, for example a car under finance, you will still have to pay that debt. If you are unable to pay your secured debts, you must surrender the secured items back to the creditor.

INCOME AND EMPLOYMENT / INCOME CONTRIBUTIONS

Becoming bankrupt does not prevent you from working, but it could have an impact on your income and employment.

There is no limit to the amount of income that you can earn while you're bankrupt. There is also no limit to the amount you can save 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.

The Income Thresholds are detailed below:

- \$66,639.30 – No dependants
- \$78,634.37 – 1 dependant
- \$84,631.91 – 2 dependants
- \$87,963.88 – 3 dependants
- \$89,296.66 – 4 dependants
- \$90,629.45 – More than 4 dependants
- Maximum dependant Income – \$3,975

SUPERANNUATION

Superannuation is protected by the Bankruptcy Act 1966, regardless of the amount. The Trustee will review payments made into any superannuation account to ensure that no payments have been made to defeat creditors.

CASH/MONEY IN A BANK ACCOUNT

The Trustee can take any funds you have in a bank account at the date of bankruptcy, but will leave you with enough for modest living expenses.

TOOLS OF TRADE

You are entitled to keep any tools you own, as long as they are below a value of \$3,950.

VEHICLES

You can keep a Car / Motorbike you use for transport up to the value of \$8,550.

COMPANY DIRECTOR

A Bankrupt cannot be a Director of a Company during the Bankruptcy period. Once the Bankruptcy has been finalised there are no restrictions.

PROPERTY / ASSETS

During bankruptcy, your Trustee may be able to claim and sell some of your assets. Your Trustee can use proceeds from the sale of your assets to repay creditors. Assets may include, but are not limited to, real estate, vehicles, bank balances, tools, lottery winnings and Deceased Estates.

TAX RETURNS

When you become bankrupt, you have some obligations when it comes to your tax returns – just as you did prior to bankruptcy.

Whether you can keep your tax return depends on your circumstances. You must inform your trustee when you receive your tax refund. You also need to provide a copy of your ATO Notice of Assessment. It's important to not spend your tax refund until your trustee makes an assessment and informs you if they have a claim in the refund.

Your trustee calculates the following and notifies you of the outcome:

- Refunds for income you earn before you enter bankruptcy is an asset your trustee can claim.
- Refunds for income you earn after you enter bankruptcy form part of your assessable income for compulsory payments. If your assessable income exceeds a set amount you may need to make compulsory payments.

You still need to lodge your tax returns as your obligations to the ATO remain during bankruptcy.

WHAT HAPPENS AFTER BANKRUPTCY

After your bankruptcy has ended, there is no restriction on applying for loans or credit. It's up to the credit provider to decide if they will lend you money.

Your credit report will continue to show your bankruptcy for either:

- 2 years from when your bankruptcy ends or
- 5 years from the date you became bankrupt (whichever is later).

It can take time to rebuild your credit rating.

The Bankruptcy Act 1966 does not impose any restrictions on employment, either during or after bankruptcy. However, some trades or professions may impose restrictions.

We recommend you contact the relevant agency or association to see if your bankruptcy will impact your employment. Common professions that bankruptcy may affect are listed at [employment restrictions](#) on the Australian Financial Security Authority website.

You can travel overseas and no longer need your Trustees' permission when your bankruptcy ends.

Normally you don't need to keep in contact with your Trustee, however in some cases your Trustee continues to manage your bankruptcy, even after it has ended.

Should you require assistance managing your money once your bankruptcy has ended, we can put you in contact with an accountant who will be able to assist you going forward.

SECTION 73 COMPOSITION

A Section 73 Composition is an offer to creditors to repay a percentage of your debts. If your Composition is successful, this will annul your bankruptcy immediately and the National Personal; Insolvency Index (NPII) will be updated to reflect this.

In relation to the Contribution Amount, you can put forward any amount of your choosing and a timeframe for payment of this amount. Debtors would usually put forward a proposal of around 5 to 10 cents in the dollar of their total creditor pool amount. We do not recommend that the timeframe exceeds more than 6-9 months.

Within the Composition offer you must outline the following:

- Set out the terms of your proposal;
- Allow for payment of the trustee's fees and expenses; and
- Allow for payment of the realisations charge to the Australian Financial Security Authority (AFSA) which is 7%. This is a statutory payment that has to be paid to AFSA and cannot be waived.

Within the Trustee's Report to Creditors, they will provide a recommendation to creditors to either Accept or Reject the Composition Proposal, and they will provide two different scenarios, being a continued Bankruptcy Scenario and a Composition Scenario.

The continued Bankruptcy Scenario is on the basis of the future recovery of any assets and any income contributions expected to be paid over the term of the bankruptcy. Creditors however do not have to accept the Trustee's recommendation and are able to vote for or against the proposal if they wish.

For the Composition to be accepted, the Debtor will require a "yes" vote in favour of the composition a majority in number of creditors and 75% of the dollar value. This is referred to as a special resolution.

If creditors accept the offer, the bankruptcy will be annulled immediately even if the proposal is to pay the Composition amount over a period of time.

Should you have any queries regarding the above information or any other personal insolvency matters, contact our team via hamiltonmurphy.com.au or send us an email to info@hamiltonmurphy.com.au.

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