Bankruptcy Information

Bankruptcy Explained

The purpose of the Bankruptcy Act is to provide a humane solution for persons who are unable to pay their debts.

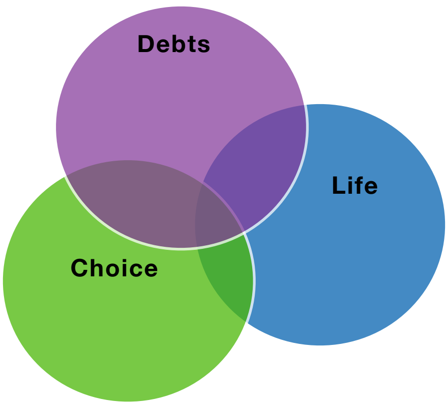
If you feel overwhelmed by financial pressures then bankruptcy is a legitimate way for you to get out of debt so that you can start again, get back on your feet and get on with your life.

Thousands of "ordinary people" choose to utilise bankruptcy each year and any one can go bankrupt. The pressures of debt can be suffocating and this is the reason for the bankruptcy act. The types of debt people feel overwhelmed by include credit card debt, personal loan debt, tax debt or debt from an adverse Court Judgement and much more. Some of the causes of these debts can include; relationship breakdown, unemployment or underemployment, sickness, adverse Court judgement, business failure, act of nature (eg Floods), a personal guarantee and structural change within an industry just to name a few.

Only individuals can go bankruptcy. If you have a company that is unable to pay its debts then liquidation is a companies way of going bankrupt and requires a little more work but in many ways the processes are quite similar.

If you are considering bankruptcy then you need to know how it works and how it may effect your life. Bankruptcy needs to be a sensible solution for both the person going bankrupt as well as the creditors who are owed the money. Too often the person who owes the money is pressured by the creditor to pay them. If the person cannot pay the debt they will often experience increasing emotional, relationship and health problems. As time progresses the ability to repay the debt deteriorates until their life implodes. This is no good for anyone. It is best to be open and honest, admit you can’t pay the debt and declare bankrupt. Then everyone knows where they stand.

Bankruptcy enables everyone to put direction into their lives and so be able to plan forward.



Take away the emotion and it comes down to maths, you can choose to serve your debts or regain your life.

How Does A Person Become Bankrupt?

To obtain the protection of bankruptcy you firstly need to accurately complete two very lengthy documents, a Debtors Petition and a Statement of Affairs. Once completed you are required to lodge them with a bankruptcy trustee then answer any queries the trustee may have concerning the documents. Completing the Statement of Affairs and debtors petition can be very stressful. Often times people begin putting together their Statement of Affairs and give up after five or ten pages, the end result of which is a return to the financial stress, endless phone calls, toxic letters appearing in the post box not to mention the sleepless nights go on. The proper completion of these forms is very important.

What Happens Once A Person Becomes Bankrupt?

Once a person obtains the protection of bankruptcy, all debts vest in the bankrupt estate and you become debt free. An important point to note is that sometimes you may be persuaded to consider a bankruptcy alternative. These are known as either Debt Agreements or Personal Insolvency Agreements. In these cases you are not released from your debts until you have met the terms of the agreement and the final payment is made. Often times with Debt Agreements that is five years down the track. In my opinion a bad option.

Once the Bankruptcy is in place then the bankruptcy number and date of bankruptcy are recorded on the National Personal Insolvency Index. The Trustee will write to all creditors to let them know to contact his office regarding their liabilities and the person who has obtained the protection of bankruptcy is advised to direct all creditors to the Trustee's office. This relieves the now bankrupt person from all the harassing phone calls, emails and letters.

The bankruptcy is not advertised in a newspaper and the person who has obtained the protection of bankruptcy can start putting the stresses of being unable to repay their debts behind them and get on with life.

What Happens if the Person Who Files for Bankruptcy is the Director of a Company?

The Corporations Act precludes persons from being a director of a company whilst they are subject to bankruptcy. Once a person obtains a bankruptcy number they need to lodge some specific forms with ASIC.

Once a person lodges these forms, if the company is left with no directors, you can expect ASIC to deregister the company as a directorless company. It may well be that one of the creditors will initiate a Court winding up of the company before ASIC gets to the point of deregistering the company. Either way, once you have removed yourself from being a director of the company, you will no longer have capacity to act on behalf of the company and should leave issues regarding the company to a Liquidator if appointed, or ASIC. We do however recommend that a letter be issued to all the creditors of the company to tell them what you are doing so they can decide what actions they wish to take, if any.

How Does Life Work During Bankruptcy?

Once you obtain the protection of bankruptcy, life goes on as normal. The biggest difference people tell us is that they can use their wages to live rather than having no money because all their wages were being used for loan repayments. The Trustee is not involved in your daily life. The role of the Trustee is to administer the bankrupt estate although it is worth mentioning that you are required to help the Trustee should that be required. That might mean sending a document or having a chat on the telephone.

Household furniture & effects are protected unless you have items of value that will appreciate like works of art or antique furniture. You are able to save and replace items of furniture & effects during the three years of the bankruptcy. You can retain tools of trade to an auction value of $3,600. This amount enables a lot of tools of trade to be retained as these days tools tend to sell for very little at auction.

Transport is very important; you can retain cars to an auction value of $7,350. These days a lot of people have cars on finance and normally the lender will allow people to retain the car during the three years you are bankrupt (and then once bankruptcy has been completed) provided the payments are kept up to date. They do this as cars depreciate rapidly and if the financier repossess the car they will most likely sell it for less than the amount owing and bring a loss to account. This loss would be a provable debt in the bankruptcy. To avoid this lenders allow people to retain the car and to continue making the payments. If in any doubt, we recommend that you discuss the car with the lender prior to proceeding to lodge the papers for bankruptcy. It is important that you can function in your day to day life post bankruptcy. Where a car is subject to finance, the value of the car that can be retained is the loan payout plus $7,350. For example, if the loan payout is $20,000 then for the car to be retained its auction value should not be more than $27,350. If you have a car that exceeds the $7,350 threshold equity amount and you need to retain the vehicle, give us a call and we will try to help and will look to see if anything can be done to help you retain the car.

A Debit Card. We recommend to people that they obtain a Debit Card so they still have the convenience of a credit card if travelling, buying goods on line etc. A Debit Card works the same as a credit card except you are using your own money and do not have the costs and interest that will be incurred on a credit card if the monies are not repaid on time. During the 3 years of bankruptcy you must disclose your bankruptcy when applying for, or obtaining goods and services on credit or by cheque for more than $5,333. Normally, once subject to bankruptcy you will not be able to obtain a credit card and we recommend that you do not obtain credit as you will most likely be charged a high rate of interest which will detract from your funds that are available for day to day living. Use bankruptcy to create the habit of saving, no matter how small the amount being saved is.

Plan. Bankruptcy is not only about assisting you to resolve debt that you are unable to repay, it is also about reconfiguring the way you live your life going forward. We recommend that you create some quiet time and plan how you want to live your life once you have the protection of bankruptcy, it is a new start so do not waste the opportunity.

Cash. On the day of your bankruptcy, most Trustees will allow you to have $1,000 in your bank account. Once you have received your bankruptcy file number and have the protection of bankruptcy, any money you save in your bank account from your income is protected. However these monies must remain in your bank account and cannot be invested into property, managed fund, shares etc. The funds can however be used for living expenses, replace a fridge, lounge, TV or even to go on a holiday etc. Once discharged from bankruptcy the funds in the bank account are available for you to do what you want.

Tax Refund. Any monies able to be claimed as a tax refund for the year or part year prior to bankruptcy, go to the bankrupt estate. For example, if a person becomes bankrupt on 30 September, 2012 and lodges a tax return for the Financial Year ended 30 June 2013 and obtains a tax refund of $1,200, then $300 will go to the bankrupt estate and the person will get to keep $900 of the refund. All subsequent refunds during bankruptcy can be retained by the bankrupt person, but will be looked at as these are really some of your net income, and so may take your earnings over what is called the Threshhold amount. Another point to note is, if monies are owed to the Tax Office, refunds during bankruptcy will be retained by the Tax Office against taxes owing at the date of bankruptcy. This only happens during the three years of the bankruptcy.

My House. It is possible, depending on your circumstances, to save a house when you become bankrupt. Each case needs to be considered on its own merits. It is in everyone's best interest if the social consequences from the trauma of extreme financial problems can be minimised. The effects and consequences for other (non bankrupt) members of the family can be significant. Kids can be distressed from losing the security of their bedroom, the non bankrupt spouse can be devastated to lose the house when they do not have financial problems, etc. and we will work to help the non bankrupt spouse to save the house if we consider this to be a viable option.

Overseas Travel. During bankruptcy you can still travel overseas. Those persons wishing to travel will however need to obtain permission from their trustee to travel overseas. There is a form to be filled out to authorise the travel. It is very rare that overseas travel is declined.

How much can I earn.

- No dependents - $52543.40 (After Tax)
- 1 Dependent - $62,001.21(After Tax)
- 2 Dependents - $66730.12 (After Tax)
- 3 Dependents - $69,357.29 (After Tax)
- 4 Dependents - $70,408.16 (After Tax)
- Over 4 dependents - $71,459.02 (After Tax)

If your after tax income exceeds these threshold amounts (depending on the number of dependants you have) you will have to pay income contributions to the bankrupt estate of half of each dollar that you earn above your threshold amount. You get to keep the other half of the excess as protected income. Some people who are subject to bankruptcy save their half of the excess income to save for a holiday, to buy a car once discharged from bankruptcy, to save a deposit to buy a house once discharged from bankruptcy.

Where income contributions are required to be paid, the Trustee seldom contacts the employer. They liaise with the person subject to the bankruptcy for the payment of the income contributions. The Bankruptcy Act is very humane. One of the great attributes of bankruptcy is that it ensures that your income is protected so as to ensure your wages are available for the provision of the necessities of life such as rent, food, electricity, fuel, transport costs, saving for a holiday, that sort of thing.

Superannuation. Monies held in a superannuation fund are protected provided they have been accumulated over time. If lump sums are deposited into the Super Fund prior to bankruptcy there can be problems. During bankruptcy, monies your employer pays into your super fund are protected and are not available to the bankrupt estate. You are not precluded from depositing money into your super fund during bankruptcy and if you are considering doing this we recommend that you first obtain advice from your superannuation advisor. Post the commencement of bankruptcy, monies you receive from your super fund are protected. If you receive an income from your super fund and it exceeds the above mentioned threshold amount that is relevant for you (eg. $52,543.40 if you have no dependants) then you may have to pay income contributions.

How Does Bankruptcy End?

Bankruptcy lasts three years (3) and your discharge from bankruptcy is automatic. At the end of the 3 years you are provided with a Certificate of Discharge to confirm that you are no longer bankrupt. A Trustee can object to your discharge and extend the period of your bankruptcy if you do the wrong thing.

What if I decide to pay all my debts off during the 3 years? If during the 3 years of bankruptcy your debts are paid in full, then your bankruptcy is 'annulled'.

Life After Bankruptcy

Once you are discharged from bankruptcy your creditors cannot reappear, they remain with the bankrupt estate. The bankruptcy (and pre bankruptcy Judgements, defaults etc.) remain on the records of Credit Reporting Agencies for a further 4 years and you are free to earn however much you wish in the knowledge that your financial life is clean and you can start a fresh.