

# BANKRUPTCY

*A fresh start*



**Australian Government**

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**Australian Financial Security Authority**

# This guide describes key concepts about personal insolvency to help you find the right option for your situation.



Bankruptcy is a legal process where a person is declared unable to pay their debts.



Bankruptcy provides relief from most debts and allows a fresh start.



Bankruptcy normally lasts 3 years and 1 day.



There are legal obligations to fulfill when bankrupt.



A record of the bankruptcy will appear on the National Personal Insolvency Index (NPII).

# Bankruptcy is just one option

After assessing your situation, you may find that you have unmanageable debt that you can't resolve. If this is the case, you will need to find the personal insolvency option that is right for you.

## Bankruptcy

Bankruptcy is a legal process where a person is declared unable to pay their debts and it normally lasts 3 years and one day.

Bankruptcy may have a serious impact on you. It may affect your ability to get credit, travel overseas or gain some types of employment.

## Personal Insolvency Agreement

This is an agreement with your creditors that can include part payment by installments or a lump sum.

A trustee is appointed to take control of your property and make an offer to your creditors. You may be able to retain assets such as your house and car if the terms of the agreement allow.

## Debt Agreement

This is an agreement with your creditors to pay off your debts in installments.

You make repayments to your debt agreement administrator, rather than individual payments to your creditors.

There are fees associated with a debt agreement that are paid to AFSA and your debt agreement administrator.

## Temporary Debt Protection

This gives you a short period (21 days) to consider your options. In this time your unsecured creditors cannot take recovery action against you.

# Before bankruptcy

## Know your options

When navigating your way to a fresh start, there are four options to explore: bankruptcy, a personal insolvency agreement, a debt agreement, or temporary debt protection. Each of these options have different eligibility criteria and varying consequences.

It is important to consider each option carefully when deciding which one is best for your situation. Further information is available on AFSA's website:

[www.afsa.gov.au](http://www.afsa.gov.au)

## Getting advice

### Get trustworthy advice

Financial counsellors offer free, independent and confidential services to help people deal with unmanageable debt. Contact the National Debt Helpline on:

**1800 007 007**

### Avoid dodgy advisors

Some advisors provide untrustworthy advice, purposely targeting vulnerable people in times of financial crisis and pressure.

### AFSA's resources

AFSA's website contains further information to help navigate insolvency information and avoid dodgy advisors.



# Starting bankruptcy

## Applying for bankruptcy

### Bankruptcy forms

A person can enter into voluntary bankruptcy by submitting a Bankruptcy Form.

### Creditor's Petition

A person can also be made bankrupt involuntarily, through a sequestration order. This happens when a creditor makes someone bankrupt through the courts using a Creditor's Petition.

## Bankruptcy Trustees

### Official Trustee

Every bankrupt estate is administered by a bankruptcy trustee. The Official Trustee is a government body appointed by default if a Registered Trustee is not appointed.

### Registered Trustees

A Registered Trustee is a trustee in the private sector. A person can nominate a Registered Trustee when they become bankrupt, or a creditor may nominate one if they make someone bankrupt.

## Effects on debts and money

### Debts

If you enter bankruptcy, you don't have to repay most of your debts. Debts you are no longer required to pay include:

- credit and store cards
- gas, electricity, phone and internet bills
- overdrawn bank accounts and unpaid rent
- medical, legal and accounting fees.

Bankruptcy doesn't cover all debts and secured debts like car loans and mortgages still need to be repaid if you still have the asset.

Your trustee may sell your assets or use compulsory payments to pay your debts.

### Money

Money (cash or in a bank account) that a person has at the start of bankruptcy can be taken by the bankruptcy trustee. A reasonable amount can be kept for everyday living expenses.

### Savings

Money saved from income during the bankruptcy will not be taken. But if the income earned is above a certain amount then contributions may need to be paid to the bankruptcy.

# During bankruptcy

## Obligations

### Money received during bankruptcy

Any money received during the bankruptcy (such as an inheritance or lottery win) will belong to the bankrupt estate.

### Overseas travel

Travelling overseas while bankrupt requires written permission from the bankruptcy trustee.

## Income

### Employment

There are no restrictions from working while bankrupt. However, certain industries may have their own restrictions on a person who is bankrupt.

### Owning a business

It is possible to operate a business while bankrupt, however there are some requirements. The business name will need to contain the person's full name or alternatively they will need to inform those that they deal with about the bankruptcy.

### Income contributions

When earning income above a certain amount, contributions will need to be made to the bankruptcy. The threshold amount depends on a person's circumstances and whether they have dependants.

## Assets

### House

When someone becomes bankrupt, their bankruptcy trustee becomes the owner of their share of any house or real estate that they own. The property can be sold to help pay their debts. If the property has a mortgage, this is a secured debt. This means that if the mortgage payments fall behind, the bank or lender can repossess and sell the house.

### Vehicle

A vehicle up to a certain value can be kept by a person in bankruptcy. Most everyday household items can also be kept by a person when bankrupt.

### Protected assets

Other assets that are excluded during a bankruptcy include:

- tools of trade up to a certain value
- certain types of compensation
- superannuation in a superfund or withdrawn after the bankruptcy has started.

# Ending bankruptcy

## Composition

During the period of bankruptcy, a person can make an offer through their trustee to their creditors known as a composition. This is an offer to settle the debts in the bankruptcy for an amount that is less than what is owing.

## Annulment

A bankruptcy can be paid in full at any time, even after someone is discharged. This is known as an annulment.

## Discharge

Bankruptcy generally lasts 3 years and one day. At the end of that period a person will be discharged from bankruptcy.

## Objections

In some cases a bankruptcy trustee may object to a person's discharge from bankruptcy. This may be as a result of failure to provide information, disclose income or assets. Depending on the reason, the period of bankruptcy may be extended to 5 or 8 years.

**Find out more  
about your options**



[afsa.gov.au](http://afsa.gov.au)



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**Australian Financial Security Authority**

**The Australian Government  
regulator and service provider  
for matters relating to **personal  
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