



Bankruptcy and other insolvency options

Prescribed Information booklet

(reg 4.11) as at July 2006

If you intend to lodge a

- Declaration of Intention to Present a Debtor's Petition
- Debt Agreement Proposal
- Debtor's Petition to become bankrupt
- Personal Insolvency Agreement proposal

you must

- read the information in this booklet
- sign the Acknowledgement on page 19 and lodge it along with your documents.

Acknowledgement

I have received and read this prescribed information booklet

I have read with attention the information in this booklet and I understand the consequences of bankruptcy (p. 18)?

I have read the information in this booklet?

Have you had this booklet read to you or translated for you?

Have you considered the alternative options described on p. 7 of this booklet?

(if yes, tick)



Name:

STEPHEN JOHN A...

Signature:

Stephen...

Date:

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Are you in financial difficulties
and unable to pay your debts?

Are you considering
bankruptcy?

You may
have
other
options

OPTION 1

Informal arrangements

Talk to your creditors about renegotiating your debts

Consult

- a financial counselling service or
- ITSA or
- a trustee

See page 3

With this option
your name will not
appear on the
public record

or

OPTION 2

Temporary relief

Give a Declaration of Intention to
Present a Debtor's Petition to ITSA

See page 3

This will give you 7 days to seek help

or

OPTION 3

Debt Agreements: Part IX

Creditors agree to accept something less
than full payment

See page 4

*Some financial limits apply
Your name will stay on the public record forever*

or

OPTION 4

Personal Insolvency Agreements: Part X

Finalise debts with an agreement
using a trustee

See page 6

*No financial limits apply
Your name will stay on the public record forever*

or

OPTION 5

Becoming bankrupt

If you cannot reach a compromise
or settlement with your creditors,
you can become bankrupt

See page 8

The consequences
of bankruptcy
are serious
(See p. 18)

Options 2, 3
and 4 are acts
of bankruptcy
and
your creditors
may make you
bankrupt

It may be that bankruptcy is your only choice –

**look at all options
before you make a final
decision**



A list of financial counselling services and other advisers is available from www.itsa.gov.au and ITSA offices (see rear cover)

To become bankrupt you need to provide to ITSA:

- your Debtor's Petition (p. 9)
- your completed Statement of Affairs (p. 9)
- the signed Acknowledgement form (p. 19).

If you do choose bankruptcy and your Debtor's Petition is accepted:

- you will be bankrupt in 1 day
- a trustee is appointed
- your assets, income and debts must be disclosed to the trustee who will then advise your creditors
- your assets may be sold and you may have to make payments from your income to pay your debts
- there are serious consequences (p. 18).

How long do I stay bankrupt? (p. 15)

Your bankruptcy is normally discharged 3 years and 1 day after your Statement of Affairs is lodged with and accepted by ITSA.

Can it end earlier? (p. 15)

Your bankruptcy can be annulled (cancelled) earlier through:

- payment in full
or
- an offer to creditors (composition)
or
- application to the Court.

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Note: Bankruptcy is a complex process. This booklet should be used as a general guide only. You should always seek help from financial counsellors and ITSA.

Underlined words in the text are explained under 'Terms used in this booklet' p. 22.

Introduction

If you are having financial problems, the information in this booklet will help you understand your options so you can make an informed decision.

It covers:

- informal alternatives to bankruptcy
- formal alternatives to bankruptcy
- bankruptcy.

In addition to reading this booklet you should:

- talk to your creditors
- speak to someone who can give you more information about bankruptcy and your other options.



ITSA can provide you with names of financial counselling services, registered trustees and debt agreement administrators.

In some cases you may need to talk to a specialist, such as a solicitor, accountant or other professional adviser.

More information on many of these topics is also available from ITSA offices (see rear cover) or the ITSA website www.itsa.gov.au.

You must however

- **read the information in this booklet**
- **sign and lodge the acknowledgement on page 19** before ITSA will accept a
 - Declaration of Intention to Present a Debtor's Petition (p. 3)
 - Debt Agreement proposal (p. 4)
 - Personal Insolvency Agreement proposal (p. 6)
 - Debtor's Petition to become bankrupt (p. 9).

The consequences of bankruptcy are serious (see p. 18).

If you change your mind, bankruptcy is difficult to undo once your documents have been accepted.

Fact sheets available from ITSA



Many of the topics in this booklet are discussed in more detail in the following fact sheets available from:

- the ITSA website www.itsa.gov.au
- all ITSA offices (see list on rear cover).

Annulment: Can my bankruptcy be cancelled?

Assets: What happens to my assets if I go bankrupt?

Can I Appeal? Review and appeal of trustee and administrator decisions

Client Service Charter (booklet)

Client Service Pamphlet

Debt Agreements: Part IX of the *Bankruptcy Act*

Debts and Creditors: What happens to them if I go bankrupt?

Discharge: How and when does my bankruptcy end?

Income Contributions: Will I have to make payments from my income?

Information for Creditors about Bankruptcy

ITSA Administration Fees

ITSA Fees and Charges

Overseas Travel: Can I leave Australia if I go bankrupt?

Personal Insolvency Agreements: An alternative to bankruptcy

Resolving Complaints about Trustees and Administrators

Searching the Public Record: The National Personal Insolvency Index (NPII) database

Is Bankruptcy Your Only Option?

You may be able to come to an arrangement to deal with your debts without going bankrupt. Please read and think about the other options in this section.

Option 1: Informal arrangements

■ Talk to your creditors

Explain your financial position to your creditors. Some creditors may:

- have hardship provisions which you can use to vary the terms of your credit contract
- give you more time to pay
- agree to re-negotiate loan repayments
- accept a lesser sum.

■ Seek financial help

You can also ask for help from financial counselling services, legal aid or community legal centres, or from a registered trustee, debt agreement administrator, solicitor or accountant. Some of these services will be free, others will charge you a fee.

Financial counsellors and other advisers may be able to:

- speak to creditors on your behalf
- advise you of your rights under the Consumer Credit Code
- settle disputes
- help with budgeting advice
- suggest other options, such as varying contracts, getting access to government assistance.

Informal arrangements may not be binding on your creditors and may be cancelled if you do not keep up your repayments.

Option 2: Temporary relief from creditors

If you are under pressure from creditors but you need some time to think about your options, you can lodge a signed **Declaration of Intention to Present a Debtor's Petition** with ITSA.

This stops your creditors, the bailiff or sheriff from taking action against you to recover the debts for 7 days. This period gives you time to seek help and consider your options.

At the end of the 7 days you do not have to become bankrupt.

You can lodge only one Declaration every 12 months.

Warning:

Lodging a Declaration is an act of bankruptcy.

A creditor can use this to apply to the Federal Court or Federal Magistrates Service to make you bankrupt.



A list of financial counselling services and other advisers is available from ITSA offices (see rear cover) or from ITSA's website www.itsa.gov.au

Option 3: Debt agreements: Part IX

A Debt Agreement is a simple way to come to an arrangement with your creditors which is legally binding and will, if your creditors accept it, release you from your debts.

■ Proposals

Under a Debt Agreement you may propose to:

- make payments from your income to your creditors, either for a set time or to pay a set dividend to creditors
- make a one-off, lump sum payment to creditors
- sell assets of your choosing to pay your creditors
- have a freeze on your debts for a set time to let you 'get back on your feet'
- pay something less than the full amount to finalise your debts.

■ Administrator

The administrator of your proposal must meet eligibility requirements under the Bankruptcy Act, and can be either you or another person, such as:

- a registered trustee
- a debt agreement administrator
- an adviser (eg solicitor or accountant)
- ITSA
- any other person.

If you are not acting as your own administrator, your proposal must authorise another person who will make sure that the terms of your proposal are carried out. An administrator will generally charge a fee.

■ Eligibility to propose a Debt Agreement

You must be insolvent (unable to pay your debts) to propose a Debt Agreement.

You cannot propose a Debt Agreement if:

- you have been a bankrupt, had a Debt Agreement or given an authority under Part X of the Bankruptcy Act in the last 10 years, or
- your unsecured debts exceed a set limit
- assets that would be divisible if you were a bankrupt exceed a set limit
- expected after-tax income for the next 12 months exceeds a set limit.

For set limits refer to Current Amounts page at www.itsa.gov.au or contact ITSA (refer back cover).

(Option 3 continues on next page)



See *Debt Agreements: Part IX of the Bankruptcy Act*



A list of registered trustees and debt agreement administrators is available from ITSA offices (see rear cover) or from ITSA's website www.itsa.gov.au



For ITSA offices contact information, see rear cover or www.itsa.gov.au

■ Procedure

1. Complete a Debt Agreement proposal form with the best offer you can afford, and explain your reasons for making the proposal. A standard proposal form with a Statement of Affairs is available from ITSA.
2. Obtain the written consent of an administrator (unless you are going to handle your own Debt Agreement).
3. Lodge your proposal, Statement of Affairs, and Acknowledgement (p. 19) with your administrator or ITSA.

■ Creditors' vote

Your creditors vote by letter whether or not to accept your proposal.

For your proposal to be accepted ITSA must receive 'yes' votes from:

- a majority in number of the creditors who vote, and
- at least 75% in value of the creditors who vote.

■ Fees

An administrator or adviser may charge you for giving you information and setting up the proposal.

ITSA does not charge fees for lodging your proposal or sending it to your creditors for voting.

During the term of a Debt Agreement most administrators (including ITSA) will charge fees and expenses for carrying out the terms of the agreement and distributing any money to creditors.

■ Public record

Your Debt Agreement proposal will be recorded on the public record (the NPII) forever, along with its acceptance or rejection by your creditors (see p. 21).

Your name will also be recorded on a commercial credit reference record for 7 years.

■ Your obligations

If your creditors accept your Debt Agreement you are obliged to do what you have proposed. If your circumstances change during your Debt Agreement, you or your creditors can propose a variation (eg to increase or reduce your payments). However, this is subject to your creditors' approval.

If you fail to carry out your part of the Debt Agreement, your creditors can vote to terminate it. If the Debt Agreement is terminated you are no longer released from your debts and you will have to repay any outstanding debts, which may include interest, and your creditors can apply to the Court for your bankruptcy.

Warning:

Lodging a proposal, acceptance of the Debt Agreement by creditors and breaching or terminating a Debt Agreement are all acts of bankruptcy.

A creditor can use any one of these to apply to the Federal Court or Federal Magistrates Service to make you bankrupt.



A list of registered trustees is available from ITSA offices (see rear cover) or from www.itsa.gov.au

Option 4: Personal Insolvency Agreements: Part X

A Personal Insolvency Agreement (Part X) is another way to come to an agreement with creditors for finalising debts. It is a good idea to first ask your major creditors whether they would accept a Personal Insolvency Agreement proposal.

■ Eligibility

You must be insolvent to propose a Personal Insolvency Agreement. There are no income, asset or debt limits. You cannot give an authorisation to a controlling trustee within 6 months of another authorisation without prior approval from the Court.

■ What can you propose?

You may negotiate to:

- pay less than the full amount to finalise your debts
- make payments in a lump sum or instalments
- sell some or all your assets to pay your creditors
- give some or all of your assets to your creditors
- make regular payments from your income to your creditors
- continue to operate your business to repay your debts
- make different rates of payments among creditors.

■ Appointing a controlling trustee

You must complete:

- a Personal Insolvency Agreement Controlling Trustee Authority
- a Statement of Affairs attaching your detailed proposal.

Your controlling trustee will then:

- take control of your assets
- call a meeting of your creditors to consider your proposal
- investigate your financial affairs and report to your creditors.

Once your controlling trustee has signed your authority it cannot be withdrawn. You cannot deal with your assets in any way without his or her consent. If he or she is related to you this needs to be disclosed to your creditors.

■ Creditors' meeting and vote

A meeting of your creditors is advertised in the newspapers and you must attend. For your proposal to be accepted your controlling trustee must receive 'yes' votes from:

- a majority in number of the creditors who vote, and
- at least 75% in value of the creditors who vote.

■ If your creditors do not accept your proposal, they will either:

- vote in favour of your becoming bankrupt (you do not have to accept this – you can seek additional financial advice), or
- leave it up to you to decide how to resolve your financial difficulties. Control over your assets is returned to you.

(Option 4 continues on next page)



See *Personal Insolvency Agreements: An alternative to bankruptcy*

■ **If your creditors accept your proposal** they will appoint a trustee to carry out the terms of the Personal Insolvency Agreement. This may or may not be a different person from the controlling trustee. Your trustee can be either a registered trustee or ITSA.

■ Fees

Fees apply to Personal Insolvency Agreements:

- Controlling trustees fees
- Trustees fees
- Processing fee.



See *ITSA Administration Fees and ITSA Fees and Charges*

■ Your rights

A creditor cannot proceed to make you bankrupt where you have put forward a proposal and your creditors have not had an opportunity to accept it. If your creditors accept your proposal, they cannot take any further recovery action against you or make you bankrupt.

You are released from your debts on the terms of your Personal Insolvency Agreement. The rights of some unsecured and secured creditors however, are not affected (see p. 12 and 13) and you may have to continue to make payments for those debts.

■ Your obligations

You must assist your trustees in their enquiries. You must disclose details of any creditors related to you either financially or by family. If your creditors have accepted your proposal you have an obligation to fulfil what you have proposed. If you fail to carry out your obligations under your Personal Insolvency Agreement, it can be terminated by your trustee, your creditors or the Court. If this happens, you will have to repay any outstanding debts, which may include interest, and your trustee or your creditors can also apply to the Court to make you bankrupt.

■ Public record

When you give an authority to a controlling trustee, your details will be recorded on the public record (the NPII) forever along with any creditors' acceptance of the agreement (see p. 21). Your name will also be recorded on a commercial credit reference record for 7 years.

Warning:

Authorising a trustee to take control of your affairs is an act of bankruptcy.

It is also an act of bankruptcy if your creditors do not accept your proposal, but vote that you should become bankrupt and you do not.

A creditor can use this to apply to the Federal Court or Federal Magistrates Service to make you bankrupt.

About Bankruptcy

(Option 5)

The consequences of bankruptcy are serious (see p. 18)

If you cannot reach a compromise or arrangement with your creditors, you may become bankrupt.

Bankruptcy is a process where people, who cannot pay their debts or come to a satisfactory arrangement with their creditors, receive the protection of the *Bankruptcy Act*.

Before deciding to go bankrupt you should seek help from a financial counselling service.



A list of financial counselling services and other advisers is available from ITSA offices (see rear cover) or from ITSA's website www.itsa.gov.au

Eligibility

There are no income, asset or debt limits for bankruptcy.

To become bankrupt you:

- cannot have an unfinalised *Part IX Debt Agreement* or *Part X arrangement* or *Personal Insolvency Agreement* in place, and
- must be personally present or ordinarily resident in Australia; or have owned a house or business, or have carried on a business, in Australia at the time of lodgement.

In a very few cases, your *Debtor's Petition* (see p. 9) may be rejected by ITSA if we consider that you are able to pay all your debts within a reasonable time

and either

- you have previously been bankrupt 3 or more times or once in the last 5 years
- or
- you are unwilling to pay one or more creditors or creditors in general.

Warning:

The presentation of a Debtor's Petition is an *act of bankruptcy*.

This means that, if your Debtor's Petition is rejected, a creditor can use this to apply to the Federal Court or Federal Magistrates Service to make you bankrupt.

Process for becoming bankrupt

- **To apply to become bankrupt** you need to complete and lodge the following 3 documents with the ITSA office in your state or territory (see rear cover for addresses).

Document 1: Debtor's Petition

This is your application to become bankrupt.

Document 2: Statement of Affairs

This document identifies who you are. It provides your trustee with essential information, such as your income, assets, debts, and business dealings.

Document 3: Acknowledgement that you have received and read this Prescribed Information booklet

The *Bankruptcy Act* prescribes that information about alternative options to bankruptcy and the consequences of bankruptcy must be given to people who are contemplating bankruptcy.

If you decide to become bankrupt you must sign, detach and lodge the Acknowledgement on p. 19 of this booklet with ITSA along with your Debtor's Petition and Statement of Affairs.

When your Debtor's Petition is accepted by ITSA, you become bankrupt within 1 day and are given an administration number. The normal term of a bankruptcy is 3 years from the date your Statement of Affairs is lodged with and accepted by ITSA.

Please keep the rest of this booklet for information during your bankruptcy.

Warning:

Not all debts are released by bankruptcy (see p. 12).

- **Creditors can make you bankrupt**

One of your creditors may apply to the Court in a Creditor's Petition to make you bankrupt if you have committed what is called an act of bankruptcy (see p. 3–8). The Court can make you bankrupt by making a Sequestration Order.

The most common act of bankruptcy relied on by creditors is a failure to comply with a bankruptcy notice requiring that a creditor's debts, of at least \$2,000, be paid within 21 days.

Your assets

Assets or property are anything you own or buy or receive, except income you earn during bankruptcy.

You must disclose **all** your assets to your trustee.

You are entitled to keep exempt assets as listed below. All non-exempt assets you own when you become bankrupt, and any which you receive before the end of your bankruptcy, automatically become assets of your trustee and may be sold to pay your creditors and the expenses of handling your bankruptcy.

■ Assets you can keep (exempt assets)

The Bankruptcy Act sets out a list of exempt assets, for example:

- most ordinary household or personal items, such as clothes, furniture, kitchen appliances and equipment, a TV, video recorder, stereo, washing machine, and items mainly for the use of children or students in the house
- tools used to earn an income, up to a set limit
- vehicles used to earn an income, up to a set limit.

For asset limits, refer to Current Amounts page at www.itsa.gov.au or contact ITSA (refer back cover).

- superannuation and life assurance policies up to the pension Reasonable Benefit Limit (as worked out under the *Income Tax Assessment Act 1936*)
- compensation for a personal injury, eg from a car accident or workers compensation
- assets bought with protected monies (eg personal compensation)
- re-establishment grants to farmers, including grants under the *Rural Adjustment Act 1992* or *Farm Household Support Act 1992*
- property protected under the *Defence Service Homes Act 1918*
- an asset held by you in trust for another person.

Awards of a sporting, cultural, military or academic nature made to you, such as medals or trophies but not cash or jewellery, and claimed as having sentimental value may be exempted by your creditors.

If you are buying an exempt asset under finance (see Secured creditors p. 13), you will only be able to keep it if you continue to pay for it.



See
Assets: What happens to my assets if I go bankrupt?
and
Income Contributions: Will I have to make contributions from my income?

■ Assets which may be sold or distributed by your trustee (divisible assets)

Your trustee will sell any of your assets that are not exempt, or that have a value over a specified limit, for example:

- houses, apartments, land, farm and business premises (including leases)
- cars, trucks, vans, caravans, trailers, motorbikes, boats and aircraft
- shares and other investments (including shares held in your employer's business)
- money with deposit taking organisations (eg banks, credit unions, licensed totalisator/betting agencies)
- tax refunds for income earned before you became bankrupt
- antiques, collectables and jewellery
- business and business assets, including goodwill, stock, equipment, machinery, vehicles, fixtures and fittings and an interest in a partnership
- money owed to you
- leaseholds, franchises, licences and patents
- livestock and farming crops
- a right to commence or continue legal proceedings/legal actions
- your right as a beneficiary in a deceased estate under certain circumstances
- lottery winnings and other competition prizes.

These assets can be in:

- Australia or overseas
- your possession or held by someone else.

If you have a share in one of these assets, your trustee can sell your share. If the co-owner is not also bankrupt, the trustee may sell your share to them, but it would have to be for at least as much as the trustee could get from selling it on the open market.

Your trustee's aim is to pay your creditors and his or her own fees and expenses. Your trustee will usually sell your assets if there will be a surplus after the selling costs are covered.

Warning:

There are penalties if you fail to:

- disclose assets on your Statement of Affairs
- disclose to your trustee in writing within 14 days any assets you acquire during bankruptcy.

Your debts and creditors

You must disclose **all** your **debts** in your Statement of Affairs to your **trustee**, including:

- debts you owe jointly with someone else
- any loans to you from friends and relatives.

You are **released** from certain debts at the end of your **bankruptcy**. However, there may be some debts that you will still have to pay.

Once you are bankrupt, **creditors** with debts included in **bankruptcy** should stop contacting you unless they have a valid security over an **asset** (see p. 13).

Even if you go bankrupt your creditors might be able to pursue another person, for example:

- a person who is a guarantor for your debts
- debts in joint names with another person (eg your wife or husband).

Warning:

You are released only from HECS debts which have appeared on a notice of assessment issued by the Australian Taxation Office before your bankruptcy.

You still owe any HELP or other accumulated HECS debt. Ask the Australian Taxation Office if you need more information.

■ **Debts you still have to pay during bankruptcy**

1. Some debts are not **provable** in bankruptcy. The creditors of some types of debt **cannot** receive any money from your bankrupt estate but they can continue debt recovery action against you **even during** bankruptcy eg:

- penalties and fines imposed by a court
- damages from accidents (eg car accidents), unless, before bankruptcy, the sum of damages has been fixed by a court judgment or you have a written agreement with the other party
- student assistance/supplement loans
- HELP debts that arise under the *Higher Education Support Act*.

2. Any new debts you run up on or after your date of bankruptcy.

■ **Debts you still have to pay when your bankruptcy ends**

Some debts are provable in bankruptcy. The creditors of certain types of debt **can** receive money from your bankrupt estate and can also continue debt recovery action against you **after your bankruptcy ends** eg:

- child support debts
- maintenance
- debts incurred by fraud.



See *Debts and Creditors: What happens to them if I go bankrupt?*

■ Secured creditors

A secured creditor is a creditor who holds a security over your asset that entitles them to take and sell the asset if you fall behind in payments.

Common examples of secured creditors include:

- banks with a mortgage over a house
- finance companies with a chattel mortgage, hire purchase, lease or bill of sale over a car or furniture
- creditors secured by government legislation over houses and land, such as council/shire rates and water rates.

In some cases creditors retain ownership of items you have bought until their debt has been paid in full (eg retention of title, consignment and commission).

If you are in doubt about whether one of your creditors is secured, you should first ask the creditor. If you are still doubtful, ask a [financial counsellor](#).

If you wish to keep an [exempt asset](#) which is secured, you will need to keep paying for it or the creditor will take it back. Your trustee can sell a non-exempt asset if it is of value, even if you are paying it off (eg a house). A secured creditor cannot take an asset back just because you are bankrupt.

■ Unsecured creditors

An unsecured creditor is a creditor who is not secured eg your telephone company. These creditors generally do not have the right to take back the item you bought but have not paid for.

If you become bankrupt, any legal action by unsecured creditors against you, such as a summons, [garnishee](#) or recovery action by a sheriff or bailiff, must also stop.

You do not have to continue paying your unsecured creditors if you become bankrupt (except creditors for Debts you still have to pay – see p. 12)

However, **providers of essential services** to your home (eg electricity, gas, telephone, water) may disconnect the service if you do not pay your current account or pay a security deposit/bond. If you later move to another home and still owe them money, you may be required to pay an increased deposit/bond to obtain the service.



Debts and creditors can be difficult to sort out. Talk to a financial counsellor or [ITSA](#) if you are unsure about what type of debts or creditors you have. ITSA offices can provide you with a list of advisers (see rear cover) or www.itsa.gov.au

Income contributions



See *Income Contributions: Will I have to make payments from my income?*

If you become bankrupt, your trustee will work out if you are required to make payments from your income (contributions) to help repay your creditors.

Your trustee will use a formula set out in the *Bankruptcy Act* to assess your income for each year of your bankruptcy. You must disclose to your trustee all income, including salary from second jobs, and all benefits and pensions you receive. Income defined for bankruptcy purposes may differ to your taxable income.

Your requirement to make contributions depends upon your:

- current or expected level of income
- number of dependants
- payment of any child support.

In calculating your income your trustee will take into account:

- any fringe benefits (eg the use of a car or subsidised rent) you receive in your job
- any salary sacrifice arrangements.

Low income earners are not required to make income contributions.



For more information see Contributions table on Current Amounts page at www.itsa.gov.au or contact ITSA

Warning:

If you are asked to pay and you do not, your trustee may:

- garnishee (automatically deduct without your consent) from your income or bank account or from a third person who holds money on your behalf
- extend your bankruptcy to a maximum of 8 years and you may have to pay contributions for this extended period.

Annulment

Annulment is the cancellation of bankruptcy before the end of the normal 3 year period.



See *Annulment: Can my bankruptcy be cancelled?*

A bankruptcy can be annulled in three ways:

1. Payment in full

Your creditors and your trustee's fees and expenses have been paid in full, either during or after the period of bankruptcy.

2. Composition or arrangement

An offer made by you through a trustee for finalising your debts is accepted by creditors.

Your creditors must vote whether or not to accept your offer.

For your proposal to be accepted your trustee must receive 'yes' votes from:

- a majority in number of the creditors who vote
- and
- at least 75% in value of the creditors who vote.

3. Application to the Court

If you think you should not have been made bankrupt or should not have lodged your Debtor's Petition, you may apply to the Court to have your bankruptcy annulled. You should seek legal advice before making such an application.

Discharge

You will normally be automatically discharged from bankruptcy 3 years and 1 day from the date your Statement of Affairs was lodged with and accepted by ITSA.

Extension of bankruptcy

If you fail to co-operate with your trustee, your bankruptcy may be extended to a maximum of 8 years.



See *Discharge: How and when does my bankruptcy end?*

Your trustee



A list of registered trustees is available from ITSA offices (see rear cover) or from www.itsa.gov.au

A trustee is the person who administers your bankruptcy. Your trustee will either be a registered trustee or ITSA.

If a creditor makes you bankrupt, they choose your trustee.

If you make yourself bankrupt, you may choose your own trustee to administer your bankruptcy. If you do not choose a trustee, ITSA will be your trustee.

During your bankruptcy, whether you were made bankrupt by creditors or you made yourself bankrupt, your creditors may decide to change the trustee. Your trustees may also obtain the consent of another trustee to replace them.

You may be charged a minimum fee if your trustee changes from ITSA to a registered trustee.

Your trustee will:

- advise you of your administration number
- advise you of your obligations (including specific issues you must assist with)
- advise your creditors of your bankruptcy (who should then inform their debt collection agent)
- find out what assets you own
- find out what assets you sold or disposed of before bankruptcy
- sell your non-exempt assets
- assess your income, work out if you are required to make contributions from your income, and if so, collect these contributions

- deduct the trustee's fees and expenses from money received
- divide any money received amongst your creditors
- make sure you comply with your obligations
- consider whether you may have committed any bankruptcy offences and present any evidence of an offence to ITSA.

Your trustee may also extend your bankruptcy if you fail to co-operate with them.

Fees and expenses

The trustee, whether a registered trustee or ITSA, is paid for administering your bankruptcy.

ITSA will only be paid (in full or part) if money is received from the sale of your assets or your income contributions.



See *ITSA Administration Fees*

Registered trustees usually charge an hourly rate. These fees are authorised by the creditors, or by the Court, and they may be reviewed by ITSA on appeal. These are usually paid from the sale of your assets or your income contributions. If the trustees do not receive enough money to pay their fees, they are allowed to recover from you a minimum fee. For the minimum fee, please refer to the Current Amounts page at www.itsa.gov.au or contact ITSA (refer back cover).

Your obligations during bankruptcy

■ To your trustee – You must:

- co-operate with your trustee
- tell them of any changes to your name and address or affairs
- you must tell your Trustee if you are or become involved in any criminal actions
- disclose all assets and items of value you acquire during your bankruptcy and before your discharge
- disclose all income you have, or receive, before your discharge
- attend an interview or examination (on oath) as and when required to do so
- get your trustee's written permission to leave Australia.

■ To others – You must:

- disclose your bankruptcy when applying for credit, or buying goods and services on credit or by cheque, if the amount is more than a set limit. For set limits refer to Current Amounts page at www.itsa.gov.au or contact ITSA (refer back cover)
- tell everyone you deal with that you are an undischarged bankrupt if you are in business and trade under a name other than your own.

Warning: If you fail to fulfil these obligations, you are committing an offence under the *Bankruptcy Act*, punishable by law.

■ Bankruptcy offences

You may be prosecuted for offences and fined or in some cases imprisoned if you:

- breach any of your obligations as a bankrupt
- conceal or dispose of assets before bankruptcy with the intention of keeping them from your creditors

- materially contribute to your bankruptcy by gambling or speculation
- fail to reveal details of your income to your trustee
- leave Australia without the written permission of your trustee



See *Overseas Travel:*
Can I leave Australia if I go bankrupt?

- leave out important information which should have been included in your Statement of Affairs
- sign a declaration in your Statement of Affairs which you know to be untrue
- run up debts before your bankruptcy without an expectation of being able to pay for them.

All trustees have a duty to refer any possible allegations of bankruptcy offences to ITSA for examination by specialist investigators. Allegations of bankruptcy offences can also be reported by creditors, credit providers and the general community.

■ Family Law Matters

If you are or become involved in family law property or spousal maintenance proceedings, the trustee is able to apply to:

- become a party to those proceedings
- have family law property orders set aside
- have a spousal maintenance order modified.

You are obliged to tell your trustee if:

- you are or become involved in family law property or spousal maintenance proceedings.
- you have been a party to a family law property or spousal maintenance order or agreement.

Consequences of bankruptcy

**The consequences of being bankrupt are serious.
You will be bankrupt for at least 3 years.**

Credit rating

- Your name will be on the public record (the NPII) forever (see p. 21).
- Your documents are lodged with ITSA and much of the information is open to public search.
- Your name will be on a commercial credit reference record for 7 years even if your bankruptcy has been discharged.
- 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.
- You may find it hard to get or renew insurance.
- Some banks will not let you operate an account or will restrict how you can use your account.

Assets

- Your non-exempt assets (including your house, shares, land and investments) belong to your trustee and can be sold.
- You may keep only limited items (see p.10).
- Any non-exempt assets you receive during your bankruptcy become assets of your trustee.

Employment or trade

- If you are registered for GST and wish to continue in your trade or profession during bankruptcy, you should advise Australian Taxation Office so that your pre bankruptcy GST liability, if any, can be separately identified.
- Your job opportunities may be affected, especially with jobs handling money or where a licence is required (eg the security industry or licensed builder). This will differ from state to state.
- You cannot be a director of a company or hold certain public positions without permission.
- If you are in business and trade under a business name different to your own, you must tell everyone you deal with that you are an undischarged bankrupt.

Legal rights

- You will lose the right to take and/or continue most legal actions.

Freedom to travel

- You must advise your trustee of any change of address.
- You will not be able to travel overseas without the written permission of your trustee.
- You may be asked to hand your passport to your trustee.

Acknowledgement

that I have received and read this
Prescribed Information booklet

If you proceed with a:

- Declaration of Intention to Present a Debtor's Petition (p. 3) or
- Debt Agreement (p. 4) or
- Personal Insolvency Agreement (p. 6) or
- bankruptcy (p. 8)

you must now acknowledge that you have received and read this booklet by:

- signing and detaching this page
- lodging it and your documents with ITSA (or with your controlling trustee in the case of Personal Insolvency Agreements).

Have you read the information in this booklet?
(the Prescribed Information) (if yes, tick)

or

Have you had this booklet read to you or translated for you?

Have you considered the alternative options
described on p. 3–7 of this booklet?

Have you read the consequences of bankruptcy (p.18)?

Name: _____

Signature: _____

Date: _____

Interpreter's Statement

I declare that before this declaration was completed I carefully read and interpreted the information in this booklet to the person named above in a language in which we are both familiar.

Name: _____

Signature: _____

Date: _____

Address: _____

Telephone: _____

Section 3

Public record

The public record consists of:

- a computerised database known as the National Personal Insolvency Index (NPII)

It is maintained by ITSA.

Any member of the public can pay information brokers or ITSA to search the NPII.

The NPII contains details (as permitted by the *Bankruptcy Act* and privacy laws) of:

- bankruptcies
- Debt Agreements: Part IX
- Personal Insolvency Agreements: Part X
- Part XI insolvent deceased estates
- Creditor's Petitions
- Part X arrangements

Details kept on the NPII include:

- your name and address at the time your documents were accepted by ITSA
- any previous names and aliases
- your date of birth
- your occupation
- your administration number
- details of trustees and debt agreement administrators.

These details will appear on the NPII forever.

Certain documents are also available for public inspection. They include:

- some sections of a debtor's Statement of Affairs
- certain reports related to Personal Insolvency Agreements.

This may incur a fee.



See
*Searching the Public Record:
The National Personal
Insolvency Index (NPII)*



See the ITSA website
www.itsa.gov.au
for more information

ITSA can withhold certain debtor information from the Public Record where publishing the information would jeopardise the safety of the debtor. Contact ITSA offices (see rear cover) for details.

Terms used in this booklet

Act of bankruptcy – an action or declaration which, if not carried through, can be used by a creditor to apply to the Court to make you bankrupt

Administration number – a number issued by ITSA as an identifier of each bankruptcy or other proceeding

Administrator – an eligible person nominated by a debtor to handle a Debt Agreement on their behalf

Asset – anything a person owns before going bankrupt, or buys or receives during bankruptcy. See also **Divisible Assets** and **Exempt Assets**

Bankruptcy – a process where people, who cannot pay their debts become bankrupt to receive the protection of the *Bankruptcy Act* and their estate is administered by a trustee. It allows for the fair distribution of property among creditors and the prosecution of dishonest debtors

Bankruptcy Act – the Commonwealth legislation which covers bankruptcy, Part IX Debt Agreements, Personal Insolvency Agreements and Part X arrangements

Bankruptcy notice – a formal, final demand for payment of a debt by a creditor owed at least \$2,000 on one or more final judgments or final orders. This notice is issued by ITSA. Failure to pay within 21 days is an act of bankruptcy

Bankruptcy offence – not carrying out an obligation under the *Bankruptcy Act*. You may be prosecuted and fined or imprisoned

Composition – an offer made through a trustee to creditors to finalise your debts

Contribution – a sum of money that a bankrupt person is required to regularly pay to the trustee from their income

Controlling trustee – a registered trustee, ITSA or an eligible solicitor who investigates your financial affairs and calls a creditors' meeting for a Personal Insolvency Agreement

Court – the Federal Court or the Federal Magistrates Service

Creditor – someone you owe money to

Creditor's Petition – an application by a creditor to the Court for a Sequestration Order to make a debtor bankrupt

Debt – money owed to a creditor

Debt Agreement – an arrangement for finalising debts between people who cannot pay their debts and their creditors. It is a formal arrangement under Part IX of the *Bankruptcy Act*

Debt agreement administrator – see **Administrator**

Debtor – someone who owes money to a creditor

Debtor's Petition – your application to ITSA to become bankrupt

Discharge – the end of bankruptcy. The date of discharge is the day after bankruptcy ends

Divisible assets – assets/property which can legally be sold in bankruptcy by the trustee

Exempt assets – assets/property which cannot be sold in bankruptcy by the trustee

Financial counselling/counsellor – community/government funded counsellors offer a free and confidential service providing information, advocacy and support to individuals and families experiencing financial difficulties

Garnishee – an automatic deduction arranged without your consent from your income or bank account

Income contribution – see **Contribution**

Indexed – the amount regularly changes in line with the Consumer Price Index or the base pension rate

Insolvent – being unable to pay your debts as and when they fall due

ITSA – Insolvency and Trustee Service Australia. ITSA is a Commonwealth government agency. ITSA is the trustee when a registered trustee is not appointed

Lodge – to post or bring documents. Documents cannot be electronically lodged

NPII – the National Personal Insolvency Index, the computerised database of all personal insolvencies in Australia

Official Receiver – administrator of statutory functions under the *Bankruptcy Act* for the government/ITSA

Official Trustee – government equivalent of a registered trustee

Part IX – Part 9 of the *Bankruptcy Act* that deals with Debt Agreements

Part X – Part 10 of the *Bankruptcy Act* that deals with a formal agreement – see Personal Insolvency Agreement

Personal Insolvency Agreement – An agreement between a debtor and their creditors for finalising debts under Part X of the *Bankruptcy Act*

Prescribed information – information which must be read by people before taking certain actions under the *Bankruptcy Act*

Property – see **Assets**

Protected monies – monies that cannot be claimed by a trustee eg personal compensation money, certain government grants

Provable debt – an amount for which a creditor is entitled to claim a dividend in your bankruptcy

Public record – the National Personal Insolvency Index computerised database kept by ITSA. It can be searched for a fee

Registered trustee – a person registered with ITSA to be a trustee of bankruptcies and Personal Insolvency Agreements. A registered trustee can also be a debt agreement administrator or a controlling trustee

Released from debt – you are no longer responsible for or have to pay this debt

Sequestration Order – an order made by the Court to make a person bankrupt

Trustee – the person who administers your bankruptcy or Personal Insolvency Agreement; either a registered trustee or ITSA. See also **Controlling trustee**, **Official Trustee** and **Registered trustee**

ITSA Telephone 1300 364 785

National contact number

ITSA Website www.itsa.gov.au

More information

ITSA can provide fact sheets on many of the topics covered in this booklet.
See p. 2 for a complete list.

ITSA Offices

ACT

Level 2, NFF House, 14-16 Brisbane Avenue
BARTON ACT 2600
Fax: (02) 6270 3608
email: itsa.canberra@itsa.gov.au

New South Wales

GPO Box 548
SYDNEY NSW 2001
Level 8, 135 King Street
SYDNEY NSW 2000
Fax: (02) 8233 7891
email: itsa.sydney@itsa.gov.au

Queensland

Brisbane

PO Box 10443
Adelaide Street
BRISBANE QLD 4001
Level 16, 340 Adelaide Street
BRISBANE QLD 4000
Fax: (07) 3360 5466
email: itsa.brisbane@itsa.gov.au

Townsville

PO Box 1527
TOWNSVILLE QLD 4810
Level 1, National Australia Bank Building
315 Ross River Road
AITKENVALE QLD 4814
Fax: (07) 4727 0500
email: itsa.townsville@itsa.gov.au

South Australia/Northern Territory

GPO Box 2604
ADELAIDE SA 5001
Level 9, William Grenfell Centre
80 King William Street
ADELAIDE SA 5000
Fax: (08) 8112 4305
email: itsa.adelaide@itsa.gov.au

Tasmania

GPO Box 850
HOBART TAS 7001
Level 4, ANZ Centre
22-26 Elizabeth Street
HOBART TAS 7000
Fax: (03) 6221 7700
email: itsa.hobart@itsa.gov.au

Victoria

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300 La Trobe Street
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