

Bankruptcy checklist

Client Name Date Worker: File no:

Requirements

- Connection to Australia
- Possible referral to court by AFSA (joint petitions and partnerships)
- May be rejected where it appears debts can be paid
- Increased risk of rejection where previous bankruptcies
- Forms will be returned and not processed if incorrect or incomplete
- Debtor must read the Prescribed Information (or have it read to them)

General warnings

- Penalties for incorrect, misleading information or material omissions
- Data will be cross-matched (e.g. with ATO)
- Parts B, C & D of the SOA on public record
- The bankrupt's address will appear on a searchable public record. If safety is an issue see Family Violence below.
- Generally bankruptcy cannot be undone only annulled at significant cost

Duration of bankruptcy & its effects

- 3 years and 1 day unless extended
- Can be extended by objection for 5 or 8 years for breaches
- Continues indefinitely if no SOA filed (debtors made bankrupt by court)
- NPII listing for life
- Credit listing 5 years from start or 2 years from end, whichever is longer

What sort of debts are covered (provable)?

Note: All debts, provable and not, secured or not must be listed in the SOA

- Individual debts
- Joint debts
- Unsecured debts – credit cards, personal loans etc.
- Centrelink (if no fraud)
- Interest/penalties only on Child Support
- Private debts (friends & family)
- Rental arrears
- Energy debts
- Telecommunications debts
- Tax debts
- GST debts
- Guarantees (for loans obtained by others)
- Personal guarantees given for company/business debts
- Contingent liabilities (e.g. goods or car lease entered prior to bankruptcy but later defaulted on)

- Note:** Indexed amounts are accurate as at the date of publication but change regularly throughout the year. Go to <https://www.afsa.gov.au/> and select indexed amounts to ensure you have the current amount.

- This checklist is a tool only. It does not explain the consequences of bankruptcy and is intended for use in conjunction with other training and resources. For a more detailed explanation of the consequences of bankruptcy see Chapters 6 and 8 of the Bankruptcy Toolkit. It is the responsibility of the worker using the list to ensure that the information provided to clients is comprehensive, accurate and up-to-date.**

- Car accident with judgment or exchange of letters that liquidate debt
- Genuinely forgotten debts can be added later

What sort of debts are not covered (not provable)? Can be enforced against the debtor

- Most court fines
- Director's fines
- Debt incurred after date of bankruptcy
- Student assistance (HECS/HELP)
- Unliquidated debts
- Student Supplementation loan

Cannot legally be enforced against debtor

- Statute barred debts
- Illegal debts (debts to drug dealers and loan sharks)

Tricky debts

Secured debts — (repossession can occur, only provable if security sold for shortfall):

- Home loans
- Car loans
- Water and council rates
- Debts incurred by fraud (e.g. Centrelink, enforcement ceases during bankruptcy but can recommence afterwards as debtor not released by discharge, possible prosecution)
- Bail bonds
- Debts on recognisance
- Fines where license or registration at risk (waiver may be available)
- Child support (provable, enforceable against the client, not released upon discharge)
- Gambling debts (provable but possible prosecution)
- Debts to government or financial institutions with set off rights (i.e ATO and future refunds if tax liability)
- Overseas debts

Family/Domestic violence

Where personal safety is at risk, AFSA will consider all requests to suppress addresses from the NPII.

- If you have been affected by family/domestic violence, AFSA will consider your request to suppress your address.
- The form to request this suppression is on AFSA's website under **Request for information to not be on the NPII:** [afsa.gov.au/insolvency/how-we-can-help/forms/request-information-not-be-npii](https://www.afsa.gov.au/insolvency/how-we-can-help/forms/request-information-not-be-npii). Providing evidence of the violence, such as a copy of an Intervention Order or a report from a support worker, is important.

Bankruptcy checklist (continued)

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Protected Property

Note: All property must be listed in the SOA where appropriate whether protected or not.

- Ordinary clothing
 - Necessary household furniture & effects
 - Motor vehicle up to \$7,800 (*this amount is subject to indexation*)
 - Property belonging to non-bankrupt spouse/partner/co-occupant
 - Property held in trust for others (subject to conditions)
 - Tools of trade worth up to \$3,700 (*this amount is subject to indexation*)
 - Wedding rings, jewellery and other items of sentimental value in some circumstances
 - Life assurance or endowment policies
 - Superannuation (in a regulated Super fund)
- Some Rural Assistance Grants (generally older)

Protected money including:

- Proceeds of life insurance or endowment policies received on or after date of bankruptcy
- Funds withdrawn from super on or after date of bankruptcy
- Personal injury compensation received by the bankrupt
- Property purchased substantially wholly with protected money (bankrupt's name on title)
- Total and Permanent Disability payments may be protected if inability to work due to injury and not illness, or payment received from super fund on or after date of bankruptcy (could be a problem if paid by insurer) - Seek legal advice

Real Estate (tricky issues)

- Bankrupt's interest vests in Trustee
- Joint owners can buy Trustee's share or property will be sold
- Name on title not full story – transfers from bankrupt, significant contributions by bankrupt
- Trustee has many years in which to sell (even after discharge)
- Discharged bankrupt can offer to buy back equity after discharge if not already sold
- Pros and cons of retaining negative equity property
- Retain equity in Defence Service home loan (provided not paid out in full during bankruptcy)
- If property might be protected evidence will be required
- May be able to recover protected money even if property not fully protected

Travel restrictions

- Passport may be taken
- Can't leave Australia without Trustee's consent
- Fee payable to seek consent (\$150 if AFSA is the trustee)
- Will need to plan ahead and have good reason for travel
- Consent may be subject to conditions
- Contribution payers will need to pay in advance

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Contributions

- Contributions payable if earn above prescribed amount
- Number of dependents relevant to prescribed amount
- Salary sacrifice/fringe benefit arrangements grossed up
- Must keep Trustee informed of changes of circumstances
- Deemed income/ non-monetary benefits counted as income
- Extensive power to enforce payment (objection to discharge, supervised accounts, garnishees)
- Hardship available in limited circumstances
- Income contributions can be reassessed even after discharge (where there has been non-disclosure)

Employment

Note: Debtor should make their own enquiries of any relevant professional body or licensing/registration authority

- Prohibition on being a director/managing a corporation
- Armed forces
- Police
- Some public service
- Lawyers
- Partnerships
- Accountants
- Tax Agents
- Sheriff
- Real estate agent
- Gaming license
- Politicians
- Finance industry
- Key personnel under Aged Care Act
- Subcontractors who need licence
- Other licensed or registered trades or professions

Other

- Prosecution for non-compliance
- Possible referral to private trustee by AFSA
- Power of Attorney
- Need to keep trustee informed of changes of name, address, income and property
- Annulment (upon payment of debts, interest and substantial fees)
- Annulment noted on public record but bankruptcy remains on record
- Composition or arrangement

Bankruptcy checklist (continued)

Client Name

Date

Worker:

File no:

Advantages

- Fresh start
- Harassment stops
- Legal proceedings stop (for provable debts)
- Keep protected property (see below)
- Travel in Australia allowed
- Voluntary payments towards debts can be made
- Goods seized by Sheriff returned (if protected and not already sold)
- Garnishee of wages/salary stops
- Sole traders may be able to continue in self-employment in some circumstances

Disadvantages

- Difficulties obtaining credit (see above re NPII and credit file)
- All property/assets go to bankrupt estate (real estate, vehicles, shares, antiques, expensive jewellery) including:
 - Savings over \$1000 – \$2000
 - Tax refund (pre-bankruptcy earnings)
 - Property now owned by others (undervalue transactions, transfers to defeat creditors)
 - Money already paid to creditors (preferential payments)
- Business usually sold or liquidated
- Property acquired during bankruptcy– vests in Trustee, potential annulment and return of surplus if sufficient amount:
 - asset purchases
 - gifts
 - winnings
 - inheritances
- Must continue to pay secured debts or forfeit security property
- Can't be a director of a company/incorporated association/ self managed super fund or involved in its management (must resign directorship)
- Disclosure obligation when borrowing/passing cheques etc. over \$5,613 (*this amount is subject to indexation*)
- May be required to pay bond to secure utilities and communications services
- May have difficulties obtaining some types of insurance
- May have difficulty securing rental property
- Guarantors and joint-debtors still liable
- Restriction on ability to take legal action
- Impact on intellectual property/copyright
- Migrants and sponsors of migrants need to check impact on visas/immigration status
- Overseas travel restrictions
- Requirement to make contributions
- Restrictions on employment
- Liability for offences

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