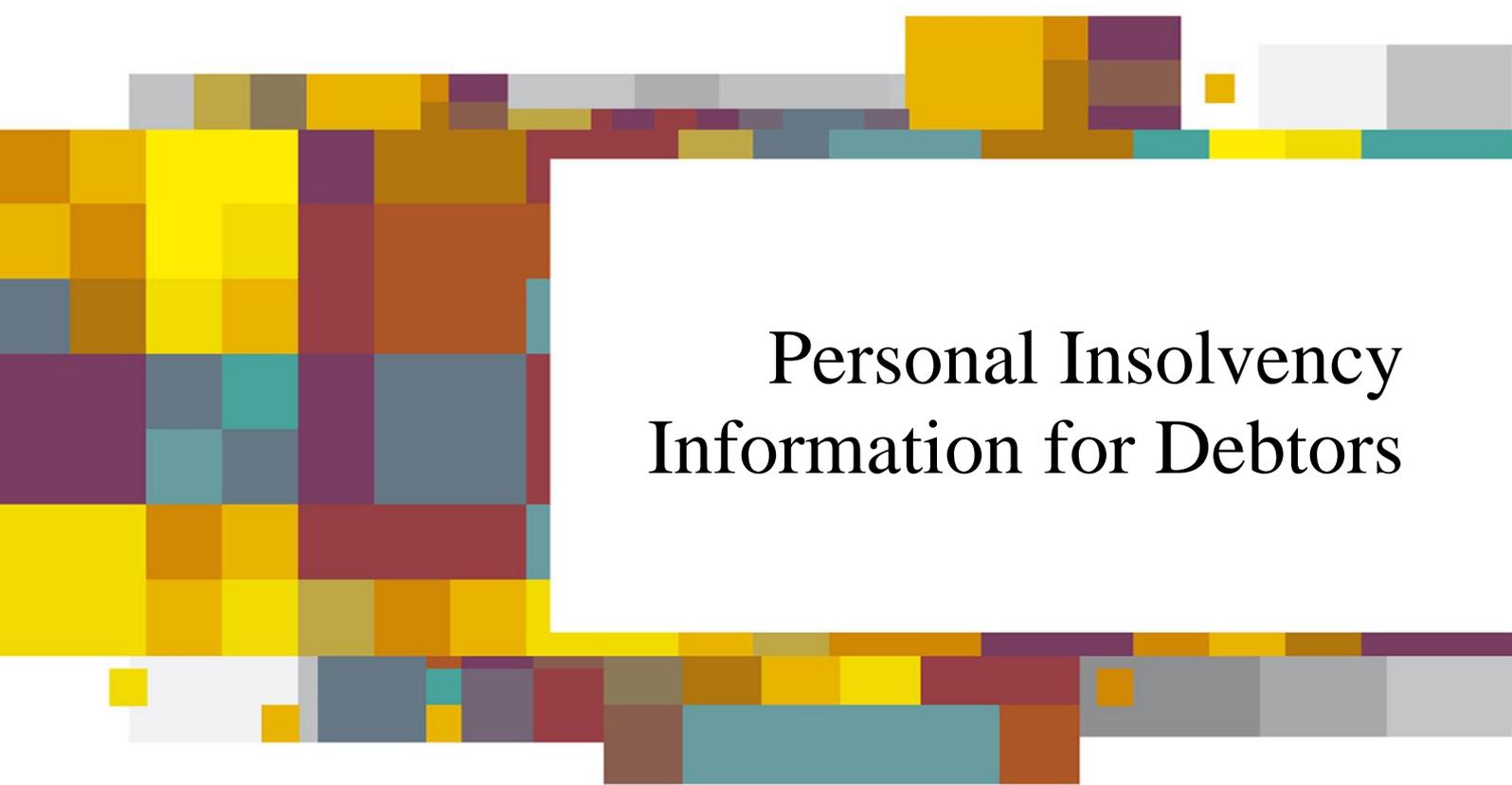




Australian Government

Insolvency and Trustee Service Australia

A decorative graphic consisting of a grid of colored squares in shades of yellow, orange, red, purple, blue, and grey, arranged in a pattern that resembles a stylized 'L' shape or a stepped border.

Personal Insolvency Information for Debtors

Content

1. Your options to deal with unmanageable debt	4
A. Informal arrangements	4
B. Formal arrangements	4
2. Interim relief: suspension of creditor enforcement by presenting a declaration of intention to present a debtor's petition	6
3. Debt agreements	7
4. Personal insolvency agreements	9
5. Voluntary bankruptcy	11
A. Your assets	12
B. Your income	13
C. Your debts and creditors	15
D. Travelling overseas	16
E. Discharge	17
F. Annulment	18
G. Fees and charges	20
6. Creditors making you bankrupt	21
7. ITSA's fees and charges	22
8. Quick comparison of features between different types of personal insolvency administrations	24
9. Sources of financial guidance	26

1. Your options to deal with unmanageable debt

Being unable to manage your debts can be caused by various reasons, some of which may be beyond your control. For instance, sudden unemployment, ill health and breakdowns in family relationships are often the causes that trigger financial hardship.

It is important to recognise financial difficulty early so that you can address the situation before it becomes unmanageable and you have to resort to options that you would otherwise prefer to avoid.

Dealing with debt: Your rights and responsibilities is a government publication which gives you information on dealing with debts, debt collectors and disputes. The booklet is available through the Australian Securities and Investments Commission (www.asic.gov.au) or the Australian Competition and Consumer Commission (www.accc.gov.au).

There are various options available to deal with unmanageable debts. Some are formal arrangements governed by specific legislation and some are more informal and usually based on agreements between you and your creditor/s.

A. INFORMAL ARRANGEMENTS

Some creditors could give you more time to pay, agree to renegotiate repayments or accept a smaller payment to settle the debt.

You can contact your creditors directly or you can ask for help from a financial counselling service, a community legal centre, a registered trustee, a registered debt agreement administrator, a lawyer or an accountant. They will talk to you about your options and may speak to creditors on your behalf, help with budgeting advice or give you advice about other sources of government assistance.

Contact details for financial counsellors, debt agreement administrators and registered trustees can be found on page 26 of this booklet.

B. FORMAL ARRANGEMENTS

The Bankruptcy Act provides formal options for dealing with unmanageable debt. The legislation specifically sets out what you and your creditors can or cannot do under each of these arrangements.

DECLARATION OF INTENTION TO PRESENT A DEBTOR'S PETITION

This stops your unsecured creditors garnisheeing your wages and/or the bailiff or sheriff seizing your assets to recover debts for a period of 21 days. It does not prevent a secured creditor from repossessing an asset. You could use that time to speak to your creditors, consider other options or seek advice.

You do not have to become bankrupt after this period. You can only lodge one declaration every 12 months.

PROPOSE A DEBT AGREEMENT

A debt agreement is a legally binding arrangement between you and your creditors which must be accepted by the majority (in value) of your creditors. You can offer to pay your creditors in instalments or with a lump sum payment which may be less than the full amount of your debts. You can also propose a freeze on your debts for a set time to let you get back on your feet. Your unsecured debts, assets and after-tax income must be under certain limits* to propose a debt agreement.

If you ask a registered debt agreement administrator to administer your debt agreement, they will charge a fee.

Further information on debt agreements can be found on page 7 of this booklet.

PROPOSE A PERSONAL INSOLVENCY AGREEMENT

A personal insolvency agreement is also a legally binding arrangement between you and your creditors whereby you offer to pay them in full or part by instalments or a lump sum. Your offer must be accepted by a special resolution of your creditors. Unlike a debt agreement, there are no debt, asset or income limits to be eligible to propose a personal insolvency agreement.

You must appoint a controlling trustee who will investigate your affairs and report to your creditors. Should your creditors accept the proposal, a trustee must administer the agreement.

Further information on personal insolvency agreements can be found on page 9 of this booklet.

VOLUNTARY BANKRUPTCY

Where you are unable to come to an arrangement with your creditors, you can consider petitioning for bankruptcy. Upon becoming bankrupt your trustee will sell those assets that you are not allowed to keep, to repay your creditors to the extent possible.

While you are a bankrupt, should you earn an after-tax income above a defined threshold* you will be required to pay half of the excess amount to your trustee for payment to creditors.

You will be bankrupt for a minimum of three years. This period can be extended by the trustee under certain circumstances. After that period you are discharged from most of your debts.

Further information on bankruptcy can be found on page 11 of this booklet.

CHOOSING THE RIGHT OPTION

Every person's circumstances are different. An option that suits one person may not suit another.

In making your decision, it is important to be realistic about your current situation as well as what you expect to happen in the future. For instance, if you are thinking about asking your creditors for more time to pay the debt, or to pay

by instalments, then you should make sure that this is something you will definitely be able to afford. If not, you may want to think about other, more formal options.

The following pages provide more detailed information about the formal options, such as bankruptcy, that may be available to you. If you have any questions regarding any of these options, please call us on 1300 364 785 or visit our website at www.itsa.gov.au.

ITSA does not provide advice on which option is best suited to your particular circumstances. You are encouraged to seek independent advice before making a decision. Refer to page 26 for where you can seek help and advice.

*For threshold limits and indexable amounts please see the current Indexed Amounts fact sheet or the ITSA website www.itsa.gov.au

2. **Interim relief: suspension of creditor enforcement by presenting a declaration of intention to present a debtor's petition**

If you have unmanageable debt and need time to consider your options, you may apply for temporary protection from enforcement action by your unsecured creditors for up to a period of 21 days. This temporary relief allows you to negotiate payment arrangements with creditors or alternatively, consider a formal insolvency administration (Debt Agreement, Personal Insolvency Agreement or Bankruptcy) that may be suited to your circumstances.

The fact that you have availed of this interim relief from creditor enforcement action is not recorded on the National Personal Insolvency Index (public electronic register of all personal insolvencies), however your creditors are notified of the stay on enforcement action and provided with a copy of your financial affairs.

You do not automatically become bankrupt after the 21 day stay period, however if you have not come in to a suitable arrangement with your creditors and you do not voluntarily apply to become bankrupt, your creditors can choose to apply to the court to make you bankrupt.

You are able to apply for this interim relief if:

- You have not applied for this interim relief in the preceding 12 months
- You have not signed a Controlling Trustee Authority within the preceding six months (proposed a Personal Insolvency Agreement to your creditors)
- You are not currently under a Debt Agreement, Personal Insolvency Agreement or the subject of a current Controlling Trustee Authority
- A creditor has not already petitioned for you to be made bankrupt
- You have a residential or business connection to Australia (you are living in Australia or conduct business in Australia)

Effect of this interim relief:

- Most of your unsecured debts are 'frozen' for the 21 days stay period and these creditors cannot continue with any enforcement action (eg garnisheeing your wages or seizing your property)
- Some unsecured creditors are not bound by this stay period and they may continue recovery action (eg Child Support debts, court imposed fines/penalties and HELP debts)
- Secured creditors are also not bound by this stay period (eg if your car or house mortgagee has initiated repossession proceedings, they may continue to do so)

You should note that the 21 day stay period can end earlier if:

- A creditor petitions the court to make you bankrupt and/or the court makes you bankrupt during this period
- You sign a Controlling Trustee Authority (propose a Personal Insolvency Agreement) during this period
- You voluntarily apply to become bankrupt during this period.

3.

Debt Agreements

A debt agreement is a binding agreement between a debtor and their creditors where creditors agree to accept a sum of money which the debtor can afford.

Payment by the debtor is based on their capacity to pay having regard to all their income and household expenses.

A debt agreement is an **option to assist debtors with unmanageable debt**. They are released from their debts when they complete all payments and obligations under the agreement. A debt agreement may provide for:

- weekly or monthly payments from the debtor's income
- deferral of payments for an agreed period
- the sale of an asset to pay creditors, and/or
- a lump sum payment to be divided among creditors.

WHO CAN PROPOSE A DEBT AGREEMENT?

Debtors can lodge a debt agreement proposal if they:

- are insolvent (unable to pay their debts as and when they fall due)
- have not been bankrupt, had a debt agreement or given an authority under Part X of the Bankruptcy Act in the last 10 years
- have unsecured debts, assets and after-tax income for the next 12 months all less than set limits*.

CONSEQUENCES OF PROPOSING A DEBT AGREEMENT

- A debtor who proposes a debt agreement commits an act of bankruptcy. A creditor can use this to apply to court to make the debtor bankrupt if the proposal is not accepted by creditors.

- The debtor's name and other details appear on the National Personal Insolvency Index (NPII), a public record, for the proposal and any debt agreement.

*Please see the current Indexed Amounts fact sheet or visit the ITSA website at www.itsa.gov.au

- The ability of the debtor to obtain further credit is affected. Details may also appear on a credit reporting organisation's records for up to seven years.
- During the voting period creditors cannot take debt recovery action or enforce a remedy against the debtor or the debtor's property; and must suspend deductions by garnishee on debtor's income.

THE CONSEQUENCES OF A DEBT AGREEMENT

- The debtor is not bankrupt.
- All unsecured creditors are bound by the debt agreement and are paid in proportion to their debts.
- The debtor is released from most unsecured debts when they complete all their obligations and payments.
- Secured creditors may seize and sell any assets (eg a house) which the debtor has offered as security for credit if the debtor is in default.
- Creditors cannot take any action against the debtor or property of the debtor to collect their debts.
- The agreement does not release another person from a debt jointly owed with the debtor.

WHAT IS THE PROCEDURE?

STAGE 1: INFORMATION

The debtor must read the Prescribed Information about the alternatives and consequences of bankruptcy and debt agreements. This is available from ITSA.

STAGE 2: PROPOSAL IS LODGED

The debtor completes and lodges three forms with ITSA: a debt agreement proposal; an explanatory statement; and a Statement of Affairs. They must be received by ITSA within 14

days of being signed.

If an administrator consents to administer the debt agreement they must lodge a certificate that they have reasonable grounds to believe that the debtor has disclosed all the information required and is likely to be able to make the payments due over the period of the agreement.

STAGE 3: PROPOSAL IS SENT TO CREDITORS TO ASSESS AND VOTE ON

ITSA checks that:

- the debtor is eligible to lodge a debt agreement proposal
- the debt agreement administrator is eligible to administer debt agreements
- every question on each of the three forms is answered.

ITSA sends the proposal and explanatory statement to creditors, asking them to detail their debts and to vote on the proposal.

Creditors then assess the proposal and vote. Any questions are referred to the debt agreement administrator.

A secured creditor (holding security like a hire purchase agreement or mortgage) is entitled to vote and receive dividends on any unsecured part of their debt. Alternatively a secured creditor may choose not to receive a dividend and rely on their security. Secured creditors' rights in relation to dealing with their security are not affected by a debt agreement.

STAGE 4: ITSA CHECKS AND COUNTS THE VOTES

For a proposal to be **accepted**, ITSA must receive 'yes' votes from a majority in value of the creditors who vote.

If the proposal is accepted by creditors the debt agreement administrator is responsible for:

- collecting payments from the debtor
- keeping creditors and debtors informed
- paying dividends to creditors
- telling ITSA when the debt agreement is completed.

If the proposal is **not accepted** by creditors:

- it remains on the NPII and on the records of credit reference agencies
- creditors are able to commence recovery action including for accrued interest.

CAN A DEBT AGREEMENT BE VARIED OR TERMINATED?

A **variation** proposal may be lodged if the debtor's circumstances have changed.

A **termination** proposal may be lodged by the debtor or a creditor if the terms of the debt agreement are not being carried out.

Creditors vote on a proposal to vary or terminate in the same way as they vote on the original proposal. If it is not accepted by creditors, the terms of the debt agreement remain in force.

The agreement is **automatically terminated** if:

- the debtor has not made any payments for six months after a payment is due, or
- the debtor does not complete their payments within six months of the completion date of the agreement.

The **effects** of terminating a debt agreement include:

- creditors can commence or recommence recovery action against the debtor, and
- the termination of the debt agreement is registered on the NPII.

The debtor, a creditor or ITSA may apply to the court for an order to terminate a debt agreement.

Creditors may apply for an order that the debtor be made bankrupt.

WHEN DOES A DEBT AGREEMENT END?

A debt agreement ends when:

- the debtor has completed all their obligations and payments, or
- the court orders the debt agreement be terminated or declared void, or
- the debt agreement is terminated by creditors.

Administrator Fees and charges

Debt agreement administrators and other advisers may charge a fee for providing information and preparing debt agreement forms. Debt agreement administrators also charge a fee for receiving and distributing the money. This must be taken as a percentage of each payment made by the debtor.

Funds realised by an administrator are subject to a realisations charge* (a government levy) which is paid by the administrator directly to the government. Any interest earned on funds realised by a registered debt agreement administrator is payable to the government.

PROPOSED GOVERNMENT LODGEMENT FEE

The Government proposes to introduce a fee payable on lodgement of a debt agreement proposal on or after 1 January 2011. The government lodgement fee may be paid to an administrator who has an account with ITSA. The administrator will be invoiced on a regular basis.

You should confirm the status of the proposed fee with your administrator.

*For current information on the realisations charge please see page 22 or visit the ITSA website at www.itsa.gov.au

4. Personal insolvency agreements

A personal insolvency agreement (PIA) is a flexible way for a debtor to come to an agreement with creditors to settle debts without going bankrupt.

A debtor must be insolvent to propose a PIA. There are no income, asset or debt limits.

A debtor is ineligible to propose a PIA if they are not in Australia or do not have an Australian connection (eg. the debtor does not usually live in Australia nor does the debtor carry on business in Australia).

A PIA may involve one or more of the following which will result in creditors being paid in part or in full:

- a lump sum payment to creditors either from the debtor's own money or money from third parties (eg family or friends), or
- transfer of assets to creditors or the payment of the sale proceeds of assets to creditors, or
- a payment arrangement with creditors (this could include deferral of repayments).

HOW DOES IT WORK?

The debtor appoints a controlling trustee to take control of their property and put forward a proposal to creditors. Only a registered trustee, the Official Trustee (ITSA) or a suitably qualified solicitor can act as a controlling trustee.

The controlling trustee examines the proposal, makes enquiries into the debtor's affairs and reports to creditors. The report will advise creditors of the amount they can expect from the proposal compared to the amount they could expect if the debtor became bankrupt, and make a recommendation whether it is in the creditors' interest to accept the proposal as opposed to the debtor becoming bankrupt. The creditors are entitled to ask questions of the controlling trustee and share information with them about the debtor's affairs.

A creditors' meeting is held within 25 working days of the controlling trustee's appointment (30 working days if appointed in December) at a time and location convenient to creditors. This meeting is advertised on ITSA's website (www.itsa.gov.au). If unable to attend, a creditor can be represented by a proxy or attorney, or participate by telephone if facilities are available.

The debtor must attend the meeting unless excused by the trustee. The creditors may ask the debtor questions before deciding how to vote. At the creditors' meeting, creditors consider the proposal. Acceptance requires a 'yes' vote from a majority of creditors who represent at least 75% of the dollar value of the voting creditor's debts (referred to as a 'special resolution').

IF THE PROPOSAL IS ACCEPTED

If the proposal is accepted the creditors are bound by the terms of the agreement. Secured creditors' rights in relation to dealing with their security are not affected by a PIA.

A trustee (who may be different from the controlling trustee but must be either a registered trustee or the Official Trustee) is appointed to administer the agreement.

IF THE PROPOSAL IS REJECTED

If the proposal is rejected creditors will either:

- vote in favour of the debtor becoming bankrupt (the debtor does not have to accept this), or
- leave it up to the debtor to decide how to resolve their financial difficulties.

If the proposal is rejected or lapses, the debtor cannot appoint another controlling trustee for six months without leave of the court.

VARYING, TERMINATING OR SETTING ASIDE A PIA

A debtor can make a written request to their trustee to vary the terms of the agreement. The trustee sends a notice of the proposed variation to the creditors and, if none object in writing, the terms will be varied. If a creditor objects, a creditors' meeting can be called to consider the proposed variation.

Creditors, with the debtor's written consent, can vary the terms of an agreement by passing a special resolution.

An agreement can be terminated by the occurrence of an event specified in the agreement as causing termination.

An agreement can also be terminated by a resolution of the creditors where the trustee is satisfied that the debtor is not complying with their obligations.

The court can set aside or terminate an agreement in certain circumstances.

The consequences of proposing and entering into a PIA.

A debtor who appoints a controlling trustee commits an 'act of bankruptcy'. A creditor can use this to apply to court to make the debtor bankrupt if the attempt to set up a PIA fails. The appointment of a controlling trustee and the setting up of a PIA will be recorded on the National Personal Insolvency Index (NPII) forever. Details may also appear on a record held by a credit reporting organisation, such as Veda Advantage, for up to seven years.

Once a debtor has executed a PIA, the debtor is automatically disqualified from managing a corporation until the terms of the PIA have been complied with.

Once the debtor has appointed a controlling trustee, any existing creditor's petition to make a debtor bankrupt cannot proceed until the meeting of creditors is held to consider the debtor's proposal.

FEES AND CHARGES

There is a fee payable to ITSA upon lodging a Controlling Trustee Authority form*. A controlling trustee will charge a fee for examining the proposal, investigating the debtor's affairs, preparing a report to creditors and holding the creditors' meeting. The trustee of the PIA (who may be different to the controlling trustee) will also charge a fee for administering the PIA.

A debtor who has executed a Controlling Trustee Authority form or a PIA and who is dissatisfied with the amount of fees charged by the trustee may request an independent review of the trustee's remuneration (including fees and disbursements) be undertaken by the Inspector-General in Bankruptcy. The Inspector-General in Bankruptcy will undertake the review provided certain conditions are met. For further information please refer to Inspector-General Practice Direction 16 at www.itsa.gov.au.

Funds realised by a trustee in an administration are subject to a realisations charge* (a government levy) which is paid by the trustee directly to the government. Any interest earned on funds realised by the trustee is payable to the government.

*For information on current fees and the realisations charge please see page 22 or visit the ITSA website at www.itsa.gov.au

5. Voluntary bankruptcy

If you are unable to pay your debts and cannot come to suitable repayment arrangements with your creditors, you may voluntarily lodge a petition to become bankrupt.

Your petition for bankruptcy may not be accepted if it appears from the information that is lodged with the petition that you are likely to be able to pay your debts, AND you are either avoiding payment of a particular debt/s, or have been previously bankrupt.

A debtor is ineligible to present a debtor's petition for bankruptcy if they are not in Australia or do not have an Australian connection (eg. the debtor does not usually live in Australia nor does the debtor carry on business in Australia).

The consequences of bankruptcy are serious.

Bankruptcy generally lasts for a period of three years but can be extended in certain circumstances. There is a permanent record of the bankruptcy on the National Personal Insolvency Index (an electronic public register which can be accessed by anyone for a fee). Creditors are notified of your bankruptcy.

A trustee is appointed to administer the bankruptcy. In order to pay creditors, your trustee will:

- sell your assets (although you will be able to keep certain types of assets)
- recover any income you earn over a certain limit
- investigate your financial affairs and may recover property that you have transferred to someone else for inadequate consideration prior to your bankruptcy or which you may receive during the period of your bankruptcy.

You can choose to appoint a registered trustee by obtaining and providing their consent when you lodge your petition to become bankrupt. If you do not choose a trustee, ITSA may arrange for a registered trustee to be appointed.

Otherwise, the Official Trustee is initially appointed to administer your estate. Your creditors may choose to change the trustee at any time.

The duties of a trustee are specified in legislation and trustees have to adhere to certain standards while administering your estate.

A. ASSETS

Assets are anything of value you own when you become bankrupt plus anything you buy or receive before the end of your bankruptcy.

Some assets are exempt, which means you may keep them. Some assets are non-exempt or divisible, which means your trustee may sell them for the benefit of your creditors.

WHAT ASSETS MAY I KEEP?

- Most ordinary household or personal items.
- Tools used to earn an income, up to a *set limit**.
- Vehicles (cars or motorbikes), where the total value of the vehicles minus the sum owing under finance is less than a *set limit**.
- Most funds held in registered superannuation funds and payments from regulated superannuation funds received after you have become bankrupt (Note: Superannuation payments received prior to bankruptcy are not protected).
- Life assurance policies in respect of yourself or your spouse or proceeds from such policies received after your bankruptcy.
- Compensation for a personal injury, eg injury to you from a car accident or workers compensation.
- Assets to the extent that they were bought with your personal compensation money or certain government grants (protected monies).
- An asset held by you in trust for another person (eg a child's bank account).
- Awards of a sporting, cultural, military or academic nature made to you, such as medals or trophies and claimed as having sentimental value may be exempted by a vote of creditors

WHAT ASSETS WILL MY TRUSTEE SELL?

Apart from the assets you can keep, your trustee will recover any assets even if they are overseas or in someone else's possession. Examples include:

- houses, apartments, land, farm and business premises (including leases)
- motor vehicles other than exempt ones
- shares and other investments (including shares held in your employer's business)
- tax refunds for income earned before you became bankrupt
- proceeds of a deceased estate where the person dies before or during your bankruptcy
- lottery winnings and other competition prizes.

Warning:

There are penalties if you fail to:

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

WHAT ABOUT ASSETS I OWN WITH ANOTHER PERSON?

If you have a share in an asset, for example a house, your trustee can sell your share. If the co-owner is not also bankrupt, the trustee may agree to 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.

WHAT ASSETS ARE SECURED CREDITORS ENTITLED TO TAKE?

A secured creditor is one holding a security over your asset. Common examples of secured assets are:

- a house subject to a mortgage with a bank
- a motor vehicle subject to a bill of sale
- goods under hire purchase, chattel mortgage, lease or bill of sale with a finance company
- real estate subject to a charge by local councils for outstanding rates.

A secured creditor cannot take an asset back just because you are bankrupt. However, if you fall behind in payments they can take and sell it whether you are bankrupt or not. 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 or your trustee.

*For the current indexed amounts please see the current Indexed Amounts fact sheet or visit the ITSA website at www.itsa.gov.au

WHAT ABOUT ASSETS I USED TO OWN?

Your trustee will investigate assets you owned in the five years before bankruptcy. If they find that you have given away or sold assets for less than their market value, they may either recover these assets or the difference between the true value of the asset and the amount you received for it. Your trustee may also recover any assets that have been transferred for the purpose of defeating your creditors (including assets transferred more than five years before bankruptcy).

WHAT ABOUT LEGAL CLAIMS I MAY HAVE AGAINST SOMEONE?

If you have already started a legal action in a court, or if you believe you have a legal claim but have not yet started an action in the court, you cannot continue with that action or start a new action once you become bankrupt. It is up to your trustee to decide whether the claim should be pursued for the benefit of your creditors. However, should your claim be in relation to a personal injury or wrong done to you, your spouse, or a member of your family, or in respect of the death of your spouse or a member of your family, you may be entitled to pursue that claim even after you have become bankrupt. It is important to discuss these issues with your trustee who can provide you with further information in relation to such actions or claims.

WHAT HAPPENS TO THE ASSETS WHICH MY TRUSTEE CAN SELL WHEN I AM DISCHARGED FROM BANKRUPTCY?

Your trustee keeps any assets which have not been sold before your discharge (end of bankruptcy). Your trustee may have been unable to sell your assets straight away and it may take some years.

If all your creditors plus your trustee's fees and expenses have been paid, any remaining assets will be returned to you and your bankruptcy will be annulled.

B. YOUR EMPLOYMENT & INCOME

The Bankruptcy Act does not impose any restrictions on employment in any trade or profession. You can continue to earn an income and/or seek other employment opportunities. You should note however that particular industry associations or licensing authorities may impose certain restrictions or conditions should a member or licensee become bankrupt.

Generally state governments administer legislation that govern eligibility for particular trades (eg builders, real estate agents, etc) while national or state based professional associations and/or statutory boards set the eligibility requirements for particular professions (eg accountants, lawyers, tax agents, etc). You should check with your relevant licensing authority or professional organisation to ascertain whether bankruptcy has any impact on your ability to continue in that trade or profession.

Under the Corporations Act you are prevented from managing a corporation while bankrupt without approval from the court.

WHAT HAPPENS TO MY INCOME WHILE I AM BANKRUPT?

If your after-tax income exceeds a certain amount, you will have to pay contributions from your income to your trustee.

If you are a low-income earner you will not have to pay contributions. However, you may make voluntary payments to your trustee.

IF I HAVE TO PAY CONTRIBUTIONS, HOW MUCH?

You will be required to pay one half of the amount by which your after-tax income exceeds the prescribed threshold amount ie 50 cents of every \$1 of the excess amount.

(Note: 'income' for income-contribution purposes under the Bankruptcy Act has a wide meaning and includes certain amounts that are not included in taxable income)

HOW ARE CONTRIBUTIONS CALCULATED?

At the start of your bankruptcy your trustee will calculate whether you will be required to pay any income contributions during the first year of your bankruptcy. Also, the trustee will repeat that process at the start of each subsequent year of your bankruptcy.

The calculation is done using the following formula:

$$\frac{\text{'Assessed income' minus 'Actual income threshold'}}{2}$$

WHAT IS ASSESSED INCOME?

Assessed income for bankruptcy purposes includes your earnings, salary or wages plus other financial benefits received by you from various sources **less** the tax paid or payable (including the Medicare levy) on such amounts and if applicable, child support or maintenance payments. It includes:

- wages and salary (including second jobs)
- tax refunds for financial years during bankruptcy
- fringe benefits from your employer or others (eg use of a car, subsidised rent)
- salary sacrifice arrangements
- business profits
- some benefits and pensions
- income you earn which is paid to someone else.

Your trustee will be able to answer any questions you have about what is included as income.

Warning:

You must disclose all income and benefits to your trustee. **Penalties apply** for non-disclosure.

Your trustee will calculate your assessed income by:

- determining your total income from all sources
- deducting your income tax, Medicare levy and child support or maintenance payments.

WHAT IS THE ACTUAL INCOME THRESHOLD AMOUNT (AITA)?

The AITA (approx 3 1/2 times the maximum pension rate) is based on an indexed figure and changes periodically*. If you have dependants the income threshold amount increases in accordance with the number of dependants.

Example

Bob expects his gross income for the first 12 months of his bankruptcy to be \$65 000. He has one dependant.

Step 1: The trustee calculates Bob's assessed income.

gross expected income	\$65 000.00
deduct income tax	\$13 524.66
deduct Medicare levy	\$975.00
Assessed income	\$50 500.34

Step 2: The trustee works out Bob's AITA.

AITA (with 1 dependant)	\$48 675.35*
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Step 3: The trustee uses Bob's assessed income and AITA to calculate his annual contribution liability.

$$\$50\,500 - \$48\,675^* = \$1\,825 \div 2 = \$912$$

Bob receives a notice of assessment, requiring him to pay \$912 at \$35 per fortnight. Payment arrangements may be changed by the trustee if Bob is paid monthly or his income is seasonal.

NOTICE OF ASSESSMENT

You will be sent a notice of assessment by your trustee with:

- the amount you have to pay (if any)
- how the amount was calculated
- the dates your payments are due.

CONSEQUENCES FOR NON-PAYMENT

Your trustee may:

- garnishee (automatically deduct without your consent) funds from your income or bank account or from a third person who holds money for you, and/or
- extend your bankruptcy by five years and assess additional contributions for this period, and/or
- obtain judgment for unpaid contributions and take enforcement action after your discharge

- require you to open a supervised bank account into which all your income must be paid from which all withdrawals are authorised by the trustee.

*For the current indexed amounts please see the current Indexed Amounts fact sheet or visit the ITSA website at www.itsa.gov.au

WHAT IF MY CIRCUMSTANCES CHANGE?

You must advise your trustee immediately if your income or number of dependants changes, or you think these details will change in the next 12 months. If you fail to do so, your assessment may be incorrect and you may pay too much or not enough.

At the end of each 12 month period your trustee will re-assess your contribution liability based on your actual income and dependants for the period. If you have not paid enough because your income was greater than you estimated then you will have to make up the shortfall. If you have paid too much the extra payments cannot be refunded but they will be credited to the next assessment.

HARDSHIP VARIATIONS

Hardship grounds are limited to exceptional circumstances which would impose an excessive financial burden on you including:

- ongoing medical expenses
- cost of child day care essential for work
- high rent
- substantial travelling expenses to and from work, or
- loss of contribution, usually made by your spouse or someone residing with you, to the costs of maintaining your household.

Contact your trustee for more details if you think you may be eligible for a hardship variation. Applications for hardship must be in writing and:

- explain why you will suffer hardship
- include documentary evidence of your income and expenses.

Your trustee will make a decision on your application within 30 days and give you a written notice setting out their reasons.

REVIEW

Contact your trustee if you disagree with your contribution assessment or a decision to refuse a hardship variation. If you still disagree you may request a review by the Inspector-General. The request for review needs to be in writing and lodged within 60 days of you being notified of the assessment. However, you must still make payments during the appeal period.

C. DEBTS AND CREDITORS

WHAT HAPPENS TO THEM IF I BECOME BANKRUPT?

Once you are bankrupt, unsecured creditors should stop contacting you. To make sure this happens you must list all your debts in your Statement of Affairs when you apply to become bankrupt, including:

- debts you owe jointly with someone else
- any loans to you from friends and relatives
- debts that you will still need to pay if you are bankrupt.

Your bankruptcy will not affect a creditor's right to pursue another person, such as:

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

DEBTS YOU STILL HAVE TO PAY DURING BANKRUPTCY

You will have to pay:

- debts which are not provable in bankruptcy eg:
 - penalties and fines imposed by a court
 - damages from accidents (eg car accidents) except under certain circumstances
 - student assistance/supplement loans
- any new debts you run up after your bankruptcy commences.

To avoid suspension of your driver's licence and/or your motor vehicle registration, you will need to pay your debts for parking, traffic and other infringements of state laws. Most states have the power to suspend your licence and/or your motor vehicle registration until payment is made.

If you fail to pay certain debts for essential services to your home (eg electricity, gas, telephone) it may result in disconnection of these services.

The Australian Taxation Office (ATO) may keep your tax refund and offset it against any debt you owe the Commonwealth (eg ATO, Child Support Agency).

DEBTS YOU HAVE TO PAY AFTER YOUR BANKRUPTCY ENDS

Although you are released from most debts at the end of your bankruptcy, there are others you may still be required to pay. For example, after bankruptcy you will remain liable for:

- debts incurred by fraud
- maintenance debts, including child support
- accumulated HECS (Higher Education Contribution Scheme) and HELP (Higher Education Loan Program) debts.

HOW WILL MY CREDITORS BE AFFECTED?

Unsecured creditors generally lose the right to recover their debts eg:

- banks, finance companies and credit unions for personal loans, credit cards and store cards
- service providers, doctors, lawyers and tradespeople.

If you become bankrupt, any legal action taken against you by unsecured creditors must stop, eg a summons, a garnishee from your income or bank account or recovery action by a sheriff or bailiff.

If creditors continue to demand that you pay their debt, you should immediately tell your trustee who will inform the creditor of your bankruptcy. If you are being harassed or coerced about debts, you may obtain further information from the Australian Competition and Consumer Commission website at www.accc.gov.au or call the Infocentre on 1300 302 502 regarding your rights as a consumer and the procedures to lodge a complaint.

Secured creditors hold security over your assets which entitles them to take and sell them if you fall behind in payments eg:

- banks with a mortgage over a house

- finance companies with a chattel mortgage, lease or bill of sale over a car, furniture or electrical goods
- hire purchase arrangements where you have not paid the full amount
- creditors secured by government legislation over houses and land, such as council/shire rates and water rates.

If you become bankrupt, secured creditors may contact you to find out what will happen to an asset. You may be able to make arrangements to keep a secured asset. However, you should talk to a financial counsellor or bankruptcy trustee beforehand.

Some creditors may retain ownership of items purchased from them until their debt has been paid in full (eg sales subject to retention of title clauses, goods on consignment or commission). Creditors holding a security deposit or bond (eg a landlord) are entitled to keep it to reduce your debt.

If you have difficulty working out your debts and creditors, you should talk to your creditors to ask whether your debts are secured. You can also talk to a financial counsellor if you are unsure about what types of debts and creditors you have.

D. OVERSEAS TRAVEL

CAN I LEAVE AUSTRALIA IF I BECOME BANKRUPT?

You can only leave Australia if you obtain your trustee's written permission before you leave.

Your trustee will need to be satisfied that you have legitimate reasons for the proposed travel eg:

- as a condition of your employment, or
- for compassionate reasons.

Your trustee may impose conditions when giving permission such as:

- the period of travel
- the date you are required to return to Australia, and/or
- that any income contributions (compulsory sums from your income to repay your creditors) that you have been assessed to pay are paid before you go.

You may have a passport, however, you must hand it to your trustee if directed to do so.

Your trustee may refuse permission if:

- you have not carried out all of your obligations under the Bankruptcy Act, eg filing a Statement of Affairs, or
- you are required to assist your trustee in the administration of your bankruptcy, or the trustee's investigations have not been completed.

Warning:

If you leave Australia without your trustee's permission or you leave with permission but do not return when you said you would, your trustee may lodge an objection to your discharge. If this happens, your bankruptcy will be extended to five years from the date you return to Australia.

If you are overseas and your trustee asks you to return to Australia and you do not, your trustee may lodge an objection to your discharge. If this happens, your bankruptcy will be extended to eight years from the date you return to Australia.

Leaving or trying to leave Australia without the written consent of your trustee is an offence under the Bankruptcy Act. The penalty for this is up to three years imprisonment.

Breaching a travel condition imposed by your trustee is also an offence under the Bankruptcy Act. The penalty for this is up to 12 months imprisonment.

HOW DO I APPLY FOR PERMISSION?

As soon as you become aware that you may need to leave Australia you should contact your trustee and discuss your situation. You should then write to your trustee giving:

- the reasons for the proposed trip
- the names of the countries you propose to visit
- the date you intend to leave Australia
- the date you intend to return to Australia
- if someone else is paying for the trip, the name of the person paying for the trip, the cost of the trip, and a confirming letter from that person
- an email address, telephone number and overseas address where your trustee could readily contact you

- your current annual income
- your proposed arrangements for paying any contribution liability whilst overseas.

Your trustee must have adequate time and information to consider your request. Your request must be in writing so that your trustee understands exactly what you are requesting. You will be advised promptly of the trustee's decision and any conditions placed on your travel.

If you are not satisfied with your trustee's decision, try to resolve your concerns with them directly. If you are still not satisfied with your trustee's decision, you may apply to the Federal Court or the Federal Magistrates Court for a review. You should seek legal advice before you do this.

E. DISCHARGE

WHAT IS DISCHARGE?

It means your bankruptcy has ended and you are no longer bankrupt.

WHEN WILL I BE DISCHARGED FROM BANKRUPTCY?

If you became bankrupt because you presented your own petition, you will be discharged automatically three years and one day after you filed that petition and the Statement of Affairs with ITSA.

If one of your creditors made you bankrupt, you will be discharged automatically three years and one day after your completed Statement of Affairs is filed with ITSA. It is important to lodge your Statement of Affairs with ITSA promptly as any delay can mean you will be bankrupt longer than three years.

In some cases, you can be bankrupt for longer than three years. This happens when your trustee lodges an objection to your discharge with ITSA.

DO I HAVE TO APPLY FOR DISCHARGE?

There is no need to apply for discharge. However, you can get confirmation of your discharge from bankruptcy by:

- asking your trustee, or

- searching the public record, the National Personal Insolvency Index (NPII), which is maintained by ITSA and obtaining an extract which shows your date of discharge. There is a fee for this service.

WHAT HAPPENS AFTER DISCHARGE?

Your name will appear on the public record (NPII) forever as a discharged bankrupt. Credit reporting organisations also keep a record of bankruptcies. These records are kept for a limited period even after you have been discharged. You can contact them to:

- confirm that they have updated your credit file to show that you are now discharged
- find out how long they will show the record of your bankruptcy on your credit file.

WHAT ARE MY LEGAL OBLIGATIONS AFTER DISCHARGE?

The administration of your bankruptcy may continue after you are discharged. Your trustee may not have finalised investigations or the sale of assets, or you may still have income contributions to pay.

- You must assist your trustee to finalise the administration of your bankruptcy.
- You must advise your trustee of any change of address or financial circumstances if requested to do so.
- You must pay outstanding income contributions.

WHAT DEBTS DO I HAVE TO PAY AFTER I AM DISCHARGED?

If you had any of the following types of debts you may have to continue paying them even after your discharge:

- penalties and fines imposed by a court
- damages claims 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
- child support debts
- maintenance debts
- student HELP debts and student loans (contact the Australian Taxation Office if you need more information)

- debts incurred by fraud.

WHAT ABOUT MY ASSETS?

Any assets that you acquired before or during your bankruptcy can still be sold by your trustee up to a specified period. These are not automatically returned to you after your discharge.

CAN I BE BANKRUPT FOR MORE THAN THREE YEARS?

Your bankruptcy may be extended to five or eight years if your trustee lodges an objection to your discharge with ITSA.

Your trustee may lodge an objection on a number of grounds, such as your failure to:

- provide information to, and assist, your trustee
- disclose to your trustee all income
- pay assessed income contributions
- explain how money was spent, or
- reveal all assets and creditors.

More than one objection can be lodged.

You may request a review of an objection by the Inspector-General. A written request for review must be lodged within 60 days of you being notified of the objection. Contact ITSA for further information about reviews of objections.

F. ANNULMENT

WHAT IS ANNULMENT?

Annulment is the cancellation of a bankruptcy. There are three ways a bankruptcy can be annulled:

- The creditors' debts including interest and trustee's fees and expenses are paid in full.
- Your creditors accept a composition or arrangement which is an offer of something less than payment in full.
- Application to the court in some limited circumstances.

Effects of annulment

- Your annulment is recorded on the public record, the National Personal Insolvency Index (NPII) database, forever.

- Assets not needed by your trustee to pay your creditors, expenses and fees will be returned to you.

I. ANNULMENT BY PAYMENT IN FULL

Your bankruptcy will be annulled providing:

- your creditors, and any interest payable on debts to creditors, and the realisations charge, and your trustee's expenses and fees have **all** been paid in full.

Contact your trustee to find out how much you will be required to pay. The money required for payment in full usually comes from the sale of assets by your trustee or from a source not otherwise available to the trustee, such as money provided by a relative. Your bankruptcy will be annulled on the date the final payment is made from your estate.

II. ANNULMENT BY COMPOSITION OR ARRANGEMENT

Compositions and arrangements are offers made by bankrupts through their trustees to finalise their debts. The creditors vote on whether or not to accept such offers. An offer:

- may involve assets already in the bankruptcy
- may include other money or assets that would not normally be available to creditors, such as money provided by a relative.

These offers benefit creditors as they receive a dividend that would not be otherwise available.

All creditors will receive an equal rate of dividend unless your offer provides otherwise.

Your written and signed offer must be lodged with the trustee:

- setting out the terms
- providing for the payment of the trustee's fees and expenses.

Before finalising your offer and asking your trustee to call a creditors' meeting to formally consider it, you should discuss:

- the requirements for making an offer with your trustee
- any proposed offer with major creditors to find out if it is acceptable.

Your trustee may:

- require a deposit to cover the expenses and fees of the meeting, or
- refuse to call a meeting if the offer does not make adequate provision for the payment of trustee's fees that have been approved by creditors and cannot be taken out of the estate.

Creditors' meeting

Your trustee may call a meeting of creditors to consider and vote on your offer. The notice of this meeting will be published on ITSA's website (www.itsa.gov.au). Each creditor will be sent:

- a notice and agenda of the meeting
- a copy of your offer
- your trustee's report.

You must attend the meeting if requested to do so by your trustee. You may amend the terms of your offer at the meeting but not in any way that would reduce the trustee's fees.

Trustee's report

The report to creditors must state whether they will benefit if the offer is accepted and tell them:

- who is providing the funds
- details of assets, realisations, and dividends
- the trustee's fees and expenses
- details of your conduct and financial dealings.

Creditors' acceptance of offer

Acceptance requires a 'yes' vote from a majority of voting creditors as long as they represent at least 75% of the claims in dollar value.

If your offer is accepted

Your bankruptcy will be annulled immediately and:

- your trustee's fees and charges will be paid
- your creditors will be paid.

All creditors with debts that can be claimed in your bankruptcy are bound by the terms of the offer.

If your offer is rejected

Your bankruptcy will continue. Your trustee will:

- keep funds covering the expenses and fees of calling the meeting from any deposit

- refund any money provided for the offer.

Variation of composition or arrangement

Your creditors can agree to vary your composition or arrangement.

Setting aside and termination

Your creditors or trustee can apply to the Federal Court or Federal Magistrates Court to set aside your composition or arrangement if:

- it is unreasonable
- it does not comply with the Bankruptcy Act
- you have supplied misleading or false information, or
- you are in default of any of the terms.

Your creditors or trustee can petition to make you bankrupt again at the same time as applying to have your composition or arrangement set aside or terminated.

III. ANNULMENT BY COURT ORDER

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 obtain your own legal advice about this.

G. FEES AND CHARGES

A trustee is entitled to a fee for administering your bankruptcy.

Where the Official Trustee is the trustee of the administration, the fee is set by legislation and is generally based on a percentage of the funds realised*. The fee is not recoverable directly from you unless you are seeking an annulment of the bankruptcy.

Where a registered trustee is the trustee of the administration, the fee is generally based on an hourly rate. Where there are insufficient funds in an administration, a registered trustee can recover a statutory minimum fee* ^.

If you are dissatisfied with the amount of fees charged by your trustee you may request an independent review of the trustee's remuneration (including fees and disbursements) be undertaken by the Inspector-General in Bankruptcy. The Inspector-General in Bankruptcy will undertake the review provided certain conditions are met. For further information please refer to Inspector-General Practice Direction 16 at (www.itsa.gov.au).

Funds realised by a trustee in an administration are subject to a realisations charge* (a government levy) which is paid by the trustee directly to the government. Any interest earned on funds recovered by the trustee is payable to the government.

*Please see ITSA's fees and charges on page 22 or visit the ITSA website at www.itsa.gov.au

^ does not apply to bankruptcies that commence on or after 1 December 2010

6. Creditors making you bankrupt

If you are unable to pay your debts and you have not otherwise entered into an arrangement with your creditors or voluntarily made yourself bankrupt, a creditor may choose to apply to the court to have you made bankrupt.

WHO CAN APPLY TO MAKE ME BANKRUPT?

Generally any creditor can apply to the court to make you bankrupt if they satisfy the court that you owe them money. The court requires various conditions to be met and processes to be followed before it makes an order making you bankrupt.

WHAT IS THE PROCESS THAT A CREDITOR MUST FOLLOW TO MAKE ME BANKRUPT?

There are a few ways by which you can be made bankrupt but they all rely on the court being satisfied that a creditor is owed money and that you have committed an act of bankruptcy. The most common process followed by creditors is set out below:

STEP 1 – ISSUE OF A BANKRUPTCY NOTICE

A creditor requests ITSA to issue a bankruptcy notice against you demanding that you pay the money owed to the creditor within 21 days. A notice can only be issued if the creditor has obtained a court judgment against you within the last six years and the total amount owing under the judgment (or two judgments combined) is not less than \$5 000.

STEP 2 – CREDITOR PETITIONS THE COURT

If you do not pay the creditor by the time given in the notice, you commit an *act of bankruptcy*. A creditor can then apply to the court (creditor's petition) to have you made bankrupt. The court gives you the opportunity to be heard before making the order.

STEP 3 – COURT MAKES A SEQUESTRATION ORDER

If after hearing the creditor's case and any submissions you make, the court is satisfied that you have not paid the creditor, the court makes an order (*sequestration order*) making you bankrupt. A trustee is appointed and you are then required to file a Statement of Affairs with ITSA within 14 days of being notified of the order.

Warning:

The information provided above is regarding general process followed by most creditors in applying to make someone bankrupt. If a creditor is currently taking steps to make you bankrupt and you wish to avoid bankruptcy or alternatively you dispute the creditor's claim/s, it is important that you seek independent legal advice.

7. ITSA's Fees and Charges

Fees change periodically. Check with ITSA to ensure you have the current fee schedule:

www.itsa.gov.au or phone 1300 364 785

Effective 1 July 2011

SERVICE	FEES
Advertising creditor meetings This is a fee for the publication of a notice advertising creditors meeting on ITSA's website.	\$275^
Inspection of public documents For the type of documents available for inspection refer to fact sheet <i>Searching the Public Record</i> .	\$40*
Bankruptcy Notices issued at a creditor's request <ul style="list-style-type: none"> ▪ Issue of Bankruptcy Notices ▪ Application for extension of time for the service of Bankruptcy Notices 	\$440* \$150*
Debt Agreements¹ Debt agreement proposal lodgement fee	\$191*
Personal Insolvency Agreements Document processing fee (payable once Controlling Trustee Authority is lodged with ITSA)	\$200*
Official Receiver Notices issued at a trustee's request Including exercising powers to access premises and conduct examinations at the request of trustees	\$450*, excluding disbursements
Taxation Service² <ul style="list-style-type: none"> ▪ Taxation of a bill of costs in relation to the administration of an estate ▪ Taxation of a trustee's remuneration in an estate 	\$50* per 15 minutes or part thereof \$50* per 15 minutes or part thereof
Trustee and Administrator Registration and Renewals <ul style="list-style-type: none"> ▪ Application to be registered as a trustee or debt agreement administrator ▪ Initial registration ▪ Renewal of registration (every 3 years) 	\$2 000* \$1 200* \$1 600*
Realisations Charge This is a levy to fund the cost of conducting enquiries in certain bankruptcies, investigating alleged offences, monitoring and regulating trustees and administrators and providing information to a range of clients.	4.4% of the money received by trustees in bankruptcies, debt agreements, compositions and personal insolvency agreements*
Interest Charge The interest earned on funds held by registered trustees and administrators is also used to fund the cost of conducting enquiries in certain bankruptcies, investigating alleged offences, monitoring and regulating trustees and administrators and providing information to a range of clients.	The interest earned net of bank charges*

Bankruptcy (Fees and Remuneration) Determination 2010 (No. 2) Amendment Determination 2011 (No. 1) and Bankruptcy (Estate Charges) (Amount of Charge Payable) Determination 2011.

^ GST Applicable

* GST Not Applicable

¹After 1 July 2011, exemptions apply to individuals in receipt of certain emergency payments for specified periods as set out in Bankruptcy (Fees and Remuneration) Determination 2010 (No. 2) Amendment Determination 2011 (No. 1)

²This only applies to bankruptcies, Part X section 188 authorities and personal insolvency agreements that commenced prior to 1 December 2010. For arrangements after that date see Division 4 of the Bankruptcy Regulations 1996.

ADMINISTRATION OF	FEES (INC GST)
Bankrupt estates Where a bankruptcy administration includes the management of a debtor's business, an additional fee of \$50 per 15 minutes applies for time spent in managing the business (applies to all bankruptcies commencing from 1 July 2006).	\$3 200 + 20% of money received
Composition under section 73 of the Bankruptcy Act (applies to all proposals lodged from 1 July 2006) This fee is in addition to the fee (if any) for administering the bankruptcy.	20% of value of the proposal accepted by creditors
Debt Agreements	20% of value of the proposal accepted by creditors
Controlling Trustee Authorities given under section 188 of the Bankruptcy Act	\$50 per 15 minutes or part thereof
Personal Insolvency Agreements	20% of the value of the proposal accepted by creditors
Pre-bankruptcy control orders under section 50 of the Bankruptcy Act	\$50 per 15 minutes or part thereof
Property under Proceeds of Crime legislation	\$50 per 15 minutes or part thereof
Special administrations not governed by the Bankruptcy Act or Proceeds of Crime legislation	As per agreement

WHEN ITSA ADMINISTERS A BANKRUPTCY

- ITSA will only be paid (in full or part) if money is received in the administration.
- If ITSA does not receive enough money to cover fees and expenses, the shortfall cannot be recovered from a bankrupt or creditors.
- If an annulment is required, ITSA's full fee must be paid along with the debts (including interest) and costs of the administration.

ITSA's fees for administering bankruptcies vary according to money received. For example, if ITSA receives \$10 000 in a bankruptcy; the fees will be \$5 200 (\$3 200 + 20% of \$10 000). There are two exceptions to this rule:

Where debts and expenses of administration are less than money received

- Fees are calculated on the sum of total debts and expenses and not the money received in the bankrupt estate.

For example, if \$40 000 is received in a bankruptcy where the debts and expenses of administration totalled \$25 000, the percentage fee is calculated on the \$25 000 (and not the \$40 000 received), ie $\$3\,200 + 20\% \text{ of } \$25\,000 = \$8\,200$.

Where the bankruptcy is transferred by ITSA to another trustee or vice versa

- If the administration of the bankruptcy is transferred out of ITSA or is transferred in to ITSA, ITSA's fees are determined on a time cost basis (\$50 for 15 minutes or part thereof) for the period during which ITSA administers the estate.

NEED HELP WITH INTERPRETING?

If you want to talk to ITSA but do not speak English, call the Translating and Interpreter Service on 131 450.

8. Quick Comparison of Features Between Different Types of Personal Insolvency Administrations

Feature	Bankruptcy
Eligibility	
Australian connection	Must have residential or business connection
Previous insolvency	While previous insolvency does not by itself make a person ineligible, the Official Receiver may not accept the petition if the debtor was previously bankrupt <u>and</u> some other conditions are met
Income threshold	No
Asset threshold	No
Debt threshold	No
Creditor agreement required	No
Period of administration/insolvency	3 years, but can be extended by trustee under certain conditions. Can also end early if debts are paid in full or creditors accept a settlement.
Impact on credit rating	Yes, for 7 years
Public record	Yes, permanent record on NPII
Income, employment and trade	
Payments from income required?	Yes, mandatory payments required if income exceeds a statutory threshold (see current threshold on ITSA website)
Ability to continue to operate a business	May be possible depending on the nature of the business and whether business assets are to be sold by the trustee. If trading under a business name or assumed name (whether alone or in partnership) bankruptcy must be disclosed to all people dealing with the business.
Ability to be a director of, or otherwise manage, a corporation	No
Other employment restrictions	Professional bodies and/or trade associations may have certain conditions of membership for the duration of the bankruptcy. There may be restrictions on holding some statutory positions during the period of bankruptcy.
Assets	
Ability to retain assets	No, unless it is exempt property (example household furniture, tools of trade up to a certain value)
Ability to retain assets acquired during the period of the agreement/bankruptcy	No, unless property being acquired is exempt property
Can assets previously sold or transferred for less than market value be recovered?	Yes, subject to certain statutory conditions being met
Can payments made to creditors prior to the agreement/bankruptcy be recovered?	Yes, subject to certain statutory conditions being met
Debts	
Unsecured debts	Unsecured creditors receive pro rata payment from funds recovered by the trustee after fees and costs have been deducted. There are some statutory priority payments to particular classes of creditors like employees.
Secured debts	Rights of secured creditors are not affected. They can repossess asset if there is default in payment.
Release from debts	Upon discharge from bankruptcy, but not released from some types of debts
Restrictions	
Ability to travel overseas	Prior consent of trustee required
Ability to travel within Australia	No statutory restriction
Incurring further debt	Must disclose insolvency if incurring debt or obtaining goods and services in excess of a threshold (see current threshold on ITSA website)
Fees and charges	
Statutory filing fee	No
Statutory levies	A government levy is imposed on all receipts in the administration. Any interest earned on these receipts is also paid to government. (see current ITSA Fees & Charges)
Fees for administration of the estate/s	Subject to creditor approval. Fee can be reviewed upon application to the Inspector General. Note: Official Trustee's fee is set by statute. (see current ITSA Fees & Charges)
Who can administer?	Registered Trustee or Official Trustee
Act of bankruptcy	Presenting a debtors petition for bankruptcy is an <i>act of bankruptcy</i> and a creditor who is owed more than \$5,000 can rely on this act to petition to the court to make the debtor bankrupt should the debtor's own petition not proceed.

ⁱ Unless permission is obtained from the court [S188(4)]

ⁱⁱ A statutory filing fee, not exceeding \$200, is proposed to be introduced later this financial year. You should confirm the status of the proposed fee with your administrator.

Debt Agreement	Personal Insolvency Agreement
No residential or business connection required	Must have residential or business connection
Must not have been a bankrupt, proposed a Personal Insolvency Agreement or made a Debt Agreement in the previous 10 years	Must not have proposed another Personal Insolvency Agreement in the previous 6 months ¹
Yes [see current threshold on ITSA website]	No
Yes [see current threshold on ITSA website]	No
Yes [see current threshold on ITSA website]	No
Yes (majority of voting creditors by value)	Yes (majority of voting creditors by number and minimum 75% in value)
As per terms of the agreement	As per terms of the agreement
Yes, for 7 years	Yes, for 7 years
Yes, permanent record on NPII	Yes, permanent record on NPII
Yes, if the terms of the agreement require payments from income – this occurs in most cases	Only if the terms of the agreement require payments from income
Yes, unless terms of the agreement provide otherwise. If trading under a business name or assumed name (whether alone or in partnership) the debt agreement must be disclosed to all people dealing with the business	Yes, if agreement allows for debtor to continue to operate the business
Yes	Not until terms of agreement fully complied with
Professional bodies and/or trade associations may have certain conditions of membership for the duration of the agreement. There may be restrictions on holding some statutory positions during the period of the agreement.	Professional bodies and/or trade associations may have certain conditions of membership for the duration of the agreement. There may be restrictions on holding some statutory positions during the period of the agreement.
Yes, unless terms of the agreement provide otherwise	Yes, subject to the terms of the agreement
Yes	Yes
No	Not unless the agreement specifies that the antecedent transaction provisions of the Bankruptcy Act apply to the debtor.
No	Not unless the agreement specifies that the antecedent transaction provisions of the Bankruptcy Act apply to the debtor.
All unsecured creditors receive pro rata payments	Unsecured creditors can receive differential payment rates if the terms of the agreement provide for this. There are some statutory priority payments to particular classes of creditors like employees.
Rights of secured creditors are not affected. They can repossess asset if there is default in payment.	Rights of secured creditors are not affected. They can repossess asset if there is default in payment.
Upon completing terms of agreement, but not released from some types of debts	As per terms of the agreement, but not released from some types of debt.
No statutory restriction	No statutory restriction
No statutory restriction	No statutory restriction
Must disclose the debt agreement if incurring debt or obtaining goods and services in excess of a threshold (see current threshold on ITSA website)	No statutory restriction
No ⁱⁱ	Yes (see current ITSA Fees & Charges)
A government levy is imposed on all receipts in the administration. Any interest earned on these receipts is also paid to government. (see current ITSA Fees & Charges)	A government levy is imposed on all receipts in the administration. Any interest earned on these receipts is also paid to government. (see current ITSA Fees & Charges)
Subject to creditor approval Note: Official Trustee's fee is set by statute. (see current ITSA Fees & Charges)	Subject to creditor approval. Fee can be reviewed upon application to the Inspector General. Note: Official Trustee's fee is set by statute. (see current ITSA Fees & Charges)
Registered Debt Agreement Administrator, Registered Trustee, Official Trustee or another person (provided that person administers five or fewer debt agreements)	Registered Trustee or Official Trustee
Presenting a debt agreement proposal is an <i>act of bankruptcy</i> and a creditor who is owed more than \$5,000 can rely on this act to petition to the court to make the debtor bankrupt should the debt agreement not proceed or be terminated.	Signing a controlling trustee authority (the first step to establish a PIA) is an <i>act of bankruptcy</i> and a creditor who is owed more than \$5,000 can rely on this act to petition to the court to make the debtor bankrupt should the personal insolvency agreement not proceed or be terminated.

9. Sources of financial guidance

Financial counselling services help people who are in financial difficulty.

They are available in every state and territory and provide a free, independent and confidential service. They can help you manage a short-term crisis and plan to prevent a future one. Financial counsellors can help you remain independent and take full control of your own financial affairs.

AUSTRALIAN CAPITAL TERRITORY

- Care Financial Counselling Service
02 6257 1788
www.carefcs.org

NEW SOUTH WALES

- Financial Counsellors' Association of NSW
1800 007 007
www.fcan.com.au

NORTHERN TERRITORY

- Anglicare Australia Northern Territory Financial Counselling Service
08 8985 0000
www.anglicare-nt.org.au
- Somerville Community Services
08 8920 4100 (Darwin area)
www.somerville.org.au
- Tangentyre Council
08 8951 4222 (Alice Springs area)
www.tangentyere.org.au

QUEENSLAND

- Financial Counselling Association of Queensland
07 332 1 3192
www.fcqn.asn.au

SOUTH AUSTRALIA

- Uniting Care Wesley
08 8202 5111
www.ucwesleyadelaide.org.au
- Northern Community Legal Service
08 8281 6911 or 1300 558 555
www.saccls.org.au/centre_details.php?centre_id=5
- Department for Families and Communities
1800 003 305
www.dfc.sa.gov.au

The South Australia Financial Counselling Association's website lists financial counsellors in South Australia www.safca.org.au

TASMANIA

- Anglicare Financial Counselling Service
1800 243 232
www.anglicare-tas.org.au

VICTORIA

- Money Help
Financial Counselling Telephone Service
1800 149 689
www.moneyhelp.org.au

Financial & Consumer Rights Council lists all financial counsellors in Victoria
www.fcrc.org.au

WESTERN AUSTRALIA

- Financial Counsellors Resource Project
08 922 1 9411
www.fcrp.org.au
- Financial Counsellor's Association of WA
1800 889 364
www.financialcounsellors.org

Registered trustees and **registered debt agreement administrators** may also be able to provide you guidance. Some may charge a fee. Contact details for registered trustees and registered debt agreement administrators is available on www.itsa.gov.au or by calling us on 1300 364 785.

HOW TO CONTACT US

For all enquiries call **1300 364 785** or visit
www.itsa.gov.au
or send an email to info@itsa.gov.au

Other ITSA publications can be found at
www.itsa.gov.au
Office hours 8.30am – 5pm

