

WHO IS MAKING AUSTRALIANS BANKRUPT? AN OVERVIEW

This report reviews the applications in the Federal Court of Australia to make people bankrupt over the past four financial years (2015–16, 2016–17, 2017–18 and 2018–19). The report was put together after financial counsellors and community lawyers noticed that some creditors regularly bankrupted people while other creditors did not.

The experience of being forced into bankruptcy is highly stressful for people. It involves court proceedings, and substantial costs are added by the process. People can be forced into bankruptcy for a debt as little as \$5,000. This means a small credit card debt could lead to the loss of the family home.

Bankruptcy is a process where a person is declared as being insolvent; that is, they are legally unable to pay their debts when they fall due. Bankruptcy can be voluntary (the debtor initiates it) or forced (the creditor initiates it). This report focuses on forced bankruptcy.

What did we find?

Some creditors were far more likely than others to apply to make people bankrupt. The data for 2018 – 19 is below.



The most prolific user of the system was the ATO, which applied to make 543 people bankrupt in 2018-19. This number, however, was lower than in the previous years (1,061 in 2016-17; 1,215 in 2015-16 and 833 in 2017-18)



Commonwealth Bank had the most applications to make people bankrupt (7), followed by Westpac (1), NAB (1) and ANZ (0).



Bendigo and Adelaide Bank had 36 applications (down from 63 the previous year). Macquarie and Bank of Queensland had 7 and 6 applications respectively. Compared to the four major banks, the numbers are disproportionate.



American Express also used the system extensively with 119 applications (up from 80 the previous year).

What needs to change

ATO



- Improved hardship practices, clearer guidance, ability to seek an external, independent review of decisions about hardship applications.

Debt collectors



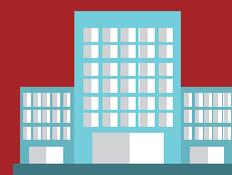
- Those using the system disproportionately, need to urgently reassess this.
- The original creditors should require a debt collector to seek their approval before moving to forced bankruptcy.

Banks



- Banks using the system disproportionately, need to urgently reassess this.
- Only sell debts to debt collectors with good financial hardship practices and that only use forced bankruptcy as a last resort.

Body corporates



- Legislative change so that people owing money are given adequate notice and a fair chance to repay.
- Access to a State Tribunal or Ombudsman to review decisions.

Policy and legislation



- Increase the threshold to apply to make someone bankrupt from \$5,000 to \$50,000
- Abolish or restrict debt collection costs being added to debts, and ban legal costs being added before court proceedings
- Improve accessibility of review processes for legal costs
- Examine processes for dealing with high fees charged by trustees
- Public reporting on numbers of statements of claim, creditor's petitions and sequestration orders (for plaintiffs with more than 20 instances)

About the data

All effort was made to ensure the data collected was accurate and excluded irrelevant information (for example, duplicates). However, given the limitations of searching and our reliance on the public data there will be an error rate. It is also important to note that there is a difference

between an application for bankruptcy by a creditor and a person actually being made bankrupt. Not all the applications to make a person bankrupt are successful. The person may successfully defend the application, pay the debt and legal costs in full, or negotiate a settlement.

