

Chapter 13: Bankruptcy checklist

Updated: 15 April 2025

Note: This checklist is only a guide. [Find the most recent indexed amounts on the AFSA website](#), as these are updated regularly. 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.

[Interactive PDF](#)

Click the button above to open an interactive PDF version of this form. To save any information you complete on the form you will first need to download and save a copy of the form onto your computer.

Client Name:

Date:

Worker:

File no:

Part 1: Advantages and Disadvantages of Bankruptcy

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 NPII and credit file)
- All property/assets go to bankrupt estate (real estate, vehicles, shares, antiques, expensive jewellery):
 - savings over \$2,000 – \$3,000
 - 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 director of a company/incorporated organisation or involved in its management (must resign directorship)
- Disclosure obligation when [borrowing/passing cheques etc. over \\$7,173 \(August 2025\)](#)
- 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

Part 2: Nature of bankruptcy

Requirements for applying for bankruptcy

- Must have a 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) for accuracy

- Name, date of birth, address, occupation all on public record
- Suppression of address possible where applicants have genuine fear of safety (ie Family violence, see 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

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](#). Providing evidence of the violence, such as a copy of an Intervention Order or a report from a support worker, is important.

Part 3: Debts covered and enforceable

What sorts 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, payday, BNPL, business loan, trade creditor 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)
- Court-ordered restitution amounts (if the amount was fixed before became bankrupt)
- Car accident with judgment or exchange of letters that liquidate debt
- Genuinely forgotten debts can be added later

What sorts of debts are not covered (not provable)?

What debts can be enforced against the debtor?

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

What debts 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. Provable, enforcement ceases during bankruptcy but can recommence afterwards as debt not released by discharge, possible prosecution)
- Bail bonds
- Debts on recognisance
- Fines where licence 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 (e.g. ATO and future refunds if tax liability)
- Overseas debts
- Victims of crime-type levies (depends on factors such as state laws and when or if debt registered)

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 \\$9,600 \(net, if under finance\) \(August 2025\)](#)
- Property belonging to non-bankrupt spouse/partner/co-occupant
- Property held in trust for others (subject to conditions)
- [Tools of trade worth up to \\$4,450 \(August 2025\)](#)
- 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)

Part 4: Other features of the bankruptcy

Real Estate (tricky issues)

- Bankrupt's interest vests in Trustee (joint tenancy converts to tenants-in-common)
- 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, as interest still vests in Trustee for generally another 6 years, and may be extended)
- Discharged bankrupt can offer to buy back equity at 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 \(from AFSA\) \\$150 \(15 April 2025\)](#)
- 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

Contributions

- [Contributions payable if earn above prescribed amount \(\\$72,117.50 \(after tax\) with no dependents, 50% of income above threshold – 15 April 2025\)](#)
- Number of dependents increases the 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 (such as, residing rent-free)
- 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 licence
- 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