

Chapter 9: It's all over, or is it? Part 1

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Summary

Part 1 of this Chapter covers what happens after discharge. While bankruptcy officially ends at discharge there are some ongoing ramifications:

- The client may experience ongoing difficulties getting credit and goods and services because of the listing on their credit report/NPII
- There may continue to be employment ramifications
- Any property that vested in the trustee as a result of the bankruptcy will remain so for a certain period unless the client has made arrangements with the Trustee to buy the property back – vested property may still be sold or otherwise dealt with by the Trustee
- Investigations into past transactions may be continued or re-opened if new information comes to light, potentially resulting in claims for money or property from third parties
- Undisclosed property could still be identified and vest in the Trustee
- Undisclosed income could result in a reassessment of contributions owed
- The Trustee could take enforcement action against the former bankrupt to recover unpaid contributions
- The discharged bankrupt has an ongoing obligation to cooperate with the Trustee in relation to any of the above.

The former bankrupt is released from most provable debts BUT:

- Debts incurred by fraud may still be enforced against the debtor (unless there is a judgment or repatriation order for the debt which predates the bankruptcy)
- The former bankrupt is not released from bail and recognisance debts, maintenance or child support, or debts incurred after the date of the bankruptcy.

Part 2 of this Chapter contains information on responding to recovery action by Centrelink in relation to allegedly fraudulently incurred debts.

Part 1: What are the ongoing consequences after discharge from bankruptcy?

The Official End

Your client will be discharged from bankruptcy when the bankruptcy finishes (normally 3 years and 1 day from the date the statement of affairs was filed, unless the bankruptcy has been extended) so long as no objection has been lodged. However, there are some things that will continue to affect your client's life in the near and long-term future.

When your client is discharged, he or she may not receive any notification from the Trustee. There is no requirement for a trustee to formally advise the bankrupt of the automatic discharge.

If the client requires confirmation of the bankruptcy discharge date, he or she can obtain an extract of the NPII which will display the date of discharge. This extract of the NPII can be obtained via AFSA's Bankruptcy Register Search on AFSA's website. The applicable fee for this extract is \$15 as at April 2025.

In cases where the Official Trustee is the bankruptcy trustee and a less formal confirmation is required, a letter can be provided by AFSA. To request mere confirmation that a client's bankruptcy has ended, or if you wish to know the expected bankruptcy end date, you can submit an online form to AFSA. AFSA can then provide a letter confirming the client's bankruptcy end date or the expected bankruptcy end date. [A request for an End of bankruptcy confirmation is free and available on the AFSA website.](#)

Ongoing ramifications

After discharge from bankruptcy a record will remain on the client's credit report for the later of:

- five years from the date on which the individual becomes bankrupt, or
- 2 years that starts from the date the bankruptcy ends.

However, the NPII record will remain for the rest of your client's life. This means that even though the client is a discharged bankrupt he or she may still encounter difficulty in obtaining credit, insurance and some other services in the near future (due to the credit listing) and possibly in the long-term (due to the NPII record).

If your client is discharged with outstanding contributions payable, those unpaid income contributions will remain payable and may be pursued as a debt despite discharge. Non-payment of contributions is grounds for an objection to discharge.

Where there has been a failure on the part of the client to disclose accurate information about income or assets during the bankruptcy, the Trustee may decide to take action to recover property or reassess income contributions, even after discharge.

Where the client has property that vested in the Trustee, but which has not yet been sold or transferred, this will continue as per the timelines and guidelines detailed in **Chapter 6**. The property does not revert to the bankrupt unless transferred by the Trustee (or it eventually reverts in the bankrupt in accordance with the time limits in the Act. See the final page of **Chapter 6 Part 3**). In fact, the discharged bankrupt has a statutory obligation under s 152 of the *Bankruptcy Act* to give such assistance to the Trustee as the Trustee reasonably requires, to sell and distribute any property so affected – failure to do so is an offence punishable by imprisonment for 6 months.

A person can become a company director again once they are discharged from bankruptcy. However, they will need to be reappointed by the company in accordance with its constitution. Changes to company details must now be made online by registering to use ASIC's online services and changing the company details online.

Even though the restrictions on being a director or partner are lifted by discharge, other restrictions due to the client's professional body's rules or licensing regulations may impact upon the client's future employment. The fact that the bankruptcy is permanently recorded on the NPII could impact on future promotion to high-level positions.

Some people still feel a sense of guilt that they have gone bankrupt and have not repaid their debts. It is important to make it clear that even after discharge, the client can opt to repay all their debts plus the fees and charges imposed by the Trustee should they be in a position to do so. Where the Trustee is satisfied that all the debts and the Trustee's remuneration have been paid in full, the Trustee can annul the bankruptcy under s 153A of the *Bankruptcy Act* after discharge. The annulment of the bankruptcy will then be recorded on the NPII. The bankruptcy annulment will occur on the date on which the last such payment was made. However, confirmation of the bankruptcy annulment date will depend on whether any creditor will claim interest. The bankruptcy trustee will then notify the Official Receiver of such annulment within two days of the annulment being confirmed. Further information can be found on AFSA's website: [Official Trustee Practice Statement 4, *The end of a bankruptcy's period of bankruptcy* 1 April 2021.](#)

The *Bankruptcy Act* does not allow a bankrupt who has already been discharged to obtain a retroactive annulment of their bankruptcy by way of an offer of Composition under ss 73 and 74.

Troubleshooting

On rare occasions a client will have been discharged from their bankruptcy and then find themselves being pursued by a creditor who they had failed to list in their bankruptcy

through an oversight or memory lapse, even though the debt was incurred before the date of the bankruptcy. The client should:

- notify their Trustee of these debts
- provide evidence that the debts were incurred prior to the date of bankruptcy
- request that the Trustee record the debts in their bankruptcy
- request that the Trustee inform the creditor(s) accordingly.

It is prudent to draft the statement of affairs as comprehensively as possible by listing all potential parties to the debt (ie creditors, debtors etc). This will minimise the risk that unforeseen claims of debt will arise in the future.

Unfortunately, some debt collectors contact clients about debts after bankruptcy and claim that they are now able to pursue them because the bankruptcy is over. The client should immediately contact their Trustee in these circumstances and should inform the debt collector that the debt was listed in the bankruptcy. Any attempts to commence legal action should immediately be referred for legal advice. Where the debt collector (or lender) is a member of an external dispute resolution scheme, a complaint could be lodged with the relevant scheme if direct contact with the client continues after the creditor has been directed to the trustee (see **Chapter 8**).