**Australian Bankruptcy Act Guide**

[](http://bankruptcyact.com.au/wp-content/uploads/2017/01/Bank1.jpg)

The **Bankruptcy Act of Australia** holds that any individual who is incapable of paying creditors within a reasonable time can be announced bankrupt. In order to file a case on bankruptcy, appropriate documents must be produced to **Insolvency and Trustee Service of Australia (ITSA)** as evidence of the financial incapability. A creditor (who the money is owed to) can involve the federal Australian court to declare a particular debtor (who owes the money) bankrupt, in case such a debtor has failed to pay the financial obligations owed to the creditor. The court has to supervise this and give a ruling.

1. Who must receive documents when a case of bankruptcy is filed?

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1. What can a creditor do if they are not being paid the money they are owed?

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According to ITSA, the duration between bankruptcies is three years. In other words, when a person has been declared bankrupt, a duration of three years has to pass before being declared bankrupt again. However, depending on how much debt an individual is facing, the duration can run up to eight years.

Once declared bankrupt, individual assets are sold to cover for debt. There are certain assets that the Australian bankruptcy law protects up to a particular nominated value. These assets include personal tools of trade less than $3,000 and a car or cars less than $6,000. The law further protects family necessities, with the exception of luxury items.

1. Once bankrupt, can an individual’s assets be sold to cover their debt? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. Once bankrupt, what assets cannot be sold to cover a debt?

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The main reward of being declared bankrupt is that a lot of debts, even tax debts, are cancelled. Some of an individual’s furniture are held and protected from any public utility cut. Also, the person declared bankrupt is set free from being contacted by creditors. However, the main disadvantage is that some assets may be seized and auctioned to clear debts. The process also affects an individual’s credit score, thus liming the chance of acquiring a bank loan in the future. Further, all bankruptcy proceedings are made public so that anyone can access even after a three-year period has expired.

Another thing the bankruptcy law considers is that it does not protect any individual from the secured creditors, such as mortgage companies or auto lenders. During the case, the debtor cannot make a substantial financial transaction or travel to other countries without a court approval.

According to ITSA, other likely problems arise when debtors lie about their assets or fail to give a report about their income changes while the bankruptcy process in going on. This can result in heavy fines and even imprisonment, and any lawsuit that is filed against other parties may also fail.

What is more? Some employers are quick to reject any potential employee who had early applied for bankruptcy protection. Also, the affected debtors may have difficult renting a house or even obtaining some utilities under their names.

1. What is a secured creditor?

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1. What are two advantages of being declared bankrupt?

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1. What are two disadvantages of being declared bankrupt?

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Fortunately, there are some bankruptcy alternatives that the Act allows. For instance, the debtor and the creditors can enter into agreements, such as the creditor accepting lower payments than actually owed, but which are feasible or practicable for the debtor to settle. Further, there is the option of settling the debt by less amount of money without the debtor necessarily going through the formal bankruptcy.

Generally, the disadvantages of being declared bankrupt outweigh the advantages.

To gain further insight into the process and consequences of declaring bankruptcy in Australia, review the following frequently asked questions (FAQs):

**What is Bankruptcy?**

The court order that changes the legal status of a person who is unable to pay back his creditors is termed as bankruptcy. Though mostly initiated by the debtor, there do occur situations where the creditors themselves shall initiate it. Once the bankruptcy is imposed on a debtor, his assets shall get liquidated and sold off to pay his debts. As per the Bankruptcy Act 1996, Australian individuals can become bankrupt, yet companies get straight into liquidation.

Anyone can declare themselves bankrupt by lodging a petition at the Official Receiver. A creditor can also initiate the bankruptcy order by making a sequestration order with the Federal Magistrate Court. For bankruptcy to be declared, the debtor should have a debt at a minimum of $5000. All the debtors who have their status changed to bankrupt should submit the State Of Affairs document with Insolvency and Trustee Service Australia. If it’s not lodged within the stipulated time, the court shall prosecute and charge a fine on the debtor. Once the documents are submitted, bankruptcy shall be initiated for a 3 year period.

1. Can companies be declared bankrupt? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. What is the minimum amount of money owed to be able to be declared bankrupt? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**How is a person declared bankrupt in Australia?**

There are two ways you can go bankrupt in Australia. The first way is when your creditor approaches the court and declares you bankrupt based on evidence of an act of bankruptcy. The other way is by declaring yourself bankrupt, otherwise known as voluntary bankruptcy. If you opt for voluntary bankruptcy, you declare yourself bankrupt by submitting a debtor’s petition and statement of affairs forms to the Insolvency and Trustee Services Australia (ITSA). You are declared bankrupt once the ITSA approves your petition.

1. **Through the order of Court:** In this case, suppose you have taken money from another person (creditor) and not in a condition to reimburse it then that person will give you the notice which is issued by Insolvency and Trustee Service Australia (ITSA). Failing to follow the instructions mentioned in this bankruptcy notice declares you bankrupt. It’s essential for a creditor to prove that you are the person who committed this act of bankruptcy before he declares you bankrupt. The creditor’s petition copy contains the date and time for you to attend the court. Bankruptcy notice instructs the debtor to pay the judgment debt within the mentioned time period in the notice. At the time of hearing the court will consider whether you are the real debtor or not, whether the amount mentioned by the creditor in the notice is correct and your ability to reimburse the amount. If you don’t agree to be bankrupt then you have to complete some formalities three days before hearing.
2. **Voluntarily:** Another way is willingly you can lodge a debtor’s petition and a Statement of affairs highlighting your inability to pay back the money to ITSA or a trustee who lodge these forms with ITSA. Then you are called a ‘bankrupt’.
3. Why would an individual willingly declare themselves bankrupt?

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1. Why would a creditor seek to make an individual bankrupt?

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**Business Name Registration Act 2011**



*Source: http://download.asic.gov.au/media/1247075/rg235.pdf*

On 28 May 2012, the Australian Securities and Investments Commission (ASIC) took over the registration of business names from the states and territories. If you want to carry on a business under a business name, you will generally need to register the business name. To register a business name, you must complete an online application and lodge it with ASIC. If your business name was already registered in a state or territory on 28 May 2012, it was automatically transferred to ASIC’s Business Names Register.

**The Business Names Register**

* On 28 May 2012 ASIC became responsible for registering, renewing and administering business names for all Australian businesses under the Business Names Registration Act 2011 (Business Names Registration Act).
* We maintain a national register of business names (the Business Names Register), which replaced the previous system that required businesses to register their business names separately in each state or territory in which they wished to operate.
* The Business Names Register removes the inconvenience and cost caused by the registration of business names in more than one state or territory. It also ensures that, if an entity carries on a business under a business name, the entity can be identified, and details will be available on how to contact the entity through publicly accessible information located on ASIC’s website (the public register).
* The Business Names Register is online, so you can: (a) quickly determine if a business name is available; (b) register and renew a business name; and (c) make changes to details relating to your business name.

1. When do you not need to register a business name?

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1. How do you register a business name?

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1. Task:

* Go the the Australian government ABN Look up site: <https://abr.business.gov.au/>
* Google a business name (choose your own eg. Gilberts Fresh Market)

1. What is the business name you searched? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. What type of business is this (service, trade, manufacturing)? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
3. What entity type is the business? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
4. Is the business registered for GST? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_