



## BANKRUPTCY

### What is bankruptcy?

Bankruptcy is a process where people who cannot pay their debts give up their assets and control of their finances, either by agreement or court order, in exchange for protection from legal action by their creditors.

### Which court?

A bankruptcy case may be heard by the Federal Court or the Federal Magistrates Court. Most bankruptcy cases are heard by the Federal Magistrates Court. The rules, forms and procedures are the same in each court for bankruptcy cases.

### How does the Court declare someone bankrupt?

A person who claims that you owe them money can ask the Federal Court or the Federal Magistrates Court to declare you bankrupt. This person is called a creditor and their application is called a Creditor's Petition. The creditor will give you a copy of the Creditor's Petition which includes a time and date for you to attend court. To declare you bankrupt the creditor must prove to the Court that you have committed an act of bankruptcy.

The most common act of bankruptcy is failing to follow the instructions in a bankruptcy notice. This notice is issued by the Insolvency and Trustee Service Australia (ITSA) and then given to you by the creditor. The main instruction is that you pay the amount of a judgment debt within the time specified in the bankruptcy notice.

At the hearing the Court decides whether or not you have committed an act of bankruptcy. Among other things the Court will consider whether:

- you are the person who owes the money
- the amount of the debt shown in the bankruptcy notice is correct, and
- you are able to pay your debts.

If you do not agree to being made bankrupt, you need to complete some forms and file them with the Court at least three days before the hearing. The steps you need to follow are explained in more detail under the heading 'Steps if you do not agree to being made bankrupt'.

### Where will the hearing be?

The Creditor's Petition will show the time, date and place of the hearing. If you are not sure, call or visit a registry near you (contact details are at the back of this brochure). You can also check *eSearch* through the Federal Court's website by logging onto [www.fedcourt.gov.au](http://www.fedcourt.gov.au)

A list of cases is usually posted on a noticeboard near the entrance of the court building. There may be several hearings with the same time and date as your case. You should wait in or near the courtroom until your case is called. It is a good idea to sit in the courtroom for a little while so that you can see what happens at a hearing.

### What happens at the hearing?

In the Federal Court your case may be heard by a Judge or a Registrar. In the Federal Magistrates Court your case may be heard by a Federal Magistrate or a Registrar. If your case is heard by a Registrar you are entitled to ask that it be heard by a Judge or a Federal Magistrate (as the case may be).

When your case is called you should walk to the long bar table at the front of the courtroom and tell the Judge, Federal Magistrate or Registrar your name. You should stand up when you are speaking and also when the Judge, Federal Magistrate or Registrar is speaking to you.

At the hearing you need to tell the Court your response to the Creditor's Petition.

You have three options:

- 1 You agree to being made bankrupt.
- 2 You do not agree to being made bankrupt and explain the reasons why.
- 3 You might ask for an adjournment because you need more time.

### If you agree to being made bankrupt

At the hearing tell the Judge, Federal Magistrate or Registrar that you agree to being made bankrupt. The Judge, Federal Magistrate or Registrar will check the Creditor's Petition. If it is correct he or she will make an order to declare you bankrupt. This is called a sequestration order.

### If you do not agree to being made bankrupt

The most common reasons or grounds for not agreeing to being made bankrupt are that you:

- did not commit the act of bankruptcy set out in the Creditor's Petition
- do not owe the money claimed by the creditor, or
- are able to pay all your debts.

There may be other grounds as well.

### What if you need more time?

If you need more time to prepare your case you may ask for an adjournment. An adjournment is when a hearing is deferred or postponed to a later date.

At the hearing tell the Judge, Federal Magistrate or Registrar you want an adjournment and the reason why. The Court will also ask the other side whether it agrees to an adjournment. The Court does not automatically grant an adjournment but will do so if it thinks your reasons for requesting it are valid.

Even after your case comes before the Court you and the creditor may negotiate to settle the creditor's claim and sometimes the Court will grant an adjournment to enable these negotiations to take place.

If you are granted an adjournment you may be ordered to prepare a further affidavit. If you ask for an adjournment and it is granted, you may also be ordered to pay the creditor's legal costs for the day of the hearing.

### Steps if you do not agree to being made bankrupt

- 1 Get a Form 4 (notice of appearance) from the Court and complete it.
- 2 Get a Form 5 (notice stating grounds of opposition) from the Court and complete it.
- 3 Prepare an affidavit (you may use Federal Court Form 20 or a Federal Magistrates Court affidavit). In your affidavit you should set out the facts which support your reasons for not agreeing to being made bankrupt. You can attach documents to the affidavit. You must swear or affirm that the contents of the affidavit are true before a person authorised to witness affidavits; for example, a lawyer or Justice of the Peace.
- 4 Once you have completed the forms, you need to file the original and two copies of each form with the Court. You can file the forms in person, by post or, in certain circumstances, by fax or electronically via the internet.
- 5 After you have filed the forms, you need to deliver or post one copy of each form to the creditor or the creditor's solicitor. This is called serving the documents.  
  
If you have not completed these steps and do not agree to being made bankrupt, you need permission from the Judge, Federal Magistrate or Registrar at the hearing to complete them.
- 6 At the hearing tell the Judge, Federal Magistrate or Registrar that you do not agree to being made bankrupt. You also need to give the Judge, Federal Magistrate or Registrar information about why you do not agree to being made bankrupt.

## What happens if you are made bankrupt?

If the Judge, Federal Magistrate or Registrar makes a sequestration order a trustee will be appointed to manage your financial affairs. Your trustee will notify you of your bankruptcy in writing. The trustee will explain his or her role and your responsibilities as a bankrupt. The trustee will also give you a statement of affairs which you must complete and file with the Official Receiver (ITSA). Your period of bankruptcy runs for three years from the date you file your statement of affairs with ITSA.

There are several legal outcomes of your bankruptcy; for instance:

- You will be released from responsibility for most of your existing debts. However, the trustee can sell your assets or property to pay your creditors.
- Any house or your share of a house that you own may be sold to pay your creditors.
- Any assets which you acquire while you are bankrupt may be sold by the trustee.
- You must not obtain credit from another person, or pay for goods or services by cheque for more than a specified amount without telling the person that you are bankrupt. The credit limit is updated quarterly, for an up-to-date figure contact ITSA (details are on page 8).
- If you run a business while you are bankrupt you must keep all proper accounts showing your business transactions and financial position.

There are other consequences of becoming bankrupt. For more information, contact ITSA (details are on page 8).

## Interpreters

The registry may arrange an interpreter for you at the hearing. If you need an interpreter you must contact the registry at least one week before the hearing. If you do not contact the registry they may not be able to arrange an interpreter in time and the hearing may be delayed.

You can also call **131 450** and speak to the registry through a telephone interpreter.

## Need more information?

For more information, including access to the Act, Rules and any of the forms mentioned in this brochure go to:

- [www.fedcourt.gov.au](http://www.fedcourt.gov.au) or [www.fmc.gov.au](http://www.fmc.gov.au)
- call the registry in your State or Territory, or
- visit a registry near you.

## What other information can the Courts provide?

The Courts can give you information about:

- mediation
- where to get legal help or legal representation
- court procedures.

**Court staff cannot provide you with legal advice.**

This brochure provides general information only and is not provided as legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to the Court.

## Bankruptcy enquiries

For general enquiries about bankruptcy contact your local ITSA office or go to their website

- [www.itsa.gov.au](http://www.itsa.gov.au)

### ITSA ACT

Level 2, NFF Building  
14-16 Brisbane Avenue, Barton ACT 2600  
PHONE 1300 364 785 FAX (02) 6270 3608  
EMAIL [itsa.canberra@itsa.gov.au](mailto:itsa.canberra@itsa.gov.au)

### ITSA NSW

Level 8, 135 King Street, Sydney NSW 2000  
PHONE 1300 364 785 FAX (02) 8233 7891  
EMAIL [itsa.sydney@itsa.gov.au](mailto:itsa.sydney@itsa.gov.au)

### ITSA Qld

BRISBANE OFFICE  
Level 16, 340 Adelaide Street, Brisbane Qld 4000  
PHONE 1300 364 785 FAX (07) 3360 5466  
EMAIL [itsa.brisbane@itsa.gov.au](mailto:itsa.brisbane@itsa.gov.au)

### TOWNSVILLE OFFICE

Level 1, National Australia Bank Building  
315 Ross River Road, Townsville Qld 4814  
PHONE 1300 364 785 FAX (07) 4727 0500  
EMAIL [itsa.townsville@itsa.gov.au](mailto:itsa.townsville@itsa.gov.au)

### ITSA SA and NT

Level 9, 80 King William Street, Adelaide SA 5000  
PHONE 1300 364 785 FAX (08) 8112 4305  
EMAIL [itsa.adelaide@itsa.gov.au](mailto:itsa.adelaide@itsa.gov.au)

### ITSA Tas

Level 4, ANZ Centre  
22-26 Elizabeth Street, Hobart Tas 7000  
PHONE 1300 364 785 FAX (03) 6221 7700  
EMAIL [itsa.hobart@itsa.gov.au](mailto:itsa.hobart@itsa.gov.au)

### ITSA Vic

Level 16, 300 La Trobe Street, Melbourne Vic 3000  
PHONE 1300 364 785 FAX (03) 8631 4900  
EMAIL [itsa.melbourne@itsa.gov.au](mailto:itsa.melbourne@itsa.gov.au)

### ITSA WA

Level 12, Durack Centre  
263 Adelaide Terrace, Perth WA 6000  
PHONE 1300 364 785 FAX (08) 9268 1298  
EMAIL [itsa.perth@itsa.gov.au](mailto:itsa.perth@itsa.gov.au)

## FEDERAL COURT and FEDERAL MAGISTRATES COURT REGISTRIES

### ACT Registry

Commonwealth Law Courts  
Childers Street  
Canberra City ACT 2601  
PHONE (02) 6267 0566  
REGISTRY FILING FAX (02) 6267 0625  
TTY (02) 6267 0537  
EMAIL [actman@fedcourt.gov.au](mailto:actman@fedcourt.gov.au)

### NSW Registry

Level 16, Law Courts Building  
Queens Square  
Sydney NSW 2000  
PHONE (02) 9230 8567  
REGISTRY FILING FAX (02) 9230 8295  
TTY (02) 9230 8270  
EMAIL [nswdr@fedcourt.gov.au](mailto:nswdr@fedcourt.gov.au)

### NT Registry

Level 3, Supreme Court Building  
State Square  
Darwin NT 0800  
Postal address: PO Box 1806  
Darwin NT 0801  
PHONE (08) 8941 2333  
REGISTRY FILING FAX (08) 8941 4941  
TTY (08) 8982 0838  
EMAIL [ntreg@fedcourt.gov.au](mailto:ntreg@fedcourt.gov.au)

### Qld Registry

Level 6, Commonwealth Law Courts  
119 North Quay  
Brisbane Qld 4000  
Postal Address: PO Box 13084  
George Street Post Shop  
Brisbane Qld 4003  
PHONE (07) 3248 1100  
REGISTRY FILING FAX (07) 3248 1240  
TTY (07) 3248 1272  
EMAIL [qldreg@fedcourt.gov.au](mailto:qldreg@fedcourt.gov.au)

### Vic Registry

Level 7, Commonwealth Law Courts  
305 William Street  
Melbourne Vic 3000  
PHONE (03) 8600 3333  
REGISTRY FILING FAX (03) 8600 3351  
TTY (03) 9670 0320  
EMAIL [vicreg@fedcourt.gov.au](mailto:vicreg@fedcourt.gov.au)

### SA Registry

Level 5, Commonwealth Law Courts  
3 Angas Street  
Adelaide SA 5000  
Postal address: GPO Box 1350  
Adelaide SA 5001  
PHONE (08) 8219 1000  
REGISTRY FILING FAX (08) 8219 1001  
TTY (08) 8219 1011  
EMAIL [sareg@fedcourt.gov.au](mailto:sareg@fedcourt.gov.au)

### Tas Registry

Commonwealth Law Courts  
39-41 Davey Street  
Hobart Tas 7000  
Postal address: GPO Box 903  
Hobart TAS 7001  
PHONE (03) 6232 1715  
REGISTRY FILING FAX (03) 6232 1701  
TTY (03) 6232 1865  
EMAIL [tasreg@fedcourt.gov.au](mailto:tasreg@fedcourt.gov.au)

### WA Registry

Level 6, Commonwealth Law Courts  
1 Victoria Avenue  
Perth WA 6000  
Postal address: GPO Box A30  
Perth WA 6837  
PHONE (08) 9268 7100  
FAX (08) 9221 3261  
REGISTRY FILING FAX (08) 9268 7208  
TTY (08) 9325 7053  
EMAIL [waregistry@fedcourt.gov.au](mailto:waregistry@fedcourt.gov.au)