

Insolvency Newsletter

Vince & Associates

Issue October 2017

Insolvency Law Reform Act Commences

On 14 December 2011 the Attorney-General and Parliamentary Secretary to the Treasurer released A Modernisation and Harmonisation of the Regulatory Framework Applying to Insolvency Practitioners in Australia - a proposals paper setting out a pathway to significant regulatory reform of Australia's insolvency industry. Key reform areas in the paper are reflected in the Insolvency Law Reform Act 2016. The Act comprises a package of proposals to amend and streamline the Bankruptcy Act, 1966, the Corporations Act, 2001 and the Australian Securities and Investments Commission Act 2001. The amendments aim to:

- remove unnecessary costs and increase efficiency in insolvency administrations;
- align the registration and disciplinary frameworks that apply to registered liquidators and registered trustees;
- align a range of specific rules relating to the handling of personal bankruptcies and corporate external administrations;
- enhance communication and transparency between stakeholders;
- promote market competition on price and quality;
- improve the powers available to the corporate regulator; and
- improve overall confidence in the professionalism and competence of insolvency practitioners.

The reform was implemented over two stages. Parts 1 and 2 of the new Insolvency Practice Schedules (for Corporations and Bankruptcy), largely concerned with registration and discipline of insolvency practitioners, commenced on 1 March 2017. Part 3 of the Schedules which relates to insolvency administration processes commenced on 1 September 2017.

Bankruptcy – Common Questions

What happens to my debts when I'm bankrupt?

1. Unsecured debts

An unsecured debt is not tied to specific property, like a house. Bankruptcy covers most unsecured debts, such as:

- credit and store cards.
- unsecured personal loans and pay day loans.
- gas, electricity, phone and internet bills.
- overdrawn bank accounts and unpaid rent.
- medical, legal & accounting fees.



The unsecured debts are frozen at the date of bankruptcy, and are subsequently extinguished at the date of discharge from bankruptcy.

Under the Bankruptcy Act 1966, the following debts are not captured in bankruptcy:

- court imposed penalties and fines.
- child support & maintenance.
- HECS & HELP debts.
- debts you incur after your bankruptcy begins.
- unliquidated debts.



2. Secured debts

A secured debt is tied to specific property, like a house. The creditor has the right to take possession of your property if you don't make the payments. If this occurs, you must assist with this recovery action.

Some examples are:

- mortgage on a house.
- car loan.
- hire purchase or rent to buy furniture.



Any shortfall on a secured debt is classified as an unsecured debt.

3. Joint debts

A joint debt is a debt you share with another person. Normally if one person enters bankruptcy, the other person on the loan documents becomes wholly liable for the debt. If both people are bankrupt, they should include the debt in each bankruptcy administration.

4. Overseas debts

Debts you incur overseas are covered in your Australian bankruptcy. This means your creditors can't pursue for that debt in Australia. However, your overseas creditors can pursue you for the debt if you travel back to that country. This applies during and after your bankruptcy. You must include any overseas debts in your bankruptcy application.

How is my credit file affected?

Credit reporting agencies keep a record of your bankruptcy for:

- 5 years from the date you became bankrupt; or
- 2 years from when your bankruptcy ends, whichever is later.

Who will know I'm bankrupt?

Your name will appear permanently on a public register called the National Personal Insolvency Index (NPII). The NPII shows details of insolvency proceedings in Australia, including bankruptcy. Some other information that may appear on the register are:

- Name, date of birth, residential address and occupation that you disclose on your application.
- Any previous names and aliases, if known.
- The type of proceeding, the start date and the AFSA administration number.
- The name and contact details of the trustee or administrator of the proceeding.
- The current status of the proceeding.

How much can I earn?

There is no limit to the amount of income that you can earn while you're bankrupt. However, if your after-tax income exceeds a set threshold, you may have to make compulsory payments. This threshold amount changes according to how many dependants you have.

What are contributions?

If your trustee determines you are earning over the income set threshold amount, they'll ask you to pay income contributions. Contributions is the word often utilised for compulsory payments from your income.

Your trustee can use these contributions to help repay your debts. Your trustee will notify you how and when you need to make payments. Compulsory income payments are:

- 50% of the amount you earn above the income threshold (set amount).
- Paid by you to your trustee, and may go towards your creditors.
- Calculated by your trustee to determine the amount you need to pay, if any.

Can I apply for Centrelink?

Yes. Becoming bankrupt does not impact your eligibility to make an application to Centrelink for benefits.

For further information, you should contact Centrelink directly.

Is my spouse's income affected?

The trustee can only utilise your income to assess whether you need to make compulsory payments. Your spouse's income does not impact your income assessment.

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Vince & Associates specialise in the following areas:

Corporate Insolvency:

- Creditors' Voluntary Liquidation
- Members' Voluntary Liquidation
- Voluntary Administration
- Official Liquidation

Personal Insolvency:

- Bankruptcy
- Personal Insolvency Agreements

Consulting Matters:

- Investigative Accountant's Reporting
- Business Valuations
- Forensic Accounting & Litigation Support
- Business Advisory

To find out more about the information covered in this newsletter or to discuss any issues pertaining to insolvency or consulting matters, please contact the following on 03 9793 5588 or via email to the following:

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