

# Better off bankrupt

By Geoffrey W Munck

Bankruptcy has a bad reputation. However, when you learn that it protects most personal property including a modest car, perhaps even your house and it safeguards the first \$50,000 you earn each year, you wonder why.

On its website under the link to Debtor Information, the Insolvency Trustee Service of Australia, the Government bankruptcy service, outlines key aspects of bankruptcy law in a fearsome text<sup>1</sup>. The emphasis is on what the Trustee might, may and can do but little mention is made of the Debtor's Rights under the same law. For example, the reader is told a bankrupt cannot leave the country without written approval. The inference being that a bankrupt cannot travel. No mention of the established process that approves travel for business, compassionate grounds, or holiday providing the Trustee is satisfied the bankrupt is coming back, up to date with their bankruptcy obligations, and not removing assets they should not.

In another example, emphasis is placed on Penalties such as extending the length of bankruptcy from three to eight years. Yes, the Trustee can penalize people who play 'ducks and drakes' to impede the bankruptcy process. For most people though, this is not an issue. Even if it does become one, the debtor can appeal against the decision of the Trustee.

Certainly, bankruptcy is a serious business but this is no justification a one sided presentation of important community information. Interestingly, this same imbalance is reflected in the sales spin of the debt agreement industry.

People fear bankruptcy but it is the myths and not the facts they recoil from. Asked what they fear the usual responses include: losing everything, going to jail, not being allowed to earn, never getting another loan and the social stigma. When asked who they got their information from, invariably they heard from someone who knew of someone who said they knew about bankruptcy, or debt agreement salesman.

Let's debunk these myths to bed before continuing on to find out why there is so much misinformation peddled about bankruptcy.

## *Losing everything*

If you are thinking of bankruptcy, you have already lost your money, bankruptcy didn't do that. The Bankruptcy specifically protects household property listed in the Regulations<sup>2</sup>. It cannot be taken and sold to pay creditors. This protection extends to most ordinary household items of furniture including white goods, televisions beds, wardrobes and the like, providing these are not exceptionally valuable. It specifically protects tools of trade to a reasonable value, modest car, superannuation and the first \$50,000 of income each year. On the other hand, if you are not bankrupt, creditors could send a bailiff to your home to seize and sell any of your property, or they could garnishee on your wages and take a percentage of every dollar you earn.

## *Going to jail*

Being unable to pay your debts is not a crime, you are not a criminal and you certainly cannot be sent to jail because you become bankrupt.

---

<sup>1</sup> <http://www.itsa.gov.au/dir228/itsaweb.nsf/docindex/debtors-%3Edebtors>

<sup>2</sup> Section 116(2)

### *Restriction on earnings*

There is no restriction on earnings. In fact the bankruptcy Trustee would like you to earn as much as you can because you may pay a modest contribution from annual earnings over \$50,000 under the Income Contribution Scheme<sup>3</sup>. There are some jobs that you cannot do while a bankrupt such as being a company director, holding a position that requires a government license or the ability to operate a trust account. These jobs include for example, lawyer, accountant, politician, stockbroker, real estate agent, licensed builder, or security guard. You can however, run your own business as a sole trader or contractor providing you contract in your own name and not under a business name.

### *Never get another loan*

Chances are you can't borrow now and you are not bankrupt. . Bankruptcy law does not ban you from credit. However, if you want to obtain larger credit, you must tell the credit provider you are bankrupt but of course they will do a credit check anyway. Bankruptcy actually helps you restore your credit worthiness. Without your debts you will be able to save much of the money you had been repaying. This will amount to a good deposit over the three years of bankruptcy. Mortgagees are happy to sell you money again after your bankruptcy ends providing you meet other normal criteria including having a deposit, steady job and the capacity to meet repayments. The bankers need to sell money to make profit so if you present as a good prospect you stand the same chance as the first time you borrowed.

### *The stigma of bankruptcy*

It is true that bankruptcies are listed on a Government archive called the National Personal Insolvency Index (NPII) and that this is a public record. When was the last time you searched this record? That is about as often as anyone else does. The only people to be told about your bankruptcy directly are your creditors. Should you tell other people you will find most will express sympathy for your situation. Those that don't haven't experienced what you have. If they ever do, they will want the same protection. Your Credit Rating will record bankruptcy for seven years before it drops off your record. Of course this is better than having an unpaid judgment debt on your credit history for twelve years.

While we are in the mood lets deal with the last excuse for not considering bankruptcy a valid solution and that is that the debtor wants to pay his or her debts. What this excuse really expresses is that the debtor wants creditors to leave them alone until their situation improves to the point they can make payment, however long that might be. This is unrealistic and uncommercial. Going bankrupt will enable the creditor to recoup much of the financial loss either through debt insurance or as a tax deduction. So if you are sincere in your desire to pay your creditors, going bankrupt can achieve the same result but much faster than you could from your earnings.

### *Bankruptcy in balance*

Bankruptcy law was created in recognition of the need to find a solution to debts that cannot be paid. The law makers know that creditors won't relent so the law must step in to protect the individual from unreasonable creditor behavior and allow the debtor to start over at a community standard of living.

Bankruptcy is not the end of your financial life but it is the end of creditor domination over it. Bankruptcy is in fact the start of your new financial life, debt free. It creates the fresh platform on which to rebuild your personal finances.

You won't hear this from any creditor or debt collector of course. Creditors and government fear bankruptcy but for very different reasons. Their fear is that should consumers come to properly understand bankruptcy law and its benefits, you will use it. This emasculates debt collection bullies, they have nothing with which to intimidate you. Too many bankruptcies

---

<sup>3</sup> Division 4B Bankruptcy Act 1966

might look bad for Government. But frightening people away from the relief they need, condemning them to further unnecessary hurt, or worse driving them into the arms of unscrupulous lenders or debt agreement administrators, cannot be in the best interest of the community.

#### Conclusions

Bankruptcy law is a compassionate and helpful law, used appropriately. Quite simply, if you can't pay your debts, you will be better off bankrupt. Misinformation about bankruptcy is peddled by those who have an interest in you not understanding the benefits it can bring.

Bankruptcy is a valid solution to debt problems and well worth considering. Bankruptcy balances the interests of debtor and creditor alike. It relieves debt distress and creates a stable platform on which to rebuild your financial future. Above all else, Bankruptcy is the law that defines and defends the principle that people are more valuable than their debts.

All rights reserved © 2010 Geoffrey W Munck, Brisbane, Australia  
Published by Debt Helpline Pty Ltd, Level 2/183 Wickham Terrace Brisbane, Australia

#### About the author **Geoffrey W Munck**

- Senior Advisor (Insolvency), Australian Taxation Office, 1989 -1995
- Senior Manager, Worrells Solvency & Forensic Accountants 1995 – 2000
- Managing director, Debt Helpline Pty Ltd, 2000 – 2010
- ASCPA Centre for Excellence in Insolvency & Reconstruction (Qld), 1994 – 2000
- Board Member, AICM (Qld), 1997 -1999

Contact Geoff: [gmunck@debthelpline.com.au](mailto:gmunck@debthelpline.com.au)

S116(2)(b)(i) exempts household property as prescribed by Regulation