

## Information Sheet 2 - Your Income & Your Assets

I've shown you what net take home pay you can earn and, as a bankrupt, keep. The amounts shown are net after tax, after child support, and if applicable, after business expenses too. They are called the Threshold Amounts. They're each too, so if a husband and wife go bankrupt separately, they can each earn the amount applicable to them.

I've explained that if you earn more than the net figures shown, then you keep all of the amounts earned up to the net Threshold Amount as applies to how many dependants you have. If you earn over the Threshold, you share the excess 50/50 with your bankruptcy trustee, (and congratulate yourself) but the Threshold amount is always yours.

If your income is over the Threshold, and you cause your bankruptcy trustee some grief and concern about your willingness to advise him of your current income and pay this excess, then they can get quite tough with you, particularly under what is known as a Supervised Account Regime for the Collection of Income Contributions.

A bankrupt should have the opportunity to comply voluntarily with their obligation to pay contributions on time, and the bankruptcy trustee should only apply the Supervised Account regime in cases in which it would appear to be the most effective method to ensure that (50/50) contributions are paid.

If a bankruptcy trustee successfully attacks you under the Supervised Account Regime, then as a bankrupt you must, within 10 days, open a separate bank account, as instructed.

All of your income received after the account is opened must then be deposited into that account. The bankruptcy trustee then supervises withdrawals from that account. And it goes on and on and on.

This Regime is only designed to apply to bankrupts who try and avoid their obligations to voluntarily pay their contributions on time if their income is over the Threshold amounts. It's easy to stay on track. From what Alan Nicholls tells me for example, a separate bankruptcy trust bank account for your matter is opened, and you then simply transfer to this account each payday what your trustee has advised you is the correct amount. It's you that transfers it, not your employer. In ordinary circumstances your employer is not told that you are bankrupt.

My advice is, don't muck around, avoid the grief, it really is simple to stay out of trouble, so just comply and keep your trustee informed of movements in your income.

Don't give your trustee an opportunity to start dictating to you under the Supervised Account Regime.

Also, a lot of the people who contact me are a bit fragile by now so the last thing you want is your bankruptcy trustee being a bit heavy handed with you. Best thing to do is not get caught up in this, be in touch with your trustee when and as your income changes, and of course if your whereabouts and contact details change.

I hope that the people at the various bankruptcy trustees' offices who will have the day to day contact with bankrupts are given adequate training and counselling on how to handle the people involved in these matters.

Because I know that Alan Nicholls, as well as being a bankruptcy trustee, is also a very decent bloke, I have no hesitation in suggesting, where I see that the 50% over the Threshold amounts come into play, that we should see if Alan would agree to be your bankruptcy trustee. I'll talk to you about that.

If you do get caught up in one of these Supervised Accounts, I think that you should take particular note in Bankruptcy Information Sheet 4 - General Information to what I say about objecting to the decisions of your bankruptcy trustee.

By the way, if you earn more than the Threshold amount and you pay the half of the excess to your bankruptcy trustee,

then he takes a fee from this upfront before he distributes anything down to the creditors pro rata to their debt. You generally don't have to pay anything extra to your trustee. Not always, but generally in most cases.

ITSA, and any other bankruptcy trustee, will charge your bankruptcy if it is entitled to get money from you or your estate if your income is over the threshold amounts mentioned in Bankruptcy Information Note 1 - Your Income, or if it is entitled to sell your house or your assets like Telstra shares or a speedboat etc etc.

If ITSA doesn't collect from your bankruptcy over the 3 year term, I don't think that it personally charges you for any shortfall, but I'm not sure. Other trustees might.

At times, ITSA can transfer a bankruptcy to a private trustee. They are tending to do this more and more

The rationale is that if ITSA, a government department, has too much work on at the time when your matter arrives they can allocate your matter to a private bankruptcy trustee. It might also happen for other reasons.

If a registered private bankruptcy trustee (appropriately registered accountants), and these are mostly a trustee if you are sent bankrupt through the courts, becomes your bankruptcy trustee, they are entitled to charge you a fee.

Again this fee can be paid by the sale of an asset that they're entitled to sell, or from your income contributions if your income is over the Threshold amounts. If none of that applies then you'll have to pay the fee over the 3 year period of your bankruptcy.

If your bankruptcy trustee changes from ITSA to a registered trustee, currently the minimum fee is about \$1,600, and it's indexed, so it may change every March and September. If this happens to you, and you receive a fee, my suggestion is to pay it at say \$200 or so a month until its paid. As bankruptcy releases you from paying other creditors like credit cards, I'm expecting that something like \$200 a month would be affordable.

Let me stress though, if your debt is just ordinary credit card and bank loans and tax, and you've got no real estate for a trustee to sell, or you're not in a business other than being a contractor or a consultant, it seems to me that your bankruptcy stands a chance to stay with ITSA. However, I've heard that this may change.

I think that if you've reached the end of your tether and bankruptcy is going to happen anyway, you're much better off taking the action yourself first rather than have somebody do it to you. If there's nothing there for ITSA, then your bankruptcy's administration is free to you. If you go bankrupt through me, we will do it through ITSA, although sometimes I may think that you'd be better off with Alan Nicholls or Nick Crouch's office as your trustee.

Some private trustees are on a list and they have agreed to accept transfers from ITSA. They have to work on the basis that you win some, you lose some. They can be anywhere in Australia, so they won't necessarily be near you.

As a bankrupt you can have a car with your net equity in it worth \$6,700. That value's wholesale, it's about what really a car dealer would pay you if you sold the car to him or through a car auction. If you owe money on the car, the \$6,700 is your net equity in the car after deducting what you owe from the value of the car. If the car is owned in joint names and you both go bankrupt, then wholesale the car can be worth \$13,400, that's \$6,700 twice.

Say you own a car worth \$20,000 (wholesale) and you still owe \$16,000 on it to a finance company who has a Bill of Sale over the car as security. In that sort of scenario then your net equity in the car is the \$4,000. As that's below the \$6,500 value that you can have, then your bankruptcy trustee won't take the car off you.

In a case like this, if you are up to date with your repayments when you go bankrupt, and can stay up to date with them while you are bankrupt, then I think that you'd be able to keep the car even though you are bankrupt.

Similarly, if the car was only worth say \$12,000 wholesale and you owed the \$15,000 to the finance company under a Bill of Sale, then your net equity is then a minus figure, (minus \$3,000) which is below \$6,700 plus, so the same scenario would apply. If you're up to date with your repayments when you go bankrupt, and can stay up to date, then I expect that you'd keep the car.

However, let's say the car was worth the \$20,000 wholesale mentioned above, but the \$16,000 owing was not secured by a Bill of Sale, the loan on the car was unsecured. For bankruptcy purposes you've now got a car worth \$20,000. Your bankruptcy trustee would then take the car off you and sell it. From the proceeds he would return \$6,700 to you so that you could buy yourself another car, and the balance would go into your bankruptcy, and be treated as has been previously described. You wouldn't owe the \$16,000 anymore either, it belongs to Box 3.

To get an idea of what your car's wholesale value, my advice is to enter something like, cars, wholesale prices in your search engine and check out in a few of the sites what your car would be worth. For bankruptcy purposes it's definitely not worth what the dealers are asking, or what it's insured for.

If you want to hand the car back, then do so, even after bankruptcy. If it's secured the finance company can't then ask you to pay any more repayments, or losses that they incur in selling the car.

As a bankrupt you can keep most ordinary household or personal items, such as clothes, furniture, kitchen appliances, TV, video recorder, stereo, washing machine, and items mainly for the use of children or students in the house.

If you don't go bankrupt though, some of these items could be at risk if the person who you owe money to takes you through the court system and then gets the sheriff to come around to take your goods away for auction. You see, the "umbrella of bankruptcy" will give you protection from a lot of the carry on that the debt collectors have been upsetting you with.

Remember though that the debt collectors can't get the sheriff to come around and take some of your possessions away to be sold until the debt collectors and their lawyers have taken you through what I call the real legal system. You actually have to receive a summons to go to court. Letters saying that they will have no choice etc to do so are mostly part of the harassment that you're being subjected to. In the end it could happen but mostly when worried people first contact me, they're months away from that point.

A bankrupt can have tools of trade worth \$3,350 (sheriff's auction value). If you've got more than that, we'll talk about it. Again, check some of the auction sites on the web, that'll give you a idea of the second hand value of your tools etc.

While you are bankrupt, you're not supposed to get any assets, but you can save your income. I know of no reason why some bankruptcy trustees get a bit stroppy about you having money in the bank because you haven't yet spent all your income. It seems to me that there is a double standard here.

An ITSA publication says that assets or property are anything you own or buy or receive, except income you earn during bankruptcy. It seems to me that if you leave your income in the same bank account that it went into on pay day, then it should be safe from your bankruptcy trustee.

You can transfer money that you have saved from your income into a fixed deposit or something like that, and I'm told that it now should be safe. However, if you put money from a gift from your parents or somebody like that, or a tab or lottery win or something, then your trustee can claim it, because it's not you saving your income.

Personally, if it were me I'd probably even consider just having it as cash.

As I've mentioned earlier, if there are 2 incomes coming into the household and only one income earner is bankrupt, then the other income earner could simply save their income and the bankrupt person could spend his/hers on the household expenses. Saves a bankruptcy trustee from being tempted.

Your creditors can't sue you for the debt that was part of your bankruptcy. As far as they are concerned, it's gone forever unless your bankruptcy trustee is entitled to recover something off you if you "come good". They've got to wait for your trustee to then distribute them something. However to be written off, the debt has to legally exist at the date of your bankruptcy. In car accident claims, this is very important.

One trap here is in relation to something that you may receive from a will during the three years of a bankruptcy. If this happens while you are bankrupt, and your bankruptcy trustee finds out about it, (and you are obliged to inform him), he'll take it, because it's classed as getting an asset. So go and see grandma or whoever thinks you're the greatest, and tell them that this might happen. Sometimes wills get changed, and things work out ok. I've known instances where bankrupts have come to grief when the trustee has been able to claim their inheritance.

I'd also get another member of the family to buy Lotto in their name. If you win Lotto while you're bankrupt, you've "come good" and your bankruptcy trustee can put his hand out. I've known this to happen too.

If the trustee puts his hand out for your lotto win or your share of grandma's will then he will ask the people to who you owe money to update the debt with further interest and charges calculated to the expected date when he'll pay them. He'll also add his fees, plus the government's expected tax too.

Up until now we've thought that you might go bankrupt, Bankruptcy Information Note no 3 - Debt Agreement Proposal will tell you what you can do if you'd rather not go bankrupt.

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