



JHK LEGAL

Legislative and practical relief to bankrupts during COVID-19

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On 13 March 2020, the World Health Organisation categorised COVID-19 as a pandemic.

In recent JHK Legal articles we have outlined the relief for individuals and businesses during the COVID-19 era and the temporary changes to safe harbour provisions. View those recent articles here:

[Relief for individuals and Businesses during the Covid-19 era](#)

[Temporary Changes to Safe Harbour Provisions](#)

This article deals with the relief provided to bankrupts during the COVID-19 crisis and considers the position of the trustees in bankruptcy during this period.

AFSA Guidelines

As at the date of this article, there are no legislative restrictions on trustees of bankrupt estates in carrying out their powers as a result of the COVID-19 pandemic. Notwithstanding this, the Australian Government have been vocal with their expectations, that parties work together to obtain short-term agreements (including extensions of time or delay of payments).

As a result of the government's position, the Australian Financial Security Authority (AFSA) have released general guidelines for trustees¹. Overall, AFSA recommend a degree of leniency should be afforded to bankrupts where appropriate however the needs of creditors should remain a priority and the estate should otherwise be administered in a timely manner.



¹ <https://www.afsa.gov.au/about-us/newsroom/practitioners-covid-19-and-updated-advice-inspector-general>

Some of the AFSA guidelines include:

1. Where an estate can still be administered, it is expected that it will be administered in a timely manner;
2. There may be some estates that cannot be progressed and the reasons need to be documented on file in sufficient detail to satisfy any parties seeking access to the estate file that any delay is reasonable;
3. Trustees are expected to continue to take the necessary steps now to secure assets but only to the extent that they are able to do so without exposing staff to risk;
4. While there may be delays in being able to deal with a property (for example restrictions on real estate agents conducting open house inspections), it is important that actions to secure property are not delayed, if this can be safely completed.
5. As the Australian Government has announced a nationwide six-month moratorium on evicting renters, trustees should avoid evicting parties from properties. It may be difficult for such parties to find alternative accommodation particularly where their income has been reduced (either partly or wholly), where they have become unwell or have unexpected caring responsibilities at this time.
6. Trustees must be conscious that bankrupts may not be able to provide information as quickly as requested.
7. Any renegotiation of payment schedules with contributors must be balanced with the bankrupt's need to repay their liability, noting they may be in a less favourable position to repay the liability at a later time. At the same time, the trustee must be mindful that some creditors, particularly small creditors, may be relying on dividends from a bankrupt estate to keep their business operating.

Practical relief for bankrupts

So, what does this mean for bankrupts? There may be the ability to discuss and attempt to negotiate extensions of time or variations to payment schedules with a trustee in bankruptcy if a bankrupt is affected by COVID-19.

Reasonable evidence that a bankrupt has been affected by one or more of the following will likely be required (please note this list not exhaustive):

1. Loss of employment;
2. Reduction in income;
3. Tested positive for COVID-19;
4. Been in mandatory self-isolation; and/or
5. Increased and unexpected caring responsibilities.

Practical effects for bankruptcy practitioners

While a trustee must be mindful of certain parties being affected by COVID-19, a trustee still needs to continue performing their obligations under the *Bankruptcy Act 1966* (Cth).

Trustees should try to obtain written evidence of any temporary or permanent loss of employment or reduction in income to be able to document sufficiently the reason for any leniency provided to bankrupts.

If any Court applications are commenced by trustees to seek to obtain orders to deal with the assets of a bankrupt estate, it is likely that trustees will need to evidence to the Court that a level of reasonableness has been provided to bankrupts who have been affected by COVID-19 and sufficient evidence of the same has been provided. Depending on the situation, a trustee may consider allowing bankrupts with longer periods of time than usual to complete certain steps.

There is no question that applying the AFSA guidelines and completing the trustee's obligation of administering a bankrupt estate in a timely manner will be a difficult balancing act for bankruptcy practitioners.

How can we help you

Whether you are a bankrupt or a bankruptcy practitioner, JHK Legal can assist you with any queries you may have.

JHK Legal has an extensive knowledge in the insolvency area and we can provide legal advice based on your specific circumstances. If this article may be relevant to your circumstances or if you have any general enquiries, please do not hesitate to get in touch with one of our offices.

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