

Earning income during bankruptcy



Stewart Free, Jirsch Sutherland Partner

When Ron Foley had to make the difficult decision to file for bankruptcy, he thought his earning days were over and he began to stress about how he would support his family. He had been working as a subcontractor to various building companies but was impacted by a series of debtors not paying him, and after a recent divorce, found himself drowning in debt.

Fortunately, his bankruptcy trustee explained that he could still earn money and keep his ute and tools of trade and be able to pay living expenses.

“Contrary to what many people think, while you’re bankrupt you can earn as much as you like,” says bankruptcy specialist Stewart Free, Jirsch Sutherland Partner. “There is also no limit to the amount you can save during your bankruptcy; it must just be kept in the same bank account that your wages are paid into. However, once you earn over the relevant income [threshold](#), you’ll need to contribute a portion of your earnings towards your bankrupt estate. This amount changes with how many dependants you have.”

Income payments are calculated using a statutory formula set out in the Bankruptcy Act. The formula dictates that 50 per cent of your net assessable income above the relevant dependent threshold is payable to your estate.

If you have no dependents the Base Income Threshold Amount (BITA) you can earn that is protected by bankruptcy law is \$58,331 gross per annum – that’s an average of \$1,120 per week (net of tax and Medicare) take home pay. Over this amount, half of any income you get goes towards repaying the creditors. For those with dependants, the amount a bankrupt person can earn increases. For the latest amounts refer to the Australian Financial Security Authority (AFSA) table [here](#).

“The expectation is that you need this amount to cover the cost of living, such as your rent or mortgage, groceries, getting to and from work, medical bills and insurances, and running your car or motorbike,” explains Free. “Anything you earn above this amount you split 50/50 with your bankruptcy trustee for the period of your bankruptcy.”

“We also get many questions about what you can buy or donate to during the bankruptcy period. For example, you can give money to your church or a charity; you can buy household items such as a replacement fridge or bed or to pay for repairs to your car; you can save for a holiday; and you can give money to family members in Australia or overseas. There can be confusion, so it’s crucial to speak with your bankruptcy trustee.”

What if you win the lottery?

“I often get asked about other income that someone might receive during their bankruptcy,” says Free. “That might include a tax refund, inheritance, gifts from family or friends, or a prize such as a lottery win. Apart from your ordinary income, other money and payments you receive may still form part of your income assessment or be an asset your trustee can claim and sell. Again, it’s important to check with your trustee.”

As a guide:

- **Tax refunds:** don’t spend the money before confirming with your trustee whether you can keep it.
- **Superannuation:** normally a trustee can’t claim your super if you receive it after your bankruptcy begins. During bankruptcy, you must inform your trustee of any super you receive.
- **Inheritances:** normally you can’t keep it. If you receive an inheritance, inform your trustee.
- **Redundancy payment:**
 - If you receive it prior to entering bankruptcy, it’s an asset the trustee can claim.
 - If you receive it after bankruptcy, it forms part of your assessable income. If your income goes over a [set amount](#) you need to make compulsory payments.