



# PRISONERS' LEGAL SERVICE INC

# CHAINMAIL

INFORMATION BROADSHEET FOR PRISONERS OF QUEENSLAND

111<sup>th</sup> Edition June 2018

JUSTICE BEHIND BARS

## Thinking about bankruptcy?.....

A person may choose to go bankrupt if they are in a lot of debt, don't have any way to repay and want relief from the stress of being in debt especially if legal action is being taken. If you are thinking about bankruptcy, we recommend you consult with a financial counsellor for more information to make sure the decision is right for you. Bankruptcy usually lasts for 3 years and will affect your ability to apply for credit for at least 5 years. A record of bankruptcy is listed for life on *the National Personal Insolvency Index (NPII)* which is an online database. The Government agency responsible for managing bankruptcy is called the *Australian Financial Security Authority (AFSA)*

Whether bankruptcy is a good option for you will depend on many factors including:

- The type of debts you have and how old the debts are (whether they can be cleared or not)
- How large your debts are and how many debts you have
- What assets you have which could be repossessed
- If any debts or assets are in joint names or if there is a guarantor
- Whether you have transferred or sold any assets to someone else
- Whether bankruptcy will affect your ability to get a job (some employment restrictions apply)
- Whether you need accommodation (bankruptcy can impact applications for rental properties)

Below is a list of some of the types of debts that can and cannot be cleared by bankruptcy:

Debts which CAN be cleared	Debts which CANNOT be cleared
Credit Cards / Personal loans	Fines or penalties imposed by a court
Residual debts owed after repossession – e.g. car or home	SPER fines
Mobile Phone debts	Child Support and maintenance debts
Utilities (electricity and gas bills)	HECS or HELP tertiary education loans
Tax debts	Debts incurred due to fraud
Personal debts	Debts incurred after declaring bankruptcy
Debts where a court judgment has been obtained	Debts from proceeds of crime
Victims of Crime – offender debt recovery orders	Overseas debts

Prisoners' Legal Service Inc.  
Postal Address: GPO Box 257, Brisbane QLD 4001

Justice Behind Bars  
Free Advice Line: Tues and Thurs from 9am to 1pm

*This broadsheet is intended to provide legal information only and is no substitute for legal advice. If you wish to take any action arising from matters raised in this publication you should consult a lawyer immediately.*



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## Thinking about early release of super?.....

We often receive enquiries about accessing superannuation under early release and hardship provisions. Super is designed for income in retirement. Therefore, under normal circumstances you are not eligible to access it until you are at least 55 years of age or over. Under current superannuation legislation, being in prison is not considered as sufficient grounds (on its own) to release your super. There are only two ways you can apply for early release:

### Financial hardship

To be eligible to apply under financial hardship you must currently be on a Centrelink benefit e.g. Newstart Allowance and have been receiving it continuously for at least 26 weeks (6 months). This is not a valid option when you are in prison even if you were on Centrelink benefits as they were stopped when you entered prison. You would need to be back on Centrelink benefits post release for 26 weeks to be eligible.

Many super funds no longer offer financial hardship release of super. If the super fund does allow it, the maximum amount is a single lump sum of up to \$10,000.00 in a 12-month period. This amount is taxed at up to 21.5% on release.

Super should never be used to pay outstanding debts and is a protected benefit in bankruptcy.

### Compassionate Grounds

You may be eligible to apply under compassionate grounds in the following situations:

- To prevent foreclosure of a mortgage (i.e. to stop the bank from repossessing your home)
- To pay for funeral expenses of a dependent or immediate family member
- To pay for medical treatment or transport for yourself or a dependent in the case of severe illness or disability

### How do I find my lost super?

As technology and the internet is being relied upon more and more, it is very difficult to search for lost super while you are in prison. The Australian Taxation Office (ATO) keep a register of lost super but to search for it, you need to either be able to call them or log on to MyGov and search online. It is becoming increasingly difficult to search for lost super if you don't have access to phone or internet unless you already know which funds you were in or can remember your prior employer information.

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