

## Restitution Orders (NSW) Updates

Are Restitution/Compensation Orders Extinguished by Bankruptcy?

The short answer is YES they are, provided the amount payable was fixed prior to the date of bankruptcy and the Order has not been made under proceeds of crime law or in relation to a crime involving fraud.

### What is a Restitution Order?

The Law is different from state to state but the general effect of a Restitution or Compensation Order is to try and recover support payments made to victims of crimes or to make the offender liable to compensate the victim directly.

In New South Wales for example, a victim of an act of violence may be awarded financial support and/or a recognition payment under the *Victims Rights and Support Act 2013*. This is a New South Wales State Act. The award or payment is paid from the Victims Fund.

If a person has been convicted of the offence that led to the victim's injury, restitution action may be taken by Victims Services to recover that money from the offender. The convicted offender may be ordered to pay back all, or some, of the victims support payments paid by the Fund to the victim. This is to make sure that offenders contribute to the assistance of their victims.

### Recent Confusion

We have been asked a lot recently whether Restitution Orders are extinguished by bankruptcy. The confusion, in New South Wales at least, stems from the fact that Revenue (now known as Revenue NSW) is now responsible for collecting outstanding Orders. In doing so they are referring to the amounts due as "fines".

Court imposed fines are typically not "provable" in a bankruptcy and as such not extinguished by the bankruptcy. This has led to a concern that Restitution Orders are not provable in a bankruptcy. Luckily this is NOT the case.

### Non Provable Debts

The main categories of non provable debts which are not extinguished by bankruptcy are:

- Debts incurred after the date of bankruptcy;
- Court fines;
- Debts under the Higher Education Support Act 2003; and
- Unliquidated debts (i.e. an amount claimed that has not been fixed by agreement or Court Order)

## Limitations on Orders Being Extinguished

With reference to these broad categories of non-provable debts, to be extinguished by bankruptcy a Restitution or Compensation Order must have:

- Been incurred prior to the date of bankruptcy; and
- Must be liquidated prior to bankruptcy (i.e. the amount must have been fixed or agreed prior to bankruptcy)

Note that pursuant to Section 82(3A) of the Bankruptcy Act 1966, amounts payable under proceeds of crime orders are not provable. As such a Restitution or Compensation Order relating to proceeds of crime would NOT be extinguished by Bankruptcy.

You should also be aware that debts resulting from fraud can be provable in a bankruptcy but a typically not extinguished by bankruptcy. As such a Restitution Order relating to a fraud based crime may be provable in bankruptcy but may not be extinguished. Further advice should be sought if the Restitution or Compensation Order is of this nature.

## Other Considerations

Depending on the individual wording and terms of the Restitution or Compensation Order there may be other adverse consequence associated with non-payment. For example an order might include a condition that breach of the order results in imprisonment. As such it is essential to read all terms of any order carefully and fully before deciding that bankruptcy is the right option to deal with the liability.

### Disclaimer

Please note that this is by no means to be taken as legal advice but rather our interpretation as registered Bankruptcy Trustees of the relevant legislation and in particular the Bankruptcy Act.

## Further Assistance

We are more than happy to discuss any individual situations on a case by case no obligation basis. Should you have any queries please contact James Shaw or Paul Gidley on **1800 376 583** or via the chat line on our website at [www.esolvency.com.au](http://www.esolvency.com.au).

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