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## November 2014

### *“Don’t Let Your Clients Play Games”*

#### **Background**

A registered Trustee in Bankruptcy has a statutory obligation to refer every offence committed by a bankrupt to the Australian Financial Security Authority (AFSA) Prosecution and Enforcement for consideration.

This non discretionary position can have severe consequences on your client (i.e. in some instances penal penalties).

#### **Most Common Offences**

Breaches of Section 265(1) (Duty to Disclose Property) is the most common offence committed (see below) and your client (if seeking your advice) needs be aware if filing for Bankruptcy they ensure full and complete disclosure at all times.

#### ***BANKRUPTCY ACT 1966 - SECT 265***

##### ***Failure of bankrupt or debtor to disclose property etc.***

***(1) A bankrupt:***

- (a) shall fully and truly disclose to the trustee all of the property of the bankrupt, and its value;***
- (b) shall fully and truly disclose to the trustee particulars of any disposition of property made by him or her within the period of 2 years immediately preceding the date on which he or she became a bankrupt;***
- (c) shall not refuse or fail to comply with a direction by the trustee to deliver to the trustee property in the possession of the bankrupt, being all or part of the property of the bankrupt;***
  - (ca) shall fully and truly disclose to the trustee such information about any of the bankrupt's conduct and examinable affairs as the trustee requires;***
- (d) shall not refuse or fail to tell the trustee where the books (including books of an associated entity of the bankrupt) relating to the bankrupt's examinable affairs may be found;***
- (e) shall not refuse or fail to comply with a direction by the trustee to deliver to the trustee books (including books of an associated entity of the bankrupt) that are in the possession of the bankrupt and relate to any of the bankrupt's examinable affairs;***
- (f) shall not omit any material particular from a statement relating to any of the bankrupt's examinable affairs;***
- (g) shall, if he or she knows that a person has lodged a proof of debt in the bankruptcy that is false, forthwith inform the trustee of the fact; and***
- (h) shall give to the trustee a full and proper explanation of any loss or depreciation of any of his or her assets or part of any of his or her assets that occurred within the period of 2 years immediately preceding the date on which he or she became a bankrupt.***

***Penalty: Imprisonment for 1 year.***

Please contact us any time to discuss and note as always we at Chamberlains SBR are more than welcome to review any matter with you or your clients regardless of how trivial it may appear.

*Chamberlains SBR, Chartered Accountants - Specialises in Personal & Corporate  
Business Reconstruction & Insolvency*

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