



Australian Government

Australian Financial Security Authority

OFFICIAL RECEIVER PRACTICE STATEMENT 9

Inspecting documents filed with the Official Receiver

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**PERSONAL
INSOLVENCY**

Our vision: To be a firm and fair regulator and world-class government service provider that delivers improved and equitable financial outcomes for consumers, business and the community.

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1. INTRODUCTION

- 1.1. Documents that are required to be filed or lodged with the Official Receiver¹ under the [Bankruptcy Act 1966](#) are held by AFSA's Insolvency and Trustee Services division.
- 1.2. This practice statement:
 - provides an outline of the process for obtaining access to, and copies of, documents that are available for public inspection under the Bankruptcy Act
 - identifies avenues available to obtain access to material that is not publicly available under the Bankruptcy Act
 - provides a list of the documents held by the Official Receiver that are available for inspection by debtors or bankrupts, their creditors and members of the public (refer to [annexure A](#)).

2. DOCUMENTS AVAILABLE TO THE GENERAL PUBLIC²

Bankruptcy Form – Part IV bankruptcy

- 2.1. From 1 January 2020, the debtor's petition and statement of affairs were combined into the Bankruptcy Form. The Bankruptcy Form is also used by a person made bankrupt via sequestration order, in place of the former statement of affairs.
- 2.2. The information on the Bankruptcy Form, other than the questions marked as confidential, are available for inspection.
- 2.3. The questions marked confidential are not available to the public because subsections 54(4) and 55(11) of the Bankruptcy Act require the Official Receiver to ensure that, where the form states that the information will not be made available the public, it is not made available to any person other than the debtor/bankrupt or agent of the debtor/bankrupt.

Statement of affairs – Part IV bankruptcy

- 2.4. Where a statement of affairs was filed on the old form ([Form 3](#)) prior to the release of the Bankruptcy Form on 1 January 2020, Parts B to E of the statement of affairs are available for inspection.
- 2.5. Where a statement of affairs was filed on the old Form 3 in the transition period following the release of the Bankruptcy Form on 1 January 2020, Parts B to E are available for inspection.

¹ A reference to the Official Receiver in this paper also refers to a delegate of the Official Receiver

² See [annexure A](#) for a summary of available documents

- 2.6. Part A of the statement of affairs is not available because the form states that this part is confidential, and because subsections 54(4) and 55(11) of the Bankruptcy Act require the Official Receiver to ensure that, where the form states that the information will not be made available the public, it is not made available to any person other than the debtor/bankrupt or agent of the debtor/bankrupt.

An accepted composition or scheme of arrangement in bankruptcy

- 2.7. After a debtor becomes bankrupt and before discharge, he or she may submit, via his or her trustee, a proposal to his or her creditors of a composition or scheme of arrangement to settle provable debts. If creditors by special resolution accept the proposal, the bankruptcy is annulled as a consequence.
- 2.8. The trustee is required to file a copy of the proposal with the Official Receiver.
- 2.9. If creditors vote to accept the composition or scheme of arrangement, the copy of the proposal filed with the Official Receiver is available for public inspection.

Debt agreement statement of affairs

- 2.10. A debt agreement statement of affairs filed under Part IX of the Bankruptcy Act is not available to the public and is only available to the debtor and his or her creditors – see [below](#).

Personal insolvency agreement (Part X)³ documents

- 2.11. Before a personal insolvency agreement has been executed (that is, before it has been agreed to by creditors and signed by the debtor), the only document available for inspection by the general public is the non-confidential part of the debtor's statement of affairs (Parts B to E) ([Form 3](#)).
- 2.12. After a PIA has been executed, further documents are available⁴ for inspection:
- the executed PIA
 - the controlling trustee authority (commonly referred to as a section 188 authority), which is a debtor's authority granting control over property to a controlling trustee pending the execution of a PIA
 - the controlling trustee's report to creditors on the debtor's proposal for a PIA
 - any other document required to be lodged with the Official Receiver relating to that PIA administration.

³ See also [ORPS4 – Setting up a personal insolvency agreement](#) and [PIA information](#) on AFSA's website

⁴ This also applies where a composition, arrangement or assignment was agreed under Part X of the Bankruptcy Act prior to 1 December 2004

Part XI administration statement of affairs

- 2.13. Except for Part A, which contains confidential information, a statement of affairs that was filed for an insolvent deceased estate under Part XI of the Bankruptcy Act ([Form 4](#)) is available for inspection.

Official Receiver examinations⁵

- 2.14. If a person is examined by the Official Receiver pursuant to section 77C of the Bankruptcy Act, the following documents are available for inspection:
- the Official Receiver’s notes of the examination, where those notes have been signed by the person who has been examined
 - any transcript of the recording of the examination, where a transcript has been produced.

Bankruptcy notices⁶

- 2.15. Where a creditor’s petition has been filed with the Federal Court or the Federal Circuit Court based on non-compliance with a bankruptcy notice, that bankruptcy notice becomes available for public inspection.

3. DOCUMENTS AVAILABLE ONLY TO THE PARTIES INVOLVED

Bankruptcy notices

- 3.1. Until such time as a creditor’s petition is filed with the court based on non-compliance with a bankruptcy notice, the bankruptcy notice is available only to the parties involved – that is, any person specified or named in the notice and an agent or solicitor acting for any person named in the notice.

Debt agreement (Part IX)⁷ documents

- 3.2. A debtor’s Part IX statement of affairs is available for inspection and copying only by the parties involved – that is, the debtor (or his or her agent) and the debtor’s creditors (or their agents). The document is not available to the public.

⁵ See also [ORPS7 – Official Receiver notices](#)

⁶ See also [ORPS6 – Applying for a bankruptcy notice](#)

⁷ See also [ORPS11 – Debt agreements](#) and [debt agreement information](#) on AFSA’s website

4. ACCESS TO AVAILABLE DOCUMENTS⁸

- 4.1. Any person can, for a fee, obtain access to available documents to inspect, make notes and/or purchase copies. The fees are provided for in Part 2 of the [Bankruptcy \(Fees and Remuneration\) Determination 2015](#).

Making a request

- 4.2. To inspect an available document, make notes and/or make copies, a request is to be made in writing. It is recommended that the [inspection of documents filed with the Official Receiver form](#) be used, as it outlines all the information required to consider the request.
- 4.3. The person making the request must:
- provide the debtor's/bankrupt's name and administration number
 - specify the name of the document(s) that is required to be inspected and/or copied
 - produce, if the person is the debtor/bankrupt, a creditor of the debtor/bankrupt or an agent of the debtor/bankrupt or of the creditor, identification establishing them as such
 - pay the required fee.
- 4.4. If the person making the request is unable to provide the debtor's relevant administration number, it will be necessary to conduct a search of the National Personal Insolvency Index ("NPII") beforehand.⁹

The debtor/bankrupt

- 4.5. The debtor/bankrupt, or an agent of the debtor/bankrupt, may access any of the debtor's/bankrupt's documents filed with the Official Receiver without payment of a fee.

The debtor's/bankrupt's relatives and associates

- 4.6. A debtor's/bankrupt's relatives and business associates (for example, the debtor's/bankrupt's spouse or business partner) may only inspect publicly-available documents as members of the general public, with payment of the required fee. Association with the debtor/bankrupt does not automatically render that person an agent of the debtor/bankrupt. The requirements for an agent are discussed below.

⁸ For current fees and charges associated with inspection and obtaining copies of documents, see AFSA's [Fees and charges webpage](#)

⁹ More information about NPII searches can be found in [ORPS8 – The National Personal Insolvency Index](#) and on [AFSA's website](#)

The debtor's/bankrupt's creditors

- 4.7. A debtor's/bankrupt's creditors, or a creditor's agent, may access the public documents of the debtor/bankrupt without payment of a fee.
- 4.8. To inspect and/or obtain copies, the creditor, or the creditor's agent, must provide some evidence identifying them (or their principal) as a creditor.

EXAMPLE 1

If the creditor was disclosed by the bankrupt on the statement of affairs (that is, it is known to be a creditor of the bankrupt estate), the representative of the creditor may be required to produce identification as that creditor; for example, he or she may be able to produce a business card, a copy of the initial notification of the bankruptcy that was sent to the creditor or other correspondence from the trustee of the bankrupt estate.

EXAMPLE 2

If the creditor was not disclosed on the bankrupt's statement of affairs (that is, it is not currently known as a creditor of the bankrupt estate), the representative of the creditor may be required to produce evidence of the debt owed by the bankrupt; for example, invoices addressed to the bankrupt evidencing a debt incurred prior to the date of bankruptcy. The creditor should also be asked to provide that information to the trustee so that it can be formally recognised as a creditor and participate in any future dividend(s).

An agent of the debtor/bankrupt or creditor

- 4.9. Access may be provided to an agent acting on behalf of the debtor/bankrupt or a creditor without payment of a fee. In order to satisfy the Official Receiver that the person is an agent of either the debtor/bankrupt or a creditor, that person must provide evidence of his or her appointment as an agent.

EXAMPLE 3

A bankrupt writes to the Official Receiver asking that a copy of his Bankruptcy Form be provided to another person on his behalf. The bankrupt includes in the request the name and address of the other person. The effect of the letter is to appoint that person as the debtor's agent. The letter can be supplied directly to the Official Receiver or given to the debtor's agent to produce. In order to provide access to the documents, the Official Receiver may require the agent to provide some identification as well as the letter from the debtor.

Access for law enforcement purposes

- 4.10. Although subsections 54(6) and 55(11) of the Bankruptcy Act require the

Official Receiver to ensure that confidential information in a bankrupt’s statement of affairs is not made available to “any person other than the bankrupt (or an agent of the bankrupt)”, subsections 54(6A) and 55(11A) provide that disclosure of the confidential parts of a statement of affairs is not prevented where disclosure is required by law.

- 4.11. When a request is made by an entity claiming to be a law enforcement agency for production of specific original documents, the request will be referred to the Official Receiver or a delegated officer.
- 4.12. There is no fee for production of documents requested by specific law enforcement bodies.

Inspecting and/or obtaining copies of documents

- 4.13. When a person requests access to documents filed with the Official Receiver, electronic copies of these documents will be provided by email or by post.
- 4.14. Paper documents will only be forwarded to a different site office under certain circumstances, for example when the documents are required for law enforcement purposes. The decision to forward original documents will be made by the Official Receiver.
- 4.15. Where the documents are held off-site – that is, they have been archived – document searches are performed within one business day of the retrieval of the documents by AFSA. Where possible, the document search request will be completed within ten business days of receipt of the request.

5. WHAT DOCUMENTS ARE NOT AVAILABLE?

- 5.1. Only the documents specified under the Bankruptcy Act are available for inspection by the general public, a creditor or a debtor/bankrupt. Access to documents other than those available under the Bankruptcy Act is governed by the [Privacy Act 1988](#) (see [part 6](#) below) and the [Freedom of Information Act 1982](#) (see [part 7](#) below).
- 5.2. No other document filed with and retained by the Official Receiver is available for inspection, for example:
 - a debtor’s petition (the Form 6 that was in use until 31 December 2019)
 - correspondence between AFSA or the Official Receiver and a debtor/bankrupt
 - correspondence between AFSA or the Official Receiver and the courts
 - documents relating to an appeal before the Administrative Appeals Tribunal.

- 5.3. Documents held by the Official Trustee in Bankruptcy are not generally available for public inspection under the Bankruptcy Act. The Official Trustee administers personal insolvency matters, including bankruptcies, when a registered trustee or other administrator is not appointed.

Refusal of access

- 5.4. The Official Receiver may refuse to allow a person access to **any** documents if that access would jeopardise or be likely to jeopardise the safety of any person. This includes documents that would usually be available to the public.
- 5.5. If there has been a successful application to suppress the debtor's/bankrupt's address published on the NPII, that address on any publicly-available document will also be suppressed.

6. PERSONAL INFORMATION AND PRIVACY

- 6.1. Where the Bankruptcy Act does not provide for a particular document being available for inspection, the Privacy Act may apply. Debtors/bankrupts have rights of access to documents containing personal information about them, without payment of a fee, under the provisions of the Privacy Act. This is not an unqualified right of access and documents that would be exempt from disclosure under the Freedom of Information Act are not available.
- 6.2. Where a debtor/bankrupt seeks access to a document that is not made available under the Bankruptcy Act, the debtor's/bankrupt's application to the Official Receiver will need to clearly identify that it is being made pursuant to the Privacy Act. Further information about how personal information is handled is contained in [AFSA's privacy policy](#).
- 6.3. The instructions for completing forms contain a statement about what the information collected is used for. The Bankruptcy Form and statement of affairs form are clearly marked with which parts are confidential and which parts are publicly-available.

7. FREEDOM OF INFORMATION

- 7.1. Where a specific document held by the Official Receiver is not available for public inspection, an application for access may be made under the Freedom of Information Act.
- 7.2. Should an application under the Freedom of Information Act be received, it will be referred immediately to AFSA's FOI coordinator.
- 7.3. More information on freedom of information can be found on AFSA's [website](#).

8. FURTHER INFORMATION

- [Inspection of documents filed with the Official Receiver information on AFSA's website](#)
- [Inspection of documents filed with the Official Receiver form](#)
- [Bankruptcy \(Fees and Remuneration\) Determination 2015](#)

ANNEXURE A – AVAILABLE DOCUMENTS

What is available?	Who can inspect and copy available documents?	Fee payable	<i>Bankruptcy Act 1966 / Bankruptcy Regulations 1996 reference</i>
Part IV bankruptcies: Bankruptcy Form			
<p>Inspect and copy the information on the Bankruptcy Form*, other than the information marked confidential</p> <p>[Only the bankrupt (or his/her agent) can inspect or copy the confidential information on his or her Bankruptcy Form]</p> <p><i>* this relates to the Bankruptcy Form, which came into use on 1 January 2020 and combines the former debtor's (Form 6) petition and statement of affairs (Form 3)</i></p>	<ul style="list-style-type: none"> ▪ A person who states in writing that he or she is a creditor of the bankrupt for a specific administration ▪ An agent for the creditor (with a written statement from the creditor that the creditor is a creditor and that the agent acts for the creditor) 	No fee	<p>Part IV:</p> <ul style="list-style-type: none"> ▪ Subsections 54(4) to (7) – sequestration order for any bankrupt ▪ Subsections 55(9) to (12) – debtor's petition – individual ▪ Subsections 56G(3) to (5) – debtor's petition – partnership or member of partnership ▪ Subsections 57(11) to (14) – debtors' petitions – joint debtors
	<ul style="list-style-type: none"> ▪ Any person 	See AFSA's Fees and charges page	

What is available?	Who can inspect and copy available documents?	Fee payable	<i>Bankruptcy Act 1966 / Bankruptcy Regulations 1996 reference</i>
Part IV bankruptcies: statement of affairs			
<p>Inspect and copy Part B onwards of a bankrupt's statement of affairs*</p> <p>[Only the bankrupt (or his/her agent) can inspect or copy Part A of his or her statement of affairs]</p> <p><i>* this refers to the statement of affairs form (Form 3) that was used in Part IV bankruptcies prior to 1 January 2020</i></p>	<ul style="list-style-type: none"> ▪ A person who states in writing that he or she is a creditor of the bankrupt for a specific administration ▪ An agent for the creditor (with a written statement from the creditor that the creditor is a creditor and that the agent acts for the creditor) 	No fee	<ul style="list-style-type: none"> ▪ Subsections 54(4) to (7) – sequestration order for any bankrupt ▪ Subsections 55(9) to (12) – debtor's petition – individual ▪ Subsections 56G(3) to (5) – debtor's petition – partnership or member of partnership ▪ Subsections 57(11) to (14) – debtors' petitions – joint debtors
	<ul style="list-style-type: none"> ▪ Any person 	See AFSA's Fees and charges page	

What is available?	Who can inspect and copy available documents?	Fee payable	<i>Bankruptcy Act 1966 / Bankruptcy Regulations 1996 reference</i>
Part XI administrations: statement of affairs			
Inspect and copy Part B onwards of a bankrupt's statement of affairs	<ul style="list-style-type: none"> ▪ A person who states in writing that he or she is a creditor of the bankrupt for a specific administration ▪ An agent for the creditor (with a written statement from the creditor that the creditor is a creditor and that the agent acts for the creditor) 	No fee	Section 246(5) – bankruptcy of a deceased estate where the legal representative has completed a statement of affairs
	<ul style="list-style-type: none"> ▪ Any person 	See AFSA's Fees and charges page	

What is available?	Who can inspect and copy available documents?	Fee payable	<i>Bankruptcy Act 1966 / Bankruptcy Regulations 1996 reference</i>
Part IV bankruptcies and Part XI administrations: section 73 – accepted composition or scheme of arrangement after bankruptcy			
Inspect and copy an accepted composition or scheme of arrangement	A person who states in writing that they are a creditor of the bankrupt (or an agent of the creditor) and who provides sufficient supporting evidence and identification	No fee	Regulation 4.17
Inspect and copy an accepted composition or scheme of arrangement	Any person	See AFSA's Fees and charges page	Regulation 4.17

What is available?	Who can inspect and copy available documents?	Fee payable	<i>Bankruptcy Act 1966 / Bankruptcy Regulations 1996 reference</i>
Personal insolvency agreements: section 188B proposal – PIA not yet accepted or executed			
Inspect and copy Part B onwards of a debtor’s statement of affairs [Only the debtor (or his or her agent) can inspect or copy Part A of his or her statement of affairs]	<ul style="list-style-type: none"> ▪ A person who states in writing that they are a creditor of the debtor and who provides sufficient supporting evidence with identification ▪ An agent for the creditor (with a written statement from the creditor that the creditor is a creditor and that the agent acts for the creditor) who provides sufficient supporting evidence and identification 	No fee	Section 188B
PERSONAL INSOLVENCY AGREEMENTS: executed PIA			
Inspect and copy: <ul style="list-style-type: none"> ▪ the executed PIA ▪ Part B onwards of a debtor’s statement of affairs [Only the debtor (or his or her agent) can inspect or copy Part A of his or her statement of affairs]	<ul style="list-style-type: none"> ▪ A person who states in writing that they are a creditor of the debtor and who provides sufficient supporting evidence with identification ▪ An agent for the creditor (with a written statement from the creditor that the creditor is a creditor and that the agent acts for the creditor) who provides sufficient supporting evidence and identification 	No fee	Subsection 226(1)

What is available?	Who can inspect and copy available documents?	Fee payable	<i>Bankruptcy Act 1966 / Bankruptcy Regulations 1996 reference</i>
Personal insolvency agreements: executed personal insolvency agreement			
Inspect and copy: <ul style="list-style-type: none"> ▪ the executed personal insolvency agreement ▪ Part B onwards of a debtor’s statement of affairs ▪ any other Part X document filed with the Official Receiver in relation to the debtor 	Any person	See AFSA’s Fees and charges page	Subsection 226(3)
Inspect and copy of any document filed with the Official Receiver under Part X	Any person	See AFSA’s Fees and charges page	Subsection 226(4)

What is available?	Who can inspect and copy available documents?	Fee payable	<i>Bankruptcy Act 1966 / Bankruptcy Regulations 1996 reference</i>
Official Receiver functions: section 77C – Official Receiver examination of a bankrupt or other examinable person			
Inspect and copy: <ul style="list-style-type: none"> ▪ notes taken during an examination and signed by the person examined ▪ transcript of evidence given 	<ul style="list-style-type: none"> ▪ The person examined ▪ The trustee of the bankrupt estate ▪ A person who states in writing that they are a creditor of the bankrupt (or an agent of the creditor) 	No fee	Subsection 77C(3)
Inspect and copy: <ul style="list-style-type: none"> ▪ notes taken during an examination and signed by the person examined ▪ transcript of evidence given 	Any person	See AFSA's Fees and charges page	Subsection 77C(3)
Official Receiver functions: bankruptcy notices			
Inspect the notice issued by the Official Receiver	<ul style="list-style-type: none"> ▪ A person specified in the notice ▪ A person who is a party to a proceeding to which the notice relates ▪ A solicitor acting for a person above 	No fee	Subregulation 4.03(1)
Inspect the notice after a creditor's petition has been lodged with the Federal Court or Federal Circuit Court based on the debtor's non-compliance with an issued bankruptcy notice	Any person	No fee	Subregulation 4.03(2)