



Australian Government

Australian Financial Security Authority

## OFFICIAL RECEIVER PRACTICE STATEMENT 9

# INSPECTING DOCUMENTS FILED WITH THE OFFICIAL RECEIVER

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If you have any comments, suggestions or queries about an issue referred to in this practice statement, please contact the National Manager, Insolvency and Trustee Services, at [registry@afsa.gov.au](mailto:registry@afsa.gov.au).

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## 1. INTRODUCTION

- 1.1. Documents that are required to be filed or lodged with the Official Receiver<sup>1</sup> under the [Bankruptcy Act 1966](#) (“the Act”) 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 which are available for public inspection under the Act
  - identifies avenues available to obtain access to material that is not publicly-available under the Act
  - provides a listing 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 PUBLIC<sup>2</sup>

### A debtor’s or bankrupt’s statement of affairs

- 2.1. Except for Part A<sup>3</sup>, which contains confidential information, a debtor’s or bankrupt’s statement of affairs is available where the statement of affairs was filed for:
  - a bankruptcy (under Part IV of the Act)
  - a personal insolvency agreement (under Part X of the Act)
  - an insolvent deceased estate (under Part XI of the Act).

(A debt agreement statement of affairs (under Part IX of the Act) is not available to the public and only to the debtor and his or her creditors – see [below](#).)
- 2.2. The Act provides that the Official Receiver must not make any information available that, on the statement of affairs form, is identified as confidential. On the current statement of affairs forms, Part A is identified as confidential. Part A contains protected information regarding the debtor’s or bankrupt’s personal details, income and some information regarding the debtor’s or bankrupt’s family. In the case of a subpoena, search warrant or other order compelling the Official Receiver to provide access to certain documents, confidential documents and/or confidential parts of some documents may need to be provided.

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<sup>1</sup> A reference to the Official Receiver in this paper also refers to a delegate of the Official Receiver

<sup>2</sup> See [Annexure A](#) for a summary of available documents

<sup>3</sup> For information about the treatment of a request from a law enforcement agency to see Part A of a bankrupt’s statement of affairs, refer to part [4](#) (paragraphs 4.10 to 4.12) below

- 2.3. The following template statements of affairs forms, of which Parts B onwards are available to the public, can be viewed on AFSA's website:
- bankruptcy and personal insolvency agreement ([Form 3](#))
  - insolvent deceased estate ([Form 4](#)).

### **An accepted composition or scheme of arrangement in bankruptcy**

- 2.4. After a debtor becomes bankrupt, he or she may submit, via their trustee, a proposal to their creditors of a composition or scheme of arrangement to settle their debts. If creditors by special resolution accept the proposal, the person's bankruptcy is annulled as a consequence. The trustee is required to file a copy of the proposal with the Official Receiver.
- 2.5. If creditors vote to accept the composition or scheme of arrangement to settle the bankrupt's debts, the copy of the proposal filed with the Official Receiver is available for public inspection.

### **Personal insolvency agreement (Part X)<sup>4</sup> documents**

- 2.6. A personal insolvency agreement ("PIA") under Part X of the Act is a flexible way for a debtor to come to an agreement with their creditors to settle debts without becoming bankrupt. A debtor must be insolvent to propose a PIA. There are no income, asset or debt limits.
- 2.7. 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).
- 2.8. After a PIA has been executed, further documents are available<sup>5</sup>, namely:
- 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.

### **Official Receiver examinations<sup>6</sup>**

- 2.9. If a person is examined by the Official Receiver pursuant to section 77C of the Act, the following documents are available for public inspection:

<sup>4</sup> See also [Official Receiver Practice Statement 4 – Setting up a personal insolvency agreement](#) and [PIA information](#) on AFSA's website

<sup>5</sup> This also applies where a composition, arrangement or assignment was agreed under Part X of the Bankruptcy Act prior to 1 December 2004

<sup>6</sup> See also [Official Receiver Practice Statement 7 – Exercise of the Official Receiver's powers to assist trustees](#)

- 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).

### 3. DOCUMENTS AVAILABLE ONLY TO THE PARTIES INVOLVED

#### Bankruptcy notices<sup>7</sup>

- 3.1. A bankruptcy notice is generally 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.
- 3.2. After 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.

#### Debt agreement (Part IX)<sup>8</sup> documents

- 3.3. 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).

### 4. ACCESS TO PUBLICLY-AVAILABLE DOCUMENTS<sup>9</sup>

- 4.1. Any person can, for a fee, obtain access to publicly-available documents to inspect them and make notes or to purchase copies.

#### Making a request

- 4.2. To access a publicly-available document to view and/or copy, a request can be made in writing. It is recommended that the [public document search request form](#) be used, as it outlines all required information.
- 4.3. The person making the request must:
  - provide the debtor’s name and administration number
  - specify the name of the document that is required to be inspected and/or copied

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<sup>7</sup> See also [Official Receiver Practice Statement 6 – Applying for a bankruptcy notice](#)

<sup>8</sup> See also [Debt agreement overview](#) on AFSA’s website

<sup>9</sup> For current fees and charges associated with inspection and obtaining copies of documents, see AFSA’s [Fees and charges](#) page

- produce, if the person is the debtor or bankrupt, a creditor of the debtor or bankrupt or an agent of the debtor or 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 for them to conduct a search of the National Personal Insolvency Index (“NPII”) beforehand. More information about NPII searches can be found [here](#).

### The debtor or bankrupt

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

### The debtor’s or bankrupt’s relatives and associates

- 4.6. A debtor’ or bankrupt’s relatives and business associates (for example, the debtor’s or 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 or bankrupt does not automatically render that person an agent of the debtor or bankrupt. The requirements for an agent are discussed below.

### The debtor’s or bankrupt’s creditors

- 4.7. A debtor’s or bankrupt’s creditors, or a creditor’s agent, may access the public documents of the debtor or 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, they are known to be a creditor of the bankrupt estate), they may be required to produce identification as that creditor; for example, they may be able to produce a business card, a copy of the initial notification of the bankruptcy that was sent to them 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, they are not currently known as a creditor of the bankrupt estate), they may be required to produce evidence of the debt owed to them by the bankrupt; for example, invoices addressed to the bankrupt evidencing a debt incurred prior to the date of bankruptcy. They should also be asked to provide that information to the trustee so

that they can be formally recognised as a creditor and participate in any future dividend.

### An agent of the debtor or bankrupt or creditor

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

#### EXAMPLE 3

A debtor writes to the Official Receiver asking that a copy of their statement of affairs be provided to another person on their behalf. The debtor 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.

#### EXAMPLE 4

A legal practitioner asks to be provided with a copy of Part B of a bankrupt's statement of affairs. In their request, she identifies herself as acting on behalf of a creditor of the bankrupt estate.

The creditor was listed by the bankrupt on his statement of affairs. In this circumstance, the legal practitioner is the creditor's agent. If the legal practitioner sends a clerk to collect the document, the Official Receiver may require identification to be produced by the clerk that confirms that the clerk is employed by the legal practitioner.

### Access for law enforcement purposes

- 4.10. Although subsections 54(6) and 55(11) of the Act provide that the Official Receiver must ensure 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 delegated officer.
- 4.12. There is no fee for production of documents requested by specific law enforcement bodies.

## Where to inspect or obtain copies

- 4.13. Normally an electronic image of the document requested will be made available and this can be viewed at an AFSA site office by arrangement.
- 4.14. When a person requests copies of pages from the document, the copies can be made available in one of the following formats:
  - print for collection or posting
  - conversion to PDF for emailing
  - conversion to PDF for downloading to CD-ROM for collection or posting.
- 4.15. Depending on age of the documents, original paper documents may be made available for inspection and/or copying at the AFSA site where they were initially lodged or created. Copies can be provided from specific AFSA sites by arrangement.
- 4.16. Original 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.
- 4.17. 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. If possible, the document search is completed within five 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 or bankrupt. Access to documents other than those available under the Act is governed by the [Privacy Act 1988](#) and the [Freedom of Information Act 1982](#) (see sections 6 and 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
  - correspondence between AFSA or the Official Receiver and a debtor or bankrupt
  - correspondence between AFSA or the Official Receiver and the courts
  - documents relating to an appeal before the Administrative Appeals Tribunal ("AAT").
- 5.3. Documents held by the Official Trustee in Bankruptcy are not generally available for public inspection under the 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 or bankrupt's address published on the NPII, that address on any part of the statement of affairs or other publicly-available document will also be suppressed.

## 6. PERSONAL INFORMATION AND PRIVACY

- 6.1. Where the Bankruptcy Act does not provide that a particular document is available for inspection, the Privacy Act may apply. Debtors and 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 or bankrupt seeks access to a document that is not made available under the Bankruptcy Act, the debtor's or bankrupt's application to the Official Receiver should clearly identify that it is being made pursuant to the Privacy Act. Further information on how AFSA handles personal information is contained in our [privacy policy](#).
- 6.3. The instructions on how to complete bankruptcy forms contain a statement about what the information collected is used for and every statement of affairs is clearly marked with which parts are confidential and which parts are publicly-available.

## 7. FREEDOM OF INFORMATION

- 7.1. Where a specific document is held by AFSA and 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](#).

## ANNEXURE A – AVAILABLE DOCUMENTS

| WHAT IS AVAILABLE?   | WHO CAN INSPECT AND COPY AVAILABLE DOCUMENTS?  | FEE PAYABLE   | <i>BANKRUPTCY ACT 1966 / BANKRUPTCY REGULATIONS 1996</i> REFERENCE  |
|--|--|---------------|---|
| <b>BANKRUPTCIES: statements of affairs (Parts IV and XI of the Act)</b>  |  |               |   |
| <p>Inspect and copy Part B onwards of a bankrupt's statement of affairs</p> <p><b>[Only the bankrupt (or his/her agent) can inspect or copy Part A of his or her statement of affairs]</b></p> | <ul style="list-style-type: none"> <li>▪ A person who states in writing that he or she is a creditor of the bankrupt for a specific administration</li> <li>▪ 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)</li> </ul> | <p>No fee</p> | <p><b>Part IV:</b></p> <ul style="list-style-type: none"> <li>▪ Subsections 54(4) to (7) – sequestration order for any bankrupt</li> <li>▪ Subsections 55(9) to (12) – debtor's petition – individual</li> <li>▪ Subsections 56G(3) to (5) – debtor's petition – partnership or member of partnership</li> <li>▪ Subsections 57(11) to (14) – debtors' petitions – joint debtors</li> </ul> <p><b>Part XI:</b></p> <ul style="list-style-type: none"> <li>▪ Section 246(5) – bankruptcy of a deceased estate where the legal representative has completed a statement of affairs</li> </ul> |

| WHAT IS AVAILABLE?   | WHO CAN INSPECT AND COPY AVAILABLE DOCUMENTS?   | FEE PAYABLE                                      | <i>BANKRUPTCY ACT 1966 /</i><br>BANKRUPTCY REGULATIONS 1996<br>REFERENCE |
|--|---|--|--|
| Inspect and copy Part B onwards of a statement of affairs filed by a bankrupt<br><br><b>[Only the bankrupt (or his/her agent) can inspect or copy Part A of his or her statement of affairs]</b> | <ul style="list-style-type: none"> <li>▪ Any person</li> </ul>  | See AFSA's <a href="#">Fees and charges</a> page | References as above  |
| Inspect and copy the whole of the statement of affairs   | <ul style="list-style-type: none"> <li>▪ The bankrupt</li> <li>▪ An agent of the bankrupt</li> </ul>  | No fee   | References as above  |
| <b>BANKRUPTCIES: subsection 73(4) – accepted composition or scheme of arrangement after bankruptcy</b>   |   |  |  |
| 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) | No fee   | Regulation 4.17  |
| Inspect and copy an accepted composition or scheme of arrangement  | Any person  | See AFSA's <a href="#">Fees and charges</a> page | Regulation 4.17  |

| WHAT IS AVAILABLE?  | WHO CAN INSPECT AND COPY AVAILABLE DOCUMENTS?  | FEE PAYABLE | <i>BANKRUPTCY ACT 1966 /</i><br>BANKRUPTCY REGULATIONS 1996<br>REFERENCE |
|---|--|-------------|--|
| <b>PERSONAL INSOLVENCY AGREEMENTS: section 188B proposal – personal insolvency agreement not yet accepted or executed</b>   |  |             |  |
| Inspect and copy: <ul style="list-style-type: none"> <li>▪ Part B onwards of a debtor’s statement of affairs</li> </ul> <p><b>[Only the debtor (or his or her agent) can inspect or copy Part A of his or her statement of affairs]</b></p>   | <ul style="list-style-type: none"> <li>▪ A person who states in writing that they are a creditor of the debtor</li> <li>▪ 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)</li> </ul> | No fee      | Section 188B   |
| <b>PERSONAL INSOLVENCY AGREEMENTS: executed personal insolvency agreement</b>   |  |             |  |
| Inspect and copy: <ul style="list-style-type: none"> <li>▪ the executed personal insolvency agreement (“PIA”)</li> <li>▪ Part B onwards of a debtor’s statement of affairs</li> </ul> <p><b>[Only the debtor (or his or her agent) can inspect or copy Part A of his or her statement of affairs]</b></p> | <ul style="list-style-type: none"> <li>▪ A person who states in writing that they are a creditor of the debtor</li> <li>▪ 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)</li> </ul> | No fee      | Subsection 226(1)  |

| WHAT IS AVAILABLE?  | WHO CAN INSPECT AND COPY AVAILABLE DOCUMENTS?  | FEE PAYABLE                                      | <i>BANKRUPTCY ACT 1966 /</i><br><b>BANKRUPTCY REGULATIONS 1996</b><br><b>REFERENCE</b> |
|---|--|--|--|
| Inspect and copy: <ul style="list-style-type: none"> <li>▪ the executed personal insolvency agreement</li> <li>▪ Part B onwards of a debtor's statement of affairs</li> <li>▪ any other Part X document filed with the Official Receiver in relation to the debtor</li> </ul> | Any person   | See AFSA's <a href="#">Fees and charges</a> page | Subsection 226(3)  |
| Obtain an office copy of any document filed with the Official Receiver under Part X   | Any person   | See AFSA's <a href="#">Fees and charges</a> page | Subsection 226(4)  |
| <b>OFFICIAL RECEIVER FUNCTIONS: section 77C – Official Receiver examination of a bankrupt or other examinable person</b>  |  |  |  |
| Inspect and copy: <ul style="list-style-type: none"> <li>▪ notes taken during an examination and signed by the person examined</li> <li>▪ transcript of evidence given</li> </ul>   | <ul style="list-style-type: none"> <li>▪ The person examined</li> <li>▪ The trustee of the bankrupt estate</li> <li>▪ A person who states in writing that they are a creditor of the bankrupt (or an agent of the creditor)</li> </ul> | No fee   | Subsection 77C(3)  |

| WHAT IS AVAILABLE?  | WHO CAN INSPECT AND COPY AVAILABLE DOCUMENTS?  | FEE PAYABLE                                      | <i>BANKRUPTCY ACT 1966 /</i><br><b>BANKRUPTCY REGULATIONS 1996</b><br><b>REFERENCE</b> |
|---|--|--|--|
| Inspect and copy: <ul style="list-style-type: none"> <li>▪ notes taken during an examination and signed by the person examined</li> <li>▪ transcript of evidence given</li> </ul>           | Any person   | See AFSA's <a href="#">Fees and charges</a> page | Subsection 77C(3)  |
| <b>OFFICIAL RECEIVER FUNCTIONS: bankruptcy notices</b>  |  |  |  |
| Inspect the notice issued by the Official Receiver  | <ul style="list-style-type: none"> <li>▪ A person specified in the notice</li> <li>▪ A person who is a party to a proceeding to which the notice relates</li> <li>▪ A solicitor acting for a person above</li> </ul> | No fee   | Subregulation 4.03(1)  |
| Inspect the notice <b>after</b> 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)  |