



Australian Government

Australian Financial Security Authority

OFFICIAL RECEIVER PRACTICE STATEMENT 10

FILING OF STATEMENTS OF AFFAIRS AND ISSUE OF SECTION 77CA NOTICES BY 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.

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1. INTRODUCTION

- 1.1. A person who is made bankrupt by a sequestration order of the court is required to file his or her statement of affairs with the Official Receiver within 14 days of being notified of the bankruptcy. A copy of the statement of affairs is required to be provided to the trustee pursuant to section 54 of the Bankruptcy Act 1966 (“the Act”).
- 1.2. The statement of affairs facilitates the administration of the bankrupt estate by the trustee and it is important that the document is filed as soon as possible after the sequestration order is made, but not later than the 14 days permitted by legislation.
- 1.3. The period of bankruptcy does not commence until the statement of affairs is filed with the Official Receiver. It is therefore in the bankrupt’s interest to file the document as soon as possible to ensure that his or her discharge from bankruptcy is not affected by their failure to file the statement of affairs on time.
- 1.4. Failure of the bankrupt to file a statement of affairs is an offence of strict liability which, upon prosecution and conviction, can result in 25 penalty units being imposed (presently \$4500).
- 1.5. The Official Receiver¹ has the power to issue a statutory notice pursuant to section 77CA of the Act requiring the bankrupt to file his or her statement of affairs. Non-compliance with a section 77CA notice can result in imprisonment for up to 12 months.
- 1.6. A section 77CA notice is able to be issued from 1 December 2010 in all bankruptcies (whether they commenced prior to, on or after that date).

2. TRUSTEE’S DUTY TO INFORM THE BANKRUPT OF HIS OR HER BANKRUPTCY AND REQUIREMENT TO FILE A STATEMENT OF AFFAIRS

- 2.1. The Official Receiver registers the sequestration order filed by the petitioning creditor and informs the trustee of his or her appointment.
- 2.2. The trustee is responsible for locating the bankrupt and notifying him or her of the bankruptcy and of the obligation to file a statement of affairs with the Official Receiver.

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

- 2.3. Where a statement of affairs is lodged by the bankrupt, the document is assessed to ensure that it is adequately completed before it is registered by the Official Receiver (more information about this is available below). A copy of the registered statement of affairs is then provided to the trustee.

3. ACCEPTANCE OF THE STATEMENT OF AFFAIRS BY THE OFFICIAL RECEIVER

- 3.1. The Official Receiver may refuse to accept a statement of affairs for filing if it is:
- not signed
 - not dated
 - not in the approved form
 - illegible or substantially blank (such that it is impossible to identify the bankrupt)
 - incomplete.
- 3.2. If the bankrupt has not reasonably attempted to answer all the questions on the statement of affairs, it may not be accepted. The Official Receiver will assess whether the unanswered question/s is critical to an understanding of the bankrupt's affairs and whether the information provided is sufficient.

EXAMPLE 1

An indication that the bankrupt owns assets without details of the location or estimated value would not constitute a reasonable attempt.

EXAMPLE 2

An indication by the bankrupt that they have creditors other than the petitioning creditor without identifying them would not constitute a reasonable attempt.

- 3.3. An incomplete statement of affairs may be accepted in exceptional circumstances but it will generally be the case that, unless the bankrupt has made a reasonable attempt to complete all relevant questions on the statement of affairs, it will likely not be accepted.

4. MONITORING BY THE OFFICIAL RECEIVER OF A BANKRUPT'S OVERDUE STATEMENT OF AFFAIRS

- 4.1. Where a sequestration order has been registered and a statement of affairs has not been filed by the bankrupt within a reasonable period from the date of the order, the Official Receiver will write to the trustee seeking confirmation that the bankrupt has been advised of the bankruptcy and of their obligation

to file a statement of affairs. The trustee will also be asked to provide information about the bankrupt's address and/or other relevant information (for example, details of the bankrupt's place of employment if the bankrupt is unable to be contacted at his or her usual place of residence) so that the Official Receiver may consider issuing a formal notice to the bankrupt requiring him or her to file a statement of affairs.

- 4.2. However, trustees do not have to await contact by the Official Receiver, and may request a section 77CA notice as soon as there is sufficient evidence available to establish that the bankrupt was notified of his or her obligation to file a statement of affairs at least 14 days ago and has not complied.

5. ISSUE OF A SECTION 77CA STATUTORY NOTICE TO THE BANKRUPT REQUIRING A STATEMENT OF AFFAIRS TO BE FILED

- 5.1. Any information provided by a trustee in response to the letter from the Official Receiver is assessed whether a statutory notice should be issued to the bankrupt requiring him or her to file the statement of affairs.
- 5.2. The Official Receiver may decide not to issue the notice if:
- the trustee has not advised the bankrupt of the bankruptcy and his or her obligation to file a statement of affairs
 - the trustee is unable to confirm the bankrupt's current address
 - the sequestration order has been stayed by the court.
- 5.3. Where a notice is issued, the Official Receiver will organise for initial service on the bankrupt.
- 5.4. If the bankrupt cannot be found at the address provided by the trustee, the Official Receiver will advise the trustee that no further action can be taken until the trustee is able to locate the bankrupt and provide an alternative contact address. Should the trustee subsequently provide additional information, such as a new address for service, the Official Receiver will consider issuing a new notice.
- 5.5. There is no fee payable by the trustee for the issue of a section 77CA notice by the Official Receiver.

6. MONITORING COMPLIANCE WITH A SECTION 77CA NOTICE

- 6.1. The bankrupt has 14 days from the date of receipt of the notice to file a statement of affairs with the Official Receiver. Failure to comply with the notice is an offence punishable by imprisonment of up to 12 months.

- 6.2. The Official Receiver will monitor compliance by the bankrupt with reference to the date the bankrupt was served with the notice.
- 6.3. Where the bankrupt fails to comply, the Official Receiver will refer the non-compliance to the Inspector-General (Regulation & Enforcement) for further investigation and consideration of prosecution.
- 6.4. The trustee is advised of the referral and its outcomes. A trustee is not required to also refer non-compliance with section 54 requirements where the Official Receiver has already referred non-compliance with a section 77CA notice.

ANNEXURE A – RELEVANT SECTIONS OF THE *BANKRUPTCY ACT 1966*

BANKRUPTCY ACT 1966 – SECTION 77CA

Power of Official Receiver to obtain statement of affairs

The Official Receiver may, by written notice given to a bankrupt, require the bankrupt to give the Official Receiver a statement of the bankrupt's affairs within 14 days after receiving the notice.

Note 1: Section 6A sets out requirements for statements of affairs

Note 2: A failure to comply with the notice is an offence: see section 267B

BANKRUPTCY ACT 1966 – SUBSECTION 6A(2)

Statement of affairs for purposes other than Part XI

A reference in a provision of this Act referred to in subsection (1) to a statement of affairs is a reference to a statement that:

- (a) is in an approved form; and
- (b) includes a statement identifying any creditor who is a related entity of the debtor or bankrupt; and
- (c) contains a declaration that, so far as the debtor or bankrupt is aware, the particulars set out in the statement are correct.

BANKRUPTCY ACT 1966 – SECTION 267B

Failure of person to provide information

- (1) A person must not refuse or fail to comply with a notice given to the person under subsection 6A(3), subsection 77C(1) or section 77CA or 139V.

Penalty: Imprisonment for 12 months.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the Criminal Code).