



Australian Government

Insolvency and Trustee Service Australia

OFFICIAL RECEIVER'S PRACTICE STATEMENT
FILING OF A STATEMENT OF AFFAIRS
AND ISSUE OF 77CA NOTICES BY THE OFFICIAL RECEIVER

Draft Issued September 2010

PLEASE NOTE: This draft Practice Statement contains references to proposed amendments to the Bankruptcy Regulations. These amendments were issued in draft form for public consultation in July 2010. In light of comments received during the consultation process, the Government is considering whether any changes to the draft amendments are warranted. It is therefore possible that the content of this Practice Statement may change.

If you have any comments, suggestions or queries on a matter referred to in this Practice Statement, please contact us at any time by email to info@itsa.gov.au or by mail addressed to:

National Manager – Information & Registry
Insolvency & Trustee Service Australia
GPO Box 548
SYDNEY NSW 2001

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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/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. [s54 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 time 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 in the debtor's interest to file the document as soon as possible to ensure that their discharge from bankruptcy is not affected by their failure to file the Statement of Affairs on time.
- 1.4 Failure of the debtor to file the the Statement of Affairs is an offence of strict liability, which upon prosecution and conviction, can result in 25 penalty units being imposed.
- 1.5 The Official Receiver may also issue a statutory notice pursuant to s77CA of the Act requiring the debtor to file his/her Statement of Affairs. Non compliance with a 77CA Notice can, upon prosecution and conviction, result in a debtor's imprisonment for up to 12 months.
- 1.6 A s77CA notice is able to be issued from 1 October 2010, and applies to bankruptcies commencing prior to, on and from that date.

2 The trustee's duty to inform debtor of bankruptcy and requirement to file Statement of Affairs

- 2.1 The Official Receiver registers the Sequestration Order filed by the petitioning creditor and informs the trustee of his/her appointment.
- 2.2 The trustee is responsible for locating the debtor and notifying him/her of the bankruptcy and of the obligation to file a Statement of Affairs with the Official Receiver.
- 2.3 Where a Statement of Affairs is lodged by the debtor, the document is assessed to ensure that is adequately completed before it is registered by the Official Receiver. 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/substantially blank (such that it is impossible to identify the debtor), and/or
- Incomplete. If the debtor 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 debtor's affairs and whether the information provided is sufficient, for example:
 - An indication that the debtor owns assets without details of the location or estimated value would not constitute a reasonable attempt, and/or
 - An indication by the debtor that they have creditors other than the petitioning creditor without identifying them would not constitute a reasonable attempt.

3.2 Notwithstanding the above, a Statement of Affairs in which there has not been a reasonable attempt to answer all questions can still be accepted in exceptional circumstances. For example:

- If the debtor is unable to complete the Statement of Affairs because the debtor has difficulty with English, and has no-one who can assist, and/or
- If the debtor is unable to complete the Statement of Affairs because of an intellectual or physical disability, and has no-one who can assist.

3.3 In summary, unless the debtor has made a reasonable attempt to complete all relevant questions on the Statement of Affairs, it may not be accepted. This requires the exercise of some discretion on the part of the officer assessing the statement of affairs.

4 Monitoring of overdue Statement of Affairs by the Official Receiver

4.1 Where a Sequestration Order has been registered and a Statement of Affairs has not been filed by the debtor within 30 business days from the date of the order, the Official Receiver will advise the Inspector General of the non compliance by the debtor.

4.2 The Inspector General shall write to the trustee seeking confirmation that the debtor has been advised of the bankruptcy and of their obligation to file a Statement of Affairs.

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

5 Issue of a 77CA statutory notice to the debtor requiring a Statement of Affairs to be filed

5.1 Any information provided by a trustee in response to the letter from the Inspector General is provided to the Official Receiver to assess whether a statutory notice should be issued to the debtor requiring him/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 debtor of the bankruptcy and his/her obligation to file a Statement of Affairs
- the trustee is unable to confirm the debtor'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 personal service on the debtor.

5.4 If the debtor 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 debtor 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 77CA notice by the Official Receiver.

6 Monitoring of compliance with a 77CA notice

6.1 The debtor is given 14 days from the date of receipt of the notice to file the 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 debtor with reference to the date the debtor was served with the notice.

6.3 Where the debtor 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 s54 requirements where the Official Receiver has already referred non compliance with a 77CA notice.

Annexure A: 77CA Notice template

**NOTICE PURSUANT TO SECTION 77CA
OF THE *BANKRUPTCY ACT 1966***

BANKRUPTCY NUMBER: < Number >
NAME OF BANKRUPT: < Name >

Dear < Name of Bankrupt >

You were made bankrupt by order of the Court on < **date** > on the petition of < creditor >.

Pursuant to section 77CA of the Bankruptcy Act 1966 ('the Act'), you are required to give a statement of your affairs, in the approved form, to the Official Receiver within 14 days after receiving this notice.

An approved Statement of Affairs form is enclosed with this notice. You may also download the form from the website of the Insolvency and Trustee Service Australia (ITSA) at www.itsa.gov.au. It is important that you complete all the questions on the form. The completed form should contain details of your affairs as at the date of your bankruptcy.

The completed forms may be given to the Official Receiver:

- by email as a scanned image to registry@itsa.gov.au
- by post to GPO Box 548, SYDNEY NSW 2001
- by facsimile to (02) 8233 7891
- in person at Level 4, 201 Elizabeth Street, SYDNEY NSW 2001

The Official Receiver will provide a copy of your Statement of Affairs to your trustee. You should note that any other information you provide to the Official Receiver in relation to this notice may be provided to your trustee.

You should also note that the period during which you remain bankrupt does not commence until your completed Statement of Affairs has been accepted by the Official Receiver.

Failure by you, without reasonable excuse, to comply with this notice may, upon conviction, render you liable to imprisonment for 12 months.

Dated this < Date > day of <Month>, <Year>

<Registry Officer Signature>

DELEGATE OF THE OFFICIAL RECEIVER

<Contact details of registry officer>

Annexure A contd.

NOTES: EXTRACT FROM 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).