



Australian Government
Insolvency and Trustee Service Australia

INFORMATION and REGISTRY

OFFICIAL RECEIVER PRACTICE STATEMENT

SEARCHING THE PUBLIC RECORD Inspection of Documents

Revised June 2010

If you have any comments, suggestions or queries on a matter referred to in this Practice Statement, please contact us at any time by telephone on 1300 364 785 or by [email](#) .

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1. Introduction

- 1.1 The Official Receiver provides public personal insolvency services for Insolvency and Trustee Service Australia in all States in Australia. Documents that are required to be filed or lodged with the Official Receiver¹ under the *Bankruptcy Act 1966* are held by Information and Registry (IR) which includes the Debt Agreement Service (DAS).
- 1.2 This Practice Statement
 - (a) provides a listing of the documents held by the Official Receiver which are available for inspection by the debtor and their creditors and members of the public;
 - (b) provides an outline of the process for obtaining access to, and obtaining copies of, documents which are available for public inspection under the Bankruptcy Act; and
 - (c) identifies avenues available to obtain access to material that is not publicly available under the Bankruptcy Act.

2. What documents are available?

Documents available to the general public²

A debtor's Statement of Affairs

- 2.1 Except for Part A, which contains confidential information, a debtor's Statement of Affairs is available where the Statement of Affairs was filed for:
 - a bankruptcy (under Part IV of the Bankruptcy Act);
 - a Personal Insolvency Agreement (under Part X of the Bankruptcy Act); and
 - an insolvent deceased estate (under Part XI of the Bankruptcy Act).
- 2.2 The Bankruptcy Act provides that the Official Receiver must not make any information available which, in the Statement of Affairs form, is identified as confidential. In the current Statement of Affairs form, Part A of the Statement of Affairs is identified as confidential, containing protected information regarding the debtor's personal details and some information regarding the debtor's family.
- 2.3 A blank Statement of Affairs document can be viewed on the [forms](#) page of ITSA's internet site.

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

² See Appendix 1 for a summary of available documents

An accepted composition or scheme of arrangement in bankruptcy

- 2.4 After a debtor becomes bankrupt, that person may submit, via their trustee, an offer 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 accept the proposal of a composition or scheme of arrangement to settle the person's debts, a copy filed with the Official Receiver is available for public inspection.

Personal Insolvency Agreement documents (Part X)³

- 2.6 Before a Personal Insolvency Agreement (PIA) has been executed (that is - before it has been agreed to and signed by the parties involved) 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).
- 2.7 After a Personal Insolvency Agreement (PIA) has been executed, further documents regarding that administration are available⁴, namely:
- the executed Personal Insolvency Agreement;
 - the Controlling Trustee's Authority (commonly referred to as a Section 188 Authority) - 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; and
 - any other document required to be lodged with the Official Receiver relating to that PIA administration.

Official Receiver Examinations⁵

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

³ See also Practice Statement - [Setting up a Personal Insolvency Agreement](#)

⁴ This also applies where a Composition, Arrangement or Assignment was agreed under Part X of the Bankruptcy Act prior to 1 December 2004.

⁵ See also [Practice Statement - Issuing an Official Receiver Notice](#) - (Section 3)

Documents available only to the parties involved

Bankruptcy Notices ⁶

- 2.9 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.
- 2.10 After a Creditors Petition has been filed with the Federal Court or the Federal Magistrate's Court based on non-compliance with a bankruptcy notice, that bankruptcy notice becomes available for public inspection.

*Debt Agreement documents (Part IX)*⁷

- 2.11 A debtor's Part IX debt agreement proposal and Statement of Affairs are available for inspection and copy only to the parties involved - that is, the debtor or the debtor's creditors (or their agents) and the Debt Agreement Administrator.

3. Access to publicly available documents

- 3.1 Any person can, for a fee, obtain access to publicly available documents to inspect them and make notes or to purchase copies.⁸

Making a request

- 3.2 To access a publicly available document to view and/or copy, requests can be made:
- in person at an ITSA site office⁹; or
 - in writing (which includes fax or email) together with the required fee. If a request is sent by fax or email, credit card details should be supplied.
- 3.3 The person making the request must produce:
- the debtor's name and administration number;
 - the name of the document that is required to be inspected and/or copied;
 - if the person is the debtor, a creditor of the debtor or an agent of the debtor or creditor - identification as such; and

⁶ See also [Practice Statement Issuing a Bankruptcy Notice](#)

⁷ See also [Debt Agreements](#) on ITSA's web site

⁸ For current fees and charges associated with inspection and obtaining copies of documents see ITSA's Fact Sheet [Fees and Charges](#)

⁹ Throughout this document – access via ITSA sites means Brisbane, Sydney, Melbourne, Adelaide and Perth offices. Details regarding specific addresses can be found at www.itsa.gov.au or by telephoning 1300-364-785

- the required fee.

3.4 If the person making the request is unable to provide the debtor's relevant administration number, it will be necessary for them to conduct an inspection of the NPII.

The general public

3.5 Any member of the general public can access an available public document **for a fee**.

The debtor

3.6 The debtor, or an agent of the debtor, may access any of the debtor's documents **without payment of a fee**.

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

The debtor's creditors

3.8 A debtor's creditors, or the creditor's agent, may access the public documents of the debtor **without payment of a fee**.

3.9 To inspect and/or obtain copies, the creditor, or the creditor's agent, must provide some material identifying them (or their principal) as a creditor.

Example 1: If the creditor was disclosed by the debtor in 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 in the debtor'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 debtor; for example, invoices addressed to the debtor 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 creditor

- 3.10 Access may be provided to an agent acting on behalf of the debtor 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 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 debtor's Statement of Affairs. In their request they identify themselves as acting on behalf of a creditor of the bankrupt estate. The creditor is listed by the debtor in the Statement of Affairs. In these circumstances, 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 they are employed by the legal practitioner.

Access for law enforcement purposes

- 3.12 From time to time documents and recordings are required to be produced for law enforcement purposes.
- 3.12 Where a request is made by a law enforcement agency for production of specific original documents, the request should be referred to the Official Receiver or delegated officer.
- 3.13 There is no fee for production of documents for law enforcement purposes.

Where to inspect or obtain copies

- 3.14 Normally an electronic image of the document requested will be made available which can be viewed at specific ITSA sites.
- 3.15 Where 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 download to CD-Rom for collection or posting, or forwarding by email.

- 3.16 Depending on age of the documents, original paper documents may be made available for inspection and/or copying in the ITSA site where they were initially lodged or created or copies can be provided from specific ITSA sites.
- 3.17 Original paper documents will only be forwarded to a different site office under certain circumstances - for example, the documents are required for law enforcement purposes. The decision to forward original documents will be made by the Official Receiver.

Performance Standards

- 3.18 Document searches are performed within one (1) business day of receipt of the request if the documents are held on site.
- 3.19 Where the documents are held off-site - that is, they have been archived, document searches are performed within one (1) business day of the retrieval of the documents by ITSA. If possible, the document search is completed within five (5) business days of receipt of the request.

4. What documents are not available?

- 4.1 Only the documents specified under the Bankruptcy Act are available for inspection by the general public or a creditor. Access by a debtor to documents other than those available under the Bankruptcy Act is governed by the *Privacy Act 1988* and the *Freedom of Information Act 1982*.
- 4.2 No other documents filed with and retained by the Official Receiver is available for inspection - for example:
- the Debtor's Petition form itself;
 - correspondence - between Information & Registry or the Official Receiver and a debtor;
 - correspondence - between Information & Registry or the Official Receiver and the Courts;
 - documents relating to an appeal before the Administrative Appeals Tribunal (AAT).
- 4.3 Documents held by the Official Trustee in Bankruptcy are not available for public inspection. The Official Trustee administers personal insolvency matters including bankruptcies, when a private trustee or other administrator is not appointed. The Official Trustee also carries out responsibilities under the *Proceeds of Crime Act 2002* and the *Customs Act 1901* to control and deal with property under court orders made under these statutes.
- 4.4 If a creditor or member of the public requires access to documents other than those that are available under the Bankruptcy Act, an application under the Freedom of Information Act may be considered.

Refusal of access

- 4.5 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 those that would usually be publicly available.
- 4.7 If there has been a successful application to suppress the debtor's address published on the NPII, that address on any part of the Statement of Affairs or other publicly available document should also be suppressed.

5. Personal information and privacy

- 5.1 Where the Bankruptcy Act does not provide that a particular document is available for inspection, the Privacy Act may apply. A debtor has access to some documents, without payment of a fee, notwithstanding the provisions of the Bankruptcy Act.
- 5.2 Where a debtor seeks access to a document that is not made available under the Bankruptcy Act, the debtor's application to the Official Receiver should clearly identify that it is being made pursuant to the Privacy Act.
- 5.3 Disclosure of some personal information contained in otherwise publicly available documents such as a debtor's Statement of Affairs would ordinarily be covered by the Privacy Act. However, some information is available to the general public with the consent of the debtor to disclose information, or by force of law. Instructions on how to complete bankruptcy forms contain a statement about what the information is used for. Every Statement of Affairs is clearly marked with which parts are confidential and which parts are publicly available.

6. Freedom of information

- 6.1 Where a specific document is held by ITSA but is not available for public inspection, an application may be made under the Freedom of Information Act.
- 6.2 Should an application under the Freedom of Information Act be received it should be referred immediately to the Official Receiver or delegated officer.¹⁰
- 6.3 A fee applies to all applications made under the Freedom of Information Act.

¹⁰ Queries regarding applications under the *Freedom of Information Act* may be referred to the FOI Officer ITSA Secretariat Canberra ACT

Annexures

Annexure 1 - Table of available documents and associated fees

What is available?	Who can inspect and copy available documents?	Fee payable ¹¹	<i>Bankruptcy Act 1966</i> reference
STATEMENT OF AFFAIRS - BANKRUPTCY (Parts IV and XI of the <i>Bankruptcy Act</i>)			
Inspect and copy <ul style="list-style-type: none"> Parts B onwards of a debtor's Statement of Affairs <p>Only the debtor can inspect or copy Part A of the debtor's Statement of Affairs</p>	<ul style="list-style-type: none"> A person who states in writing that they are a creditor of the debtor 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 of the <i>Bankruptcy Act 1966</i></p> <ul style="list-style-type: none"> Section 54 Sequestration Order for any bankrupt Section 55(9) to (12) Debtor's Petition - individual Section 56G Debtor's Petition - partnership or member of partnership Section 57(11) to (14) Debtor's Petition - joint debtors <p>Part XI of the <i>Bankruptcy Act 1966</i></p> <ul style="list-style-type: none"> Section 246(5) A bankruptcy of a deceased estate where the legal representative has completed a Statement of Affairs
Inspect and copy Parts B onwards of a debtor's Statement of Affairs	<ul style="list-style-type: none"> Any person 	\$40	<ul style="list-style-type: none"> references as above

¹¹ see Bankruptcy (Fees and Remuneration) Determination (2010)

What is available?	Who can inspect and copy available documents?	Fee payable	<i>Bankruptcy Act 1966</i> reference
Statement of Affairs, Bankruptcy continued			
Inspect and copy <ul style="list-style-type: none"> the whole of the Statement of Affairs 	<ul style="list-style-type: none"> The debtor or bankrupt an agent of the debtor or bankrupt 	No fee	<ul style="list-style-type: none"> references as above
PERSONAL INSOLVENCY AGREEMENTS			
Section 188B proposal - Personal Insolvency Agreement not yet accepted or executed			
Inspect and copy <ul style="list-style-type: none"> Parts B onwards of a debtor's Statement of Affairs No other document <p>Only the debtor can inspect or copy Part A of the debtor's Statement of Affairs</p>	<ul style="list-style-type: none"> A person who states in writing that they are a creditor of the debtor (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"> Section 188B
Executed Personal Insolvency Agreement			
Inspect and copy <ul style="list-style-type: none"> the executed Personal Insolvency Agreement (PIA) Parts B onwards of a debtor's Statement of Affairs the creditors' proofs of debt <p>Only the debtor can inspect or copy Part A of the debtor's Statement of Affairs</p>	<ul style="list-style-type: none"> A person who states in writing that they are a creditor of the debtor (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"> Section 226
Inspect and copy <ul style="list-style-type: none"> the executed Personal Insolvency Agreement (PIA) 	<ul style="list-style-type: none"> any person 	\$40	<ul style="list-style-type: none"> Section 226

What is available?	Who can inspect and copy available documents?	Fee payable	<i>Bankruptcy Act 1966</i> reference
<ul style="list-style-type: none"> Parts B onwards of a debtor's Statement of Affairs the creditors' proofs of debt any other Part X document filed with the Official Receiver in relation to the debtor 			
Obtain an office copy of any document filed under Part X with the Official Receiver	<ul style="list-style-type: none"> any person 	\$40	<ul style="list-style-type: none"> Sec 226(4)
SECTION 77C Examination of a bankrupt or other examinable person by the Official Receiver			
Inspect and copy <ul style="list-style-type: none"> notes taken during an examination and signed by the person examined transcript of evidence given, taken at time of examination 	<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	<ul style="list-style-type: none"> Section 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, taken at time of examination 	<ul style="list-style-type: none"> any person 	\$40	<ul style="list-style-type: none"> Section 77C (3)
SECTION 73(4) Accepted composition or scheme of arrangement after bankruptcy			
<ul style="list-style-type: none"> Inspect and copy an accepted composition or scheme of arrangement 	<ul style="list-style-type: none"> a person who states in writing that they are a creditor of the bankrupt (or an agent of the creditor) 	no fee	<ul style="list-style-type: none"> Regulation 4.17

What is available?	Who can inspect and copy available documents?	Fee payable	<i>Bankruptcy Act 1966</i> reference
<ul style="list-style-type: none"> Inspect and copy an accepted composition or scheme of arrangement 	<ul style="list-style-type: none"> any person 	\$40	<ul style="list-style-type: none"> Regulation 4.17
BANKRUPTCY NOTICE			
Inspect the notice <ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> Reg 4.03(1)
Inspect the notice <ul style="list-style-type: none"> after a Creditor's Petition has been lodged with the Federal Magistrate's Court¹² based on the debtor's non-compliance with an issued bankruptcy notice 	<ul style="list-style-type: none"> any person 	no fee	<ul style="list-style-type: none"> Reg 4.03(2)

¹² Federal Magistrates Court or Federal Court