



## Making an Application to Issue an Official Receiver's Notice

The decision to issue a notice must be soundly based and directly related to the performance of a trustee's duties under the *Bankruptcy Act 1966* and at general law.

The powers of an Official Receiver to obtain entry to premises, direct the production of information and recover assets are far-reaching. The effect on a debtor or an associate may be significant.

The exercise of these powers other than on a sound basis can have an effect on the public perception of the role of the Official Receiver and on the professional reputation of a trustee. The decision to issue a notice is also subject to review by the Federal Court.

ITSA has published a Practice Statement (PS) to explain how the Official Receiver will exercise their powers to assist trustees in the performance of their functions. The PS is available from ITSA's website ([www.itsa.gov.au](http://www.itsa.gov.au)).

This note is a summary of the key information contained in the PS about what the Official Receiver will expect in an application to issue a Notice.

### The application.

An application to issue a Notice must include:

- A draft notice or notices. Templates are available from ITSA's website.
- A cheque for \$450 unless an alternative arrangement for payment has been agreed with the Inspector-General or the Official Receiver. The Official Receiver could charge additional disbursements as may be required.
- If the notice requires the recipient (not being the bankrupt) to attend before the Official Receiver a cheque for \$21 made payable to the recipient.<sup>1</sup>
- A statement setting out the background and purpose of the Notice.
- Any supporting documentation referred to in the statement.

The following paragraphs are intended to provide some assistance to trustees in the preparation of the statement in support of the application.

This outline is not prescriptive. Neither is it intended to give an indication of what an Official Receiver will accept – each matter will have to be considered on its own facts. It does, however, provide an indication of what the Official Receiver will expect to see.

Trustees should consider the Official Receiver's PS and the information in it relating to specific types of Notices.

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<sup>1</sup> See ss.77D and 77F of the *Bankruptcy Act 1966*

## **Supporting statement.**

The statement should provide the name of the bankrupt estate, the bankruptcy number and the name of the recipient (if the notice is being issued to a person other than the bankrupt).

The supporting statement should cover the following points.

### ***1. Have the alternatives been considered and/or exhausted?***

The trustee must satisfy the Official Receiver that exercise of the power is necessary because other attempts to obtain the books, information or assets have been, or are likely to be, unsuccessful.

The statement should indicate whether:

- The trustee has considered statutory alternatives other than a Notice (eg sections 77A or 129) and alternatives to the Notice being sought (eg why is a section 77AA Notice being sought when a section 77C Notice would achieve the same outcome?).
- The recipient has been contacted informally or formally prior to the issue of the Notice. If not, the statement should explain why not.

### ***2. Does the information or asset exist?***

The trustee will need to explain the reason for believing that the books or assets are in the possession of the recipient (if the recipient is not the debtor) or held on the premises to which access is sought.

### ***3. Why is the notice being reissued (if there is more than one)?***

If more than one notice has been issued to the recipient, the statement should explain why previous notices have not been complied with and whether non-compliance has been referred to ITSA's Bankruptcy Fraud Investigation unit.

### ***4. Is the notice being issued in connection with the trustee's role?***

The statement should indicate that the trustee has considered whether the Notice will assist in the investigation of the bankruptcy.

The trustee must establish that production of the information, evidence or books is relevant to the performance of his or her functions.

Where the notice seeks information concerning an "associated entity" of a bankrupt, it may be appropriate to provide a short table or explanation of how the entity is associated with the bankrupt. The trustee may wish to consider the application of sections 5B to 5E to identify the nature of the relationship.

### ***5. What exactly is required?***

The statement should provide an explanation of the information, class of records or assets sought under the notice. The thing sought, and therefore the explanation, should be as specific as possible.

## **Additional information.**

Please refer to the Official Receiver's Practice Statement or contact the Official Receiver Notices Team on 02 8233 7830 or via [or.notices@itsa.gov.au](mailto:or.notices@itsa.gov.au) if you require further information.

Applications may be submitted by post to the attention of the Official Receiver, c/ - GPO Box 548 Sydney NSW 2001 or via email to [or.notices@itsa.gov.au](mailto:or.notices@itsa.gov.au).