



DEBTOR'S PETITION OVERHAUL – JANUARY 2020

Date : January 24, 2020

By Darrin Mitchell, Senior Associate at Matthews Folbigg in the Insolvency, Restructuring and Debt Recovery Group

An individual overwhelmed by debt ("the **Debtor**") may seek the protection of the *Bankruptcy Act* 1966 (Cth) ("the **Act**") and file a Debtor's Petition.

Section 55 of the Act provides that an individual may present to the Official Receiver a petition against himself/herself in the approved form and accompanied by a Statement of Affairs which provides details of the person and sets out the person's financial affairs.

On 1 January 2020 the Official Receiver commenced a new online process for the lodgement of debtor's petitions in an online portal. A new version of the approved form has been created which combines the petition and the Statement of Affairs. A sample of the new approved form can be found [here](#). A Debtor is required to set up an online account to complete the form. For online access to create an account see [here](#).

On 2 January 2020 the Official Receiver published a Practice Statement reviewing the Official Receiver's guidelines on accepting and rejecting debtor's petitions. The Official Receiver's Practice Statement can be found [here](#).

A Debtor filing a Debtor's Petition with the new approved form will have their application reviewed by the Official Receiver. If the Petition is accepted, then the Debtor is declared bankrupt and the Official Trustee is appointed as their trustee in bankruptcy. If the Debtor's Petition is rejected, a letter will be sent to the Debtor advising of the rejection and the reason. The Debtor is not precluded from filing a further Debtor's Petition that addresses the reason for the rejection as notified by the Official Receiver. The decision of the Official Receiver may also be reviewed by application to the Administrative Appeals Tribunal.

The Debtor may wish to appoint a private trustee to their bankrupt estate. The private trustee can download the new approved form and have the Debtor complete the form. Alternatively, the Debtor can create an account and download the form, complete it and forward it to the private trustee. The private trustee can then complete a Consent to Act form found [here](#) and file the documents with the Official Receiver on behalf of the Debtor at registry@afsa.gov.au. If the petition is accepted, the Debtor is declared bankrupt and the private trustee appointed as trustee rather than the Official Trustee. If the petition is rejected both the Debtor and the private trustee are notified of the rejection and the reason for rejection.

Some reasons for rejection of a Debtor's Petition can include*:

- the debtor has an ability to pay all of his or her debts immediately, for example from existing cash reserves or by selling an asset;



- the debtor appears to have been making payments to some but not all of his or her creditors;
- the debtor has incurred debts within a very short period of time prior to lodging the petition and his or her stated income indicates there may be capacity to pay;
- the debtor has not explored the alternatives available to deal with his or her financial difficulties; and
- the debtor's opinion as to the cause of his or her insolvency.

Pre-existing provisions and requirements for the consideration of a Debtor's Petition such as an Australian nexus of the Debtor, existing Debt Agreement or Personal Insolvency Agreement as set out in section 55 of the Act, still remain.

The above summary is designed to give practitioners and debtors a general idea of the recent amendments to the presentation of a Debtor's Petition that may impact upon them. Any specific advice on Debtor's Petitions or bankruptcy generally can be discussed by contacting the team at Matthews Folbigg.

*** Official Receiver's Practice Statement**

If you would like more information or advice in relation to insolvency, restructuring or debt recovery practice and procedure, contact Darrin Mitchell on 02 9806 7428 or darrinm@matthewsfolbigg.com.au or a Principal of the Matthews Folbigg Insolvency, Restructuring & Debt Recovery Group:

Jeffrey Brown on (02) 9806 7446 or jeffreyb@matthewsfolbigg.com.au

Stephen Mullette on (02) 9806 7459 or stephenm@matthewsfolbigg.com.au