



Law Council  
OF AUSTRALIA

*Business Law Section*

Messrs John Price and Greg Tanzer  
Commissioners  
Australian Securities and Investments Commission

Via email:: [adrian.furby@asic.gov.au](mailto:adrian.furby@asic.gov.au)

4 April 2014

Dear Sirs

### **Insolvency Notices Website**

1. This submission is made by the Insolvency & Reconstruction Committee of the Business Law Section of the Law Council of Australia (**Committee**).
2. It is made in response to the invitation of the Australian Securities and Investments Commission (**ASIC**) to participate in a consultation regarding a review of ASIC's publication policy for certain notices on the Insolvency Notices Website. The invitation was forwarded by email dated 13 March 2014 and enclosed a copy of a discussion paper in which the Committee was invited to express its views in relation to three specific questions.

### **Key Points**

3. The key matter the Committee wishes to make in response to the invitation is that, subject to the submission below it supports the removal of notices from the Insolvency Notice Website where :

- 3.1 A proposed deregistration does not proceed;**
- 3.2 A court dismisses a winding up application; or**
- 3.3 An applicant withdraws its winding up application.**

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## Submissions

4. No useful purpose has been identified for the maintenance of historical data on a public record relating to any of the three circumstances identified in 3 above. However the maintenance of such publication, particularly on a government website named by reference to "insolvency" may well invite the drawing of unfavourable or adverse inferences by third parties. As such the Committee supports the removal of notices where:

**4.1 A proposed deregistration does not proceed;**

**4.2 A court dismisses a winding up application; or**

**4.3 An applicant withdraws its winding up application.**

5. It is noted that it is not uncommon for a third party creditor to seek to be substituted as applicant on a winding up application upon the initial applicant applying to withdraw the application<sup>1</sup>. For the avoidance of doubt, in relation to item 4.3 it is the view of the Committee that publication ought only be removed upon the granting of leave to withdraw the application.
6. The Committee supports the practical steps ASIC is undertaking as referred to in Part D of the discussion paper with respect to the operation of the Insolvency Notices Website. The Committee does not have any additional suggestions in this regard and supports the ongoing review of ASIC's operation of the website.

## Conclusion and further contact

7. The Committee would be pleased to discuss any aspect of this submission.
8. If you have any questions, please contact the Chair of the Committee, Michael Lhuede, on 03 8665 5506 or by email [mlhuede@piperalderman.com.au](mailto:mlhuede@piperalderman.com.au).

Yours sincerely,



John Keeves  
**Chairman, Business Law Section**

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<sup>1</sup> An applicant to wind up a company requires leave of the Court to withdraw the application – see Rule 5.8 of the *Federal Court (Corporations) Rules 2000* and corresponding Corporations Rules of Courts of the States. Section 465B of the *Corporations Act 2001* gives the Court power to substitute an applicant in a winding up application.