



Law Council
OF AUSTRALIA

Business Law Section

The Secretary
Australian Bankers' Association
Level 3 56 Pitt Street,
The Secretary
Sydney NSW 2000
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10 June 2015

Dear Sir,

Responsiveness of Financial Institutions to Notices under section 77C of the Bankruptcy Act 1966

The Insolvency & Reconstruction Law Committee of the Business Law Section of the Law Council of Australia (“the **Committee**”) has received various anecdotal reports through its national committee suggesting that financial institutions, including banks, are regularly failing to respond to notices under section 77C of the *Bankruptcy Act 1966* (**Act**) in a timely manner.

The purpose of this correspondence is to raise this with you for the purpose of having the concerns communicated to your membership.

Sub-section 77C(1) of the Act provides as follows:

(1) The Official Receiver may, by written notice given to a person, require the person to do one or both of the following:

(a) give the Official Receiver information the Official Receiver requires for the purposes of the performance of the functions of the Official Receiver or a trustee under this Act;

(b) attend before the Official Receiver, or an officer authorised in writing by the Official Receiver to exercise powers under this paragraph, and do one or both of the following:

(i) give evidence relating to any matters connected with the performance of the functions of the Official Receiver or a trustee under this Act;

(ii) produce all books in the person's possession relating to any matters connected with the performance of the functions of the Official Receiver or a trustee under this Act.

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It does not matter whether or not the person is a bankrupt or is employed in or in connection with a Department, or an authority, of the Commonwealth or of a State or Territory.

A person on whom a Notice has been served and for which conduct money has been tendered who refuses to answer the Notice without reasonable excuse is liable to be charged with an offence under section 267D of the Act.

The failure of a person to respond to a Notice under section 77C can cause delays and significant additional costs in the administration of a bankrupt estate.

Similar issues may sometime also arise with respect to Notices under section 77A of the Act. Notices under that section may issue by the trustee in bankruptcy (as opposed to the Official Receiver's power under section 77C) to a person requiring production of specified "books of an associated entity of the bankrupt" for which it is an offence not to comply without reasonable excuse – see section 265A of the Act. However the definition of "*associated entity*" contained in section 5 of the Act expressly excludes a public company. Accordingly, to the extent a banking institution is asked to produce its own records insofar as they relate to a bankrupt, section 77A will not apply if the institution is a public company.

As we noted above the evidence of there being a failure on the part of financial institutions to respond to Notices is anecdotal. We do not suggest that such failure is systemic. However we wish to bring these concerns to the attention of your membership.

Any questions regarding this matter may be addressed to the following:

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Yours faithfully,

A handwritten signature in black ink, appearing to read 'John Keeves', with a long horizontal flourish extending to the right.

John Keeves, Chairman
Business Law Section