



## MEMO

To: Board of Directors  
From: Company Secretary  
Subject: **WITHDRAWING A DOCUMENT FROM ASIC**

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Form 484 (change of director's address) was lodged [manually] with ASIC on 2 October 2007, but was returned to us as the company's corporate key was not included.

For expediency – because the corporate key could not be found and a new one ordered will take time to arrive [by post] – the Form 484 was then lodged with ASIC electronically, and a letter written to ASIC to explain.

ASIC have responded and advised that we must lodge a Form 106 "Request to Withdraw a Lodged Document" as the 'letter' is not sufficient. Interestingly, in the introductory words to the guide to the Form it states: *The use of this form is optional. It has been prepared by ASIC to assist business with the lodgement process by highlighting information required by ASIC.*

### Completion of Form

Form 106 is designed to show:

- company name / ACN
- lodging party details
- original document details – including number given to the document when it was lodged with ASIC (Note: The document number can be obtained from a search of the National Names Index at [www.asic.gov.au/nni](http://www.asic.gov.au/nni) )
- reasons why the document should be withdrawn/cancelled

and be signed/dated by the director or Company Secretary who signed the original document (Form 484) to be withdrawn. If the same signatory is not available then a suitable cover letter should be sent to ASIC explaining why (e.g., officer since resigned).

I have prepared Form 106 and note:

- there is no specific time limit in which to lodge Form 106, but it must be lodged as soon as possible after it has been decided to request withdrawal/cancellation of the original document



- there is no lodgement fee, except in circumstances where the correction highlights a fee that would have been charged if the original document had been lodged and processed correctly.

### **Acceptable Reasons for Withdrawal**

ASIC's guide to Form 106 states that they will only agree to withdraw and/or cancel a lodged document in the following circumstances:

- Duplication of information (e.g., 2 copies of the same notification to change a registered office address have been accidentally lodged)
- Information has been provided on a lodged document and that information is subsequently found to be incorrect and exceptional circumstances exist to withdraw the document. Examples of exceptional circumstances include:
  - the financial reports attached to a form are for the wrong company
  - a deregistration application has been lodged and the company has subsequently realised that they do not meet the deregistration criteria
  - the appointment of a director was conditional upon another event which has not happened (and sufficient evidence is provided by the company to confirm that)
  - an issue of shares was conditional upon another event occurring and that event has failed to occur (and sufficient evidence is provided by the company of this fact).

Lodgement of the Form 106 does not guarantee that the requested document will be withdrawn. ASIC will determine if the request is acceptable based on the above criteria. In making the determination ASIC may make further inquiries such as requesting further documentary evidence to support the request or contacting other parties affected by the request.

ASIC will review and make a decision on the acceptability of a request to cancel a lodged document when it is received.

When ASIC approves a request to withdraw a lodged document:

- the document will not be deleted from the ASIC records for that company
- a copy of the withdrawn document and/or Form 106 will be available to anyone who undertakes a search
- any details that were altered as a result of processing the withdrawn form will be restored.

If ASIC is not satisfied that exceptional circumstances exist it may be necessary, if applicable, for the company to apply to the Court for an order to rectify the register under Corporations Act s1322(4)(b) to have the document cancelled.



## Documents not Withdrawable

Some documents cannot be withdrawn / cancelled; these include:

- Applications, such as Form 201 “Application for Registration as an Australian Company”
- Form 205 “Notification of Resolution” where a special resolution has been passed such as where the company has resolved to:
  - voluntarily wind up
  - change its type
  - change its name
  - change its share structure.
- Documents which have an effect on a company’s status, e.g., Form 505 “Notification of Appointment or Cessation as an External Administrator”.

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### **DISCLAIMER**

*The comments in this memo reflect some commercial aspects and observations on the matter experienced or observed by the writer in practice as he understands them. The information is given as a guide only and does not represent a definitive or legal view of any of the issues raised, covered or referred to and the reader is urged to seek his own professional advice on all aspects of, or pertaining to, this and any related matter.*