



MEMO

To: Board of Directors
From: Company Secretary
Subject: **REGISTERED OFFICE OPENING HOURS**

The Corporations Act (section 142) requires that every company – incorporated in, or registered to operate in, Australia – must have a Registered Office somewhere in Australia, being the place where communications and notices can be sent to or served on the company and/or where company documents may be inspected (see ss100 & 109X).

Under s144(1) all companies must display their name prominently at every place at which they carry on business and are open to the public. And a public company must also display the words “Registered Office”.

Section 144 requires all companies to display their name prominently at every place where they carry on business and are open to the public. Additionally a public company must also display, adjacent to its name, the words “Registered Office” at that location.

All directors are primarily responsible for all matters relating to the Registered Office, unless there is a Company Secretary who then is deemed to assume that responsibility – s188. This includes advising ASIC of any change in a company’s Registered Office or Principal Place of Business which must be notified to ASIC on Form 484 within 28 days.

Opening Hours

Section 145 requires that a **public** company must have its Registered Office open and accessible each business day at least.

a) from at least 10:00am till 12:00noon and from at least 2:00pm till 4:00pm (‘standard hours’); or

b) at least 3 hours between 9:00am and 5:00pm, as chosen by the company and advised to ASIC; those hours need not be consecutive.

There is no specific opening hours requirement for proprietary limited (private) companies as they are not obliged to have their Registered Office open at any time – even though they must have one.

Having the office ‘open and accessible’ is taken to mean that a person visiting the Registered Office during the standard opening hours – or alternative stated opening hours – will be attended to within a relatively short time [see *Invention Finance v. Flavel*(1988)].

Regardless of its opening hours, a document can be served on a company at its Registered Office at any time [see *Cornick v. Brains Master Corp* (1995)].



A public company must select its opening hours when a new company is formed by nominating the times on the application Form 201 “Application for Registration as an Australian Company”. Any subsequent change in opening hours must be notified to ASIC by letter (signed by a director or the Company Secretary), as there is no prescribed form, at least the day before they become effective.

However, there is a prescribed form to complete/lodge with ASIC for a registered Australian body or foreign company – which must lodge a Form 489 “Notification of Change of Registered Office or Office Hours of a Registered Body”

Note the following definitions:

- foreign company – a body corporate that is incorporated in an external territory (to Australia)
- registered Australian body – a body corporate (not a company), which has been formed or incorporated in Australia and registered by ASIC
- Australian company – a company registered in Australia.

Contravention Offence

Under s145(4) the offence of contravening the Registered Office opening hours provisions is an ‘offence of strict liability’.

A *strict liability* offence essentially means it is not necessary to prove intention, knowledge, recklessness or negligence (see Section 6.1 of Criminal Code). However, a “took all reasonable steps to comply” defence may be available (see Section 13.4 of Criminal Code).

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.