



MEMO

To: Board of Directors
From: Company Secretary
Subject: **OFFICE OPENING HOURS OVER HOLIDAY PERIOD**

Our Managing Director has advised all staff and customers that the company's head office will be closed for Christmas ~ New Year holidays from 24 December through to 4 January and no-one will be here.

I think this is a great idea which I fully support. However, I need to point out to you that technically **this is in breach of the Corporations Act** because the head office is also the company's Registered Office and should be open on all business days.

Registered Office – Opening Hours

The 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”.

Most importantly, a **public company must**, but a proprietary company is not obliged to, **open its Registered Office to the public each business day** – s145 – at least between 10:00am~ 12:00pm and 2:00pm~4:00pm or for a minimum of 3 hours between 9:00am~5:00pm as advised to ASIC.

Notification to ASIC

A public company's opening hours are stated on Form 201 “Application for Registration as an Australian Company” initially, but any subsequent change must be advised to ASIC at least the day before it becomes effective, by letter – as there is no prescribed form. ASIC [informally] advise this letter must be signed by a director or Company Secretary.

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”.



Holiday Period – ASIC Attitude

I have approached ASIC on this matter (of closing over the holiday/festive period) with the following question:

“What is ASIC’s position with public companies that close their registered office over the Christmas – New Year holiday period because, as I read the Act (sec 145) they MUST be open every business day?”

and they have advised in writing:

“Regarding section 145(a) office opening hours, unfortunately ASIC is unable to provide any interpretation of the Corporations Act or advise on any legal matters that may relate to the Act. You are entitled to seek you own independent professional advice.”

which, of course, provides little help!

Closure of ASIC Offices

I note too, that ASIC themselves close their offices over this period with their website currently displaying: **“ASIC offices will be closed from Christmas Day to 3 January (inclusive), re-opening on Monday 4 January”** and further comments including: “Our Service Centres will be closed..... ASIC telephone support for our lodging services will be unavailable..... Normal telephone inquiry services will be unavailable from 5:00pm AEDST on Christmas Eve until the New Year, re-opening at 8:30am AEDST on Monday 4 January”. So I would think it highly unlikely (although I do not have any legislative or case law basis for saying it) that they could justify taking penalty or pecuniary action against a company for also being closed for a few days in the ‘festive season’.

ASIC’s office opening hours are in fact governed by section 95 of the *Australian Securities and Investments Commission Act 2001* which refers to the establishment of offices to serve the needs of the business communities throughout Australia. The closure of ASIC offices over the holiday period include a public service holiday on 29 December and 2 days of office closedown on 30 and 31 December as determined by ASIC.

ASIC defend their position on the basis that during this closedown period adequate services are still provided to meet the basic needs of business through their website and the continual availability of on-line lodgements.

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.