

Addressing an important issue



Updating the registered office of a company is a simple but vitally important task to protect a company. Perhaps the band 'Absent Friends'ⁱ were onto it as far back as 1990 when they cheekily named their debut album '*Here's Looking Up Your Address*'.

With the address of the registered office used for the delivery of key demands and notices, an incorrect address may mean the company is unaware of claims against it, despite them being legally delivered.

Such documents could include:

- a statutory demand or the subsequent application to wind up a company – these could be filed by the Australian Taxation Office ('ATO') or other creditors
- a Director Penalty Notice ('DPN') sent by the ATO, which can seek to make a director personally liable for taxation or superannuation debts of the company (in certain circumstances)

The ATO recently released its annual report for 2018/19, disclosing that its collectable book debt had grown to a record \$26.6 billion, with small businesses making up most of this figure. With the ATO often using one of the two avenues above to assist with collections, now is the time to ensure a company's registered address is correct.

While a creditor may seek to serve documents on other known addresses, such as a main trading address, the registered office can be relied on from a simple search of the Australian Securities and Investments Commission database.

We've seen many instances over the years where recovery actions have been taken based on delivery to an out-of-date registered office. The ATO has 2 options for DPNs, determined by the age of the debts and whether the company's lodgements are up to date - one type of DPN provides directors with a strict timeframe in which to take action to avoid personal liability. If this timeframe expires, the director may be personally liable for a company debt before they even knew the ATO was taking recovery action.

It is the responsibility of the company to ensure that the address is updated.

This was recently confirmed by the Victorian Supreme Court in the matter of *AXF Group*ⁱⁱ. Here, a statutory demand was sent to a company's registered office, being the offices of the company's solicitor. However, the building itself had been demolished and the registered office was now a vacant lot.

While the solicitor arranged for a mail redirection, there was no evidence that the documents were delivered to the redirection address, nor were the demands returned as 'undeliverable'. Accordingly there was a presumption that service was effective, ultimately leading to a liquidator being appointed to the company.

With such significant ramifications, directors and advisors should take the time to check that registered addresses are correct.

ⁱ 'Absent Friends' were an ARIA winning veritable super-group of the era, featuring members of INXS and Models, among others

ⁱⁱ *AXF Entertainment P/L (ACN 161 337 480) (in liquidation) v AXF Group P/L (ACN 116 258 130)* [2019] VSC 671