

INSOLVENCY LAW JOURNAL

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ARTICLES

Secret service – *Stephen Mullette*

Serving a bankruptcy notice, statutory demand or director's penalty notice can have profound consequences for the recipient. It is essential for both those serving, and for those receiving, such documents that there is certainty and clarity about this process and in particular when and how delivery by post will be an effective tool for service. The difficulty is that as the cases make clear, there is no uniform method of ensuring that these objectives are met. A complex system of interconnected legislation and case law makes it very difficult to know whether a document has been properly served, and if so when the time for compliance expires. Greater thought needs to be given to the way in which the law in relation to service by post of important insolvency documents can, and should, be clarified. 195

Extending the time for compliance with a statutory demand – A need for commercial certainty – *Jasmine Lipton*

The recent case of *Aussie Vic* once again raised the issue of mandatory time limits when dealing with the provisions found in Pt 5.4 of the Corporations Act. The case addressed the issue of whether a court is able, pursuant to s 459F(2)(a)(i) and s 70 to extend the time for compliance notwithstanding that the time (as previously extended by the Master) had already expired. The Court of Appeal raised some very interesting arguments relating to the alterability of time issue which was summarily dismissed by the High Court. Here the justices focused on the forensic significance that is attached with s 459C(2)(a). It was found that this presumption of insolvency once attached cannot be undone by way of a subsequent order and thus any challenge upon the expiration of time can only end in futility (subject to the safety net provisions of s 459S(2)). Such a stringent interpretation of the legislation really leaves open the question of whether the judiciary has gone too far in applying such time frames and become too process focused. 211

Seen but not heard? The significance of shareholders under Pt 5.3A of the Corporations Act – *Dr Colin Anderson* and *Dr David Morrison*

The article considers the interests of company members as stakeholders in the event of a company entering voluntary administration and suggests that while shareholders hold a residual interest, they nonetheless have an interest in ensuring that the company is rescued and perhaps therefore have a role to play in the rescue of the company's business. In doing so it argues that there is some inconsistency in recent changes in Ch 5 regarding the role of shareholders with some changes recognising their role while others have sought to downplay it. 222

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