



## Is your ACN on all your public documents?

Do your public documents have your Australian Company Number (**ACN**) on them? Surprisingly, many businesses are not complying with the section 88A of the *Corporations Act 2001* (Cth) (**Act**) by omitting their ACN from many documents.

Section 153 of the Act provides that a company must set out its name on all its public documents and negotiable instruments. If a company's name is not its ACN, then pursuant to section 153(2)(a) of the Act the company must use the expression Australian Company Number followed by the ACN. Section 149 of provides that ACN is an acceptable abbreviation of Australian Company number.

### What is a public document?

Section 88A of the Act defines public document in relation to a body as:

- (a) an instrument of or purported to be signed, issued or published by or on behalf of that body;
- (b) an instrument of, or purporting to be signed or issued by or on behalf of, the body in the course of, or for the purposes of a particular transaction or dealing; or
- (c) a business letter, statement of account, invoice, receipt, order for goods, order for services or official notice of, or purporting to be signed or issued by or on behalf of, the body.

*Best practice dictates that companies use their ACN on all correspondence in order to comply with section 153*

Therefore, a company's ACN should be on all its contracts and dealings where it intends to be contractually bound, but it does not need to appear on every page of that document.

### When doesn't a company's ACN have to be used?

Section 88A(2) of the Act provides that a thing is not a public document of a body if it:

- (a) is applied to goods; or
- (b) to a package, label, reel or thing in or with which goods are, or are to be supplied.

Therefore, a company's ACN would not have to be put on the labelling of a product for example.

### What are the penalties for non-compliance?

The penalty for breaching this section is 10 penalty units, 3 months imprisonment or both. An offence based on non disclosure of a company's ACN is an offence of strict liability.

"The information contained in this article is general in nature and cannot be regarded as anything more than general comment. Readers of this article should not act on the basis of this comment without consulting one of Rostron Carlyle's legal practitioners who will consider their particular circumstances".

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