

**FRANCHISOR NEWS****FRANCHISOR COMPANY DIRECTOR LIABILITY**

Most prudent business people take appropriate steps to minimising risk and liability. Structuring the business through vehicles such as companies and trusts is one way to provide such protection.

However, the use by individuals of vehicles such as companies to operate a franchise system does not guarantee that a director of the Franchisor company is necessarily immune from personal liability in a franchise context.

As an example, section 18 of the Australian Consumer Law (which essentially reflects the old section 52 of the Trade Practices Act 1974) prohibits misleading and deceptive conduct by persons in trade or commerce.

Section 236 of the ACL enables persons to take action to recover loss or damage caused by another person's contravention of section 18.

Moreover, individuals may be held liable for breaches of section 18 if they aid, abet, induce, or be knowingly concerned in or conspire with others to give effect to a contravention of the legislation.

As such, where there has been a breach, the Court can look to the conduct of a director to ascertain if the director has "knowingly" been concerned in a contravention. Such a finding may result in an award of damages, injunction or other remedy personally against the director.

In respect of Franchisor companies, it is important to make sure that information that is disclosed by the company and its directors or offices to prospective Franchisees is not misleading or deceptive, otherwise the Franchisor and its directors could face significant repercussions.

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