

# PERSONAL LIABILITY OF DIRECTORS UNDER THE FAIR TRADING ACT 1986

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"The question of the concurrent primary liability of the officers of the company and the company itself is a matter of some controversy."<sup>1</sup>

### INTRODUCTION

The Fair Trading Act 1986 ("the Act"), which is substantially based on Part V of the Australian Trade Practices Act 1974 (TPA), prohibits certain conduct and practices in trade. Specifically, the Act prohibits misleading and deceptive conduct, false representations and unfair practices.

Section 9 is the most frequently litigated section of the Act. It addresses misleading and deceptive conduct generally, and provides:

- 9. Misleading and deceptive conduct generally** – No person shall, in trade, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

Other sections are more specific. Sections 10 to 12 prohibit misleading or deceptive conduct in relation to goods, services and employment respectively. Section 13 lists specific areas in which representations must not be misleading. Section 14 outlines prohibitions for false representations regarding the sale of land.

A breach of ss 10 to 14 carries criminal and civil liability. In contrast, only civil proceedings can be taken for breaches of s 9. The defendant in such proceedings is usually a company. However, directors are often co-defendants.

This paper will examine the bases under which directors (and other employees) may be held personally liable under the Act. In New Zealand, a director can have primary liability where they are directly involved in a contravention of the Act. A director can have secondary liability where they knowingly aid and abet the company in its contravention. For secondary liability, a director need not be involved in the breach.

### PERSONAL LIABILITY OF DIRECTORS

#### Primary liability

In relation to primary infringements, a director of a company can be held personally liable under the Act on the basis that directors are independently engaged "in trade". While this proposition is supported by case law, the liability of directors under this head is far from settled.

Section 45(2) of the Act provides:

- (2) Any conduct engaged in on behalf of a body corporate –
- (a) By a director, servant, or agent of the body corporate, acting within the scope of that person's actual or apparent authority;
- ... shall be deemed for the purposes of this Act, to have been engaged in also by the body corporate.

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<sup>1</sup> *Newport v Coburn* CA234/04 23 February 2006, [88].

In *Kinsman v Cornfields Ltd*, the Court of Appeal held the use of the word “also” suggests liability under the Act for *both* director and company where the director is acting within his actual or apparent authority.<sup>2</sup>

The Court accepted the view of the High Court in *Gloken Holdings Ltd v The CDE Co Ltd* that directors who are the alter ego of a company are equated with the company itself so far as being “in trade” is concerned and that any other view is “unrealistic”.<sup>3</sup> Quoting the Judge at first instance, the Court of Appeal said that such a view was justified by the policy underlying the Act “which extends beyond ordinary contract and corporate law”.<sup>4</sup>

The Court added that liability should not be excluded simply because a person is functioning as a director or corporate officer, rather than in a personal capacity. It is not necessary to show an acceptance of personal responsibility by the director, and that the seriousness of the allegations made against the officer was not a consideration in determining whether or not to lift the corporate veil.<sup>5</sup>

The Court also cited with approval the High Court decision of *Megavitamins Laboratories (NZ) Ltd v Commerce Commission*, where it was held that “in some circumstances the conduct of a director, servant, or agent of a company can be regarded as conduct of both that person and the company as principals”.<sup>6</sup>

The Court concluded that:<sup>7</sup>

... It will be a rare case where a director who participates directly in negotiations as to his or her company's business will be able to avoid s 9 liability simply on the basis that he was acting only on the company's behalf. The Fair Trading Act is intended in our view to cast its net wider than that ...

However, at least one academic commentator has suggested that *Kinsman* and *Specialised Livestock Imports* should be overruled. Professor Watts argues that “trade” under ss 9 to 14 of the Act is that of the employer (ie, the company), and not that of the director/employee. Watts contends that the provisions “contain an ellipsis, and that the missing notion to be spelled out is that the defendant must be a *principal* in relation to the relevant conduct”.<sup>8</sup> His reasons for this are:

- The sections impose strict liability for misstatements, and this is only justifiable where there is an intention by the representor to warrant the accuracy of the statement or ownership of the business. This would not be the case with directors/employees.
- The sections impose liability for misrepresentations inducing a contract and inaccurate statements that form part of the contract. Imposing liability on honest employees for the inaccuracy of statements that become part of their employer's contracts unjustifiably enriches claimants. This comes at the expense of claimants who have bothered to obtain personal guarantees or warranties from directors or employees, and at the expense of the employer's other creditors.
- Liability already exists where employees aid and abet their employer.

In *Newport*, the Court of Appeal was of the view that “the points made by Professor Watts may have some validity”.<sup>9</sup> However, as the issue was not fully traversed in argument before the Court, it considered itself bound by its previous decisions.<sup>10</sup>

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<sup>2</sup> (2001) 10 TCLR 342, [19]. Also see *Specialised Livestock Imports Ltd v Borrie* CA72/04 20 September 2002.

<sup>3</sup> (1997) 8 TCLR 278, 286.

<sup>4</sup> (2000) 9 TCLR 698 (HC), [37].

<sup>5</sup> *Kinsman*, above n 2, 346-347.

<sup>6</sup> (1995) 6 TCLR 231, 244.

<sup>7</sup> *Kinsman*, above n 2, [27].

<sup>8</sup> P Watts “Directors’ and Employees’ Liability under the Fair Trading Act 1986” (2002) CSLB 77, 77

<sup>9</sup> *Newport*, above n 1, [56].

<sup>10</sup> *Ibid*, [88].

As recognised by the Court in *Kinsman*, the personal liability of directors acting within authority under the Act is directly at odds with established principles of company law. Under the current law, the default position is that incorporation provides no protection for directors for breaches of the Act, whereas under company law, the corporate veil will traditionally be lifted only where exceptional circumstances exist, such as where there is fraud, sham or breach of policy in either the establishment or operation of the company. Watts has argued that breaches of the Act generally do not reach this threshold.<sup>11</sup> The Court of Appeal, which acknowledged the unsatisfactory state of the law in *Newport*, has hinted that the law might change when an appropriate test case arises.<sup>12</sup>

In contrast to the position in New Zealand (where directors can be found primarily liable under the Act), under the TPA primary liability can only be imposed on corporations. Directors and other employees may be liable only for aiding and abetting.<sup>13</sup>

### Secondary (accessory) liability

Directors can be held secondarily liable under the Act if they aid a company in infringing the Act. Section 43 of the Act provides:

#### 43. Other Orders

(1) Where, in any proceedings under this Part of this Act, or on the Application of any person, the Court finds that a person, whether or not that person is a party to the proceedings has suffered, or is likely to suffer, loss or damage by conduct of any other person that constitutes or would constitute-

- (a) A contravention of any of the provisions of Parts 1 to 4 of this Act; or
- (b) Aiding, abetting, counselling, or procuring the contravention of such a provision; or

...

- (d) Being in any way directly or indirectly knowingly concerned in, or party to, the contravention of such provision; or

...

this Court may (whether or not it grants an injunction or makes any other order under this Part of the Act) make all or any of the orders referred to in subsection (2) of this section.

(2) For the purposes of subsection (1) of this section, the Court may make the following orders --

...

- (d) An order directing the person who engaged in the conduct referred to in subsection (1) of this section to pay to the person who suffered the loss or damage the amount of the loss or damage;

...

Although those primarily liable under s 9 must have engaged in trade, it is apparent from the statutory language under s 43 that there is no such requirement for accessory liability.<sup>14</sup>

In *Yorke v Lucas*,<sup>15</sup> the High Court of Australia considered language equivalent to that of ss 43(1)(b) and (d). The Court observed that:<sup>16</sup>

<sup>11</sup> Watts, above n 8, 79

<sup>12</sup> *Newport*, above n 1, where the Court said at [56]:

... Our preliminary view is that the points made by Professor Watts may have some validity. But we consider that, if change is to be made to the law in this regard, it should occur only after the point has been fully argued either in this Court or the Supreme Court. ...

<sup>13</sup> Section 84, TPA.

<sup>14</sup> See *Specialised Livestock Imports*, above n 2, [151].

[T]he words... "aiding, abetting, counselling or procuring" are taken from the criminal law where they designate participation in a crime as a principal in the second degree or as an accessory before the fact.

In New Zealand, the main parties provision in the criminal law is s 66(1) of the Crimes Act 1961, which uses each of the four terms. In *R v Samuels*, the Court of Appeal, referring to that section, said that "[t]he essence of aiding and abetting is intentional help".<sup>17</sup>

The Court held in *Specialised Livestock Imports* that since ss 43(1)(b) and (d) import the requirements of criminal law, directors will only be liable under those provisions for their "intentional help" in the company's contravening acts. They must know of the contraventions and intentionally participate in them, and that knowledge must extend to all the essential facts which make the principal's acts contraventions of the Act.<sup>18</sup>

### **Status of other employees same as directors**

In *Newport*, the Court of Appeal, in finding a senior employee personally liable for misleading and deceptive conduct, found that there was no basis for imposing a different rule for persons who are mere employees as opposed to directors.

It is perhaps worth noting that in any event, "director" is defined broadly under the Companies Act 1993, and captures persons other than formally appointed directors.

### **POTENTIAL CIVIL REMEDIES**

Section 43 of the Act confers a very broad discretion upon the Courts to award civil remedies for breaches of the Act.<sup>19</sup> Potential remedies include injunctions, orders for corrective advertising (only available to the Commerce Commission), private actions and other compensatory orders, depending on the jurisdiction of the Court.

The mere making of a misleading or deceptive statement may constitute a breach of the Act regardless of whether it induces reliance by anyone. However, before the Court can grant a remedy, it must be satisfied that a person has suffered or is likely to suffer loss as a result of the breach. The Court of Appeal said in *Goldsbro v Walker* that there must be a "clear nexus between the conduct and the loss or damage suffered".<sup>20</sup>

Under s 43, any person may apply to the Court for a remedy, whether or not that person is the one who suffered loss. This enables consumer-protection and other organisations, such as the Commerce Commission, to bring actions on behalf of an individual. The Court may make an order for damages in favour of the person who suffered the loss, even though he or she is not a party to the proceedings. Similarly, third parties can claim damages even though they were not privy to the underlying contract between the main parties in a dispute. By enabling third parties to make claims relating to contractual arrangements, a director's potential liability is extended beyond the four corners of a contract.

The person from whom a remedy can be exacted under s 43 is the person who engaged in the misleading or deceptive conduct. That person need not be a party to the contract at the heart of the

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<sup>15</sup> (1985) 158 CLR 661.

<sup>16</sup> *Ibid*, 667.

<sup>17</sup> [1985] 1 NZLR 350, 356.

<sup>18</sup> *Above n 2*, [156]. Also see *Giorgianni v R* (1985) CLR 473, 487-488. In that case, it was held at 505 that "actual knowledge ... must be provided and not knowledge which is imputed or presumed".

<sup>19</sup> Wide remedial provisions can also be found in other related legislation such as s 9 of the Contractual Remedies Act 1979 and s 7 of the Contractual Mistakes Act 1976.

<sup>20</sup> [1993] 1 NZLR 394, 401.

dispute. In contrast, under s 6 of the Contractual Remedies Act 1979, the only person from whom damages and other relief can be claimed is the other party to the contract.

Section 43(2)(d) of the Act provides for a remedy in damages. Under that section, the Court has power to direct a person who engaged in contravening conduct within s 43(1) to "pay to the person who suffered the loss or damage the amount of the loss or damage". In *Goldsbro v Walker*, the Court of Appeal established that it was not appropriate simply to apply conventional common law rules in assessing compensation under the Act and noted that the power under s 43 is expressed in discretionary terms.<sup>21</sup> The Court has the power to award an amount less than the loss suffered, and this power is implied in the power to award the full amount. An award may be reduced if the plaintiff's own conduct contributed to the loss.

In *Specialised Livestock Imports*, the Court of Appeal observed that the purpose of the Act is consumer protection and given the discretionary nature of the remedy, it should be fashioned and applied on a principled basis.

Damages under the Act are calculated on a tortious basis. The Court of Appeal has held that the Act does not impose a duty to make a misrepresentation good. The behaviour proscribed by the Act is engaging in misleading conduct rather than in failing to honour any expectations arising from it. In *Cox & Coxon Ltd v Leipst*, the Court said:<sup>22</sup>

Section 9 creates a duty not to mislead. If the duty has been breached money may be awarded to make good, or compensate for, loss or damage which has been caused by the breach. Where there has been an actionable wrong, it is a general and basic principle of law that the remedy by way of monetary award is to put the wronged party in the same position as he or she would have been but for the wrong. Where the wrong is misrepresentation leading to a contract for purchase of property, the position to be restored is that which would have ensued had the misrepresentation not been made.

However, the minority in *Cox & Coxon* cautioned that the open-ended description of the remedy in the Act should not be fettered by importing concepts derived from the compartmentalised categories of the common law. It should also be noted that "the concepts of reliance loss and expectation loss are not necessarily to be seen as mutually exclusive, nor as involving bright-line distinctions".<sup>23</sup>

While damages for distress and inconvenience are available under the Act,<sup>24</sup> exemplary damages are probably not.<sup>25</sup>

## MERE CONDUIT DEFENCE

The Court of Appeal has recognised that where it is apparent to the recipient of information that the person conveying it, being an employee of a company, is not personally the source of information, that employee is not liable under the Act if the information is later held to be misleading or deceptive. This "mere conduit" defence was first adopted by the Australian Courts in relation to secondary liability under the TPA.<sup>26</sup>

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<sup>21</sup> *Ibid*, 399.

<sup>22</sup> [1999] 2 NZLR 15, 27.

<sup>23</sup> *Lane Group Ltd v DI & L Paterson Ltd* [2000] 1 NZLR 129, 150.

<sup>24</sup> *AMP Finance NZ Ltd v Heaven* (1997) 8 TCLR 144. However, such damages are "not easily recoverable": *Crump v Wala* [1994] 2 NZLR 332, 340.

<sup>25</sup> In *Coburn v Newport* HC WN CP17/01 & CP18/01 6 August 2004, Durie J noted at [220] that:

... [T]he question of whether exemplary damages could be given under the Fair Trading Act was not fully argued in this case. It may be that they are not recoverable upon the ground that s 43 provides a complete and prescriptive damages code. ...

Also see *Cooper v Snyman* (1989) 91 ALR 209, 235.

<sup>26</sup> See *Yorke v Lucas*, above n 15, 666.

In *Goldsbro v Walker*, Cooke P said:<sup>27</sup>

There is no difficulty in accepting that an innocent agent who acts merely as a conduit and purports to do no more than pass on instructions from his principal does not thereby become responsible for anything misleading in the information so passed on. (Emphasis in original.)

Richardson J (as he then was) expressed the mere conduit defence in these terms:<sup>28</sup>

It is not sufficient to attract liability that the communication simply purports to pass on information ostensibly provided by a third party. In such a case any misleading conduct is that of the third party not of the intermediary.

...

The test under s 9 is objective and on which side of the line a particular case falls turns on an assessment of what was conveyed. Was it a representation by the person charged or was it the passing on of information for what it was worth to the receiver without any inference that the person charged was vouching for it?

Hardie Boys J suggested the following test:<sup>29</sup>

... [F]or the conduit to avoid liability it must be apparent that he is not the source of the information, that he expressly or implicitly disclaims any belief in its truth or falsity, and is merely passing it on for what it is worth.

As mentioned earlier, under the TPA, only corporations can be primarily liable. The original purpose of the "mere conduit" defence was not to protect employees, but external agents (such as real estate agents) against misinformation from the principal. In *Newport*, the Court of Appeal recognised that "there are some difficulties in applying to employees a test that was devised to deal with the situation involving independent agents".<sup>30</sup> However, it nonetheless extended the test to cover employees. The Court observed that:<sup>31</sup>

The reality is that there are many situations, particularly where information has been conveyed by a relatively junior employee, in which [it] will be obvious to the recipient that the representation is made by the body corporate which employs the employee rather than independently by the employee himself or herself. We do not think that there is anything in the *Goldsbro* test which requires that an employee specifically distances himself or herself from the information in order to satisfy the mere conduit test. ...

Watts argues that the mere conduit defence "is too limited a defence to provide adequate protection for employees".<sup>32</sup> In this regard, it is important to note the fundamental differences between primary and secondary liability under the Act, the latter requiring intentional participation in the infringing conduct in trade.

## CASE EXAMPLES

### *Kinsman v Cornfields Ltd*

Kinsman was the director of a company which franchised the "Gourmet Burger" restaurants. He gave Cornfields and its accountants inaccurate pro forma profit and loss projections of an existing

<sup>27</sup> *Goldsbro*, above n 20, 398.

<sup>28</sup> *Ibid*, at 402.

<sup>29</sup> *Ibid*, at 405. Also see *Hammer Auctions NZ Ltd v Williams* HCAK HC148/96 10 April 1997; and *Hall v Warwick Todd Ltd* (2000) TCLR 448.

<sup>30</sup> *Newport*, above n 1, [101].

<sup>31</sup> *Ibid*, [104].

<sup>32</sup> Watts, above n 8, 79.

franchise, and did not correct those projections in his dealings with them. Cornfields entered into an agreement to purchase and operate a similar franchise and suffered loss.

The Court of Appeal held, *inter alia*, that Kinsman was the alter ego of the company and was the only person who could effectively act on its behalf. It also upheld the lower court's finding that Kinsman was personally liable, as his representations were made in trade.

*Specialised Livestock Imports Ltd v Borrie*

Specialised Livestock entered into contracts with 15 people to sell to them live ostriches and ostrich eggs imported from Australia. The company was during the relevant time owned by Mr and Mrs Bendall and their son Philip in equal shares. Philip Bendall held himself out as an expert in matters concerning the importation of ostriches from Australia. In some cases, telephone and face-to-face discussions/representations were supported by written communications outlining similar representations.

A number of difficulties arose in the performance of the contracts, including closure of the New Zealand border to imports of live ostriches and a high mortality rate of ostriches. No live ostriches were ever delivered to the purchasers.

The plaintiffs brought proceedings for, *inter alia*, breach of s 9 the Act. The plaintiffs primarily claimed that because the Bendalls did not disclose risks that were known to them at the time they made statements indicating that the "importation would undoubtedly be successful", these pre-contractual representations contravened s 9 of the Act.

The Court of Appeal undertook a careful examination of the representations made to each of the 15 plaintiffs to determine whether in each case the representations had been made, and that the other requirements under s 9 were satisfied (ie, the plaintiffs were misled, it was reasonable for them to be misled, the misrepresentation was causative of the loss suffered).

The primary complaint (likelihood of successful importation) was upheld in favour of each of the plaintiffs. The Court of Appeal found Specialised Livestock and Philip Bendall primarily liable for inducing each of the purchasers to enter ostrich contracts by misleading conduct. Mr and Mrs Bendall were also personally liable for making misrepresentations to some of the purchasers. In essence, the representations made by the Bendalls were contrary to the known risks that the company may not be able to import the ostriches.

The case is a useful example of the requisite approach of the Courts in assessing s 9 claims – a careful focus on the pre-contractual "conduct" alleged to be misleading and deceptive is necessary.

*Coburn v Newport*

Installer Services Limited wanted to sell regional franchises for the installation of electronic and other accessories in cars, and placed the following advertisement:



Dave Newport was Installer Services' sales manager. Under false pretence of Installer Services' success in other regions, he sold the Wellington franchise of Installer Services to Mr and Mrs Leeming and the Manawatu franchise to Mr Coburn.

The Court at first instance, inter alia, held both Installer Services directors and Newport liable under the Act to the Coburns, the Leemings and Installer Services Wellington. The relevant made were, broadly:

- Installer Services would provide support to its franchisees, in particular, by connecting franchisees to existing or potential customers; and
- Installer Services had contracted with parties who would provide the new franchisees with business – ie, there were customers in place – and other extant Installer Services franchisees had experienced profitable trading.

Durie J considered both directors were "in trade" for the purposes of the Act. He also considered that Newport was "in trade" as a commissioned agent and salesperson for Installer Services.

On appeal, the Court of Appeal held that Newport, as an employee of Installer Systems, could still be primarily liable for breach of the Act. However, Newport did not know the misrepresentations to the Leemings were false. As he did no more than convey to the Leemings information prepared by the directors, he was not personally liable to the Leemings. However, he was personally liable to Coburn as he knew the representations to Coburn were false.

### **PRACTICAL STEPS TO REDUCE RISK OF LIABILITY**

Among the steps that could be taken to reduce the prospect of personal liability of directors under the Act are:

1. Adopting internal business processes and guidelines to ensure representations to customers and the market are appropriate, such as trade practice guidelines; and
2. Ensuring that directors make representations in a manner which minimises risk of personal attribution and liability.

### **Trade practice guidelines**

Companies adopt internal trade practice guidelines to govern their interactions with competitors, customers and suppliers. Such guidelines assist in raising awareness of:

- Relevant trade practice laws;
- Trade practice issues that could arise;
- What employees can do to assist the company in complying with the laws, and minimise the risk of liability for the company and directors/employees personally.

Topics which could be addressed in relation to the relevant trade practice laws include:

- Identifying the relevant legislation;
- Describing the purpose and effect of such legislation;
- Setting out penalties for contravention of the legislation for companies and individuals.

Topics which could be addressed under trade practice issues might include:

- Misleading or deceptive conduct;
- Implied warranties in goods;
- Practices which lessen competition;
- Taking advantage of market power to prevent competition;
- Resale price maintenance;

- Secret commissions; and
- Restrictions on door to door sales, and practical guidelines on what to do and what not to do in such situations.

Possible issues to address when setting out how employees can assist in compliance include:

- The importance of documentary evidence;
- Correspondence guidelines;
- The maintenance of written records;
- Language and statements to avoid; and
- How to act in the event of a Commerce Commission inquiry.

### **Making representations**

In general, when making a representation, directors and other employees should be conscious of:

- The intended recipient;
- The capacity in which the representor is making the representation;
- Whether the representee, or any third party, is likely to rely on the representation; and
- The source of the information on which the representation is based.

Recent case law has confirmed that disclaimer type language can be effective in assessing the character of the representation and the reasonableness of the claimant relying on the representation.<sup>33</sup> Some points to note when advising a client on making representations include:

- Seek a comprehensive briefing from your client on representations made/received.
- Record the representations made.
  - If your client is seeking to rely on a representation, this will serve as a confirmation.
  - If seeking to clearly isolate and ring-fence the representations that your client is prepared to make, then the recording of those representations – coupled with other provisions directed at the Contractual Remedies Act (including non-reliance and non-inducement, except for the express representations recorded) – should enable a robust assertion that the full legal effect of the transaction is contained in the written contract alone.
- Even where misrepresentation is not expressly excluded, the Courts have indicated that they will not lightly override a “no reliance” or “entire agreement” clause in the absence of an imbalance in bargaining power. It is sometimes therefore appropriate to record that each party has taken specialist advice, not just legal, but also from experts concerned with the subject matter of the contract.
- Where key representations are to be recorded in a contract, specify which representations are *essential* or *substantial*, and which are not, as part of clarifying the cancellation rights that may arise under s 7(4) of the Contractual Remedies Act.
- Ensure the representations made are “tight” and of clear meaning.
- If there is a risk that a misrepresentation may have occurred (or at least, may be alleged subsequently) then the available remedies for pre-contractual misrepresentation (as well as any other errors) should be expressly and clearly excluded or limited in the contract/document in question.

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<sup>33</sup> See *Butcher v Lachlan Elder Realty Pty Limited* [2004] HCA 60.

**CURRENT REVIEW OF THE ACT**

The Ministry of Consumer Affairs is currently undertaking a broad review of the effectiveness of the redress and enforcement provisions found in the Act and the Consumer Guarantees Act 1993. In May 2006, it released a discussion paper comparing consumer protection legislation in similar overseas jurisdictions that:

- Forbid the production and selling of unsafe products;
- Prohibit behaviour that is misleading or deceptive; and
- Set out redress, enforcement and penalty provisions.

The paper considers whether having such provisions in New Zealand would be beneficial to improving the environment for consumers to transact with confidence, and invites businesses and consumers to consider the proposals suggested.

The discussion paper does not, however, suggest any change to the legislation which would clarify whether directors can be held primarily liable for contraventions of the Act. It remains to be seen whether such a change emerges from the wide-scale review, although this is perhaps unlikely if the discussion paper is an indication.

**CONCLUSION**

Below is a summary of the arguments identified in this paper for and against the imposition of primary liability for directors under the Act:

<b>For</b>	<b>Against</b>
Perceived public policy benefit of regulating trading behaviour of directors and providing strong incentives for lawful trading activities.	Undermines status of incorporation under s 15 of the Companies Act 1993. Implications on incorporation as a trading vehicle.
Consumer protection policy underlying the Act extends beyond normal contract and company law	Imposition of strict liability on directors not justified. No assumption of personal responsibility or ownership of company.
Justified by specific wording of s 45(2).	Imposition of liability on employees unjustifiably enriches claimants who make contracts with companies instead of the individual, at the expense of those parties who have obtained personal guarantees and the employer's other creditors (the latter being unable to "cast their net" as widely).
	Directors can already be made accountable under the Act through the imposition of secondary liability. In addition, in certain cases, there may be tortious liability.

Some or all of these arguments might also be relevant when assessing/arguing the potential personal liability of directors.

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This paper was prepared with the assistance of Terence Lau, Solicitor, Clendon Feeney.

This paper is intended to be a summary of the relevant issues and recent developments and does not constitute legal advice. Specialist legal advice should be sought in relation to the issues described in this paper.