

Can you Sleep at Night?

Senior Executives, Managing Directors, Chief Executive Officers and business owners all know too well the challenges that companies face when dealing with regulators such as the *Australian Securities & Investment Commission (ASIC)* and the *Australian Competition and Consumer Commission (ACCC)*.

Each of these bodies are law enforcement agencies with powers to carry out investigations and commence litigation against corporations and also individuals.

Enforcement

The results of enforcement activities and litigation can have civil penalties for corporations but also criminal implications for individual business executives in their personal capacities without the protection from the corporation who employs them.

Both ASIC and ACCC have a range enforcement powers and powers to compel compliance with the law, to deal with misconduct and to protect the competitive market and consumers within this market from misconduct.

Investigations

ASIC may carry out informal or formal investigations if it suspects that a contravention of the law has been or is being committed.

It may:

- Inspect books;
- ask an organisation to produce its books or otherwise disclose a large range of financial information;
- issue a search warrant; and
- carry out an examination.

A significant area of focus for ASIC is insolvent trading. Directors need to take special care in this area as this can leave directors personally exposed.



Liability limited by a scheme approved under Professional Standards Legislation

Whilst ASIC predominantly deals with the financial aspects of an organisation and breaches under the *Corporations Act 2001 (Cth)*, ACCC's powers relate to enforcement for breaches under the *Trade Practices Act 1974 (Cth)*.

Service of Notices

The ACCC can issue a notice under Section 155 of the *Trade Practices Act 1974 (Cth)*, which is similar to a subpoena for the production of documents. These notices can require companies to produce a large volume of documents particularly, internal emails within a relatively short timeframe.

This process can be debilitating not to mention distracting for a senior executive group of managers. To minimise business disruption, a dedicated team should be appointed to focus on correctly and adequately complying with the Notice.

Refusal to comply with any Notices received by ASIC or the ACCC can have serious repercussions and therefore document management, storage and retention policies are critical.

Summary

Corporate governance has to be top of mind for organisations at all times. If poorly managed, the effect of regulators and their powers can be overwhelming and extremely time consuming, stopping a business at least temporarily, from doing what it does best.

If you would like any further information on this topic, please contact Ilona Teremi, Partner on 9230 6503 or ilona.teremi@kreissonlegal.com.au