



Fred Nadde, Director, Capital Mutual Insurance Brokers

Liability & The franchise operator

When you are considering buying a franchise business, insurance may not be one of the first few items you consider. In fact, many leave it until the last minute and in some cases it is the requirement of third parties such as banks, landlords or franchisors that may prompt you to arrange liability insurance before you can commence trading.

However, you only need to listen or read the news to understand the importance of liability insurance in business.

Whether a person slips or falls in a shopping centre, consumes a contaminated food item or buys a faulty product resulting in injury, it is the liability insurance cover the business owner will call upon to protect the business.

Liability insurance arguably is the one class of insurance all business owners cannot afford to be without. This is because Liability insurance protects your business against financial loss resulting from claims for injury or damage caused to a third party by you or your staff. A third party referring to anyone your business may have contact with such as your suppliers, neighbours, visitors, contractors, lessors and customers. The trigger point for such claims is negligence.

Put simply, Mistakes often happen in business, Liability cover is there to clean up after your business mistakes by providing you cover for claims related to your negligent business activities or for your business failure to take reasonable care.

What liability covers do you need?

There are three types of liability insurance

covers you need to consider as a franchise operator. The first two types of cover, Public Liability and Products liability are generally available in the Australian Market under one policy and work hand in hand for the majority of industries. The third, Professional Indemnity Insurance, is generally offered as a stand alone cover, although in recent years all three covers have been offered by some insurers under one policy for certain industry occupations such as computer a computer consultant.

Public Liability

This cover protects you and your business against the financial risk of being found liable to a third party for personal injury or death and for loss or damage to property resulting from your negligence.

A common example of a personal injury claim in supermarkets are the standard "slip and trip" incidents. A customer may spill a drink on the floor of a supermarket, before the staff have the opportunity to clean the mess another customer walks over the wet area and subsequently slips causing personal injury. This scenario may lead to a negligence claim against the business.

Property damage negligence claim may be

as simple as a cleaning franchise operator cleaning a carpet for a customer and in the process using the wrong detergent to clean a stain on the carpet resulting in discolouration. The owner of the carpet may hold the franchise responsible and seek compensation.

Products Liability

As a franchise operator if you manufacture, deliver or sell a product, repair an item or provide a service, you need to ensure you are protected against any of your services or goods causing injury or damage to a third party. Under the Trade Practise Act a person who suffers injury or loss as a result of a defective product may take legal action against the supplier of the product. Whilst as a franchise operator you may be only a retailer of the product and not the manufacturer, it is common to be included in a court action brought against all parties involved in the production, distribution and sale and repair of the product. The legal costs alone could be alarming to a small business operator. Product liability insurance is designed to afford you protection.

Product Liability incidents and claims are various and can occur as a result of improper

Liability insurance arguably is the one class of insurance all business owners cannot afford to be without.



labelling, warning and instructions on products, poor quality control, testing and design of products.

Professional Indemnity

In addition to Public and Products liability, if you hold yourself out to be a professional in a traditional profession such as a Lawyer, Accountant, Architect or a Doctor or you provide advice or services of a skilful character, according to an established discipline, such as a real estate agent, computer consultant or a travel agent, you must have Professional Indemnity insurance.

The cover is designed to cover you and your staff against 'breach of your professional duty' by way of neglect, error or omission committed in the conduct of your professional business.

Simply, as a professional you must exercise a degree of care and skill in your business to a level expected in your profession, if you make a mistake and a person dealing with you relies on your advice and suffers financial loss, injury or damage, a claim may be brought against you.

A claim example becoming more common is

where a real estate agent sells a property for a vendor for a price. Some months later the property is resold for a figure much higher than the original sale. The agent is then held to have undersold the property and a claim may proceed.

What level of cover do You need?

Each profession and business may require different covers, sometime the level of cover may be out of the control of the franchise operator. In the current climate with escalating legal costs and awards by courts, a minimum \$10m Public and Products liability cover should be sought.

If you operate a franchise in a shopping complex or your franchise is involved in the food and hospitality industry or a high hazard occupation such as plastics and chemicals, a \$20m limit may be more appropriate as resultant damage or incidents may be higher.

In some circumstances you may find the required limits already established for you in the franchisor guidelines/manuals or the lessor requirements, especially if you operate in a shopping complex.

Whilst most industry experts will agree the level of Professional Indemnity insurance

protection should be at a limit of \$2m or more, the needs of every business is different and you should consult your professional Insurance broker for advice before you commence your business.

Finally, Liability Insurance should be considered as part of your overall risk management strategy, it should not be taken alone but with other classes of business that may have a severe impact on your business such as fire, water damage or business interruption insurance.

Fred Nadde is a Director of Capital Mutual Insurance Brokers & shopinsurance.com.au, further information at www.shopinsurance.com.au