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Directors Duties and Responsibilities

The Corporations Act 2001

The Corporations Act 2001 sets out the responsibilities of directors and secretaries of companies.

However, this statute is not the only source of their legal obligations, as the common law and equity also impose duties. Most of these impose obligations on directors to act honestly, in good faith and with reasonable care and diligence.

The company's constitution (if any) or rules may also set out the directors' powers and functions.

ASIC

The Australian Securities & Investments Commission (ASIC) considers itself the "company law watchdog" and is responsible for administering and overseeing the corporations law regime and the companies (and their directors) that are a part of it.

The Directors

Directors acting together constitute the board of the company and each director is responsible as an individual for the actions of the board (as well as all of the directors collectively), even if they appoint an agent to look after the company's affairs.

A company secretary (if the company has one) generally carries out administrative roles for the company but is also held to the same standards as the directors. Proprietary companies are not required to have a secretary.

Section 180 - Care and diligence--civil obligation only

Care and diligence--directors and other officers

(1) A director or other officer of a corporation must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they:

- (a) were a director or officer of a corporation in the corporation's circumstances; and

(b) occupied the office held by, and had the same responsibilities within the corporation as, the director or officer.

Section 181 - Good faith--civil obligations

Good faith--directors and other officers

(1) A director or other officer of a corporation must exercise their powers and discharge their duties:

- (a) in good faith in the best interests of the corporation; and
 - (b) for a proper purpose.
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Section 182 - Use of position--civil obligations

Use of position--directors, other officers and employees

(1) A director, secretary, other officer or employee of a corporation must not improperly use their position to:

- (a) gain an advantage for themselves or someone else; or
 - (b) cause detriment to the corporation.
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Section 183 - Use of information--civil obligations

Use of information--directors, other officers and employees

(1) A person who obtains information because they are, or have been, a director or other officer or employee of a corporation must not improperly use the information to:

- (a) gain an advantage for themselves or someone else; or
 - b) cause detriment to the corporation.
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Section 184 - Good faith, use of position and use of information--criminal offences

Good faith--directors and other officers

(1) A director or other officer of a corporation commits an offence if they:

- (a) are reckless; or
 - (b) are intentionally dishonest;
- and fail to exercise their powers and discharge their duties:
- (c) in good faith in the best interests of the corporation; or
 - (d) for a proper purpose.



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Note: Section 187 deals with the situation of directors of wholly-owned subsidiaries.

Use of position--directors, other officers and employees

(2) A director, other officer or employee of a corporation commits an offence if they use their position dishonestly:

- (a) with the intention of directly or indirectly gaining an advantage for themselves, or someone else, or causing detriment to the corporation; or
- (b) recklessly as to whether the use may result in themselves or someone else directly or indirectly gaining an advantage, or in causing detriment to the corporation.

Use of information--directors, other officers and employees

(3) A person who obtains information because they are, or have been, a director or other officer or employee of a corporation commits an offence if they use the information dishonestly:

- (a) with the intention of directly or indirectly gaining an advantage for themselves, or someone else, or causing detriment to the corporation; or
- (b) recklessly as to whether the use may result in themselves or someone else directly or indirectly gaining an advantage, or in causing detriment to the corporation.