

Attachment 1

Corporations Act 2001	Fair Work (Registered Organisations) Act 2009
<p>180 Care and diligence—civil obligation only</p> <p>Care and diligence—directors and other officers</p> <p>(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:</p> <p>(a) were a director or officer of a corporation in the corporation’s circumstances; and</p> <p>(b) occupied the office held by, and had the same responsibilities within the corporation as, the director or officer.</p> <p>Note: This subsection is a civil penalty provision (see section 1317E).</p> <p>Business judgment rule</p> <p>(2) A director or other officer of a corporation who makes a business judgment is taken to meet the requirements of subsection (1), and their equivalent duties at common law and in equity, in respect of the judgment if they:</p> <p>(a) make the judgment in good faith for a proper purpose; and</p> <p>(b) do not have a material personal interest in the subject matter of the judgment; and</p> <p>(c) inform themselves about the subject matter of the judgment to the extent they reasonably believe to be appropriate; and</p> <p>(d) rationally believe that the judgment is in the best interests of the corporation.</p> <p>The director’s or officer’s belief that the judgment is in the best interests of the corporation is a rational one unless the belief is one that no reasonable person in their position would hold.</p> <p>Note: This subsection only operates in relation to duties under this section and their equivalent duties at common law or in equity (including the duty of care that arises under the common law principles governing liability for negligence)—it does not operate in relation to duties under any other provision of this Act or under any other laws.</p>	<p>285 Care and diligence—civil obligation only</p> <p>(1) An officer of an organisation or a branch must exercise his or her powers and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if he or she:</p> <p>(a) were an officer of an organisation or a branch in the organisation’s circumstances; and</p> <p>(b) occupied the office held by, and had the same responsibilities within the organisation or a branch as, the officer.</p> <p>Note: This subsection is a civil penalty provision (see section 305).</p> <p>(2) An officer of an organisation or a branch who makes a judgment to take or not take action in respect of a matter relevant to the operations of the organisation or branch is taken to meet the requirements of subsection (1), and their equivalent duties at common law and in equity, in respect of the judgment if he or she:</p> <p>(a) makes the judgment in good faith for a proper purpose; and</p> <p>(b) does not have a material personal interest in the subject matter of the judgment; and</p> <p>(c) informs himself or herself about the subject matter of the judgment to the extent he or she reasonably believes to be appropriate; and</p> <p>(d) rationally believes that the judgment is in the best interests of the organisation.</p> <p>The officer’s belief that the judgment is in the best interests of the organisation is a rational one unless the belief is one that no reasonable person in his or her position would hold.</p> <p>Note: This subsection only operates in relation to duties under this section and their equivalents at common law or in equity (including the duty of care that arises under the common law principles governing liability for negligence)—it does not operate in relation to duties under any other provision of this Act or under any other laws.</p>

<p>(3) In this section:</p> <p>business judgment means any decision to take or not take action in respect of a matter relevant to the business operations of the corporation.</p>	
<p>181 Good faith—civil obligations</p> <p>Good faith—directors and other officers</p> <p>(1) A director or other officer of a corporation must exercise their powers and discharge their duties:</p> <p>(a) in good faith in the best interests of the corporation; and</p> <p>(b) for a proper purpose.</p> <p>Note 1: This subsection is a civil penalty provision (see section 1317E).</p> <p>Note 2: Section 187 deals with the situation of directors of wholly-owned subsidiaries.</p> <p>(2) A person who is involved in a contravention of subsection (1) contravenes this subsection.</p> <p>Note 1: Section 79 defines <i>involved</i>.</p> <p>Note 2: This subsection is a civil penalty provision (see section 1317E).</p>	<p>286 Good faith—civil obligations</p> <p>(1) An officer of an organisation or a branch must exercise his or her powers and discharge his or her duties:</p> <p>(a) in good faith in what he or she believes to be the best interests of the organisation; and</p> <p>(b) for a proper purpose.</p> <p>Note: This subsection is a civil penalty provision (see section 305).</p> <p>(2) A person who is involved in a contravention of subsection (1) contravenes this subsection.</p> <p>Note: This subsection is a civil penalty provision (see section 305).</p>
<p>182 Use of position—civil obligations</p> <p>Use of position—directors, other officers and employees</p> <p>(1) A director, secretary, other officer or employee of a corporation must not improperly use their position to:</p> <p>(a) gain an advantage for themselves or someone else; or</p> <p>(b) cause detriment to the corporation.</p> <p>Note: This subsection is a civil penalty provision (see section 1317E).</p> <p>(2) A person who is involved in a contravention of subsection (1) contravenes this subsection.</p>	<p>287 Use of position—civil obligations</p> <p>(1) An officer or employee of an organisation or a branch must not improperly use his or her position to:</p> <p>(a) gain an advantage for himself or herself or someone else; or</p> <p>(b) cause detriment to the organisation or to another person.</p> <p>Note: This subsection is a civil penalty provision (see section 305).</p> <p>(2) A person who is involved in a contravention of subsection (1) contravenes this subsection.</p> <p>Note: This subsection is a civil penalty provision (see section 305).</p>

<p>Note 1: Section 79 defines <i>involved</i>.</p> <p>Note 2: This subsection is a civil penalty provision (see section 1317E).</p>	
<p>183 Use of information—civil obligations</p> <p>Use of information—directors, other officers and employees</p> <p>(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:</p> <p>(a) gain an advantage for themselves or someone else; or</p> <p>(b) cause detriment to the corporation.</p> <p>Note 1: This duty continues after the person stops being an officer or employee of the corporation.</p> <p>Note 2: This subsection is a civil penalty provision (see section 1317E).</p> <p>(2) A person who is involved in a contravention of subsection (1) contravenes this subsection.</p> <p>Note 1: Section 79 defines <i>involved</i>.</p> <p>Note 2: This subsection is a civil penalty provision (see section 1317E).</p>	<p>288 Use of information—civil obligations</p> <p>(1) A person who obtains information because he or she is, or has been, an officer or employee of an organisation or a branch must not improperly use the information to:</p> <p>(a) gain an advantage for himself or herself or someone else; or</p> <p>(b) cause detriment to the organisation or to another person.</p> <p>Note 1: This duty continues after the person stops being an officer or employee of the organisation or branch.</p> <p>Note 2: This subsection is a civil penalty provision (see section 305).</p> <p>(2) A person who is involved in a contravention of subsection (1) contravenes this subsection.</p> <p>Note: This subsection is a civil penalty provision (see section 305).</p>
<p>184 Good faith, use of position and use of information—criminal offences</p> <p>Good faith—directors and other officers</p> <p>(1) A director or other officer of a corporation commits an offence if they:</p> <p>(a) are reckless; or</p> <p>(b) are intentionally dishonest;</p> <p>and fail to exercise their powers and discharge their duties:</p> <p>(c) in good faith in the best interests of the corporation; or</p>	<p>PROPOSED COALITION AMENDMENT</p> <p>288A Good faith, use of position and use of information—criminal offences</p> <p><i>Good faith—officers</i></p> <p>(1) An officer of an organisation or a branch commits an offence if he or she:</p> <p>(a) is reckless; or</p> <p>(b) is intentionally dishonest;</p> <p>and fails to exercise his or her powers and discharge his or her duties:</p>

<p>(d) for a proper purpose.</p> <p>Note: Section 187 deals with the situation of directors of wholly-owned subsidiaries.</p> <p>Use of position—directors, other officers and employees</p> <p>(2) A director, other officer or employee of a corporation commits an offence if they use their position dishonestly:</p> <p>(a) with the intention of directly or indirectly gaining an advantage for themselves, or someone else, or causing detriment to the corporation; or</p> <p>(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.</p> <p>Use of information—directors, other officers and employees</p> <p>(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:</p> <p>(a) with the intention of directly or indirectly gaining an advantage for themselves, or someone else, or causing detriment to the corporation; or</p> <p>(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.</p>	<p>(c) in good faith in the best interests of the organisation; or</p> <p>(d) for a proper purpose.</p> <p>Maximum penalty: Imprisonment for 5 years or 2,000 penalty units, or both.</p> <p><i>Use of position—officers and employees</i></p> <p>(2) An officer or employee of an organisation or a branch commits an offence if he or she uses his or her position dishonestly:</p> <p>(a) with the intention of directly or indirectly gaining an advantage for himself or herself, or someone else, or causing detriment to the organisation; or</p> <p>(b) reckless as to whether the use may result in himself or herself, or someone else, directly or indirectly gaining an advantage, or in causing detriment to the organisation.</p> <p>Maximum penalty: Imprisonment for 5 years or 2,000 penalty units, or both.</p> <p><i>Use of information—officers and employees</i></p> <p>(3) A person who obtains information because he or she is, or has been, an officer or employee of an organisation or a branch commits an offence if he or she uses the information dishonestly:</p> <p>(a) with the intention of directly or indirectly gaining an advantage for himself or herself, or someone else, or causing detriment to the organisation; or</p> <p>(b) reckless as to whether the use may result in himself or herself, or someone else, directly or indirectly gaining an advantage, or in causing detriment to the organisation.</p> <p>Maximum penalty: Imprisonment for 5 years or 2,000 penalty units, or both.</p>
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