DUTY TO ACT IN GOOD FAITH IN THE INTERESTS OF THE COMPANY

OPENING STATEMENT

Directors are under both statutory and fiduciary duties to act in good faith in the interests of the company. The content of the duties have no material difference [Hodgson v Amcor].

THE DUTIES

[FIDUCIARY DUTY] – Directors must act in a manner in which they honestly perceive to be in the company’s best interests [Re Smith & Fawcett].

[STATUTORY DUTY] – Directors must ‘exercise their powers and discharge their duties in good faith in the corporation’s best interests’ [CA, s 184(1)].

TEST

The test is ‘whether an intelligent and honest man in the position of a director of the company could, in the whole of the existing circumstances, have reasonably believed that the transactions were for the benefit of the company’ [Charterbridge v Lloyds Bank].

Elements of Test

1. Director must act honestly (subjective test); and
2. In a matter motivated by the best interests of the company as an intelligent director in the identical position would have (semi-objective test).

CRIMINAL LIABILITY

A breach of the duty to act in good faith in the interests of the company will attract criminal liability if –

- The director acted ‘recklessly’ [CA, s 184(1)(a)]; or
- The director acted with ‘intentional dishonesty’ [CA, s 184(1)(b)].

WHAT DOES IT MEAN TO ACT ‘IN GOOD FAITH’?

TEST FOR GOOD FAITH

‘While there has been some debate about the application of an objective test, and whether it is appropriate to consider whether in fact the directors considered the interests of the company, it is now generally accepted that an objective test ought to be applied’ [Mernda Developments].

- Subjective Test – ‘The test whether directors acted bona fide in the interests of the company as a whole is largely (though by no means entirely) subjective. It is a factual question that focuses on the state of mind of the directors’.
- Quasi-Objective Aspect – ‘Bona fides cannot be the sole test, otherwise you might have a lunatic conducting the affairs of the company, paying its money…in a manner that is perfectly bona fide yet perfectly irrational’ [ASIC v Adler].

- Practical Difference between ‘Subjective’ and ‘Objective’
  - If only director subjectively acted in good faith AND reasonable directors would have agreed, but wasn’t in the interests of the company – only a CIVIL PENALTY [ASIC v Adler]
  - If director’s actions were objectively and subjectively not bona fide – CRIMINAL PENALTY (this is the fault element) [ASIC v Adler].

Examples of Acting in Bad Faith [from Resources Equities v Carr]

- Directors approving their own remuneration in excess of the limits imposed by the Constitution;
Loaning company money to associates of directors who cannot repay those loans;
Investing company funds in insolvent companies who pay consultancy fees to the directors;
Using company funds to defend legal action brought against them personally for improper conduct;
Using funds to avoid voluntary administration simply to frustrate legal action.

**WHAT ARE THE ‘INTERESTS OF THE COMPANY’?**

**TEST**
Directors ‘must exercise their discretion *bona fide* in what they consider – not what a court may consider – is in the interests of the company, and not for any collateral purpose’ [Re Smith & Fawcett].

**COMPANY’S INTERESTS**
[IF SOLVENT] - The interests of the company as a separate legal entity as those of the ‘operators as a whole’ [Greenhalgh v Arderne Cinemas].

**SHAREHOLDERS’ INTERESTS**
[TEST] – Directors must act in the interests of the shareholders as a ‘collective group’ [Greenhalgh] and ‘it is proper to have regard to the interests of present and future members of the company, on the footing that it would be a going concern’ [Darvall v North Sydney Brick & Tile Co].

- **If Shareholders Do Not Have Identical Interests** – ‘directors should act fairly between different classes of shareholders’ [Mills v Mills].
- **Not Just the Majority Shareholders** - Important not to simply assess the interests of the shareholders as the ‘interests of the majority shareholders’ alone [Henry v Great Northern Railway].
- **No Duty Owed to Individual Shareholders** - While consideration must be provided to all shareholders, unless there is a ‘special factual relationship’ between the directors and the individual shareholders that gives rise to a fiduciary relationship, the directors owe no duty to the individual shareholders [Percival v Wright].
  - **Exception** - ‘Special factual relationship’ will only arise when directors are brought into close contact amounting to ‘dealings, negotiations, communications or other direct contact’ with individual shareholders [Peskin v Anderson].
  - **IF A “TWO-PERSON” COMPANY** – Directors owe such a fiduciary relationship to the other director/shareholder as well as the company [Mesenberg].
    - **HOWEVER** – The fiduciary relationship owed to the other director/shareholder will not be recognised if it runs concurrent to the fiduciary relationship owed to the company [Southern Cross Mine Management].
  - **Rule** – If director owes a fiduciary duty to the company, they cannot owe a simultaneous fiduciary duty to an individual shareholder [Brunninghausen v Glavanics].

**NB:** Oppression Remedy [s 232] may apply if directors use their voting power to pass resolutions that are contrary to the members as a whole, oppressive or unfairly prejudicial or discriminatory.

**CREDITORS’ INTERESTS**
[RULE] – ‘[T]he directors…must take into account the interests of its…creditors. Any failure by the director to take into account the interests of the creditors will have adverse consequences for the company as well as for them. The creditor of a company…must look to that company for payment. His interests may be prejudiced by the movement of funds between companies in the event that the companies become insolvent’ [Walker v Wimborne].

- Generally, the interests of the creditor and the company will coincide. In such cases, ‘it is legitimate for the director to consider the creditors’ interests [Walker v Wimborne].
- **2 Approaches to How Creditors’ Interests Should be Considered:**
  - **If Solvent** – Failure to consider creditors’ interest will only be a breach of duty if the interests align those of the company [Kinsela].
• **If Insolvent** – Creditors’ interests become paramount and displace those of the members/company and any failure to consider creditors’ interests will be a breach [Kinsela].
  • ‘Where a company is insolvent or nearing insolvency, the creditors are to be seen as having a direct interest in the company and that interest cannot be overridden by the shareholders’ [Re New World Alliance].

**EMPLOYEES AND THIRD PARTY INTERESTS**

**[RULE]** – Directors owe no direct fiduciary duty to employees or third parties [Mandala Private Hospital].
  o **However** – If the interests of these person coincide with those of the company, they will be relevant to the director’s duty [Hampson v Prices Patent Candle Co].

**GROUP OF COMPANIES**

**[RULE]** – Directors may take into account the interests of other companies in the group as ‘[t]he law does not require directors of a group of companies to ignore the interests of the wider group’ [Bell Group Ltd].
  • **Exception** – If there is a **conflict of interest** between companies in the group, ‘directors must act in the interests of the company for which they act as a director’ [Walker v Wimborne].

**CONSEQUENCES OF A BREACH**

• Section 181 is a **civil penalty provision** – see consequences below.
• Common law remedies also apply.
DUTY TO ACT FOR PROPER PURPOSES

OPENING STATEMENT

Directors must ‘exercise their powers conferred under the Company Constitution for the purposes for which they were conferred and not for some ulterior purpose’ [Ngurli v McCann].

CRIMINAL LIABILITY
A breach of the duty to act for proper purposes will attract criminal liability if –
- The director acted ‘recklessly’ [CA, s 184(1)(a)]; or
- The director acted with ‘intentional dishonesty’ [CA, s 184(1)(b)].

WHAT IS A PROPER PURPOSE?

TWO-PART TEST [from Howard Smith v Ampol Petroleum]
1. Determine the scope of the power from the instrument conferring it (question of law);
2. Assess whether the director wielded the power within the confines of that scope (question of fact).

SCOPE OF POWER

[MUST BE DERIVED FROM AN INSTRUMENT] – ‘[T]he law does not allow directors to determine the scope of their own power, it must be determined from the terms of the instrument’ [Topham v Duke of Portland].

[OBJECTIVE TEST] – The assessment of the scope of the power is a question of law to be determined objectively [Howard Smith].

Assessment of Director’s Exercise of Power

[SUBJECTIVE TEST] – It is the perception of the directors which determines their purpose [Re Southern Resources Ltd].

[IN THE CIRCUMSTANCES] – Must give regard to the ‘surrounding circumstances to genuinely throw light upon the question of the state of mind of the director’ [Hindle v John Cotton].

[MIXED PURPOSES] - In assessing the subjective intent of director, it may be the case they had acted for ‘mixed purposes’ (purposes to benefit both themselves personally AND the company as a whole).

- Takeover Bids – If shareholders are presented with an offer, and the directors act to undertake a commercial venture which would allow them to remain in control; the directors ‘may take advantage of the power to benefit themselves if the benefit was incidental to a bona fide exercise of the power’ [Ngurli].
- [‘BUT FOR’ TEST] – If director would not have undertaken the action ‘but for’ the causative circumstances (e.g. takeover bid) – the purpose will be ‘impermissible’ [Whitehouse v Carlton Hotel].

WAS THE POWER EXERCISED FOR AN ‘IMPROPER PURPOSE’?

TEST FOR IMPROPER PURPOSE
An improper purpose is any purpose ‘which is beyond the scope of, or not justified by, the instrument creating the power’ [Vatcher v Paull].

Examples of Improper Purposes
- Withdrawing company funds for personal use without company approval [Re Wan Ze Property Development];
- Selling company property to an associate for less than market value [Re Wan Ze Property Development];
• Arranging for company to transfer mining licenses to a company owned by the director for no considera
  tion [Diamond Hill Mining];
• Transfer company owned land to the director personally [Diamond Hill Mining];
• Selling company property and keeping any surplus profits for themselves or their families [Fodare v Shearn];
• Diverting company assets to another company owned by the director [Parker v Tucker];
• Purchasing shares under another family member’s name, causing an inflation in the share price so that the director receives a performance bonus [ASIC v Soust];
• Using company funds to promote their own re-election [Advance Bank Australia];
• Exercise powers for the benefit of third parties [Bell Group Ltd];
• Refuse to register a share transfer [Metropolitan Life Assurance].

CIRCUMSTANCES AMOUNTING TO A BREACH OF DUTY

Most common circumstance amounting to a breach is the issue of shares for improper purposes.

ISSUING SHARES

• Power to Issue Shares – Companies have the legal capacity to issue shares in themselves [CA, s 124(1)(a)] and the directors have the power to ‘exercise all of the powers of the company’ under the Corporations Act [CA, s 198A].
• Ngurli Principle – When issuing shares, directors ‘must raise sufficient capital for the benefit of the company as a whole [but] must not do so under the cloak of such a purpose for the real purpose of benefiting some shareholders or their friends at the expense of other shareholders’ [Ngurli].

Directors will Breach Their Duty to Act for Proper Purposes if Issue Shares –
• For the purposes of maintaining control of the business [Ngurli];
• For the purpose of defending a takeover bid;
• For the purpose of creating or destroying a voting majority [Howard Smith].

DEFENDING A TAKEOVER BID

[RULE] – Directors cannot issue shares to employees on trust as a means to prevent a takeover bid for the ‘primary purpose of ensuring control of the company’ [Hogg v Cramphorn].
• Exception – Directors may issue shares for the purpose of defending a takeover bid if the director ‘believes that there will be a substantial damage to the company’s interests if the takeover is successful’ [Teck Corp Ltd v Millar].

DESTROYING OR CREATING A VOTING MAJORITY

[RULE] – It is ‘unconstitutional for directors to use their fiduciary powers over the shares in the company purely for the purpose of destroying an existing majority, or creating a new majority which did not previously exist’ [Howard Smith].

PERMITTING COMPANY TO BREACH THE CORPORATIONS ACT

[RULE] – Directors may breach their duty to act for proper purposes if they permit the company to contravene the Corporations Act [ASIC v Adler].
• Criteria – Directors will breach their duty if the contravention occurs and [from ASIC v Maxwell] -
  o Company’s interests were jeopardised; and
    ▪ Company’s interests will be jeopardised if company is exposed to any liability under the Corporations Act [ASIC v Maxwell]
  o Risks outweighed any potential benefit to the company; and
  o Director failed to take reasonable steps to avoid the breach.
CONSEQUENCES OF A BREACH

- Section 181 is a civil penalty provision – see consequences below.
- Common law remedies also apply.

DUTY OF CARE, SKILL & DILIGENCE

OPENING STATEMENT

Directors have a duty to exercise reasonable care and diligence under statute (s 180(1)), equity and common law. ‘The substance of the duties is the same’ [Vines v ASIC]. Directors are required to take the ‘necessary steps to enable them to guide and monitor effectively the management of the company’ [Daniels v Anderson].
- Key Question – what is the standard? Was that standard met?

DIRECTORS ARE NOT LIABLE FOR ‘MERE MISTAKES’
The question ‘is not whether the defendants made mistakes…the issue is whether they failed to meet the standard of care and diligence that the statute lays down’ [ASIC v Rich].

STANDARD OF CARE

PRINCIPLE
The standard required depends on the degree of care and diligence expected of a reasonable person in the director’s position [CA, s 180(1)].

OBJECTIVE TEST
‘The test is basically an objective one in the sense that the question is what an ordinary person, with the knowledge and experience of the defendant might be expected to have done in the circumstances if he was acting on his own behalf’ [Vrisakis v ASC].
- Balance of Risk and Benefit – ‘[T]he question of whether a director have exercised a reasonable degree of care and diligence can only be answered by balancing the foreseeable risk of harm against the potential benefits that could reasonably have been expected to accrue to the company from the conduct’ [Vrisakis].

HIGHER POSITION = HIGHER STANDARD
‘A director is an essential component of corporate governance. Each director is placed at the apex of the structure of direction and management of a company. The higher the office that is held by a person, the greater the responsibility that falls upon him or her’ [Centro].

FACTORS WHICH AFFECT THE STANDARD OF CARE
- Circumstances of the company;
- Skills and knowledge of the director; and
- Position held by the director.

1. Circumstances of the Company

[PRINCIPLE] - Court will make an assessment of the company’s circumstances by making an assessment of [from ASIC v Rich];
(a) Type of company;
(b) Size and nature of its business;
(c) Terms of its constitution;
(d) Composition of its board;
(e) Distribution of work and responsibility; and
(f) Whether the company is controlled by a parent company.

2. **Skills and Knowledge of the Director**

**[PRINCIPLE]** - ‘A person who accepts the role…will be required to have the knowledge and skills required for the role’ [ASIC v Adler].
- Subjective knowledge and experience of the director cannot lower the standard, but it may raise the standard [AWA v Daniels].

3. **Position Held by the Director**

**[PRINCIPLE]** – ‘The director’s responsibilities would include arrangements flowing from the experience and skills that the director brought to his or her office, and also any arrangements within the board or between the director and executive management affecting the work that the director would be expected to carry out’ [ASIC v Rich].
- Director’s Responsibilities may arise from –
  - Company’s Constitution; or
  - Arrangements with the Board; or
  - Specific Tasks Delegated to the Director.

**Position: Chair of the Board**
‘The chairman is responsible to a greater extent than any other director for the performance of the board as a whole and each member of it. The chairman has the primary responsibility of [controlling the information flow to the board]’ [AWA v Daniels].
- **Example of Breach** – In Centro, the non-executive chair of the board was found to have breached his duty under 180(1) by failing to correctly read financial statements. The chair had adopted a practice of simply scanning the statements

**Position: Executive Director**
An executive director ‘has a larger role inside a company [than a non-executive director], which comes with greater responsibility’ [ASIC v Rich].
- ‘Executive Director’ includes all directors involved in the daily management of the company (e.g. CEO, Managing Director, CFO etc).
- **Higher Standard** - Involvement in management bestows special responsibilities upon executive directors and they are therefore subject to more stringent standards of care, skill and diligence.
- **Must Monitor Management** - Executive Directors will breach their duty of care if they ‘fail to monitor the management of the company effectively’ [Daniels v Anderson].
- **Examples of Breaches by Executive Directors** –
  - **CEO** – Breached his duty by failing to ‘ensure other directors appreciated the potential harm of [a poor business deal] by abstaining from a vote’ [Permanent Building Society].
  - **CEO** – Breached his duty by failing to present sufficient information to the board for its consideration regarding the company’s restructuring [ASIC v McDonald].
  - **CFO** – Breached his duty by failing to ensure key information regarding the likelihood of a profit was disclosed to the board [Vines v ASIC].

**Position: Non-Executive Director**
**DUTY** – ‘The duty involves becoming familiar with the business of the company and how it is run and ensuring that the board has available means to audit the management of the company so that it can satisfy itself that the company is being properly run’ [AWA Appeal Decision].

**CHALLENGES OF NON-EXECUTIVES** – ‘As conglomerates get larger and more complex it becomes almost impossible for the non-executive director to discharge directional duties in any detailed and knowledgeable manner’ [AWA v Daniels].

- Non-directors are subject to same standard of care but are recognised as having only an ‘intermittent’ involvement in the management of the company.
  - As the duty does not exist in a vacuum – the duty is shaped by the factual circumstances.
- Non-Delegable Duty of Oversight - All non-executives hold a non-delegable duty to oversee company’s financial position.
- If Director has any Special Skill of Experience - ‘[T]he director has a duty to give the company the benefit of that skill or experience’ [Gold Ribbon v Sheers].

**Position: Audit Committee Members (oversight of financial accounts)**

**DUTY** – Directors in disclosing entities have a duty to sign off on the company’s accounts [CA, s 195(4)].

‘There is a responsibility to read, understand and focus upon the contents of those reports which the law imposes a responsibility upon each director to approve or adopt. All directors must carefully read and understand financial statements before they form the opinions which are to be expressed in the declaration required by section 295(4)’ [Centro].

- Directors Must Personally Ensure Accounts are Correct – Directors cannot simply trust that the auditor has adequately performed their role [AWA v Daniels].
- Examples of Breaches by Audit Committee Members –
  - In Centro, directors on the audit committee failed to actively engage with the auditors of the company to ensure the accuracy of financial information. Court held the committee had an obligation to ensure the board was updated on important matters such as any irregularity in the accounts.

## EXAMPLES OF BREACHES OF DUTY OF CARE

Examples of some breaches of the duty of care, skill & diligence –

- Allowing company to contravene the Corporations Act [ASIC v Citrofresh].
- Failing to observe management or find out the true financial position of the company [ASIC v Rich].
- Allowing company to enter into transaction that hold no benefit to the company [Gamble v Hoffman].
- Failing to ensure company was properly licensed to carry out financial services [ASIC v PFS Business Development Group Ltd].
- Allowing company to trade in an unreasonably risky manner [Circle Petroleum v Greenslade].
- Providing a notice to members containing misleading statements [Petrovsky].
- Failing to supervise the accuracy of financial statements [Sheahan v Verco].
- Failing to ensure company met basic legal requirements [ASIC v PFS Business Development Group].
- Failing to actively supervise the management of the company [Daniels v Anderson].
- Disclosing confidential information [Digital Cinema Network v Omnilab].

## DEFENCE: THE BUSINESS JUDGMENT RULE

**COURTS WILL NOT REVIEW A LEGITIMATE BUSINESS DECISION**

Directors holding a duty to act with reasonable care, skill and diligence are tasked with making decision about a company’s future and so long as those decisions are made ‘in good faith and not for irrelevant purposes, [they] are not open to review in the courts’ [Harlowe’s Nominees].

**SUMMARY OF THE DEFENCE**

Directors can avoid liability if their act was a “business judgment”. An act will be considered a “business judgment” if the director made the judgment a) in good faith; b) without any material personal interest; c)
informed themselves of the subject-matter prior to the judgment; and d) rationally believe the judgment is in the best interests of the company [CA, s 180(2)].

- **Good Faith** – Will be deemed to be in ‘good faith’ in the director acted honestly.
- **No Material Interest** – Directors with a material personal interest must disclose the interest to the other directors [CA, s 191(1)].
- **Informed Decision** – Courts will assess an ‘informed decision’ using the following criteria [ASIC v Rich]:
  - Importance of judgment made;
  - Time available for obtaining information;
  - Costs related to obtaining information;
  - Director’s confidence in exploring the matter;
  - State of the company’s business at the time; and
  - Whether the information was readily available to the director at the time.
- **Rational Belief That Judgment was in Company’s Best Interests** - Director’s belief will be “rational” if the evidence supports the reasoning process ‘sufficient to warrant describing it as a rational belief’ [ASIC v Rich].
  - **Reasonable** – There are ‘no degrees or levels of reasonableness. A belief is either reasonable or not reasonable’ [ASIC v Rich].
  - The requirement ‘is less onerous than a requirement that the belief is reasonable’ [ASIC v Rich].

**ONUS OF PROOF**

Unlike in the US, the business judgment rule in Australia is not a presumption against liability and the onus of proving all four of the criteria under s 180(2) rests with the defendant (director) [ASIC v Rich].

**WHAT IS A ‘BUSINESS JUDGMENT’?**

‘Any decision to take or not to take action in respect of a matter relevant to the business operations of the corporation’ [CA, s 180(3)].

**Liability for Defective Disclosure** – Directors will breach their duty of care, skill & diligence if they allow the company to engage in defective disclosure practices that incur penalties

- **Examples;**
  - Breach of Continuous Disclosure obligations [CA, s 674]
  - Misleading or Deceptive Conduct [ASIC v Fortescue Metals].

**DEFENCES**

**REASONABLE RELIANCE ON OTHERS**

[STATUTORY DEFENCE] - ‘A director may rely on information provided by another director, employee, professional expert or committee only if the reliance was made a) in good faith; and b) after making an independent assessment of the information’ [CA, s 189].

- **Principle of Reliance** - All directors rely on others as a company ‘could not go on if the directors could not trust those who are put in a position of trust for the express purpose of attending to details of management’ [Overend & Gurney Co].

- **Directors Must Make an Independent Assessment** - ‘[A] director is entitled to rely without verification on the judgment, information and advice of management and other officers…However, reliance would be unreasonable where directors know, or by the exercise of ordinary care should have known, any facts that would deny reliance on others’ [ASIC v Adler].

- **Onus of Proof** – The director’s reliance is presumed as reasonable, unless proven incorrect. Therefore, the onus of proving the reliance was unreasonable rests with the accuser [Sheahan v Verco].

**DELEGATION OF AUTHORITY**
[STATUTORY DEFENCE] - ‘A director avoids liability if the delegation was made a) on a reasonable belief that the power would be exercised in compliance with the Corporations Act; b) in good faith; c) the director had made a proper inquiry prior to delegation’ [CA, s 190(2)].

- **Principle of Delegation** - The board of a company may delegate authority to others [CA, s 198D]. However, the board will always remain responsible for the exercise of its powers through the delegates [CA, s 190].
- **Delegate Authority, not Responsibility** – The delegation of authority must be recorded in the company’s minute book [CA, s 215A].

**RATIFICATION**

[COURT’S POWER TO EXCUSE DIRECTOR] – The court has the power to excuse a director from liability under ss 1317S and 1318. The court has the power ‘to excuse company officers from liability in situations where it would be unjust and oppressive not to do so, recognising that such officers are businessmen and women who act in an environment involving risk in commercial decision-making’ [AWA Appeal Decision].

- **Ratification by Members** – Ratification by members of conduct that constitutes a breach of the statutory duty cannot cure the breach [Angas Law Services Pty Ltd].

**CONSEQUENCES OF A BREACH**

**Breach of Statutory Duty**

- Civil Penalty Scheme

**Breach of Common Law Duty**

- Any equitable remedy (including compensation).

**CASE SUMMARIES – DUTY OF CARE, SKILL & DILIGENCE**

**ASIC v RICH**

**Facts**

Rich was the founder of One.Tel (a mobile service provider) which expanded its business in 1998-1999. One.Tel was the fourth-largest telco in Australia with an annual turnover of $1 billion. When James Packer, Rupert Murdoch and others withdrew their support for One.Tel, it collapsed. ASIC claimed Rich breached his duty of care, skill and diligence by failing to keep the board informed of the true state of the company’s finances. ASIC sought $92 million in damages and a lifetime disqualification order against Rich. ASIC failed with the judge stating ‘ASIC failed in every aspect of their case – failed to call key witnesses, and exaggerated the effect of evidence or misleadingly took passages out of context’.

**Legal Significance**

The business judgment rule is capable of providing a defence for directors whose conduct breaches section 180(1). The chairman of the board holds special responsibilities above of those of non-executive directors.

**ASIC v VINES**

**Facts**

The CFO of the GIO Insurance Group failed to present key information regarding the likelihood of a profit to the board. The profit was required to pay large dividends during a hostile takeover in order to encourage shareholders to reject the bid. Vines was working with information that was seven weeks old and failed to update that information.

**Legal Significance**
Court found Vines had not acted as a reasonable person in the position of a CFO.

**ASIC v HEALEY (CENTRO CASE)**

**Facts**
In Centro’s 2007 financial reports, the company failed to disclose significant matters. The report failed to disclose $1.5 billion in short-term liabilities by classifying them as non-current liabilities and also failed to disclose guarantees of short-term liabilities that were provided shortly after the balance date. The non-executive directors who signed off on the reports had full knowledge of the relevant accounting standards and failed to take all reasonable steps to secure compliance with the company’s financial disclosure obligations under section 295A. As a result, the company’s value decreased.

**Held**
Middleton J found that the directors breached their duty of care, skill & diligence by failing to ensure the accuracy of the reports as the directors had carefully considered the reports and they did have full knowledge of the relevant accounting standards but still failed to apply those standards.