

The news court of appeal

[Business](#)



Act attach not only to directors but to officers more broadly (directors, company secretaries and certain others). The NEWS Court of Appeal found that Mr. Saffron was an officer on two distinct bases. Firstly, because Mr. Saffron was the company secretary of James Hurdle Industries Ltd OIL), and secondly, because Mr. Saffron was a person who makes, or participates In making decisions that affect the whole, or a substantial part, of the business of the corporation.

On appeal, Mr. Saffron argued that the duties practiced by him as company secretary were limited to company secretarial functions, and did not extend to general counsel functions such as providing advice to the board about the Australian Stock Exchange (ASS) issue and the actuarial issue. Mr.

Saffron sought to delimit the company secretarial functions by arguing that it should be equated to the functions of the Joint company secretary, Mr. Cameron, whose functions were primarily administrative.

Mr. Saffron further argued that he was not a person who participated in making the session In relation to the separation proposal, because that was a decision for the board, of which Mr. Saffron was not a member. Finally, Mr.

Saffron argued that if he was an officer (on either basis), he had, in any event, not breached his duties in relation to either the ASS issue or the actuarial issue. . The relevant law relied on by the Judge in making the decision was under section 180(1) of the Corporations Act which provides that directors and other officers of a corporation must exercise the powers and duties provided to them with the degree f care and diligence that a

reasonable person would exercise. Under section 9 of the Corporation Act, an officer of a corporation can be defined as a person who: * Is a director or secretary of a corporation; or makes or participates in making decision that affects the whole or a part of the business of the corporation; or has the capacity to affect the corporation's financial standing; or * is a receiver, or receiver and manager of the property of the corporation; or * is an administrator of the corporation; or * is an administrator of a deed of company arrangement executed by the corporation; or * is a liquidator of the corporation, or * is a trustee or other person administering an arrangement made between the corporation and someone else. 3.

The Court held that the degree of care and diligence required in section 180(1) of the Act can be determined by looking at the corporation's circumstances and the office and responsibilities within the corporation that the officer in question occupied and assumes, then made clear, extend to whenever responsibility is less than someone unconcerned had within the corporation, regardless of how or why those responsibilities came to be imposed on the officer. As such, the Court dismissed the appeal, agreeing that a company secretary with a legal background would be expected to raise issues such as potential misleading statements in disclosure obligations, and that because of Mr. Saffron's close involvement in the actuary advice (including sourcing it, and pitching it to the board) the raising of the limitations of that advice was a responsibility that fell within Mr. Saffron's responsibility as company secretary.