

Duty of good faith and proper purpose

<i>Australian Charities and Not-for-profits Commission Regulations 2022</i> (Cth) ('ACNC Reg')	A registered entity must take reasonable steps to ensure that its responsible entities are subject to, and comply with a duty "to act in good faith in the registered entity's best interests, and to further the purposes of the registered entity": reg 45.25(2)(b).
Corps Act	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: s 181(1).
Co-operatives National Law*	A director or other officer of a co-operative must exercise their powers and discharge their duties: (a) in good faith in the best interests of the co-operative; and (b) for a proper purpose: s 193(1).
<i>Co-operatives Act 2009</i> (WA)	A director or other officer of a co-operative must exercise their powers and discharge their duties — (a) in good faith in the best interests of the co-operative; and (b) for a proper purpose: s 208(1).
<i>Associations Incorporation Act 1991</i> (ACT)	An officer of an incorporated association must exercise the officer's functions and discharge the officer's duties— (a) in good faith in the best interests of the association; and (b) for a proper purpose: s 66B.
<i>Associations Incorporation Act 2009</i> (NSW)	—
<i>Associations Act 2003</i> (NT)	—
<i>Associations Incorporation Act 1981</i> (Qld)	An officer of an incorporated association must exercise the officer's powers and discharge the officer's duties— (a) in good faith in the best interests of the association; and (b) for a proper purpose: s 70F.
<i>Associations Incorporation Act 1985</i> (SA)	—
<i>Associations Incorporation Reform Act 2012</i> (Vic)	An office holder of an incorporated association must exercise his or her powers and discharge his or her duties— (a) in good faith in the best interests of the association; and (b) for a proper purpose: s 85(1).
<i>Associations Incorporation Act 2015</i> (WA)	An officer of an incorporated association must exercise his or her powers and discharge his or her duties — (a) in good faith in the best interests of the association; and (b) for a proper purpose: s 45.

*The Co-operatives National Law is set out in the Appendix to the *Co-operatives (Adoption of National Law) Act 2012* (NSW). As well as its adoption in NSW, it has been adopted by the ACT by *Co-operatives National Law (ACT) Act 2017* (ACT), by the Northern Territory under *Co-operatives (National Uniform Legislation) Act 2015* (NT), by Queensland under *Co-operatives National Law Act 2020* (Qld), by South Australia under *Co-operatives National Law (South Australia) Act 2013* (SA), by Tasmania under *Co-operatives National Law (Tasmania) Act 2015* (Tas), and by Victoria under the *Co-operatives National Law Application Act 2013* (Vic).

Duty of care and diligence

ACNC Reg	<p>Duty to exercise the responsible entity's powers and discharge the responsible entity's duties with the degree of care and diligence that a reasonable individual would exercise if they were a responsible entity of the registered entity: reg 45.25(2)(a).</p> <p>Note Protection 2 (reg 45.110), referred to as "the business judgement rule", relates to the duty mentioned in paragraph 45.25(2)(a).</p> <p>Protection 2:</p> <p>(1) A responsible entity meets this protection if the responsible entity makes a decision in relation to the registered entity, and the responsible entity meets all of the following: (a) the responsible entity makes the decision in good faith for a proper purpose; (b) the responsible entity does not have a material personal interest in the subject matter of the decision; (c) the responsible entity informs itself about the subject matter of the decision, to the extent the entity reasonably believes to be appropriate; (d) the responsible entity rationally believes that the decision is in the best interests of the registered entity.</p> <p>(2) In this section: decision means any decision to take, or not take, action in relation to a matter relevant to the operations of the registered entity.</p>
Corps Act	<p>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: s 180(1).</p> <p>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: (a) make the judgment in good faith for a proper purpose; and (b) do not have a material personal interest in the subject matter of the judgment; and (c) inform themselves about the subject matter of the judgment to the extent they reasonably believe to be appropriate; and (d) rationally believe that the judgment is in the best interests of the corporation. 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: s 180(2).</p>
Co-operatives National Law*	<p>A director or other officer of a co-operative 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 co-operative in the co-operative's circumstances; and</p>

	<p>(b) occupied the office held by, and had the same responsibilities within the co-operative as, the director or officer: s 192(1).</p> <p>A director or other officer of a co-operative 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> <ul style="list-style-type: none"> (a) make the judgment in good faith for a proper purpose (taking into account the co-operative principles where relevant and other relevant matters); and (b) do not have a material personal interest in the subject matter of the judgment; and (c) inform themselves about the subject matter of the judgment to the extent they reasonably believe to be appropriate; and (d) rationally believe that the judgment is in the best interests of the co-operative. <p>The director's or officer's belief that the judgment is in the best interests of the co-operative is a rational one unless the belief is one that no reasonable person in their position would hold: s 192(2)</p> <p>In this section: business judgment means any decision to take or not take action in respect of a matter relevant to the business operations of the co-operative: s 192(3).</p>
<i>Co-operatives Act 2009 (WA)</i>	<p>A director or other officer of a co-operative 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 co-operative in the co-operative's circumstances; and (b) occupied the office held by, and had the same responsibilities within the co-operative as, the director or officer: s 207(2)</p> <p>A director or other officer of a co-operative who makes a business judgment is taken to meet the requirements of subsection (2), and their equivalent duties at common law and in equity in respect of the judgment, if they —</p> <ul style="list-style-type: none"> (a) make the judgment in good faith for a proper purpose (taking into account the co-operative principles where relevant and other relevant matters); and (b) do not have a material personal interest in the subject matter of the judgment; and (c) inform themselves about the subject matter of the judgment to the extent they reasonably believe to be appropriate; and (d) rationally believe that the judgment is in the best interests of the co-operative: s 207(3) <p>The director's or officer's belief that the judgment is in the best interests of the co-operative is a rational one unless the belief is one that no reasonable person in their position would hold: s 207(4).</p> <p>In this section — business judgment means any decision to take or not take action in respect of a matter relevant to the business operations of the co-operative: s 207(1).</p>
<i>Associations Incorporation Act 1991 (ACT)</i>	<p>An officer of an incorporated association must exercise the officer's functions and discharge the officer's duties with the degree of care and diligence that a reasonable person would exercise if that person— (a) were an</p>

	officer of the association in the circumstances applying at the time of the exercise of the function or the discharge of the duty; and (b) occupied the office held by, and had the same responsibilities within the association as, the officer: s 66A.
<i>Associations Incorporation Act 2009 (NSW)</i>	It is the duty of each committee member to carry out his or her functions for the benefit, so far as practicable, of the association and with due care and diligence: s 30A.
<i>Associations Act 2003 (NT)</i>	—
<i>Associations Incorporation Act 1981 (Qld)</i>	<p>An officer of an incorporated association must exercise the officer's powers and discharge the officer's duties with the degree of care and diligence that a reasonable person would exercise if that person—</p> <p>(a) were an officer of the association in the association's circumstances; and</p> <p>(b) occupied the office held by, and had the same responsibilities within the association as, the officer: s 70E(1), as inserted by <i>Associations Incorporation and Other Legislation Amendment Act 2020 (Qld)</i> s 31</p> <p>An officer of an incorporated association who makes a business judgment is taken to meet the requirements of subsection (1), and the officer's equivalent duties at common law and in equity, in relation to the judgment if the officer—</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) is informed about the subject matter of the judgment to the extent the officer reasonably believes to be appropriate; and</p> <p>(d) reasonably believes the judgment is in the best interests of the association: s 70E(2), as inserted by <i>Associations Incorporation and Other Legislation Amendment Act 2020 (Qld)</i> s 31</p> <p>In this section, business judgment means any decision to take or not to take action in relation to a matter relevant to the operations of the incorporated association: s 70E(3), as inserted by <i>Associations Incorporation and Other Legislation Amendment Act 2020 (Qld)</i> s 31</p>
<i>Associations Incorporation Act 1985 (SA)</i>	<p>An officer of a prescribed association must at all times act with reasonable care and diligence in the exercise of his or her powers and the discharge of the duties of his or her office: s 39A(4).</p> <p>A 'prescribed association' is an incorporated association that had gross receipts in that association's previous financial year in excess of \$500,000: <i>Associations Incorporation Act 1985 (SA)</i> s 3(1) (definition of 'prescribed association'); <i>Associations Incorporation Regulations 2008 (SA)</i> reg 4.</p>
<i>Associations Incorporation Reform Act 2012 (Vic)</i>	<p>An office holder of an incorporated association must exercise his or her powers and discharge his or her duties with the degree of care and diligence that a reasonable person would if that person — (a) were an office holder of the association in the circumstances applying at the time of the exercise of the power or the discharge of the duty; and (b) occupied the office held by, and had the same responsibilities within the association as, the office holder. s 84(1)</p> <p>An office holder of an incorporated association who makes a business judgment is taken to meet the requirements of subsection (1), and his or her equivalent duties at common law and in equity, in respect of the</p>

	<p>business judgment if the office holder—(a) makes the judgment in good faith for a proper purpose; and (b) does not have a material personal interest in the subject matter of the judgment; and (c) informs himself or herself about the subject matter of the judgment to the extent that he or she reasonably believes to be appropriate; and (d) rationally believes that the judgment is in the best interests of the association: s 84(2)</p> <p>For the purposes of subsection (2)— (a) a business judgment means any decision to take or not take action in respect of a matter relevant to the operations of the incorporated association; (b) an office holder's belief that a business judgment is in the best interests of the incorporated association is a rational belief unless the belief is one that no reasonable person in the position of the office holder would hold: s 84(3).</p>
<i>Associations Incorporation Act 2015 (WA)</i>	<p>An officer of an incorporated association 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 that person — (a) were an officer of the association in the association's circumstances; and (b) occupied the office held by, and had the same responsibilities within the association as, the officer: s 44(1).</p> <p>An officer of an incorporated association who makes a business judgment is taken to meet the requirements of subsection (1), and his or her equivalent duties at common law and in equity, in respect of the judgment if the officer — (a) makes the judgment in good faith for a proper purpose; and (b) does not have a material personal interest in the subject matter of the judgment; and (c) informs himself or herself about the subject matter of the judgment to the extent the officer reasonably believes to be appropriate; and (d) rationally believes that the judgment is in the best interests of the association: s 44(2)</p> <p>For the purposes of subsection (2) — business judgment means any decision to take or not take action in respect of a matter relevant to the operations of the incorporated association: s 44(3)</p> <p>The officer's belief that the judgment is in the best interests of the incorporated association is a rational one unless the belief is one that no reasonable person in the position of the officer would hold: s 44(4).</p>

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