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By email - reviewofsanctions@treasury.gov.au

Review of Sanctions for Breaches of Corporate Law
Corporations and Financial Services Division
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Dear Sir/Madam


We wish to raise an issue in relation to section 189 of the *Corporations Act*. We note that it is discussed in paragraphs 3.19-3.26 of the *Review of Sanctions in Corporate Law Discussion Paper*.

Section 189 provides that a director's reliance on information or advice provided by others, where certain conditions are met, will be taken to be reasonable unless the contrary is proved. We note that section 189 is expressed to apply only to directors, and does not apply to officers. In contrast, sections 180, 181, 182 and 183 of the *Corporations Act* extend directors' duties to officers. As a result, the *Corporations Act* requires that officers comply with directors' obligations, yet does not provide them with the protection of section 189.

An example where this may have a practical effect is the fact situation in *Vines v ASIC* [2007] NSWCA 75 where Mr Vines was an officer, but not a director, who was found to have failed to exercise the degree of care and diligence required under s 232(4) of the *Corporations Law* (now s 180(1) of the *Corporations Act* 2001) when he relied on a profit forecast provided to him by an Executive Director of a subsidiary company. *Vines v ASIC* dealt with a factual scenario prior to the introduction of section 189. Nonetheless if that factual scenario was repeated today, section 189 would not be available to someone in Mr Vines situation.

We would like to suggest that it may be appropriate to extend the application of section 189 to encompass officers, in order to provide them with the same presumption afforded to directors. A view that only directors may have cause to rely on information or advice provided by others does not reflect the commercial reality of large corporations where there are multiple layers of reporting.

Yours faithfully



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