


CASE SUMMARY: Australian Securities and Investments Commission v King [2020] HCA 4

Description: Definition of officer of company in Corporations Act not confined to persons holding specific office.

	
20	Corporations
20K1210-K1352	Management and administration
20K1210-K1233	Officers of corporation
20K1231	Officer

who is an officer — person with “capacity to affect significantly the corporation's financial standing” — managed investment schemes — chief executive officer of responsible entity's parent

Can a group Chief Executive Officer be classed as an ‘officer’ of the responsible entity of a managed investment scheme forming part of the group?

Held: (by the court)

(1) The definition of ‘officer’ in the Corporations Act 2001 (Cth), s 9, as “a person ... who has the capacity to affect significantly the corporation's financial standing” is not confined to the holder of a specific office. The inquiry required by para (b)(ii) of the definition is concerned with whether the facts show that a putative officer has played a role in the corporation and the nature and extent of that role, not with some a priori classification of his or her position.

(2) With regard to the duties of an ‘officer’ of the responsible entity of a managed investment scheme, there is nothing in the text of the [CORPORATIONS ACT, S 601FD\(1\)](#), which implies that the person must act in any designated office or position. References to the word “position” in that section naturally refer to the role actually performed by the officer; it does not imply that the person must act in a recognised position with rights and duties attached to it.

(3) The person in question must relevantly be an “officer of the corporation”. In the case of a person said to fall within para (b)(ii) of the definition in s 9, questions of fact and degree will arise as to whether the person also answers the description of being “of” the corporation in the sense of being engaged, in fact, in the management of its affairs or property.