

**Injunction under s 1324
Corporations Act: Use of
information to solicit and
compete in breach of s 183**

Presented by:

GLEN PAULINE

Barrister & Advanced Mediator

[E: glen.pauline@vicbar.com.au](mailto:glen.pauline@vicbar.com.au)

M: 0411707487

FOLEY'S | LIST

S.183 Corporations Act

(1) A person who obtains information because they are or have been a director or other officer or employee of a corporation must not improperly use the information to:

- a. gain an advantage for themselves or someone else; or
- b. cause detriment to the corporation.

Note 1: This duty continues after the person stops being an officer or employee of the corporation

S 1324 Corporations Act

Injunctions

- (1) Where injunction may be granted
- (3) Injunction by consent
- (4) Interim injunction where desirable
- (6) Where prohibitory injunction may be granted
- (7) Where mandatory injunction may be granted

**Customer
connection as a
legitimate interest**

***Wallis Nominees (Computing) Pty Ltd v
Pickett*** (2013) 45 VR 657 (CA)

- First, that an employee must be in a **position to gain trust and confidence so as to be relied on in a client's affairs.**
- Secondly, that the relationship between employee and client is such that there is a **possibility that if the employee leaves the business of the employer he or she may carry away the client's business** with them.

**Injunction under s
1324 & s 183
Corporations Act**

Smart EV Solutions v Guy [2023] FCA 1580,
Derrington J:

“courts of equity are astute to protect confidential information from misuse: see *Commonwealth v John Fairfax & Sons Ltd* (1980) 147 CLR 39, 50; *Boardman v Phipps* [1967] 2 AC 46, 127-128.

That is particularly so where the information in question has been utilised by former employees or directors **in pursuit of business opportunities** in apparent contravention of their duties”.

Reasonable non-solicitation and restraints

Smart EV Solutions v Guy

- where an employee's role in the business includes business development, this prima facie supports a reasonable non-solicitation clause that covers all existing clients as being reasonable

Avant Group v Kiddle [2023] FCA 685, Wheelahan J:

- business development employee with access to information identifying clients and contact details, pricing structure and business strategies, would foster connections and justify a reasonable post-employment restraint to protect confidential information

Identification of clients to be protected

Crowe Horwath Pty Ltd v Loone [2016] VSC 582

- Clients listed by name in exhibit

Birdanco Nominees Pty Ltd v Money (2012) 36 VR 341

- *a restraint clause that is limited to the provision of services to those particular clients that, by virtue of the employment and the opportunity to establish a continuing relationship, is precisely the kind of connection which the authorities make clear, the employer is entitled, within reasonable limits, to protect*

Inadequacy of damages

Avant Group v Kiddle [2023] FCA 685 (Wheelahan J)

- in applications for interlocutory injunctions to enforce restraint clauses, the inadequacy of damages as a final remedy informs the balance of convenience
- damages may be inadequate because once **client relationships** are severed, they may be difficult to repair

Smart EV Solutions v Guy [2023] FCA 1580, Derrington J

- difficulty of **detection of breaches** of the obligations, establishing **causation** between any loss of business with customers and any actions of the ex-employee and the difficulty of the **calculation of the quantum** of damages arising from the loss of business