

Your organisation's environmental responsibility - leadership actions for company directors and officers

Guidance



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This guidance sets out how company directors and managers can lead their organisations in taking responsibility for protecting the environment that is most affected by their operations.

It is designed for use by all directors, company officers and managers and their equivalents in the private and public sector.

This guidance is written with larger organisations in mind, but contains a broad range of actions that can apply to company of any size.

Introduction

Environmental law establishes 11 (s1B-1L inclusive) principles of environment protection. One of those principles is that of shared responsibility. It is the responsibility of all levels of Government, industry, business, communities and the people of Victoria to protect the environment. Another principle is of intergenerational equity. This means it is the responsibility of the present generation to ensure the health, diversity and productivity of the environment is maintained or enhanced for future generations. The Pre-cautionary principle is another key principle that seeks to promote preventative efforts and management to avoid impacts on the environment.

Environmental law also places a range of duties on organisations including to not pollute the environment or create an environmental hazard. Directors and those involved in the management of corporations, unincorporated associations and partners in a partnership can be personally liable when these duties are breached; members of the board have both collective and individual responsibility.

Environmental law requires directors and those involved in the management of corporations, unincorporated associations and partners in a partnership to exercise due diligence in preventing the organisation from breaching environmental laws. Practical due diligence encourages directors to have and maintain an integrated corporate risk management system which takes account of environmental risk and motivates organisations to put in place preventative measures.

By following this guidance you will help your organisation find the best ways to lead and promote environmental responsibility, and therefore meet its legal obligations. You will also be guided on how to use due diligence in discharging your environmental responsibilities.

In this guidance

The following pages set out:

- a summary of legal responsibilities and liabilities
- four actions that will substantially assist leaders in complying with their legal responsibilities
- a checklist of key questions for leaders.

Each action consists of:

Core actions for boards, directors and managers that relate directly to the legal duties and environmental responsibilities of an organisation. *These actions are intended to set the standard.*

Good practice guidelines that set out ways to give the core actions practical effect. *These guidelines provide ideas on ways to achieve the core actions.*

Legal responsibilities and liabilities

Legal responsibilities of organisations

Environmental law states that organisations must:

- not cause pollution - pollution is the introduction of substances into water, land or the atmosphere, that will have a detrimental effect on current or future use. Or the substance could harm the health or welfare of humans, plants or animals. For example, discharge of wastes or contaminated stormwater from your site.
- not create an environmental hazard - such as to humans or the environment caused by inappropriate storage or handling of toxic, corrosive, flammable, explosive, or infectious substances. For example, storage of dangerous chemicals or waste products in unsealed containers beside a stormwater drain or creek is a hazard.
- comply with any licence, permit, notice or order from the EPA. For example, failure to have a monitoring program at a licensed site is a breach of your licence.
- not create unreasonable noise or odour that will impact a residential area. For example, the escape of untreated waste vapours from your site may generate offensive odour, or your activities might generate noise that affects residents trying to sleep.

The offence provisions under the Act are very strict. As a general rule, once a prohibited event has occurred, the person or organisation in control, namely the occupier of the premises, the producer or seller of the goods or the holder of the licence will be guilty of the offence.

Defences are very limited. For example, pollution in an emergency that was not caused by negligence of the person charged with the offence. And as soon as reasonably practicable after the event, the person notified the Authority in writing of the event.

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Legal liability of individual board members, company directors and managers

If an environmental offence is committed by an organisation, each director or person concerned in the management of the organisation is deemed to be guilty of that offence.¹

The purpose of the deeming provision is to require all people in a position to influence the conduct of an organisation to use due diligence to prevent the organisation from damaging the environment and breaching the Act. The provision applies to partners in a partnership and people involved in the management of an unincorporated body, as well as directors and those concerned in the management of corporations.

In this guidance we will use the term "officer" to describe directors and persons concerned in the management of an organisation to which s.66B of the Act applies.

This means that an officer may face the same penalty as the organisation. To put this into perspective, organisations that are found guilty of pollution offences can face a fine of up to \$260,000 for each offence. Some contraventions provide for a penalty of \$130,000 for each day that a contravention continues to occur.

The best way for an officer to avoid prosecution for an offence is to make sure that the organisation of which the person is an officer does not breach the Act.

If an organisation has breached the Act an officer will also be guilty of that breach unless the officer proves that he or she was not in a position to influence the conduct of the organisation that committed the offence or that the officer used all due diligence to prevent the contravention.²

So by using due diligence an officer will not only deliver on their environmental responsibility by reducing the risk of their organisation damaging the environment and breaching the Act, but also reduce his or her legal liability under the Act.

The four actions in this guidance offer practical ways for an officer to demonstrate that he or she has used due diligence. The actions are common sense and reflect prudent decision making across a range of governance issues including environmental compliance.

An officer can comply with his or her duty by taking an active and inquisitive role in the planning and implementation of environmental initiatives and preventative controls. The officer may not, depending on their precise role in the organisation, need to be directly involved in the implementation, but he or she should take all steps and utilise all measures and processes to ensure those initiatives are taken and that the controls are effective.

Using due diligence requires an officer to:

- a) acquire and keep up to date knowledge of environmental matters relevant to the organisation
- b) gain an understanding of the nature of the operation of the business or undertaking and general environmental issues associated with those operations
- c) ensure that there is available for use and used by those engaged in the business or undertaking, appropriate resources and processes to eliminate or minimise risks to the environment and non-compliance with licences during the conduct of the business or undertaking

- d) ensure that people engaged in the business or undertaking have appropriate processes for receiving and considering information regarding environmental incidents, hazards and risks, and respond in a timely way to that information
- e) ensure that those engaged in the business or undertaking have in place and implement processes for complying with any duty or obligation of the organisation under the Act, including complying with licence conditions and notices served
- f) verify the provision and use of the resources and processes set out above.

An officer should have knowledge of the relevant matters before they are able to make decisions. This will involve having in place measures where the environmental performance of the organisation is monitored, reviewed, reported and acted upon.

It is not enough for a board member, company director or manager to remain at arm's length from an environmental compliance issue. Being ignorant of an issue is likely to be evidence of a lack of due diligence rather than assist in proving a defence of due diligence under the Act. Due diligence is about taking action. For this reason the next part of the guidance is broken down into actions and a checklist.

Action 1 - Plan the direction of environmental responsibility

Company officers should set the direction for effective environmental management of the organisation. For large organisations, board members, in particular, need to establish an environmental policy that is much more than a document - it should be part of the organisation's culture, values, performance standards and corporate citizenship.

All officers should take the lead in ensuring the communication of environmental responsibility throughout the organisation. For larger organisations, environmental management is a corporate governance issue. The board and its officers should integrate environmental management into the main governance structures, including board sub-committees, such as risk and audit.

Core actions

To agree on a policy, officers, including boards and directors will need to be aware of, and understand the significant environmental risks faced by their organisation.

The policy should set out the board's own role and that of individual board members in leading environmental management of the organisation.

The policy should require officers and the board to:

- own and understand the key issues involved
- decide how to best communicate, promote and embed environmental management
- state how environmental management is to be monitored, reviewed and enhanced.

The environmental policy should evolve with the organisation, taking into account major organisational changes such as restructuring, merger and acquisition.

¹ Section 66B(1) of the *Environment Protection Act 1970* (the Act)

² Act means Environment Protection Act

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Good practice

- Environmental performance should appear regularly on the agenda for board meetings.
- The chief executive officers can give the clearest visibility of leadership, but some boards or management teams may find it useful to name one of their number as the environmental 'champion'.
- The attendance at the board meetings of the environmental manager can be a strong signal that the issue is taken seriously and that its strategic importance is understood.
- Setting targets helps define what the board is seeking to achieve.

Action 2 - Deliver environmental performance

Delivery depends on an effective management system to ensure that the activities of the organisation do not harm the environment, and also demonstrates the organisation's sense of responsibility to protect the environment.

Due diligence is specific not general. This means that an environmental risk management system must focus on the specific risks identified in respect of the operation of the organisation's business or undertaking and their mitigation. It is not sufficient for a corporation to adopt a generic system of environmental management. It must be adapted to specifically address the particular activities of the organisation which have an environmental impact or may pose an environmental risk.

The due diligence obligation means more than complying with minimum legislative standards or industry standards. These standards must be satisfied and provide useful guidance but due diligence requires a more proactive approach including the driving of the message and the need to improve continuous feedback loops within the organisation to prevent and minimise environmental incidents and the likelihood of non-compliance.

Organisations should aim to protect the environment by introducing management systems, practices and controls that ensure environmental risks are dealt with expediently, effectively and proportionately.

Core actions

To take responsibility for environmental performance, officers, including members of the board should ensure that:

- they acquire and keep up-to-date knowledge of environmental matters that effect the organisation
- the management of environmental issues is preventative, adequately resourced and properly implemented
- they gain an understanding of the nature of the operations of the organisation and of the hazards and risks associated with those operations
- they consider the environmental implications of introducing new processes, plant or practices.

Good practice

- Leadership is more effective if visible - board members and officers can reinforce environmental responsibility by addressing breaches immediately.
- Ensure specific environmental risks likely to be faced as a result of activities are kept current and controls are designed to specifically address these risks.

- Assign a director or board member responsibility for environmental compliance and consider environmental responsibility when appointing senior managers.
- Have a contingency plan to manage environmental hazards and risks in the event of an emergency to immediately minimise damages if such risks materialise.
- Set up a separate risk management or environmental committee that reports through to the board (and is chaired by a senior executive). Ensure it has adequate resources and require it to monitor, inspect and improve the effectiveness of systems, equipment and operations of the company.
- Have procurement standards for goods and services that help minimise environmental hazards.
- The environmental compliance of contractors, suppliers etc. should be assessed as their performance could affect the liability of the organisation.
- Ensure all site operators and contractors are aware of your organisation's environmental policy and obligations and take all reasonable steps to avoid non-compliance.
- Providing environmental training to some or all of the senior officers can promote understanding and knowledge of the key environmental issues faced by an organisation.
- Supporting and consulting employees on environmental performance can foster a sense of responsibility.

Action 3 - Monitor environmental performance

Monitoring and reporting are vital parts of a culture of environmental responsibility. Management systems need to allow officers to receive both specific (e.g. incidents) and routine reports on environmental performance.

It is not sufficient to have a management system to provide against contravention of environmental laws, it must be shown that adequate supervision exists to ensure that the system is properly audited, carried out and implemented.

Some of the environmental performance information can be reported during the formal review period (see action 4). The management system should also enable officers to be briefed on relevant events (especially incidents or breaches) between the formal reporting periods.

Core actions

The board and senior officers should ensure that:

- a systematic internal reporting system exists to ensure that information about environmental hazards and unsafe practices is promptly conveyed to senior management and acted on
- company officers report back to the board on the operation of the environmental management system and issues are reported in a timely manner
- employees and officers, including directors, react personally and immediately upon becoming aware of any system failures
- appropriate weight is given to reporting both preventative information and incident data
- periodic audits of the effectiveness of management structures and risk controls for environmental performance are conducted

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- the impact of changes such as the introduction of new procedures, work processes or any major environmental failure is reported to the board as soon as possible
- there are procedures to implement new and changed legal requirements and to consider external developments and environmental innovations relevant to the industry.

Good practice

- Effective monitoring of environmental issues and pollution events can alert officers and the board to underlying problems that could seriously damage performance or result in a major environmental incident.
- The collection of environmental performance data can allow officers and the board to benchmark the organisation's performance.
- Appraisals of senior managers can include an assessment of their contribution to the organisation's environmental performance.
- Boards can receive regular reports on the environmental performance of subsidiary and related entities.
- Boards and officers can consider involving employees in the environmental monitoring and build a stronger sense of organisational responsibility for the environment.
- Where events or non-compliance occurs, all reasonable and appropriate precautions are reviewed and as necessary, new controls designed and implemented.

- if applicable provide a report on the Environment and Energy Resource Plan⁴.

Good practice

- Environmental performance is increasingly being reported in an organisation's annual reports, publications and website content.
- Celebrating good environmental performance at both a central and local level.
- Engaging the local community to understand their environmental concerns and impacts linked to the organisation's operations.
- Reports on critical incidents which then embed 'lessons learnt' and system improvement will demonstrate the board's commitment to environmental responsibility.

Action 4 - Review environmental performance

A formal review of environmental performance is essential. It allows officers and the board to establish whether the essential environmental principles - strong and active leadership, employee involvement, and assessment and review - have been embedded in the organisation. It will tell the organisation whether the environmental systems that have been put in place are effective.

Core actions

The board and senior officers should review environmental performance at least once per year. The review process should:

- examine whether the environmental policy reflects the organisation's current priorities, plans and targets
- examine whether risk management and other environmental systems have been effectively reporting to the board
- report environmental incidents, notices issued by EPA Victoria, results of environmental audits etc.
- identify and address any weaknesses in the environmental management systems
- consider immediate reviews in light of environmental and pollution incidents
- if the organisation's premises is licensed by the EPA, report on any licence compliance issues
- provide a summary of the Annual Performance Statement³

³ This is a requirement applying to licence holders under section 31D of the Act

⁴ This is a requirement of section 26H of the Act that applies to a person who undertakes a scheduled activity (as defined in s.4 of the Act)

Your organisation's environmental responsibility

Environmental leadership checklist

This list is designed to check your status as an environmental leader

- How do you demonstrate your commitment to environmental performance?
- What steps have you taken to ensure appropriate board level or management level review of environmental performance?
- What have you done to ensure that your organisation (at all levels) receives competent environmental advice?
- How are you ensuring that all staff - including the board - are sufficiently trained and are able to manage their specific environmental risks and responsibilities?
- How confident are you that your workforce is consulted on environmental issues and that their concerns are reaching the appropriate level?
- Are there systems in place to ensure your organisation's specific environmental risks are assessed and that sensible control measures are established and maintained?
- Are you regularly briefed on what is happening on the ground, and what audits or assessments are being undertaken to inform you about what your organisation and contractors actually do?
- What information do you and the board receive regularly about environmental performance? Is it sufficient to allow the board 'line of sight' on emerging issues?
- What targets have you set to improve environmental performance against others in your industry or sector?
- Where changes in working arrangements have significant implications for environmental performance, how are these brought to your attention and the attention of the board?
- What information do you receive about the organisation's dealings with EPA - in particular Clean Up Notices, Pollution Abatement Notices and Penalty Infringement Notices?
- If your organisation operates in premises licensed by EPA Victoria, do you receive reports about any compliance issues with the licence conditions?
- What information do you receive about reports required under the Environment Protection Act such as Annual Performance Statements and Environment and Resource Plans?
- If your organisation had an environmental incident, have the causes been investigated and improvements implemented?
- What emergency and contingency plans do you have in place to manage and communicate environmental risks and impacts to your staff, emergency services, authorities such as EPA and the community should an event occur?