

Episode Summary

Episode number: 114
Episode name: Nature Positive Business: Identifying and Managing Nature-related Risk
Guest(s): Laura Waterford & Olivia Back

What area(s) of law does this episode consider? Legal opinion on nature-related risk.

Why is this topic relevant? Section 180 of the Corporations Act is a mainstay of Australian corporate law. It provides for the requirement that directors and officers exercise their powers and discharge their duties with care and diligence. The section - and those words - capture a wealth of meaning, and today we're covering a new and developing part of it.

In October 2023, Sebastian Hartford-Davis and Zoe Bush - instructed by Pollination Law - issued a joint memorandum of opinion on the topic of nature-related risks and directors' duties. The opinion discusses the extent to which the duty of care and diligence permits or requires consideration, disclosure, and management of nature-related risks arising from dependencies and impacts on nature.

What legislation is considered in this episode? *Corporations Act 2001* (Cth), s 180

What are the main points?

- Section 180 of the *Corporations Act* mandates that directors exercise their powers with care and diligence.
- In October 2023, Sebastian Hartford-Davis and Zoe Bush - instructed by Pollination Law - issued a joint memorandum of opinion on the topic of nature-related risks and directors' duties.
- Legal opinion outlines that directors should identify and prioritise their company's nature-related risks including how directors should consider, disclose, and manage nature-related risks.
- Nature-related risks arise from a company's impact on and dependence on nature.
- The *Taskforce on Nature-related Financial Disclosures* (TNFD) is a framework for companies to identify and disclose nature-related risks.
- Boards may now need to consider nature-related risks as part of their regular duties.
- Both impacts (e.g., pollution) and dependencies (e.g., pollination services) constitute nature-related risks.

- Even companies that don't have a direct impact on nature may still have exposure through their supply chain.
- Nature-related risk assessments must consider the full spectrum of a company's value chain, from direct operations to supply chains.

What are the practical takeaways?

- There is an increasing amount of work being done around biodiversity and alignment with nature-positive strategies.
- Climate-conscious lawyering is suggested as necessary, taking environment considerations into account in all legal practices.
- Corporate strategies should be checked for potential nature-related risks, even when supporting climate beneficial goals like solar energy projects.

Show notes

Taskforce on Nature Related Financial Disclosures (TNFD) ([link](#))

Taskforce on Climate Related Financial Disclosures (TCFD) ([link](#))