

The evolution of corporate laws and their intersection with director duties in relation to nature

Introduction

In Aotearoa New Zealand, growing awareness of sustainability and climate change is reshaping the corporate landscape and decision making at the board room table. Around 70 percent of export earnings are linked to natural capital here, making environmental stability both a commercial and governance concern.¹ Within this context, directors are increasingly expected to identify and manage nature-related risks, including biodiversity loss and ecosystem degradation, as part of their legal duties.²

This article outlines a few of the key developments in directors' duties and the evolving regulatory and market landscape. It then provides some practical governance steps for directors to consider taking in response to these changes.

Part I: Why nature-related risks matter

Physical risks

Aotearoa's economy relies heavily on natural capital, with agriculture, fisheries, and forestry dependent on healthy ecosystems. Research shows that physical nature-related risks such as pollination loss, soil degradation, and ecosystem collapse can materially affect financial performance.³ Boards that integrate nature-related risk into governance can protect long-term value and reputation.

Transition risks

As a trade-dependent nation, Aotearoa also faces transition risks as global environmental regulations tighten. Major trading partners such as the EU and the UK are introducing stricter nature-positive import standards, which could create additional compliance pressures and potentially reduce export competitiveness.⁴ Increasingly, trading partners will be asking hard questions of our companies.

Higher foreseeability threshold

The increase in reliable data shapes the foreseeability of risk under section 137 of the *Companies Act*, which is discussed below. Frameworks such as the Taskforce on Nature-related Financial Disclosures provide standardised metrics, limiting claims of ignorance about environmental impact. In Aotearoa, the External Reporting Board has already set a climate reporting precedent, and it might be that nature disclosures are the next step. As these standards spread, a reasonable director is expected to understand their company's nature dependencies.

Part II: Directors' duties and nature-related risk

The *Companies Act 1993* consists of two core principles regarding directors' duties.

The duty to act in good faith and in best interests of the company

Section 131(1) requires directors to act in good faith and in what they believe to be the company's best interest.⁵ The *Companies (Directors' Duties) Amendment Act 2023* introduced section 131(5), clarifying that directors may consider

¹ PwC New Zealand, *Nature-related risks, opportunities and disclosures*, (n.d.), <https://www.pwc.co.nz/services/sustainability-climate-and-nature/nature-related-risks-opportunities-and-disclosures.html>.

² Andrew Bevin "Directors must consider nature or face the music" (29 March 2023) newsroom <https://newsroom.co.nz/2023/03/29/directors-must-consider-nature-or-face-the-music/>.

³ IRFS Sustainability "Sustainability-related risks and opportunities and the disclosure of material information" (November 2024) at pg 55 <https://www.ifrs.org/content/dam/ifrs/supporting-implementation/issb-standards/issb-materiality-education-material.pdf>.

⁴ Molly Green "UK firms will have to comply with stricter EU green laws" (12 April 2024) <https://www.solarpowerportal.co.uk/solar-technology/report-uk-firms-will-have-to-comply-with-stricter-eu-green-laws>.

⁵ Companies Act 1993, s 131(1).

environmental and social factors alongside profit.⁶ The amendment affirms that the company's best interests is not confined to maximising profits, and signals Aotearoa's leadership in expressly recognising Environmental, Social, and Governance (ESG) considerations within directors' decision making.⁷

Although this provision is expected to be repealed on the basis that existing law already allowed such considerations, its introduction reinforces that environmental issues can legitimately inform directors' decision making when assessing the company's long-term interests.⁸

The duty of care, diligence, and skill

Secondly, section 137 requires a director exercise the care, diligence, and skill that a reasonable director would in the same circumstances.⁹

Others have suggested that section 137 would likely oblige directors to identify and manage nature-related risks where such risks are foreseeable and capable of materially affecting the business. We agree with that approach.¹⁰

This further highlights the increased environmental recognition with the *Companies Act*.

Part III: Practical steps for boards

Given the complexity and uncertainty surrounding nature-related risks, boards should take a proactive and structured approach to governance.

Accordingly, it is recommended that boards:

- Actively embed the identification and assessment of nature-related risks within governance and risk management frameworks.
- Closely monitor ongoing legal, regulatory, and market developments, both domestically and internationally.
- Ensure the board has, or can readily access, the expertise and resources necessary to meet evolving regulatory expectations and stakeholder demands.

Conclusion

Nature-related risk is now a core governance issue in Aotearoa. Directors' duties under the *Companies Act* require boards to identify and manage foreseeable environmental risks, particularly as regulatory and market expectations evolve. In an economy deeply reliant on natural capital, proactive engagement with nature-related risk is both a legal responsibility and a commercial necessity. Boards should respond with proactive governance that reflects nature's material relevance to business success.

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⁶ Companies (Directors' Duties) Amendment Act 2023, s 4.

⁷ Dr Lynn Buckley and Dr Peter Underwood "NZ took the lead on director duties reform. Why are we set on giving it up?" (13 September 2024) newsroom <<https://newsroom.co.nz/2024/09/13/nz-took-the-lead-on-director-duties-reform-why-are-we-set-on-giving-it-up/?>>.

⁸ Simpson Grierson, "Biggest Companies Act overhaul in decades on the agenda" (23 August 2024) <https://www.simpsongrierson.com/insights-news/legal-updates/biggest-companies-act-overhaul-in-decades-on-the-agenda>.

⁹ Companies Act 1993, s 137.

¹⁰ Chapman Tripp "The business of nature: new legal opinion outlines emerging expectations on directors to manage nature-related risk" (28 March 2023) <https://chapmantripp.com/about-us/news/the-business-of-nature-new-legal-opinion-outlines-emerging-expectations-on-directors-to-manage-nature-related-risk/#:~:text=Chapman%20Tripp%20was%20engaged%20to,sustainable%20prosperity%20for%20future%20generations.>