


Are Your Environmental Reporting Practices Ready For CLERP 9?

Frances Richards
Partner, Gadens Lawyers

Daniel Freiman
Solicitor, Gadens Lawyers

This paper looks at and provides:
• Statutory and non-statutory requirements for environmental reporting
• The impact of CLERP 9
• A checklist for responding to requirements for environmental reporting

As the trend toward greater corporate transparency and accountability gathers pace, environmental reporting is becoming an increasingly important part of corporate disclosure practices. Industry has recognised this for some time through voluntary triple bottom line reporting.

Under changes proposed by the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003 (Cth) (CLERP 9), environmental reporting will soon become a critical component of the statutory reporting regime for public listed companies. CLERP 9 is currently before parliament and is intended to come into force on 1 July 2004.

Here we review existing statutory and non-statutory requirements for environmental reporting and consider how CLERP 9 will add to this framework. We also discuss the implications for companies that will be
affected by the increased focus on environmental reporting.

**Existing statutory requirements for environmental reporting**
The current statutory regime governing the financial reporting and disclosure obligations of companies (and other entities) deals with environmental reporting, but only to a limited degree. The *Corporations Act* requires the annual directors’ report to provide general information about operations and activities, including details of performance against relevant environmental regulation. This assessment of environmental performance concerns operations for the year past.

In addition, the continuous disclosure provisions of the *Corporations Act* require that public companies disclose information, not generally available, which a reasonable person would expect to have a material effect on the value of securities by influencing investors. Information concerning environmental (and social) performance has become an important factor in the decision making of many investors. Indeed, some investment research firms now assess the financial implications of environmental issues for specific companies and analyse performance against environmental standards or targets.

The Listing Rules of the Australian Stock Exchange require public companies to include a review of operations and activities as part of their annual reports. Such a review may include an assessment of compliance with environmental regulation.

Companies with statutory licences will have reporting obligations under the conditions of those licences. The Environment Protection Authority in NSW issues licences for prescribed activities which impact on the environment.

**Non-statutory requirements for environmental reporting**
Companies may also be subject to a number of non-statutory requirements to report on environmental performance, for example:
- the National Pollutant Inventory, which requires facilities to report against a list of agreed chemical pollutant emissions
- the Greenhouse Challenge, which requires signatories to report on greenhouse gas emissions
- the Australian Minerals Council Code of Environmental Management and
- the National Packaging Covenant.

**Best practice guidance**
Many companies also undertake environmental reporting on a voluntary basis in accordance with best practice guidelines.

In Australia, the Group of 100 Inc (G100) publishes the following best practice guides which are relevant to environmental reporting:
- Guide to Review of Operations and Financial Condition, which states that a review of operations and financial condition (such as that proposed under CLERP 9) should report on environmental performance and environmental influences on a company where relevant and
- Guide to Triple Bottom Line Reporting, which discusses environmental reporting practices in detail.

The Commonwealth Department of Environment and Heritage has produced the Australian Framework for Public Environmental Reporting, providing a step-by-step approach for companies to
follow when preparing an environmental report. Importantly, the Australian Framework is compatible with accepted international guidelines.

On an international level, the Global Reporting Initiative (GRI) has produced a set of internationally acceptable reporting guidelines, simply called the Guidelines. The GRI was initiated in 1997 by the Coalition for Environmentally Responsible Economies and is now an independent organisation working closely with the United Nations Environment Program. The Guidelines provide companies with a broad framework to develop environmental reporting practices. They specify general reporting principles and outline report structure, core content and environmental performance indicators. The Guidelines are complemented by industry-specific Sector Supplements and Technical Protocols on the measurement of environmental indicators.

In addition, the International Organisation for Standardisation (ISO) has established standards for environmental management systems known as ISO 14000. The standards contained in ISO 14000 range from environmental auditing, performance evaluation, communication mechanisms, design and development, product life-cycle assessment, labelling and declaration.

CLERP 9
The reforms proposed under CLERP 9 significantly broaden reporting requirements and thereby increase the emphasis placed on environmental and other non-financial performance within the statutory framework.

CLERP 9 proposes the introduction of a new s 299A into the reporting provisions of the Corporations Act. The proposed s 299A creates additional general requirements for the content of the annual directors’ report prepared by listed public companies. The directors’ report should contain information that members of the company would reasonably require to make an informed assessment of:

- the company’s operations
- the company’s financial position and
- business strategies and future financial prospects.

Information about business strategies and future financial prospects can be omitted if that information would likely result in unreasonable prejudice to the company.

Practically, this means that the directors’ report must (where relevant) address not only compliance with environmental regulation for the year past, but also provide information on the potential effect of significant environmental issues on business strategy and future financial prospects.

Examples of significant environmental issues that may affect the business, and that the directors may need to address are:

- responses to climate change and greenhouse gas emissions
- water pollution and salinity
- extended producer responsibility and
- access to water resources.

What are the consequences of not complying with CLERP 9?
Existing offence and enforcement provisions under the Corporations Act relating to companies’ reporting requirements will apply. If the directors fail to take all reasonable steps to comply or secure compliance with statutory reporting requirements, then the directors would have contravened a civil penalty provision. The court would
make a declaration of that contravention. ASIC could then seek from the court a pecuniary penalty order of up to $200 000 for an individual or $1 000 000 for a corporation or a disqualification order. If the contravention is dishonest, the directors would have committed an offence. The prescribed penalty is $220 000 or five years’ imprisonment or both.

As the directors’ report constitutes a set of representations made to shareholders, the directors can also be exposed to liability for the offences of making false or misleading statements or providing false or misleading information. This can lead to criminal liability, injunctive action or damages.

How to respond to requirements for environmental reporting?
Obviously, the significant environmental issues will vary from company to company and will change over time. Many companies will already have environmental reporting procedures in place to satisfy existing mandatory requirements or voluntary best practice guidelines. The government envisages that in preparing a report in accordance with the proposed s 299A, directors will have regard to best practice guidance such as that published by the G100 mentioned above.

Companies should take the following steps in relation to environmental reporting to ensure readiness for the implementation of CLERP 9:

- review existing environmental reporting systems against recognised best practice guidelines, such as the G100 guides mentioned above
- carry out environmental audits or other processes to identify significant environmental issues which may require disclosure once CLERP 9 takes effect
- develop methods of presenting and reporting environmental issues (best practice guidelines will be helpful in this regard)
- arrange for external verification of environmental reports in cooperation with environmental organisations
- develop procedures to review future reports internally in order to ensure compliance with the statutory requirements
- assign responsibility within the board of directors for environmental performance and reporting and
- seek further advice on the effect of the reporting provisions contained in CLERP 9 on the company’s operations.

Beyond compliance with CLERP 9
While CLERP 9 is clearly focused on the annual directors’ report, other methods of communication are available to ensure that a company’s environmental performance and the impacts of its operations are effectively and comprehensively disclosed to stakeholders, for example:

- a separate environment report outlining environmental performance and impacts
- a full triple bottom line report incorporating environmental, social and economic issues and
- publishing environmental information on the company’s website.

This article is reprinted with permission from the May 2004 issue of Keeping good companies, the official journal of Chartered Secretaries Australia.