



Chapter 4

Legal Obligations



Finding out about the law can be a difficult task. There is an ever increasing number of new laws that deal with the environment and a large number of government departments and authorities which administer these laws. Legal obligations of clubs, directors and managers must be identified and complied with.

There are three levels of government in Australia, federal (or commonwealth), state and local. These three levels all govern laws about the environment, but most are made by each State government. The Australian Constitution determines the powers of the Commonwealth and State Governments. The Commonwealth Government has produced some legislation on heritage and endangered species, but there are no Commonwealth laws dealing with pollution or planning. These areas are regulated by the states. The Local Government is responsible for implementing and enforcing some state laws, in the local area. Councils decide on development and some tree removal applications, and prosecute in the case of minor pollution offences.

There are many pieces of environmental legislation, and it is beyond the scope of this document to go into detail about each Act which applies to golf courses. An overview of the principal legislation in each state and territory is found opposite, and further information can be obtained through the relevant government agencies (Appendix 1), reading the environmental legislation in each state (Appendix 3) and examining reference material (see "References" Appendix 11).

It can be seen from the following table that much Australian environmental legislation has undergone recent change and further changes are imminent. NSW is expecting new environmental legislation in 1998. The proposed legislation is intended to repeal, consolidate and replace much of the pollution legislation. Whilst some common principles apply, different and new environmental obligations will increase by the imposed legislation.

Government agencies generally consider prosecution as the last resort when other avenues of cooperation have not worked and environmental harm continues. However, authorities throughout Australia are becoming more active in prosecuting for breaches of environmental legislation.

It is important for golf clubs to realise that responsibility for compliance with environmental legislation rests with all levels of golf course operation, from superintendents to club directors. In most circumstances club directors and secretary managers are as liable as the superintendent. Rigorous education and policy implementation by the clubs, at the highest level and application of those policies by all operations staff, is the most appropriate way of avoiding or successfully defending environmental prosecutions. This proactive approach is correctly known as "due diligence" or a "due diligence defence". Golf clubs cannot claim ignorance or lack of knowledge as a defence to avoid prosecution.

In NSW, the Environmental Offences and Penalties Act

1989 provides 3 tiers in which prosecutions can be brought for breaches of environmental legislation. Penalties of up to \$1,000,000 in the case of a corporation or in any other case \$250,000 or 7 years imprisonment, or both, can be incurred for convictions for Tier 1 offences (Section 8: Environmental Offences and Penalties Act 1989).

How Clubs Can Show 'Due Diligence'

- Establish and operate pollution prevention systems
- Those with responsibility must receive reports on the systems and actively seek to improve existing pollution prevention systems
- Those with responsibility must know the environmental standards
- Those with responsibility must know the environmental laws
- Those with responsibility must have mechanisms in place to address system failures

COMMONWEALTH

Environmental matters concerning the Commonwealth Government and its agencies are controlled principally by the Environment Protection (Impact of Proposals) Act 1974. The Commonwealth Government has separate legislation for agricultural chemicals, wildlife and heritage issues.

STATES

New South Wales

Environment Protection Authority administers a range of acts which include the Clean Water Act 1970, Clean Air Act 1961, Noise Control Act 1975, Pollution Control Act 1970 and Environmental Offences and Penalties Act 1989. Under the proposed Environmental Operations Bill 1996 these acts will be repealed and replaced, possibly sometime in 1998.

Victoria

Environmental protection in Victoria is guided by the Environment Protection Act 1970. The act is administered and enforced by the Environment Protection Authority.

Tasmania

Environmental Management and Pollution Control Act 1994. This Act provides for the management and improvement of the environment and control of pollution in Tasmania. This Act repealed the Environment Protection Act 1973.

South Australia

In South Australia the Environment Protection Act 1993 is administered by the Office of the Environment Protection Authority within the Department of Environment and Natural Resources. The Environment Protection Authority is a statutory

authority created by the Act. The Office of the EPA provides the resources by which to pursue the goals of the EPA.

Queensland

Environmental Protection Act 1994 is enforced by the Queensland Department of the Environment. This Act enables the setting of pollutant and geographic Environment Protection Policies. The Act also provides a regime for licensing and discharge of pollutants and creates offences and penalty provisions. This Act repealed the Clean Air Act 1963, Clean Water Act 1971 and Noise Abatement Act 1981.

Western Australia

Environmental protection in Western Australia is guided by the Environmental Protection Act 1986. The Act is administered by the Environmental Protection Authority and the Department of Environmental Protection. The EPA is an independent statutory authority and provides independent environmental advice to the Government. The Department of Environmental Protection is the government department which manages the statutory processes of the Act to make certain that environmental legal requirements are met. This act also covers issues of pollution.

TERRITORIES

Australian Capital Territory

The principal environmental legislation in the ACT is the Land (Planning and Environment) Act 1991. The ACT has separate air and noise pollution acts.

Northern Territory

The Environmental Assessment Act 1982 is the Northern Territory's principal environmental legislation.

Table 7. Relevant Environmental Legislation

State / Territory	Principal Environment Act	Pollution
COMMONWEALTH	Environment Protection (Impact of Proposals) Act 1974	Environment Protection (Impact of Proposals) Act 1974
NEW SOUTH WALES	Environmental Offences and Penalties Act 1989	Clean Water Act 1970, Clean Air Act 1961, Noise Control Act 1975, Pollution Control Act 1970, Catchment Management Act 1989
QUEENSLAND	Environmental Protection Act 1994	Clean Air Act 1963, Clean Waters Act 1971
SOUTH AUSTRALIA	Environmental Protection Act 1993	Environmental Protection Act 1993
TASMANIA	Environmental Management and Pollution Control Act 1994	Environmental Management and Pollution Control Act 1994
VICTORIA	Environment Protection Act 1970	Environment Protection Act 1970
WESTERN AUSTRALIA	Environment Protection Act 1986	Environment Protection Act 1986
ACT	Land Planning and Environment Act 1991	Air Pollution Act 1984, Noise Control Act 1988
NORTHERN TERRITORY	Environmental Assessment Act 1982	Environmental Assessment Act 1982

State / Territory	Toxic and Hazardous Substances	Conservation
COMMONWEALTH	Agricultural and Veterinary Chemicals Code Act 1994 Agricultural and Veterinary Chemicals (Administration) Act 1992, National Parks and Wildlife Conservation Act 1975	Endangered Species Protection Act 1992
NEW SOUTH WALES	Dangerous Goods Act 1975, Environmentally Hazardous Chemicals Act 1985, Fertiliser Act 1985, Pesticides and Allied Chemicals Act 1978	Threatened Species Conservation Act 1995, National Parks and Wildlife Act 1974, Soil Conservation Act 1938
QUEENSLAND	Agricultural Chemicals Distribution Control Act 1966 Chemical Usage (Agricultural and Veterinary) Control Act 1988	Nature Conservation Act 1992, Soil Conservation Act 1986
SOUTH AUSTRALIA	Agricultural Chemicals Act 1955, Dangerous Substances Act 1979, Occupational Health Safety and Welfare Act 1986	National Parks and Wildlife Act 1972, Native Vegetation Act 1991 Soil Conservation and Land Care Act 1989
TASMANIA	Dangerous Goods Act 1976, Pesticides Act 1968 Fertiliser Act 1993, Poisons Act 1971	National Parks and Wildlife Act 1970
VICTORIA	Agricultural and Veterinary Chemicals Act 1992, Dangerous Goods Act 1985	Wildlife Act 1975
WESTERN AUSTRALIA	Fertiliser Act 1977, Occupational Health, Safety and Welfare Act 1984	Conservation and Land Management Act 1984, Soil and Land Conservation Act 1945, Wildlife Conservation Act 1950
ACT	Fertilisers Act 1904, Pesticides Act 1989	Nature Conservation Act 1980, Land Planning and Environment Act 1991
NORTHERN TERRITORY	Dangerous Goods Act 1981 Poisons and Dangerous Goods Act 1983	Soil Conservation and Land Utilisation Act 1970 Territory Parks and Wildlife Conservation Act 1977

State / Territory	Heritage
COMMONWEALTH	Aboriginal and Torres Strait Islanders Heritage Protection Act 1984, Australian Heritage Commission Act 1975
NEW SOUTH WALES	Aboriginal Land Rights Act 1983, Heritage Act 1977, Historic Houses Act 1980, National Parks and Wildlife Act 1974
QUEENSLAND	Cultural Record (Landscapes Queensland and Queensland Estates) Act 1987, Heritage Protection Act 1990
SOUTH AUSTRALIA	Heritage Act 1993, Aboriginal Heritage Act 1988
TASMANIA	Aboriginal Relics Act 1975, National Parks and Wildlife Act 1970
VICTORIA	Archaeological and Aboriginal Relics Preservation Act 1972, Historic Buildings Act 1981
WESTERN AUSTRALIA	Heritage of Western Australia Act 1990, Aboriginal Heritage Act 1972
ACT	Heritage Objects Act 1991
NORTHERN TERRITORY	Heritage Conservation Act 1991, Aboriginal Land Act 1978