
9 Priorities in ESD implementation

Successive governments have endorsed the National Strategy for Ecologically Sustainable Development (NSES D) since its inception in 1992. Yet progress in effectively incorporating the guiding principles of the NSES D into departmental and agency decision making has been mixed. One reason for this could be the variable degree of commitment to ESD implementation by departments and agencies. Another could be the absence of an ongoing organisation or group to monitor and encourage implementation and to periodically report on progress. Other explanations include a lack of clarity of what ESD actually means for government policy in some instances, or an absence of clearly defined specific outcomes or outputs in others. Some of the details of the NSES D are no longer relevant or urgent while some of the immediate objectives set in 1992 have already been resolved. However, it is important to recognise that the principles and the core objectives of NSES D remain just as valid and necessary as ever. Indeed, because of opportunities missed and actions not taken since 1992, the task ahead has become more urgent and more difficult than it was then.

The terms of reference of this inquiry requires the Commission to develop priorities for further implementation of ESD. The focus of this chapter is on two priority areas for ESD implementation. The chapter raises relevant issues in developing future directions for ESD and provides some examples. It also discusses mechanisms that could be used to facilitate implementation in these areas.

9.1 Issues in developing future directions

The NSES D has provided the basis for Australian governments, farmers, industry, business and community groups to work together on sustainable development issues. Furthermore, it has provided impetus for integrating economic, environmental and social considerations in government decision making in some areas. While there is general agreement on the key principles and core objectives contained in the NSES D, discussion and analysis contained in this report show that there are, and probably always will be, differences of opinions as to what needs to be done to achieve those core objectives.

Learning from past experience

The continuing challenge is to translate the guiding principles and core objectives of the NSESD into specific actions and outcomes. Views on what specific policy and program actions should be adopted are likely to be influenced by what has been successful at promoting ESD in the recent past. Current approaches to sustainable development include:

- greater focus on sustainable management of ecosystems and biodiversity as a major goal, with implications for land, water and marine management;
- increased efforts to develop a partnership approach for managing natural resources for multiple uses (for example, in areas such as forestry and fisheries);
- further attempts to clarify roles and responsibilities, with regard to the environment, of different spheres of government (partly through the proposed Environment Protection and Biodiversity Conservation Bill);
- increased use of adaptive management approaches to natural resource management;
- moves towards outcome based management and accrual budgeting in the government sector;
- strengthened inter linkages between resource management issues and national competition policy reform issues (for example, in the Council of Australian Governments water reform process); and
- increased emphasis on accountability, efficiency and the cost effectiveness of policy.

In furthering the implementation of ESD, an important element is the involvement of stakeholders to ensure that their preferences are considered. This will have to be achieved through the wider political process (in some cases extending to all levels of government). An informed debate on the key relevant issues, with input from, and consultation with, major stakeholders and the public in general, is required for robust decisions. Previous chapters have focussed on policy making and program development issues, particularly from the perspective of the Commonwealth, which require attention to further implement the core objectives of the NSESD.

The process of promoting ESD is dynamic because environmental and sustainable development conditions change over time and new issues emerge. In some cases, future directions will require the development of policies in areas where previously there were none. In others, it may involve the modification of an existing policy or policy development framework. Greenhouse policy is an example of the latter. A new National Greenhouse Strategy was released in 1998 which replaced the 1992 National Greenhouse Response Strategy (see appendix D).

Future directions — some examples

The major process issues emerging from chapters 6, 7 and 8 are the need for better integration of economic, environmental and social considerations into policy; greater coordination among key stakeholders; improvement in the information base; more systematic development and use of performance indicators; and monitoring and evaluation of policy and program actions. These issues have considerable relevance not only to government decision making processes, but also to the activities and functions of other groups such as business, industry, farmers, conservation organisations and the general community. There is merit in clearly identifying the responsibilities and actions of all spheres of government as well as all sectors of the Australian community in addressing these ESD issues.

In developing future directions for ESD, the Commonwealth Government needs to take into account what has been achieved since 1992, including the lessons learnt during the interim period. This requires, for example, an understanding of progress since 1992 in areas identified by the State of Environment Advisory Council (SEAC 1996). It also requires an understanding of the extent of support for ESD by industry, business and community groups and their efforts in ESD implementation.

The Smart Futures Group (sub. DR62, p. 2) characterised the implementation of ESD over time in terms of several phases:

... documentation of phases of ESD ... could provide some benchmark about where ESD is up to now, a sense of continuous improvement over time based on performance areas.

Currently a number of Commonwealth departments and agencies are in the process of developing and implementing strategies which, when adopted, could further implement ESD. Two such strategies are in the areas of natural resource management and transport. The Department of Agriculture, Fisheries and Forestry, in conjunction with Environment Australia and other stakeholders, is considering a new, farmer-focused National Natural Resource Management Policy to come into place once the Decade of Landcare and Natural Heritage Trust programs cease operating (box 9.1).

Box 9.1 **National Natural Resource Management Policy**

The stated objective of this policy is to maintain the natural resource base and ecosystems through the development of a long term strategy for natural resource management and sustainable agriculture. Key elements of the policy are the integration of economic and social factors as well as environmental values.

The policy builds on previous programs — in particular Landcare — while recognising that significant sustainability issues (such as land degradation) remain and must be addressed.

The processes employed in the development of the policy, and those envisaged regarding implementation, include:

- clarification of the roles and responsibilities of different levels of government and of stakeholders;
- integration of issues relating to land, water and vegetation;
- integration of the policy with other national strategies, policies and programs — such as programs relating to drought, water reform, forests, rangelands, coastal zone management, agriculture, biodiversity and genetically modified organisms;
- involvement of Commonwealth, State, Territory, Local Governments and stakeholders, such as representatives from rural industry;
- greater reliance on incentives utilising tools such as benchmarking to achieve sustainable outcomes; and
- a focus on data management and access issues.

Source: Pearce (1999).

The Department of Transport and Regional Services is developing a national policy on Australian Transport and Sustainable Development (ATSD). The ATSD will aim:

... to provide a framework and direction to promote integrated transport solutions for goods, services and people. (resp. 23, p. 2)

Box 9.2 outlines the scope of the Australian Transport and Sustainable Development policy.

Other specific areas where there is recognition of the need for action include water management and dryland salinity — both of which represent significant issues with respect to ESD. For example, according to a recent study (Australian Academy of Technological Sciences and Engineering 1999, p. vii):

Box 9.2 **Australian Transport and Sustainable Development (ATSD)**

In countries such as Canada, the United Kingdom and the United States of America, national policies are being developed that link transport and sustainable development. In Australia, the Commonwealth Department of Transport and Regional Services is in the process of preparing a draft policy for Australian Transport and Sustainable Development.

The main objectives of the draft ATSD policy are to:

- take a strategic approach to the consideration of transport in the context of sustainable development;
- promote transport solutions that enhance economic progress, environmental conservation, equity and safety; and
- improve the efficiency and effectiveness of all transport modes.

In doing so, the policy also seeks to:

- incorporate the considerations of all levels of government, industry and the community at large;
- take a longer term view of transport issues;
- draw together economic, environmental, access and equity and safety considerations; and
- consider current as well as future needs.

Source: DoTRS (resp. 23).

If recent trends continue, water requirements of the irrigation sector could increase by about 66% by 2020–21. On current growth rates, total national water use could be as much as 33,000 GL by 2020–21 in the absence of resource constraints. However, when water availability is considered in relation to the regional distribution of the intensive irrigation industries, it is clear this rate of growth in national water use is unsustainable.

Similarly, estimates of the costs associated with dryland salinity vary, but lost production alone has been estimated at around \$130 million per year and rising. Currently, around 2.5 million hectares of land are affected, but this may increase to 15 million (PMSEIC 1998).

However, there are other areas where progress in furthering ESD implementation has been limited. TechSearch (sub. DR65, p. 1) argued that the industry portfolio could pay greater attention to ESD principles:

The industry portfolio should play an important role in ESD. The activities of this Department impact on the environment industry — particularly in the waste and energy technology sectors.

It will not always be possible to predict where problems relating to ESD that require action are likely to occur, nor where changes in circumstances will require

modifications to existing policy settings. However, it is possible to describe the processes that should be followed in implementing new policies, or revising existing policies. As discussed elsewhere, this report has sought to set out broad principles regarding ‘good practice’ policy development and has also identified examples of programs exhibiting some elements of good practice in their processes. The development of a new strategic direction for further implementation of ESD requires decision makers to be cognisant of these principles. Specifically Commonwealth agencies should:

- recognise that not only governments (including State and Territory), but also business, industry, farmer groups, other stakeholders and the broader community need to be involved in the development and implementation of ESD related policies;
- adequately resource partnerships which are established to promote ESD outcomes;
- recognise the current policy context and the recent developments associated either directly or indirectly with government and other stakeholder approaches to sustainable development (see the discussion above);
- clearly define achievable ESD objectives and formulate specific proposals for action that will apply to governments, industry and the broader community in order to meet those objectives;
- establish institutional mechanisms to ensure that long term and strategic sustainable development and ESD performance are discussed and publicised, providing policy feedback; and
- provide leadership in the application of sound ESD principles.

Several participants have also identified some of these features as necessary for the development of ESD consistent policy. For example, the Deputy Premier of South Australia and Minister for Primary Industries, Natural Resources and Regional Development (sub. 41, pp. 2–3) said:

There are opportunities and challenges for the Commonwealth to continue to show leadership by example in its policy setting and operational implementation ... Building effective partnerships is central to the implementation of ESD and means there will need to be a continuing emphasis on building partnerships.

FINDING 9.1

The development of policies and programs — such as the National Natural Resources Management Policy Statement and the Australian Transport and Sustainable Development policy — which seek to further ESD considerations by

developing specific policies should be encouraged. Other important and priority areas for the future include dryland salinity and water management more generally.

In the development of new priority areas for ESD implementation, good practice decision making processes should be followed by departments and agencies. These include considerations such as clearly defining ESD objectives, involving stakeholders; and developing appropriate institutional frameworks and mechanisms.

9.2 Facilitating the future direction of ESD

The success of the proposed ways and means for improving implementation of ESD depends on decision makers' commitment to the guiding principles and core objectives of the NSESD. A number of participants in this inquiry have argued that the ESD debate is largely rhetoric and that the Commonwealth Government needs to demonstrate its commitment to ESD through action (see chapter 4). A common theme among submissions was the need to better institutionalise ESD into the mainstream of policy development.

Until 1997, the Intergovernmental Committee for Ecologically Sustainable Development provided the institutional mechanism for reviewing progress in implementing the NSESD and for reporting to the Council of Australian Governments. According to Environment Australia (sub. 21, p. 15):

Such [institutional] mechanisms may contribute to ESD implementation in one or more of the following ways:

- engage stakeholders and gain their support;
- improve ESD planning and coordination;
- generate information and policy options for decision makers;
- provide feedback on ESD performance;
- educate the community about ESD.

Such mechanisms need a clear mandate and authority in order to be effective. Authority can be achieved by the direct involvement of Ministers or clear links with the policy decision making process. Mechanisms also need to be perceived to engage key stakeholders while retaining independence ie not being dominated by any one group. Care would have to be taken that any new mechanism did not add an extra layer (and time) to decision making, or overlap with existing functions.

The NSESD itself recognises the crucial importance of continuing commitment to ESD and proposes a series of measures such as ministerial councils, roundtables and consultative committees for promoting this commitment (CoA 1992b, pp. 106–8).

However, many of these mechanisms have failed to meet expectations, some have been disbanded, a few were not tried. For example, as stated in chapter 3, the Intergovernmental Committee for Ecologically Sustainable Development was disbanded in 1997, after making just one report (in 1996) on implementation of ESD over the period 1993–1995.

Possible mechanisms for further implementation

Chapters 6, 7 and 8 described a number of ways to advance the implementation of ESD by departments and agencies. In particular they dealt with improving the application of good practice policy making, and monitoring and reviewing practices. They also described how incentive mechanisms (such as output based management) which require departments and agencies to clearly specify their objectives and proposed outputs, thus making them more accountable for their decisions and actions, could be used.

Suggestions made by participants for improving the commitment to ESD involve obliging departments and agencies to more fully consider the ESD implications of their policy proposals. Environment Australia (sub. 21) proposed three alternative mechanisms that could be used either separately or collectively to provide policy feedback and enhance support for further implementation of ESD. These included:

- consultative fora, at which key stakeholders offer views to the government;
- expert groups which provide advice to governments; and
- ESD performance assessment mechanisms.

Other specific suggestions made by Environment Australia and the Australian Conservation Foundation were:

- introducing a voluntary code of conduct for policy formulation;
- establishing a principle that public servants have a duty of care to consider ESD; and
- establishing an independent commission for sustainable development.

The choice between these suggested mechanisms is not mutually exclusive. It is possible to combine elements from several of these suggestions. The following discussion explores some salient features of each.

Consultative mechanisms

Chapters 5, 6, and 7 discussed the importance of consultation as a means of identifying and incorporating the views of stakeholders during the formulation of policy proposals. Relevant stakeholders can include the public, industry and farmer groups, government and non-government organisations. Consultation could also be used to set strategic ESD priorities of departments and agencies, such as determining long term objectives and associated sustainable development strategies.

Environment Australia (sub. 21, p. 15) identified some of the benefits of consultative mechanisms:

Consultative mechanisms can clarify stakeholder views, and help to develop better understanding among stakeholders of differing views. They can also provide information to assist planning and coordination.

Several challenges need to be addressed in establishing membership of consultative committees. For example, decisions may need to be made about the likely tradeoff between breadth and in-depth coverage of issues that can be considered by the committee. According to Environment Australia (sub. 21, p. 15):

Large membership and top heavy government representation limit the scope for regular meetings and can constrain agreement on new policy options or ESD performance assessment. Strong leadership would be needed to achieve results.

In fisheries management, the management advisory committee and consultative committee structure comprises members of industry and the scientific community, and may include environmental interests and other groups.

Similarly, consultative mechanisms are also proposed for the National Natural Resource Management Policy being developed by the Department of Agriculture, Fisheries and Forestry. The department is proposing a series of bilateral consultations with key stakeholders and multilateral consultation with other bodies. Similarly, the proposed national policy on Australian Transport and Sustainable Development being developed by the Department of Transport and Regional Services aims to involve extensive consultation with key stakeholders.

Expert advisory groups

Expert advisory groups (or reference groups) are another mechanism for obtaining advice on the development of strategic objectives. Such groups typically comprise a range of government, scientific and private sector representatives.

The main purpose of these groups is to provide independent advice, often technical, to policy makers. According to Environment Australia (sub. 21, p. 16):

Box 9.3 Canadian round tables

These forums are at the centre of Canada's consultation process and allow all stakeholders involved in specific issues to meet as equals to propose policy initiatives or directions to government. Following the Brundtland Commission's report in 1987, Canada began to convene round tables. By 1990, round tables had been established for the federal government, all provinces and territories, and for many communities. Unfortunately, broad based consultation in itself is not sufficient for effective government policy. Round tables at all levels have often been criticised for holding very lengthy discussions resulting in little concrete action.

Creation of the round tables was not mandated by the government, nor are there any fixed guidelines for their structure or authority. However, all are similar in their basic form and tasks. In 1993, the round tables endorsed a set of ten guiding principles for using the consensus process in sustainable development planning, including:

- Inclusive, not exclusive, participation — 'All parties with a significant interest in the issue should be involved in the consensus process'.
- Equal opportunity — 'All parties must have equal access to relevant information and the opportunity to participate effectively throughout the process'.
- Accountability — 'The parties are accountable both to their constituencies and to the process that they have agreed to establish'. Participants are expected to regularly consult with the groups they represent. However, there has been some criticism that the round tables are becoming an elite group.

The round tables operate through 13 separate program areas. Examples include:

- The Economic Instruments Collaborative, composed of environmental organisations and businesses, which focuses on developing economic instruments to deal with acid deposition, climate change, and ground level ozone.
- The Forest Round Table which has convened environmental groups, labor unions, industry representatives, and aboriginal groups to devise a set of 26 'common principles' and action plans for forest policy.
- Consensus Decision-Making which has developed ten common principles for decision-making through consultations among national, provincial, and territorial round tables.
- Sustainable Reporting which presented a list of proposed sustainability indicators to the Prime Minister in 1993.
- Sustainability and Prosperity which is concerned with the greening of industry and reforming harmful economic and trade policies.
- Task Force on Education which has developed a program called 'Learning for a Sustainable Future' and has collaborated with the sustainability initiative to develop a social marketing campaign.

Source: Resource Renewal Institute (1998).

Expert advisory groups can be structured to develop information and policy options ... Advisory mechanisms offer opportunities to push ESD in particular sectors or on specific cross sectoral issues but effective planning and coordination is needed to ensure policy integration.

However, as noted by Environment Australia (sub. 21, p. 16), expert advisory groups may be criticised 'as being insufficiently independent or consultative'.

A prominent overseas example of an expert advisory mechanism is the round table process used in Canada (box 9.3). At the round tables, Canadian government officials and representatives of sectoral groups meet to discuss issues regarding the environment and economy. The duties of these round tables include conducting studies, reporting on the state of the environment, and developing 'blueprints for sustainable economic development' to be integrated at provincial, national and international levels.

Performance assessment mechanisms

Another mechanism for improving the institutional framework is regular external performance monitoring and review of ESD programs. Lessons learnt from performance monitoring and review could provide valuable inputs into developing future directions for ESD implementation. A number of participants have suggested that an independent commission be used to monitor and review departments' and agencies' performance against their *long term* strategies. According to Environment Australia, an independent commissioner for sustainable development could (sub. 21, p. 16):

... examine the longer term ESD outcomes of Commonwealth programs and processes, including accredited processes.

Some participants have argued that such a commission could take on additional functions. The Australian Conservation Foundation (sub. 27, p. 19) commenting on the proposed Environment Protection and Biodiversity Conservation Bill, said that a commission for the environment could be engaged in:

(ii) reviewing bilateral agreements of the Commonwealth to assess their consistency with the accreditation criteria which are to be spelt out in the regulations, (iii) monitoring and reviewing State and Commonwealth compliance with bilateral agreements.

Voluntary code of conduct

Participants have suggested that departments and agencies should be subject to a voluntary code of conduct for implementing ESD.

Voluntary codes can be effective in changing the behaviour of organisations. Codes are often adopted by private companies as a precautionary measure to clarify their procedures and obligations, and to reduce the risk of environmental damage and thereby help avoid subsequent liability claims under common law.

Box 9.4 Australian Minerals Industry Code of Environmental Management

The Minerals Council of Australia launched the 'Australian Minerals Industry Code of Environmental Management' in December 1996. The object of the code is to improve the environmental management performance of minerals companies. The code is voluntary and does not set standards. It does require the commitment of signatories to continual improvement and public reporting of their implementation of the code, and of their environmental performance.

Key objectives of the code cover:

- sustainable development;
- environmentally responsible culture;
- community partnership;
- risk management;
- integrated environmental management;
- performance targets;
- continual improvement;
- rehabilitation and decommissioning; and
- reporting.

To achieve these objectives, the code provides general guidelines that signatory companies can use. Companies may also implement environmental management systems to meet parts of the code.

The code requires two forms of auditing. Code conformance auditing examines implementation of the code. It must be undertaken at least every three years by a qualified auditor from within the signatory company, or by an accredited external auditor appointed by the company. A less formal audit of the environmental management system is also employed on a more regular basis.

As at 1 November 1998, 48 mineral companies had registered with the code. This included two of Australia's largest — BHP Co. Ltd and Rio Tinto Australia.

Source: Minerals Council of Australia (1996).

Voluntary codes of conduct are also being increasingly used in a number of areas by private companies as a means of demonstrating good corporate citizenship. The recent Australian Minerals Industry Code of Environmental Management is an example of such a code (Minerals Council of Australia 1996) (box 9.5).

A voluntary code for ESD could have a range of features, including:

- a statement of the objectives of ESD and of the code;
- the guidelines that departments and agencies should follow in order to comply with the code; and
- the key mechanism by which participating departments and agencies would be reviewed and audited for compliance with the code, and an agreement as to who would conduct such audits and reviews.

A voluntary code of ESD could be maintained by a central coordinating agency with responsibility for specifying objectives, guidelines and enforcement mechanisms. The objectives of the code could be similar to the goals and core objectives of the NSESD. While adherence to the code would be voluntary, once a signatory, departments and agencies could be subject to external review and auditing.

A voluntary code of ESD has some potential advantages. First, it is a useful way of assisting departments and agencies identify how, and where, they can improve their implementation of ESD. Implementation of ESD can be improved by encouraging departments and agencies to adopt good practice policy making and management practices, such as those identified in previous chapters. Second, in contrast to mandatory standards, a voluntary code is likely to be less costly to implement as it does not have a binding enforcement mechanism. Third, a voluntary code can be adopted by departments and agencies in a way that meets their particular circumstances and needs, and can more easily be integrated into existing practices. Fourth, voluntary codes can be adjusted fairly quickly and, therefore, remain responsive over time to the overarching goal of improving the implementation of ESD.

However, a voluntary code may not necessarily guarantee compliance with good practice policy making and management guidelines. Agencies may not comply with a code if they do not perceive any current or future benefit from doing so. Indeed, adoption of a code could become selective with only some departments and agencies — most likely those who are already committed to best practice — willing to commit to it. In fact, the failure of some Commonwealth departments and agencies to incorporate the guiding principles of the NSESD reflects its voluntary nature. The voluntary nature of the code may mean that it lacks ‘teeth’, especially in the areas of compliance and accountability, and that those most in need of adopting the guidelines could avoid doing so.

Duty of care

Other participants have suggested that Commonwealth departments and agencies should be subject to a duty of care that would oblige them to consider the consequences of their decision making. The National Farmers' Federation commented (sub. 22, p. 7).

NFF [National Farmers' Federation] sees merit in ... [the duty of care] approach as it could facilitate greater consistency and clarification of department roles and responsibilities in terms of what they must do in order to meet their duty of care in ESD.

Box 9.6 Duty of care for the environment

The concept of duty of care was explored by the Industry Commission (1995) in its inquiry into occupational health and safety. The Industry Commission (1998) subsequently proposed that a statutory duty of care for the environment be extended to cover all private land managers and users of natural resources.

In elaborating the duty of care for the environment, the Industry Commission (1998, pp. 134–35, 140) said that:

The proposed duty would require everyone who influences the management of the risks to the environment to take all 'reasonable and practical' steps to prevent harm to the environment that could have been reasonably foreseeable.

The duty would not be confined to landholders. It would also cover those who manage any other natural resources — such as water and vegetation — and others who indirectly influence the risks of environmental harm that resource managers confront.

The Commission's proposal represents an extension and codification of the common law duty of care. The common law duty of care is concerned with minimising any harm that one person may cause another. The duty requires each person to take every practical and reasonable step to avoid causing foreseeable harm to another ...

The extension of the common law duty of care for the environment would make explicit that the duty not only applies to harm that might be caused to those who are living at the present, but also to those who are yet to be born. Doing so emphasises that land holders are 'stewards of the land' and that land is held in trust for subsequent generations ...

The Commission proposes that the duty of care require the duty holder to take all 'reasonable and practical' steps to avoid harming the environment. The main effect of 'reasonable and practical' is that the requirements for a particular duty holder will vary with the circumstances of each case.

Source: IC (1998).

The Australian Conservation Foundation (sub. 27, p. 21) considered that the proposed Environment Protection and Biodiversity Conservation Bill should contain a duty of care provision:

Amend the Bill to provide for a general duty of care for the environment, with subsidiary obligations to take all reasonable and practical steps to prevent harm to the

environment when formulating policy, making decisions or taking action; to identify, assess and manage the risks of harming the environment; and to inform and consult with those at risk of foreseeable harm from an environmental hazard.

There are several examples of where duty of care provisions have been used or proposed. The Industry Commission (1995) recommended that a duty of care principle apply to the operation of occupational health and safety regulation. The Commission (1998) also recommended that a statutory duty of care be applied to land management obligations (box 9.7). Duty of care principles are also implicit in product liability legislation (IC 1990).

Environment protection legislation in the ACT and Queensland also imposes a duty of care for the environment. Under Part III of the ACT's *Environment Protection Act 1997*:

22 (1) A person shall take such steps as are practicable and reasonable to prevent or minimise environmental harm or environmental nuisance caused, or likely to be caused, by an activity conducted by that person.

Similarly, section 199 of Queensland's *Land Act 1994* stipulates that lease holders of Crown land have a duty of care to that land.

And, in the Northern Territory, the *Waste Management and Pollution Control Bill 1998* contains significant duties towards environment protection.

A number of issues need to be resolved in considering the introduction of a duty of care to encourage Commonwealth departments and agencies to fully take into account the ESD implications of their policies. These include whether the duty of care should be expressed in terms of ESD outcomes or in terms of process. Environment Australia (sub. 21, p. 11) raised this issue:

... would the duty be defined in terms of outcomes (indicators) or the quality of advice? The former approach is complicated because departments have only limited influence over the outcomes of their policies and activities, and because of gaps in information about the state of the environment and links between economic activity and the environment ...

Under a duty of care for ESD, Commonwealth departments and agencies would be expected to take all reasonable and practicable steps to ensure that in preparing their policy proposals, all foreseeable and potentially significant adverse impacts on economic or social development or the environment, now or in the future, were minimised.

The terms 'reasonable', 'practicable', 'foreseeable' and 'potentially significant' are important features of the duty. They allow the strength of the obligation to vary with

the individual circumstances of departments and agencies and their proposed policies and programs.

The coverage of the duty of care would also need to be defined, both in terms of departments and agencies and their range of activities. The duty of care could cover all forms of decision making, including the ongoing management of policies, the collection, researching and reporting of ESD related data and information, and evaluating and reporting of the impacts of policies.

The effectiveness of a duty of care for ESD would depend on the enforcement and compliance mechanism used. If the duty of care for ESD were based on departmental and agency outputs then, for such a regime to be effective:

- enforcement would need to be made by designating an independent government body (such as an independent commission) to ensure that ESD considerations are adequately taken into account in policy formulations; and
- departments and agencies could be deemed to be complying with the duty of care if they adopt best practice policy making and management regimes, such as those described in chapters 6 and 7.

There are clear complementarities between the possible roles of the independent commission (described below) and the duty of care for ESD.

The duty of care approach possesses two advantages. First, a duty of care may be easily communicable and transparent to all Commonwealth departments and agencies. According to Environment Australia (sub. 21, p. 11):

... further consideration of a duty of care for departments and agencies could be useful for a number of reasons. It would:

- enable the Commonwealth to show leadership by making departments and agencies more accountable for ESD implementation;
- encourage a general discussion and debate about the environmental responsibilities of departments and agencies;
- lead to some clarification of the issues involved in accounting for ESD and possible approaches;
- raise the profile of ESD in departments where it remains low.

Second, a number of Commonwealth agencies already have ESD objectives embodied in their enabling legislation and have adopted administrative procedures that are consistent with those objectives. Legislating a requirement for pursuing ESD objectives in decision making is not necessarily new for the Commonwealth. According to Dovers (1998, p. 6) there has been an increased use of statutory rights

to comment on, or object to, policies or development approvals that have been codified in planning, development and heritage since the 1970s.

That said, imposing a legally binding and enforceable duty of care on Commonwealth departments and agencies would, in a practical sense, be very difficult to achieve. The duty raises a number of complex practical problems such as: Who would be held responsible? How could action be taken against departments and agencies? What system of penalties would be used? How would influences on decision making processes outside the control of a particular agency be taken into account?

Independent commission

A number of participants suggested that an independent commission for the environment or sustainable development could be established to examine the progress of departments and agencies in meeting ESD objectives in their policy making. The Australian Conservation Foundation (sub. 27, p. 19), in commenting on the proposed Environment Protection and Biodiversity Conservation Bill, argued that:

There is a need for an independent authority to publicly review and report on the environmental role and operations of the Commonwealth Government. We propose that the Bill provide for a Commissioner for the Environment.

The Queensland Government (sub. 3, p. 1) noted in its initial submission that it was considering establishment of a commission for sustainable development:

... the Queensland government is currently developing proposals to establish ... a Commission for Sustainable Development (CSD) ... [The] CSD will function as an independent statutory authority with the capacity to investigate and report on significant issues relating to the protection and use of the environment. It is intended that ... the CSD be operational in 1999.

There are a number of domestic and international examples of independent commissions for sustainable development or the environment. These are described in box 9.8.

Box 9.9 **Examples of the independent Commission model**

Canadian Commissioner for Environment and Sustainable Development

Amendments to the Canadian Auditor General Act in 1995 created the commission, within the Office of the Auditor General. The amendments require the Commissioner to report directly to the Auditor General, and to assist the Auditor General in carrying out his duties relating to the environment and sustainable development. The Commissioner is required to:

- monitor, and report on, the extent to which departments are implementing their sustainable development strategies and meeting their sustainable development goals;
- report annually to the House of Commons on anything related to the environmental aspects of sustainable development that the Commissioner considers should be brought to its attention; and
- report annually to the House of Commons on the number, subject and status of petitions received by ministers.

New Zealand Parliamentary Commissioner for the Environment

The New Zealand Parliamentary Commissioner for the Environment was established in January 1987 under the *Environment Act 1986*. It is an independent oversight body which reviews the environmental impact of government activities at all levels. It investigates the effectiveness of public systems for resource management and environmental planning, launches inquiries into proposed activities that may cause significant environmental harm and carries out inquiries when requested by members of the House of Representatives. Criteria by which the commissioner judges potentially damaging activities are specified in the Environment Act.

ACT Commissioner for the Environment

The ACT Commissioner for the Environment was established under the *Commissioner for the Environment Act 1993*. The Commissioner is able to:

- investigate complaints regarding the management of the environment by the ACT or an ACT Government authority;
- conduct investigations at the request of the ACT Minister for Urban Services; and
- initiate investigations into a government department or agency where the actions of the department or agency would have a substantial impact on the ACT.

All inquiries undertaken by the Commissioner are submitted to the Minister to be tabled before the Legislative Assembly. The Commissioner is also responsible for submitting to the Minister a state of the environment report every three years.

Sources: Commissioner for the Environment (1998); Environment Canada (1995); OECD (1996).

The role of a commission for sustainable development is likely to differ to that of a commission for the environment. The former would be required to give consideration to a wider range of issues, including economic and social factors, not

just the environment. However, it is important to note that in the ACT the terms of reference for the Commissioner for the Environment cover social and economic issues affecting, or affected by, environmental considerations.

There are a number of possible roles for an independent commission. A commission for sustainable development could be engaged in:

- advising the Government and the public on matters relating to long term sustainable development;
- reviewing, as well as assisting and facilitating, departments and agencies to develop long term sustainable development strategies; and
- auditing and reporting on the implementation of ESD.

There are a number of advantages in establishing a commission for sustainable development or a similar office. First, the commission's ability to review or audit departmental and agency progress could result in greater promotion of ESD outcomes than would be achieved under a voluntary code of conduct.

Second, a commission may be able to provide advice on government policy and identify priorities. This could be provided through its role of assisting departments and agencies in developing and coordinating their sustainable development strategies.

Third, the commission would be able to focus on issues which transcend beyond the time frame of a normal electoral cycle. In doing so, a commission could provide a long term strategic focus on ESD issues — a lack of which has been identified in the inquiry as an impediment to ESD implementation. According to Environment Australia (sub. 21, p. 16):

An independent Commissioner can operate outside the confines of the political cycle, and examine the longer term ESD outcomes of Commonwealth programs and processes, including accredited processes.

There is at least one disadvantage with this model. Many of the proposed functions of the commission associated with reviewing and auditing departments and agencies are already undertaken by existing bodies such as the Australian National Audit Office. As noted by Environment Australia (sub. 21, p. 16):

There seems little point in a Commissioner restricted to a narrow role of auditing ESD performance by departments. This could (continue to) be undertaken by the Auditor General.

Non-governmental approaches

Apart from these models, which would exist entirely within the sphere of government, there are other options for remedying some of the deficiencies in ESD implementation recognised by this inquiry. These other options can be initiated outside of government. One example is establishment of a national council of sustainable development.

National councils are used extensively overseas. At the United Nations Conference on Environment and Development (UNCED) in 1992, most participating countries agreed to establish broad based national councils for sustainable development (NCSD) — comprising government, non-government organisations and business representatives. The NCSD were envisaged to oversee the drafting of national strategies, help in the implementation of Agenda 21, and subsequently report each year to the UN Commission on Sustainable Development. Over 150 such NCSD now exist, and over 100 national strategies have been adopted.

Australia's NSESD was prepared by a consultative process which had the broad support and participation envisaged by the UNCED and others. However, the working parties associated with the NSESD were disbanded following its endorsement by governments in 1992. In the absence of an NCSD, there has been no ongoing mechanism to monitor implementation of the NSESD, to assess progress or to consider revisions to, or a new, NSESD.

One contributing factor to the variable (and lower than expected) implementation of the NSESD has been the absence of a steering committee or organisation (whether government or non-government) committed to follow through on the strategy. This presents another option for improving ESD implementation in the future.

A national council for sustainable development could be established on a voluntary basis. It might be elected, appointed, or self appointed. For example, in Canada, the initial council was self selected but with a wide inclusive process for electing replacement members.

To ensure that future generations' interests are not overlooked, an important element of implementing ESD is the need to transcend departmental, sectoral and jurisdictional boundaries. A NCSD could advise governments, elicit public support for, and awareness of, ESD and promulgate a voluntary code of conduct for governments and the private sector. Indeed it could undertake many of the functions envisaged for a governmental commission for ESD.

Other mechanisms

Alternative strategies and mechanisms for further promoting ESD might also be gleaned from looking at developments in other areas. For example, a number of options designed to encourage the takeup of cleaner production methods — involving industry and government — are envisaged as part of a National Cleaner Production Strategy being developed by the Australian and New Zealand Environment and Conservation Council. Among other things, the strategy envisages an important leadership role for industry associations (working in conjunction with government) promoting schemes that encourage continuous improvement — and government being involved in the development of guidelines for public environmental reports.

In some quarters, the business community has taken a lead role in promoting the concept of ‘eco-efficiency’. The World Business Council for Sustainable Development (a group of 125 international companies) has described eco-efficiency as being (WBCSD quoted in *Environmental Manager*, 1999):

... about making production processes more efficient and creating new and better products and services with less pollution along the entire value chain.

A key element of the eco-efficiency initiatives is partnerships between industry, government and the community, involving many sectors of the economy.

In Australia, initiatives relating to ESD have also been generated in other parts of the economy, not related directly to government. Examples include the Business Council of Australia’s Sustainable Development Group, and the Business Leaders Forum on Sustainable Development.

Role of the Prime Minister’s Science, Engineering and Innovation Council (PMSEIC)

A number of participants in this inquiry suggested other options for revising or setting a new strategic direction for ESD. Several participants argued that there was a need to implement mechanisms that better institutionalise ESD as a major policy issue. Dovers (1997) has presented a number of reasons why ESD has not been a priority issue for governments (box 9.7).

The Minerals Council of Australia (sub. 16, p. 4) suggested that successful implementation of ESD requires leadership from the highest level:

The Cabinet could establish a committee under the chairmanship of the minister responsible for this department to oversee inter-departmental co-operation on government-wide issues of ESD, including greenhouse gas emissions abatement

measures, matters of national environmental significance under Commonwealth environmental legislation and NEPMs. As an alternative, a specific Cabinet Committee comprising the relevant ministers could review submissions put forward by Portfolio Ministers prior to the Cabinet making final decisions.

The Tourism Council of Australia (sub. 32, p. 4) also supported a role for a body to coordinate the future direction of ESD through:

The establishment of a dedicated ESD Unit within Prime Minister and Cabinet to oversee implementation of ESD by all Commonwealth departments and agencies ...

The Commission believes that an existing body — the Prime Minister's Science, Engineering and Innovation Council (PMSEIC) — is in a good position within government to take a leadership role on ESD and to better institutionalise ESD as part of the policy development process. PMSEIC is chaired by the Prime Minister, with membership including other key cabinet ministers.

Box 9.10 Making ESD a part of the policy mainstream

Dovers (1997) has argued that an important indicator of how seriously ESD is taken into account can be gleaned from looking at its expression in law. Dovers argues that, at the Commonwealth level, ESD has tended to not be accorded significant status and that it is not expressed widely in legislation.

Dovers identifies several reasons why this has occurred. Some of these relate to the difficulties inherent in dealing with complex issues while others are more pragmatic. These reasons include:

- ill advised expectations regarding what some evaluative tools (such as contingent valuation) can offer;
- lack of active support;
- tensions between environment and development;
- bureaucratic jealousies; and
- cost cutting.

Dovers argues a number of reforms are required to better institutionalise ESD. These include the need for:

- improved information bases to support policy development and implementation;
- improved coordination between sectors, problems, and governments;
- greater focus on the long term; and
- better processes for community participation.

Source: Dovers (1997).

Environment Australia (sub. DR68, p. 3) submitted that PMSEIC has:

... provided a valuable forum for discussing long run sustainability objectives and issues. PMSEIC discussions on salinity, biodiversity, biotechnology and climate change have provided compelling illustrations of the links between economic, environmental and social outcomes.

Currently, PMSEIC's terms of reference is directed mainly toward consideration of issues related to science, technology and engineering. The terms of reference requires that PMSEIC 'advise on important issues in science, technology, engineering and relevant aspects of education and training' including as they relate to factors such as 'economic growth and the sustainable development of resources'. In recent times, PMSEIC has considered issues such as the impact of dryland salinity on rural industry and the landscape, and aspects of greenhouse science in Australia.

RECOMMENDATION 9.1

The Prime Minister's Science, Engineering and Innovation Council (PMSEIC) has recently demonstrated leadership in such areas as dryland salinity and greenhouse science. PMSEIC could consider further emphasis of the ESD dimensions of issues before the Council. For example, PMSEIC could:

- ***provide advice on strategic matters relating to long term sustainable development;***
- ***facilitate interaction between leading experts and relevant ministers on ESD issues; and***
- ***report (on a triennial basis) on matters relating to further implementation of ESD with a longer term strategic focus.***