

Law Council of Australia

# Policy on Sustainable Development

Policy Statement

14 September 2019



Law Council  
OF AUSTRALIA

This Policy on Sustainable Development addresses the key principles and commitments of the Law Council of Australia in respect of the environmental, social and economic objectives of Sustainable Development.

## Background

Key objects of the Law Council of Australia include:

- the promotion of the rule of law in the public interest;
- to be the national peak body for lawyers on national and international issues in furthering the betterment of law in the public interest;
- to promote the administration of justice and the development and improvement of law throughout the Commonwealth;
- the advancement of the profession and the ethical standards of legal institutions; and
- to advance the science of jurisprudence.

The Law Council's Policy Statement of the Rule of Law Principles (March 2011) lists eight key principles which encompass the basic tenets of the rule of law. Principle 8 states that "States must comply with their international legal obligations whether created by treaty or arising under customary international law".

Australia has significant national and international legal obligations concerning Sustainable Development. A simple definition of the term Sustainable Development is the socially responsible economic development that protects the environment and the natural resource base for the benefit of future generations. More particularly, Sustainable Development is a framework for decision-making based on promotion of environmental protection, social justice, and economic/financial responsibility at the same time, with the overall objective of promoting human well-being for present and future generations.

The Key Principles and Commitments set out in this Policy are intended to:

- assist the Law Council and its committees when evaluating the merits of government legislation, policy and practice;
- support the Law Council's advocacy in relation to Sustainable Development in Australia and internationally; and
- assist the domestic implementation of Sustainable Development in Australia.

By adopting the Key Principles in this Policy, the Law Council can advocate for consistency in the application of Sustainable Development across Australian jurisdictions in furtherance of the objects of the Law Council.

### International context

A key outcome from the 2012 United Nations World Commission on Environment and Development (UNCED) World Summit was the adoption by the UN General Assembly in 2015 of the 2030 Agenda for Sustainable Development and Sustainable Development Goals (**SDGs**).<sup>1</sup> The SDGs outline 17 integrated and indivisible goals, and 169 underlying global targets, to address matters such as poverty and inequality, food security and sustainable agriculture, sustainable economic growth, resilient infrastructure and human settlements, combating climate change, restoration of ecosystems and halting biodiversity loss. The SDGs provide a unifying framework by which to measure environmental and social governance performance and help implement Sustainable Development.

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<sup>1</sup> "Transforming our world: the 2030 Agenda for Sustainable Development", UN General Assembly, 25 September 2015, A/RES/70/1

The Law Council recognises that Sustainable Development and the exercise of human rights are interdependent and interrelated. The protection and promotion of human rights is expressly included in paragraph 3 of the resolution of the 2030 Agenda and is apparent in the drafting of many of the SDGs. The UN Special Rapporteur on Human Rights and the Environment has published “Framework Principles on Human Rights and the Environment” (2018), the first two of which demonstrate this interdependence:<sup>2</sup>

1. States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights.
2. States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment.

The 2018 Special Report of the Intergovernmental Panel on Climate Change (**IPCC**) also notes that climate change impacts and responses are closely linked to Sustainable Development, with both mitigation and adaptation actions having synergies with Sustainable Development.<sup>3</sup>

### **Australian context**

The Australian Government has committed to implementing the SDGs and to reporting on its progress in doing so. Australia is also a signatory to many international conventions grounded in the Sustainable Development principle and environmental protection and has committed to implementing its international obligations in Australian domestic law.

There is long-standing statutory and other recognition within Australian jurisdictions of Sustainable Development. In May 1992, all Australian governments acknowledged the benefits of Sustainable Development in the Intergovernmental Agreement on the Environment which is included as a schedule to the *National Environment Protection Council Act 1994* (Cth).

The most prominent relevant statutory provision of the Commonwealth is section 3A of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) which sets out principles of “ecologically sustainable development”. There are also numerous provisions of State and Territory laws that identify Sustainable Development as an objective and/or as a mandatory consideration in aspects of government decision-making.

In line with Australia’s international commitments to Sustainable Development, and in light of the statutory obligations on decision-making throughout the Commonwealth in respect of Sustainable Development, the Law Council endorses government, corporate and civil society decision-making which seeks to achieve Sustainable Development, as outlined in this Policy.

### **Related policies**

- [Rule of Law Principles](#) (March 2011)
- [Law Council Policy on a Federal Charter or Bill of Human Rights](#) (November 2008)
- [Policy Statement on Human Rights and the Legal Profession](#) (rev May 2017)
- [Position Paper on Business and Human Rights and the Australian Legal Profession](#) (January 2016)

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<sup>2</sup> Special Rapporteur on Human Rights and the Environment (OHCHR), 2018, *Framework Principles on Human Rights and the Environment*, pp5-6 Principles 1 & 2. <https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/FrameworkPrinciplesReport.aspx> (accessed 21 July 2019). See Law Council *Policy Statement on Human Rights and the Legal Profession*, paragraph 16.

<sup>3</sup> Intergovernmental Panel Climate Change, 2018. *Special Report on Global Warming of 1.5C – Summary for Policymakers*, D2.1, D3, D4.1

## Key Principles

Democracy, good governance and the rule of law at local, national and international levels are essential for Sustainable Development.<sup>4</sup>

This Policy seeks to articulate some of the separate and distinct principles comprising Sustainable Development, identifying nine Key Principles. The Policy recognises that the definition of Sustainable Development is, and will continue to be, dynamic.

The first seven of the Key Principles draw on the principles described by Preston CJ of the New South Wales Land and Environment Court in *Telstra Corporation Limited v Hornsby Shire Council*.<sup>5</sup> The eighth principle recognises that sustainability is a global issue which demands international cooperation. The ninth principle recognises the essential interdependence of environmental protection and human rights.

The Law Council recognises that there are many possible formulations of the Key Principles and whilst the principles set out below currently describe the broad scope of Sustainable Development, the appropriate emphasis for implementation may change and evolve over time.

### 1. Sustainable use

*Natural resources should be exploited in a manner which is sustainable or prudent or rational or wise or appropriate.*<sup>6</sup>

The concept of sustainability applies not only to development but to the environment. Sustainable Development improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends.<sup>7</sup>

### 2. Integration

*Effective integration of economic, environmental and social considerations in the decision-making process.*<sup>8</sup>

The principle of integration ensures mutual respect and reciprocity between economic and environmental consideration. It recognises the need to ensure not only that environmental considerations are integrated into economic and other development plans, programmes and projects but also that development needs are taken into account in applying environmental objectives.

### 3. Precautionary principle

*If there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*<sup>9</sup>

In the application of the precautionary principle, public and private decisions should be guided by:

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<sup>4</sup> *Report of the United Nations Conference on Sustainable Development*, UN Doc A/CONF.216/16 (2012)

<sup>5</sup> [2006] NSWLEC 133, (2006) 67 NSWLR 256. The analysis and conclusion of Preston CJ of LEC was approved by the NSW Court of Appeal in *Minister for Planning v Walker* [2008] NSWCA 224 at [42]-[43]; *Davis v Gosford Council* [2014] NSWCA 343, (2014) 87 NSWLR 699 at [84]; and *Warkworth Mining Ltd v Bulga Milbrodale Progress Association* [2014] NSWCA 105, (2014) 87 NSWLR 527 at [296], [299].

<sup>6</sup> *Telstra Corporation Limited v Hornsby Shire Council* [2006] NSWLEC 133, paragraph [109]

<sup>7</sup> Sustainable Development Steering Committee, *National Strategy for Ecologically Sustainable Development* (Australian Government Publishing Service, 1992)

<sup>8</sup> Note 9, paragraph [110]

<sup>9</sup> Note 9, paragraph [113]

- careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment; and
- an assessment of the risk-weighted consequence of various options.<sup>10</sup>

#### **4. Intergenerational equity**

*The present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations.*<sup>11</sup>

#### **5. Intragenerational equity**

*People within the present generation have equal rights to benefit from the exploitation of resources and from the enjoyment of a clean and healthy environment.*<sup>12</sup>

#### **6. Conservation of biological diversity and ecological integrity**

*Conservation of biological diversity and ecological integrity should be a fundamental consideration in all resource management and planning decisions.*<sup>13</sup>

#### **7. Internalisation of environmental costs**

*Environmental costs should be internalised into decision-making for economic and other development plans, programs and projects likely to affect the environment.*<sup>14</sup>

The principle of internalisation of environmental costs requires accounting for both the short-term and the long-term external environmental costs. This can be done in a number of ways:

- including environmental factors in the valuation of assets and services;
- adopting the polluter-pays principle: those who generate pollution and waste should bear the costs of containment, avoidance or abatement;
- full life cycle costing of goods and services, including the use of natural resources and assets and the disposal of waste;
- incentive structures and market mechanisms to enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.<sup>15</sup>

#### **8. Global dimension to implementation**

*The global dimension of environmental impacts of policies and actions should be considered.*

Sustainable Development requires a global partnership. National policies and actions for Sustainable Development should be consistent with international law and promote

<sup>10</sup> For example, see *Protection of the Environment Administration Act 1991* (NSW) s 6(2)(a); *Intergovernmental Agreement on the Environment* (1992) cl 3.5.3; *1992 Rio Declaration on Environment and Development*, UN Doc. A/CONF.151/26 (vol. I) (1992) Principle 15

<sup>11</sup> Note 9, paragraph [116]. For example, see *Protection of the Environment Administration Act 1991* (NSW) s 6(2)(b); *Intergovernmental Agreement on the Environment* (1992) cl 3.5.2

<sup>12</sup> Note 9, paragraph [117].

<sup>13</sup> Note 9, paragraph [118]. For example, see *Protection of the Environment Administration Act 1991* (NSW) s 6(2)(c); *Intergovernmental Agreement on the Environment* (1992) cl 3.5.3

<sup>14</sup> Note 9, paragraph [119]

<sup>15</sup> For example, see *Protection of the Environment Administration Act 1991* (NSW) s 6(2)(d); *Intergovernmental Agreement on the Environment* (1992) cl 3.5.4

sustained and inclusive economic growth, foster innovation and provide opportunities, benefits and empowerment for all.<sup>16</sup>

## **9. Interdependence of environmental protection and human rights**

*Decision-making about development that affects the environment or involves the exploitation of natural resources should respect, protect and fulfil human rights.*

The global dimension of Sustainable Development is also demonstrated by the acknowledged interdependence of, and relationship between, human rights and the environment. The International Bar Association acknowledged this interdependence in its 2014 Report on Climate Change Justice and Human Rights.<sup>17</sup> The work done by the UN Special Rapporteur on Human Rights and the Environment culminated in the 2018 Framework Principles on Human Rights and the Environment.<sup>18</sup> The first two principles in the Framework acknowledge that “[h]uman rights and environmental protection are interdependent. A safe, clean, healthy and sustainable environment is necessary for the full enjoyment of human rights”.<sup>19</sup>

### **Commitments**

In adopting this Policy on Sustainable Development, the Law Council of Australia makes the following commitments:

1. to promote the recognition and application of the Key Principles of Sustainable Development in its work;
2. to support the scrutiny of new legislation for consistency with the Key Principles;
3. to promote the development of Federal, State and Territory policies consistent with the Key Principles;
4. to recognise, in advocacy relating to human rights, the interdependence of human rights and Sustainable Development; and
5. to promote respect for and implementation of Sustainable Development Goals by government, corporations and other entities

The Law Council recognises that principles of Sustainable Development will change and evolve over time. This Policy will be reviewed periodically to ensure that such change and evolution is captured in future revisions.

Authorised by LCA Directors

Law Council of Australia

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<sup>16</sup> *Report of the United Nations Conference on Sustainable Development*, UN Doc A/CONF.216/16 (2012)

<sup>17</sup> International Bar Association Task Force on Climate Change Justice and Human Rights Report, ‘Achieving Justice and Human Rights in an Era of Climate Disruption’ (October 2014)

<sup>18</sup> <https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/FrameworkPrinciplesReport.aspx> (accessed 21 July 2019)

<sup>19</sup> *Framework Principles on Human Rights and the Environment*, p 6