



# Policy on Sustainable Development

21 October 2019

*The Law Society of the Australian Capital Territory (“the Society”) acknowledges the work of the Law Council of Australia in the researching and developing of this policy, which was adopted by the Board of the LCA on 14 September 2019.*

*The Society expresses its gratitude to the Law Council for allowing the Society to adopt the policy as its own, in similar terms as set out below.*

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

## Background

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 Society and its committees when evaluating the merits of government legislation, policy and practice;
- support the Society’s advocacy in relation to Sustainable Development in the Australian Capital Territory (“the Territory”); and
- assist the domestic implementation of Sustainable Development in the Territory.

By adopting the Key Principles in this Policy, the Society can advocate for consistency in the application of Sustainable Development across the Territory.

## 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.

# Key Principles

Democracy, good governance and the rule of law at local, national and international levels are essential for Sustainable Development.<sup>1</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>2</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 Society 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>3</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>4</sup>

## 2. Integration

*Effective integration of economic, environmental and social considerations in the decision-making process.*<sup>5</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>6</sup>

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

- 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>7</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>8</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>9</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>10</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>11</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>12</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 sustained and inclusive economic growth, foster innovation and provide opportunities, benefits and empowerment for all.<sup>13</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>14</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>15</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>16</sup>

# Commitments

In adopting this Policy on Sustainable Development, the Society makes the following commitments:

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

The Society 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.

*Approved by the Council of the Law Society of the ACT, 21 October 2019*

## Endnotes

1. *Report of the United Nations Conference on Sustainable Development*, UN Doc A/CONF.216/16 (2012).
2. [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].
3. *Telstra Corporation Limited v Hornsby Shire Council* [2006] NSWLEC 133, paragraph [109].
4. Sustainable Development Steering Committee, *National Strategy for Ecologically Sustainable Development* (Australian Government Publishing Service, 1992).
5. Note 9, paragraph [110].
6. Note 9, paragraph [113].
7. 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.
8. 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.
9. Note 9, paragraph [117].
10. 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.
11. Note 9, paragraph [119].
12. 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.
13. *Report of the United Nations Conference on Sustainable Development*, UN Doc A/CONF.216/16 (2012).
14. 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).
15. <https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/FrameworkPrinciplesReport.aspx> (accessed 21 July 2019).
16. *Framework Principles on Human Rights and the Environment*, p 6.



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