

Law Council of Australia

Climate Change Policy

Policy Statement

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Law Council
OF AUSTRALIA

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Introduction

1. The physical impacts of climate change and its far-reaching consequences have become increasingly apparent, globally and in Australia, in recent years. These developments have caused international and domestic legal frameworks to evolve.
2. They have also presented practitioners, educational institutions and the legal profession at large with novel and complex challenges with respect to the development, understanding and practice of the law and prompted legal practices to adapt at a structural level.
3. In its role as the peak body for Australian lawyers on federal and national issues, the Law Council has developed this policy statement. In so doing, the Law Council draws upon its commitment to the rule of law and its organisational objects – from furthering the betterment of law in the public interest and the administration of justice, to developing and promoting advancement of the profession and the ethical standards of practitioners.

Purpose

4. This Policy is intended to:
 - provide an evidence-based policy position on climate change which furthers the Law Council's objects and is clearly linked to its remit, for use in its work;
 - ensure that the legal implications of climate change are well understood from different perspectives - while noting that these implications are wide-ranging, complex and continually evolving – as well as the implications for the legal profession itself;
 - set out the Law Council's position on the principles that should inform the role and development of the law, the role of the legal profession, legal education and legal practice in this area, having regard to the objectives of the Law Council.

Background

Context - evidence regarding climate change

5. The scientific evidence for the existence of human induced climate change is clear. It indicates that increased concentrations of greenhouse gases (**GHG**) in the Earth's atmosphere, caused by human activity, have led to global warming at a rate that is unprecedented in at least the last 2000 years. Climate change is driving changes in weather patterns, including more extreme weather and weather events.
6. The physical risks arising from climate change extend to almost all facets of natural and human life, from terrestrial, sub-terranean and marine ecosystems to socio-economic systems. In Australia, the physical impacts of climate change on Australia's terrestrial and marine ecosystems are linked to increased drought and floods, bushfires, severe storms, land degradation, sea level rise, ocean warming, coral bleaching and water scarcity.
7. The consequences of climate change include serious effects upon human life, health and livelihoods. Rural communities, women, children, older people, First Nations communities, migrants and displaced peoples are likely to be disproportionately affected. Displacement events prompting forced migration are

more likely, including across the Asian-Pacific region.ⁱ The economic costs of climate change-related events range from damage to infrastructure to loss of productivity. Climate change is considered a ‘threat multiplier’ in global and regional security terms.

8. The legislative and policy responses to climate change include mitigation, which aims to limit net GHG emissions, and adaptation, which aims to minimise the harm caused by climate change. The United Nations (**UN**) Intergovernmental Panel on Climate Change underlines that ‘large, immediate and unprecedented’ global efforts are required in relation to both mitigation and adaptation measures.ⁱⁱ
9. Responding to climate change also involves managing transition risks, which relate to the process of adjustment towards a low-carbon economy. The global transition is also likely to lead to new opportunities for Australian society and business entities and these opportunities are beginning to be explored.
10. Multiple sectors, industries and businesses are, and are likely to continue being, impacted by the physical risks of climate change and the transition towards a low carbon economy. These agricultural, insurance and tourism sectors. Many are already identifying, evaluating and addressing climate-related risks. There is business support for greater long-term certainty on climate change policy.
11. Fundamental shifts in employment are also anticipated. Across the business and community sectors, there is consensus about the need to support just transitions for all Australians.
12. The legal implications of climate change are being tested before Australian, foreign and international courts and tribunals, which are being called upon to determine the legal boundaries of the human response to climate change. With the proliferation of such litigation, some bodies have described climate change as presenting ‘litigation risk’, as well as physical and transition risks.ⁱⁱⁱ
13. The Australian legal profession has a critical part to play as it advises clients on the legal implications of all these shifts, challenges and opportunities, participates in the development of mitigation and adaptation measures and promotes the rule of law as a stabilising force.

Legal Implications of Climate Change

International law

UNFCCC and Paris Agreement

14. Australia, as one of 197 parties to the United Nations Framework Convention on Climate Change^{iv} (**UNFCCC**), has agreed to the overarching objective of achieving, in accordance with the provisions of the Convention, stabilisation of GHG concentrations in the atmosphere at a level ‘that would prevent dangerous anthropogenic [human induced] interference with the climate system.’^v Such a level should be achieved ‘within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner’.
15. The UNFCCC sets out certain principles^{vi} to achieve this objective:

- parties must proceed on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities;
- the specific needs and special circumstances of developing countries, particularly those which are particularly vulnerable to the adverse effects of climate change, should be given full consideration;
- parties should take precautionary measures to anticipate, prevent or minimise the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures. This is known as the precautionary principle;
- parties have a right to, and should, promote sustainable development. Policies and measures to protect the climate system against human-induced change should be appropriate for the specific conditions of each party and should be integrated with national development programmes, taking into account that economic development is essential for adopting measures to address climate change; and
- parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all parties, particularly developing country parties, thus enabling them better to address the problems of climate change. Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

16. Australia is also a party to the Paris Agreement,^{vi} a separate treaty made under the UNFCCC which superseded the Kyoto Protocol.^{viii} The Paris Agreement seeks to strengthen the global response to the threat of climate change. The parties to the Paris Agreement have agreed to the long-term temperature goal of holding the increase in global average temperature, compared to pre-industrial levels, to well below 2°C, and pursuing efforts to limit temperature gain to 1.5°C higher than pre-industrial levels.^{ix} They have also agreed to increasing their respective abilities to adapt to the adverse impacts of climate change and foster climate resilience and low GHG emissions development, in a manner that does not threaten food production, and to making finance flows consistent with a pathway towards low GHG emissions and climate-resilient development.^x

17. Australia's legal obligations under the Paris Agreement include:

- aiming to reach global peaking of GHGs as soon as possible, and undertaking rapid reductions thereafter in accordance with the best available science, to achieve a balance between anthropogenic emissions by sources and removals by sinks of GHGs in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty;^{xi}
- to prepare, communicate and maintain successive nationally determined contributions (**NDCs**) that it intends to achieve for five-year periods, to achieve the purpose of the Paris Agreement;^{xii}
- to communicate each NDC with the information necessary for clarity, transparency and understanding in accordance with relevant decisions, every five years;^{xiii}
- to make each successive NDC 'represent a progression' beyond the last, reflecting 'its highest possible ambition';^{xiv}

- to pursue domestic mitigation measures with the aim of achieving the objectives of its NDCs,^{xv} as well as engaging in adaptation planning and actions;^{xvi}
 - to regularly report on various information, including a national report of anthropogenic emissions and removals by sinks of GHGs;^{xvii} and
 - to support developing countries' efforts to implement the Paris Agreement.^{xviii}
18. As with all treaties to which it is a party, Australia is bound to comply with and implement these obligations domestically, in good faith.^{xix}

Broader international frameworks

19. Australia must also comply with other environmental treaties that are inextricably linked to the UNFCCC, particularly, the UN Convention on Biological Diversity,^{xx} requiring a national biodiversity strategy and action plan; and the UN Convention to Combat Desertification,^{xxi} requiring measures to address desertification.
20. Australia has also made broader commitments under instruments regarding the environment which, while not legally binding, are authoritative.^{xxii} These include the Stockholm Declaration^{xxiii} and the Rio Declaration^{xxiv}, which reinforce the inextricable relationship between the environment and human rights, and the responsibility to protect and improve the environment for present and future generations.^{xxv} Australia's commitments under the 2030 Agenda for Sustainable Development and Sustainable Development Goals^{xxvi} include taking 'urgent action to combat climate change and its impact'.^{xxvii}
21. Australia is legally bound to comply with a series of treaties to respect, protect and fulfil human rights.^{xxviii} The UN Declaration on the Rights of Indigenous Peoples^{xxix} (**UNDRIP**) as a comprehensive standard on human rights for Indigenous peoples, should also be considered authoritative.^{xxx}
22. Australia will increasingly be required to consider the risks that climate change poses to the enjoyment of human rights, as well as the role of human rights obligations in informing measures taken to mitigate and adapt to the changing climate and its impacts. The Office of the High Commissioner of Human Rights considers that:
- ...climate change threatens the effective enjoyment of a range of human rights including those to life, water and sanitation, food, health, housing, self-determination, culture and development. States have a human rights obligation to prevent the foreseeable adverse effects of climate change and ensure that those affected by it, particularly those in vulnerable situations, have access to effective remedies and means of adaptation to enjoy lives of human dignity.*^{xxxi}
23. The Human Rights Council has further recognised the right to a safe, clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights, as well as being related to other rights that are in accordance with existing international law.^{xxxii}
24. International legal frameworks will continue to evolve in light of, and be interpreted by reference to, the challenges presented by climate change.^{xxxiii} At the same time, international legal experts and other international sectoral policy makers will continue to identify and tackle ambiguities in the existing frameworks.^{xxxiv}

25. Climate change litigation globally is raising novel causes of action across multiple areas. Foreign and international courts and tribunals are being called upon to determine the legal boundaries of the human response to climate change – including the duties and obligations of law makers to take action in response to climate change and its physical impacts.

Australia's domestic frameworks

26. Australia's domestic regulatory framework has been adapting to address the physical and transition risks of climate change, with momentum now evident across a range of areas and at federal, state and territory levels.
27. Commonwealth, state and territory governments have taken various steps to meet Australia's international obligations and drive the reduction of GHG emissions in Australia. The Commonwealth has established mechanisms such as emissions reporting, the renewable energy target, the national hydrogen strategy and other measures to promote investment in renewable energy and low-emission technology and carbon sequestration programs, including the Emissions Reduction Fund. At state and territory level, specific emissions reductions targets have been set and policy frameworks are being developed to pursue these goals.
28. Governments and regulators have taken steps in various ways to take into account the physical and transition risks of climate change. For example, climate change considerations are now incorporated in many assessment and decision making processes for water resource planning, biodiversity conservation, environmental impact assessment and planning and development. Financial regulators and the Australian Treasury are seeking to understand the impact of climate change on financial stability and the broader economy.^{xxxv}
29. However, gaps and uncertainties in the law exist and the overall regulatory landscape has been in a state of flux for many years. The gaps and uncertainties have been addressed in different ways, for example:
 - Domestic regulators and business have adopted international tools to provide guidance on future action. The widespread adoption of the Taskforce on Climate Change-related Financial Disclosures' recommendations^{xxxvi} is one example.
 - Regulators have provided guidance on their expectations of regulated entities with respect to the assessment and disclosure of climate change-related risks and opportunities.^{xxxvii}
 - In Australian courts, a wide range of climate change-related actions have been decided, settled or are on foot. Parties have included individuals, shareholders, First Nations persons, children, non-government organisations, governments, corporations, trustees, and directors.
 - The use of Royal Commissions to examine Australia's preparedness for, response to and recovery from disasters as well as improving resilience and adapting to changing climatic conditions and mitigating the impact of natural disasters.^{xxxviii}
30. While these approaches will remain important going forward, the next phase of development of Australia's regulatory response to the physical and transition risks posed by climate change must offer long-term solutions with higher levels of ambition and predictability in order to:

- achieve Australia's Paris Agreement obligations, particularly its NDCs reflecting Australia's 'highest possible ambition';
- drive mitigation measures which will lead to these NDCs being achieved; and
- enable government, business and civil society across all sectors of Australia's economy to best manage the physical and transition risks posed by climate change, and take advantage of its emerging opportunities. In this context, consideration of the need for novel or existing forms of funding and tax incentives may be required to assist the Australian economy to meet the cost of climate change and the cost of transitioning to a carbon neutral or negative economy.

Implications for the legal profession

Shifting legal demands

31. A broad spectrum of Australian individuals, businesses, community sector organisations and government agencies face new risks, liabilities and challenges in light of the physical and transition risks of climate change, and increasingly, are seeking legal advice to navigate them.
32. Novel, complex questions of law are arising, and are likely to arise, across multiple legal practice areas, from occupational health and safety, to planning and development, to insurance, to water rights. Particular industries and sectors will require tailored legal advice to meet a myriad of climate change-related challenges and opportunities. Diverse groups of Australians will also present new demands – from rural, regional and remote communities, to small business owners, to First Nations communities.
33. Australian lawyers across the private, government and publicly funded legal assistance sectors are adapting to climate change-related changes in the law and shifting client needs, and new climate-focused practice areas are emerging.

Climate change litigation

34. Climate change litigation, globally and domestically, is raising novel causes of action across multiple areas such as environment and planning, administrative, corporations including directors' duties, tort and negligence, consumer, contract, insurance and human rights law, with varying degrees of success and implications for Australian laws.
35. As well as advising and representing clients in litigious matters, lawyers need to be alive to the unfolding legal implications of climate change and its consequences, within their areas of skill and competence, as these matters are adjudicated or settled over time.

Access to justice

36. Ensuring that access to justice is readily available to Australians in need will be highly relevant in the climate change context. While legal assistance bodies and pro bono service providers are already adapting to new legal demands linked to the physical risks of climate change (such as lost dwellings or livelihoods due to bushfires, floods, and droughts), they are doing so within an already strained, underfunded system.

37. Additional legal demands may see an expansion of need in existing areas of law, fuelled by poorer physical and mental health, and increased socio-economic disadvantage. Climate change may compound existing disadvantage throughout Australian society as poor and vulnerable people are less able to recover from and adapt to a changing climate.

Education and skills development

38. The Australian legal profession's requirements for specialist, climate-related legal knowledge and skills will evolve in light of these changing demands. This evolution is being supported by shifts in the content of legal education and professional skills development by universities and continuing professional development providers. It will be important to ensure that current and future generations of Australian lawyers are well-equipped to meet the challenge.

Professional ethical obligations

39. Questions may arise about how lawyers should comply with their ethical obligations under professional conduct rules and common law principles in the context of climate change.

Operational considerations

40. Members of the legal profession may also be considering how, in the course of their daily legal practice operations, their actions may contribute to Australia's and global efforts to mitigate and adapt to climate change. This may involve reducing their own carbon footprint and introducing more environmentally sustainable business practices.

Law Council Policy Position

The legal implications of climate change

41. Climate change, and responses to climate change, give rise to material, long term physical and transition risks. Climate change, and responses to climate change, will also create opportunities.
42. The impacts of climate change on the natural environment are well documented. Where those consequences have a negative impact on the natural environment and on human health and wellbeing, this may involve a diminution of human rights.
43. The physical consequences of climate change and mitigation and adaptation measures have economic risks and costs. Failure to accommodate these risks and costs potentially has broader economic consequence to the Australian economy. Furthermore, the physical and transition risks associated with climate change may fall disproportionately on particular groups, including people who are economically disadvantaged and marginalised. Conversely, where opportunities are realised, these groups may not enjoy the economic benefits.
44. The law has a role in supporting effective action on climate change, including the development of new opportunities, and the mitigation of transition risks. The law:
 - defines the international framework for taking mitigation and adaptation measures;

- promotes informed decision making and transparency under legal frameworks for the collection of data about sources of emissions and climate change risk;
- supports the implementation of mitigation and adaptation measures in Australia;
- promotes accountability through legal action and the resolution of disputes between states, corporations, communities, civil society organisations and individuals.

Principles for the development of the law

45. The Law Council will assess and advocate on federal and national law and policy reforms responding to human-induced climate change by reference to the following principles:

Australia's international law obligations with respect to climate change should be fully implemented domestically

46. This encompasses Australia's obligations under the UNFCCC and the Paris Agreement and other relevant international agreements^{xxxix} to which it is a signatory. Implementation measures should respect the principles underpinning these agreements, including the adoption of measures to mitigate and adapt to the physical and transition risks of climate change that:
- reflect Australia's highest possible ambition;^{xl}
 - are consistent with sustainable development principles;^{xli}
 - are based on the best available scientific knowledge^{xlii},
 - are cost-effective so as to ensure global benefits at the lowest possible cost.^{xliii}
47. Australia's international human rights law obligations under relevant treaties, as well as the UNDRIP, should be fully respected, protected and fulfilled.^{xliiv}

Australia's response should give effect to rule of law principles

48. The legal implications of climate change will continue to evolve as new measures are implemented and gaps, uncertainties and inconsistencies in the law emerge. Rule of law principles^{xlv} that are engaged by these developments include the principle that the law must be both readily known and available, and certain and clear. New laws should promote certainty and clarity for those affected by climate change mitigation and adaptation measures, noting that uncertainty may itself amplify mitigation and adaptation risks. Litigation should not be relied on as the primary tool for resolving emerging gaps, uncertainties and inconsistencies in the law as litigation is an imperfect, costly and time-consuming method of driving a response to climate change.
49. Other relevant principles include that:
- the law should promote transparent outcomes which are subject to independent reporting and oversight;
 - the law should provide for well-defined Executive powers, with actions taken by the Executive to be subject to, and authorised by, the law; and
 - everyone should have access to a competent and independent lawyer of their choice in order to establish and defend their rights.

50. Access to justice must be available to Australians in need. Future service planning and funding arrangements for legal assistance bodies will need to take account of increased legal demands related to both the physical and transition risks of climate change and communities should be informed about, and empowered to participate in developing, relevant laws as they evolve, and their rights to access the law to uphold and defend their rights.

Australia's response should be fair and equitable and should promote public confidence

51. Mitigation and adaptation measures adopted by Australia should:
- be environmentally effective and have regard to direct, indirect and cumulative impacts on the natural environment;
 - be economically efficient;
 - provide for assessment of, and transparent reporting on, the effectiveness of specific measures over time;
 - be fair and equitable;
 - promote the long-term interest of households, workers and communities with respect to effective action to the physical risks of climate change and consider the principles of a just transition,^{xlvi} with a view to respecting, protecting and fulfilling the rights to work, social security, an adequate standard of living, non-discrimination and cultural rights;^{xlvii}
 - identify and address the needs of marginalised communities and groups which are most vulnerable to the physical and transition risks of climate change;^{xlviii} and
 - be informed by the knowledge and leadership of diverse communities – in particular, of First Nations communities as the original custodians of the land, by reference to principles of self-determination and free, prior and informed consent.^{xlix}
52. Decisions about mitigation and adaptation measures should be:
- predictable, with policy and decision makers explaining clearly in advance when climate change related considerations should, or will, be taken into account;
 - transparent, and to that end should be supported by analysis to explain the economic costs and benefits and the environmental outcomes to be achieved, and information about who will bear the burden and who will enjoy the benefits.

Principles for the legal profession

Lawyers should advise clients on the legal implications of climate change in accordance with professional standards and legal ethics

53. Lawyers should be alive to the unfolding legal implications of climate change and its consequences, and they should be informed, skilled and ready to assist clients on climate change-related legal matters, within their areas of skill and competence.
54. Lawyers should be responsive to the broad spectrum of clients across the Australian community facing new legal risks, liabilities and challenges in light of the physical and transition risks of climate change.

55. With respect to their ethical obligations in the context of climate change, lawyers should be aware that existing professional ethical standards, which set out the core standards to be observed, provide appropriate guidance as to the proper professional role of a legal practitioner.
56. Lawyers should also be aware that advice regarding a legal problem should be provided in a manner which meaningfully addresses any identified climate change issues and related consequences, including the possible risks, liabilities and reputational damage which may flow from activity that has a negative impact on climate change. It is not suggested that lawyers should offer advice on matters unconnected to legal issues or outside the scope of their retainer, but rather, that legal advice should take into account the full range of contextual circumstances in which it is given, consistently with professional obligations.

Lawyers should be encouraged to consider how they can contribute to efforts to address climate change

57. Climate change, and responses to climate change, will continue to raise novel legal issues leading to uncertainty about legal rights and obligations, in turn contributing to transition risk. Lawyers should be encouraged to consider:
 - how emerging gaps, uncertainties or inconsistencies could be addressed within existing frameworks;
 - how they may be able to contribute their specialist knowledge to support the development of new laws relating to climate change; and
 - how they can contribute to the better understanding of the legal implications of climate change.
58. Lawyers should also be encouraged to consider how, in the course of their daily practice, they can adopt achievable actions which contribute to Australia's and global efforts to mitigate and adapt to climate change.

Principles for the Law Council

59. The Law Council, as the national peak body for the legal profession, commits to contributing to efforts to address climate change, having regard to the following objects in its Constitutionⁱ:
 - *to promote and defend the rule of law in the public interest*, anticipating that the following principlesⁱⁱ may be particularly relevant in this context:
 - *the law must be both readily known and available, certain and clear* – given law reforms will increasingly be required to respond to climate-related gaps, uncertainties and unfolding novel situations.
 - *States must comply with international legal obligations* – in particular, Australia's specific treaty obligations to mitigate and adapt to climate change under the UNFCCC and Paris Agreement, as well as related obligations under environmental and human rights treaties.
 - *everyone should have access to competent and independent legal advice* – this will require a clear emphasis on ensuring access to justice, as well as ensuring that the profession is informed, skilled and ready to assist clients on climate-related legal matters;
 - *the Executive should be subject to the law and any action undertaken by the Executive should be authorised by law* – for

example, it will be important to guard against the gradual erosion of the safeguards which preserve democratic balance, when Executive powers are created and exercised in light of climate-related emergencies.

- *to further the betterment of the law in the public interest on climate change issues.* This is linked to the Law Council's rule of law role and relies on its ability to draw together an informed view, based on the expertise and involvement of the legal profession across multiple relevant fields.
- *to ensure that the profession is informed, skilled and ready to assist clients on climate-related legal matters,* in consultation with its constituent bodies, university peak bodies and other bodies, which are primarily responsible for the delivery of legal education and professional development.
- *to uphold the administration of justice in the context of climate change.* This includes ensuring that information about relevant laws is readily accessible, and that the roles and functions of legal practitioners and the courts are understood and upheld. It also involves ensuring that lawyers' ethical obligations are well understood.

Review

60. This Policy is consistent with the Law Council's Strategic Plan 2021-2026. In the context of the challenges posed by climate change, this Plan requires the Law Council to:
- collaborate and ensure representation in all matters involving uniformity and consistency of national laws, and federal law reform;
 - represent the legal profession internationally;
 - lead law reform and legal policy with expertise at the national and international levels;
 - work closely with decision-makers and law-makers to influence and shape law which is consistent with the rule of law;
 - promote and defend the rule of law in international jurisdictions and particularly the Asian-Pacific regions;
 - provide federal government and other stakeholders with balanced, respected, independent and apolitical policy positions;
 - ensure policies are evidence-based, culturally appropriate and acknowledge Australia's international obligations; and
 - develop policies to assist the profession to meet the needs of future consumers of legal services.
61. The Law Council commits to reviewing this Policy after a period of five years, in conjunction with the development of future Strategic Plans, to ensure that it remains fit for purpose against rapidly changing global, domestic and legal environments.

ⁱ Sylvain Ponserre and Justin Ginnetti, *Disaster Displacement: A Global Review, 2008–2018* (Internal Displacement Monitoring Centre, 2019), 5, 7. See also Jane McAdam and Jonathan Pryke, 'Climate Change, Disasters and Mobility: A Roadmap for Australian Action' (Policy Brief 10, October 2020) Kaldor Centre for International Refugee Law at 1.

ⁱⁱ Intergovernmental Panel Climate Change, '[Special Report](#) on Global Warming of 1.5C – Chapter 3' (2018), Executive Summary.

ⁱⁱⁱ Eg, the Financial Stability Board (**FSB**) refers to liability risks: FSB, *The Implications of Climate Change for Financial Stability*, Report, 23 November 2020, 16.

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- ^{iv} See, *United Nations Framework Convention on Climate Change*, opened for signature 9 May 1992, 1771 UNTS 107 (entered into force 21 March 1994) (**UNFCCC**).
- ^v UNFCCC parties have committed to achieving this objective in a timeframe sufficient to allow ecosystems to adapt naturally to climate change, to avoid threats to food production and to permit sustainable economic development: art 2.
- ^{vi} UNFCCC, art 3.
- ^{vii} *Paris Agreement*, opened for signature 22 April 2016 [2016] ATS 24 (entered into force 4 November 2016) (**Paris Agreement**). Australia ratified the Paris Agreement on 10 November 2016: [Statement](#) by the Hon Greg Hunt MP, 'National Statement, Signing of the Paris Climate Change Agreement' (New York, 22 April 2016).
- ^{viii} Kyoto Protocol to the United Nations Framework Convention on Climate Change, FCCC/CP/1997/L.7/Add.1 10 December 1997 (**Kyoto Protocol**). Under the Kyoto Protocol, Australia committed to limiting increases in its net GHG emissions between 2008 to 2012 to 8 per cent above its 1990 levels and, between 2013 and 2020, to 0.5 per cent below the 1990 levels.
- ^{ix} Paris Agreement, art 2.1.
- ^x Ibid.
- ^{xi} Ibid, art 4.1
- ^{xii} Ibid, arts. 3-4(1).
- ^{xiii} Ibid, arts 4.8-4.9.
- ^{xiv} Each successive NDC must also reflect each party's 'common but differentiated responsibilities and respective capabilities, in the light of different national circumstances': Ibid, art 4.3.
- ^{xv} Ibid, art 4.2
- ^{xvi} Ibid, art 7(9).
- ^{xvii} Ibid, art 13(7).
- ^{xviii} Ibid, arts 9-10.
- ^{xix} Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980), art 26.
- ^{xx} Convention on Biological Diversity, opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993) (**CBD**).
- ^{xxi} United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, opened for signature 14 October 1994, 1954 UNTS 3 (entered into force 26 December 1996) (**CCD**). The objective of the UNCCD is to: 'combat desertification and mitigate the effects of drought in countries experiencing serious drought and/or desertification, particularly in Africa, through effective action at all levels, supported by international cooperation and partnership arrangements, in the framework of an integrated approach which is consistent with Agenda 21, with a view to contributing to the achievement of sustainable development in affected areas.' See, art. 2. This is the only binding international agreement which makes the connections between sustainable land management on the one hand, and the environment and development on the other. See, United Nations Convention to Combat Desertification, 'About the Convention' <[About the Convention | UNCCD](#)>.
- ^{xxii} For example, the principles in such instruments may crystallize into customary law over time, or may be subsequently adopted into binding agreements.
- ^{xxiii} The text of the Stockholm Declaration was developed at the first international conference on international environmental law (**IEL**), the United Nations Conference on the Human Environment on 5 June 1972. See, *Report of the United Nations Conference on the Human Environment*, UN Doc. A/CONF. 48/14, at 2 and Corr. 1 (1972) (**Stockholm Declaration**).
- ^{xxiv} *Report of the United Nations Conference on Environment and Development*, UN Doc A/CONF.151/26 (Vol. I) (12 August 1992) annex I, principles 5, 7, 13, 24, 27, Principles 1 and 10.
- ^{xxv} The Stockholm Declaration also recognised that '[b]oth aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights [including] the right to life itself': Chapter 1, Preamble [1].
- ^{xxvi} *Transforming our world: the 2030 Agenda for Sustainable Development*, A/RES/70/1 (21 October 2015) (**SDGs**).
- ^{xxvii} See, SDGs Goal 13.
- ^{xxviii} Including, but not limited to, the *International Covenant on Civil and Political Rights* opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) (**ICCPR**); the *International Covenant on Economic, Social and Cultural Rights* opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) (**ICESCR**).
- ^{xxix} United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, Agenda Item 68, Supp No 49, UN Doc A/RES/61/295 (2 October 2007) annex (UNDRIP).
- ^{xxx} While the Declaration is not a treaty and does not itself create legally binding obligations, many, if not all of its provisions, have been recognised as reflecting customary international law: International Law Association, Rights of Indigenous Peoples, 75th Conference, ILA Resolution No 5/2012. (30 August 2012); Federico Lenzerini, 'Implementation of the UNDRIP around the world: achievements and future perspectives' (2019) 23 *International Journal of Human Rights* 51. See also Adam McBeth, Justine Nolan and Simon Rice, *The International Law of Human Rights* (Oxford University Press, 2011) 456.
- ^{xxxi} OHCHR, 'OHCHR and climate change', [online](#).
- ^{xxxii} *The human right to a safe, clean, healthy and sustainable environment*, UN GAOR, 48th sess, UN Doc A/HRC/48/L.23/Rev.1 (5 October 2021).

xxxiii Potential areas for future attention may include international security, given that climate change has been characterised as a source of aggravation of international peace and security in a Presidential Statement adopted by the United Nations Security Council, and its members have described climate change as a 'threat multiplier' in various Security Council settings (Impact of climate change, United Nations Security Council, 6587th mtg, Resumption 1, UN Doc S/PV.6587 (20 July 2011), see also overview of subsequent debates in Karin Landgren et al, 'The UN Security Council and Climate Change' (Research Report, June 2021) *Security Council Report* <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/climate_security_2021.pdf>). Another potential area is international human rights and refugee law as it address the challenges faced by persons displaced because of climate impacts; however, the UNHCR has indicated that what is required is guidance on the interpretation and application of existing legal and policy frameworks (not necessarily the development of new frameworks): UNHCR, '[Strategic Framework for Climate Action](#)' (2021) 3.

xxxiv Eg, the Oslo Principles on Global Climate Change Obligations, which seek to articulate the current obligations of all States and enterprises to defend and protect the Earth's climate (Antonio Benjamin, Michael Gerrard, Toon Huydecoper, Michael Kirby, M C Mehta, Thomas Pogge, Qin Tianbao, Dinah Shelton, James Silk, Jessica Simor, Jaap Spier, Elisabeth Steiner, and Philip Sutherland, Oslo Principles on Global Climate Change Obligations (2015)); and the Principles on Climate Obligations of Enterprises (Jaap Spier (ed.), '[Principles on Climate Obligations of Enterprises](#)' *Expert Group on Global Climate Change* (2020, Eleven International Publishing).

xxxv See, eg, Council of Financial Regulators, Council of Financial Regulators Climate Change Activity Stocktake 2021, <<https://www.cfr.gov.au/publications/policy-statements-and-other-reports/2021/council-of-financial-regulators-climate-change-activity-stocktake-2021/#Appendix-%E2%80%93Update-of-recent-agency-activity>>.

xxxvi Task Force on Climate-related Financial Disclosures, Recommendations of the Task Force on Climate-related Financial Disclosures, Final Report (June 2017).

xxxvii Eg, Australian Securities and Investment Commission (**ASIC**) Report 593 on Climate Risk Disclosure by Australia's Listed Companies, ASIC RG 247 and RG 228; ASIC Commissioner Cathie Armour, 'Managing climate risk for directors' (February 2021) <https://asic.gov.au/about-asic/news-centre/articles/managing-climate-risk-for-directors/>; Australian Prudential Regulation Authority (**APRA**), 'Understanding and managing the financial risks of climate change', letter to APRA-regulated entities (online), Monday 24 February 2020; APRA, SPS 530 Investment Governance; APRA, 'APRA releases guidance on managing the financial risks of climate change' (Media Release, 22 April 2021); draft Prudential Practice Guide CPG 229 Climate Change Financial Risks.

xxxviii Eg, the Royal Commission into National Natural Disaster Arrangements was established on 20 February 2020 in response to the extreme bushfire season of 2019-20 which resulted in loss of life, property and wildlife and environmental destruction.

xxxix Eg, the CBD and CCD.

xl Paris Agreement, art 4.3.

xli UNFCCC, arts 3.3 and 3.4; Paris Agreement, art 4.1; also arts 6, 8, 10. See also the Law Council of Australia, *Policy on Sustainable Development*, Policy Statement, 14 September 2019.

xlii Paris Agreement, Preamble; arts 4, 7, 14.

xliii UNFCCC, art 3.3.

xliv Paris Agreement, Preamble; Law Council of Australia, *Policy Statement on Human Rights and the Legal Profession*, May 2017, Law Council of Australia, *Policy on Sustainable Development*, Policy Statement, 14 September 2019.

xliv Law Council of Australia, *Rule of Law Principles*, Policy Statement, March 2011.

xlvi Paris Agreement, Preamble; For one description of the principles involved in a just transition, see International Labour Organisation, *Guidelines for a just transition towards environmentally sustainable economies and societies for all*, (2015). This states that 'A just transition for all towards an environmentally sustainable economy needs to be well managed and contribute to the goals of decent work for all, social inclusion and the eradication of poverty (4, [4]).

xlvii ICESCR, arts 6,7, 8, 9 and 11; ICCPR, arts 2, 3, 26.

xlviii Paris Agreement, Preamble, arts 6, 7, 9, 11.

xliv Law Council of Australia, *Indigenous Australians and the Legal Profession*, Policy Statement, February 2010

ⁱ Constitution of Law Council of Australia Limited, adopted on 16 April 2003, cl 2.

ⁱⁱ Law Council of Australia, *Rule of Law Principles*, Policy Statement, March 2011.