

Chapter 4

Climate change context – International and Domestic

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*I am convinced that climate change, and what we do about it, will define us, our era, and ultimately the global legacy we leave for future generations. Today, the time for doubt has passed.*¹

Ban Ki-moon, Secretary-General, United Nations

Climate change poses an enormous global challenge and will have significant impacts on all countries, governments, companies, communities, families and individuals. As the impacts of climate change increases people's vulnerability to poverty and social deprivation, it has the potential to exacerbate inequality and threaten human rights. In particular, the livelihoods of women and children, and low socio-economic populations including the worlds' Indigenous peoples are at high risk.

The former President of the Australian Human Rights Commission identified the potential challenges that we will face as follows:

The human rights lens shows populations becoming increasingly vulnerable to poverty and social deprivation as large tracts of previously fertile land become useless. We can anticipate conflicts over limited water supplies becoming more severe and frequent. We see problems in controlling infectious diseases, which are also spreading wider. We see rising sea-levels submerging low-lying atoll countries and delta regions, or making them uninhabitable by inundating their fresh water tables.

These are scenarios which directly threaten fundamental human rights; rights to life, to food, to a place to live and work as well as rights to shelter and property, rights associated with livelihood and culture and migration and resettlement... the worst effects of climate change are likely to be felt by those individuals and groups whose rights are already precarious.²

The climate change debate has so far largely focused on economic impacts and developing new technologies to mitigate and adapt to climate change. Consideration of the human rights impact has generally been minimal.³

Addressing climate change requires a multifaceted policy approach that ensures the protection of fundamental human rights, ensuring that the rights of the most vulnerable are at the forefront of the debate. With climate change policy developing rapidly, governments need to be

1 United Nations Secretary-General, *Climate change and indigenous peoples*, (2007). At: www.un.org/esa/socdev/unpfii/en/climate_change.html (viewed 21 July 2008).

2 J von Doussa, *Climate change and human rights: a tragedy in the making*, (Speech delivered at the Australian Human Rights Commission Human Rights Law Seminar, Sydney, 20 August 2008) At: <http://www.humanrights.gov.au/legal/seminars/index.html> (viewed 26 August 2008).

3 International Council for Human Rights Policy, *Climate change and human rights: a rough guide*, (2008), p 14. At: http://www.ichrp.org/files/reports/36/136_report.pdf (viewed 28 August 2008).

mindful of international obligations and commitments under the various international mechanisms, and be sure to address more than just the environmental and economic impacts of climate change.

Text Box 1: What is climate change?⁴

The UNFCCC defines climate change as a change in climate which is attributed directly or indirectly to human activity, which alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.

This change in climate is due to the release of greenhouse gases over a period of time. This is also known as greenhouse gas emissions or carbon emissions. There are six main greenhouse gases:

- carbon dioxide
- methane
- nitrous oxide
- hydrofluorocarbons
- perfluorocarbons
- sulphur hexafluoride.

Many human activities contribute to the emission of greenhouse gases, particularly carbon dioxide. This means that greenhouse gas emissions have increased significantly since pre-industrial times and continues to increase. This is because people keep on using fossil fuels for electricity and power to provide heating, transportation, and for industry. Fossil fuels include gas, coal, oil and oil-derived products like diesel.

Since 1750, anthropogenic (human induced) greenhouse gases have made up 14 percent of synthetic greenhouse gas emissions and continue to increase. According to the Intergovernmental Panel on Climate Change (IPCC), global emissions of greenhouse gases increased by 70 percent between 1970 and 2004.

1. An historical overview

Climate change is not a recent phenomenon. Scientists have been studying changes in climate since the 1700s. While changes in climate occur naturally, the current changes are significantly human induced, and are a direct result of industrialisation.

The link between climate change and the burning of fossil fuels was realised as early as the 1890s.⁵ Since then, governments, community organisations, and scientists have been monitoring, assessing, and trying to manage the consequences of the industrial revolution. This has resulted in the build up of carbon dioxide and other greenhouse gases in the earth's atmosphere, changing our global environment, in some instances permanently.

The environment was formally placed on the global agenda for the first time at the first United Nations Conference on Environment and Development, 'the Earth Summit', held in Stockholm, Sweden in 1972. While climate change was not specifically discussed until the World Climate Change Conference in Geneva in 1979, the Earth Summit established the United Nations Environment Programme (UNEP).

4 *United Nations Framework Convention on Climate Change*, 1992, art 1.

5 Greenhouse Network, *Climate Change: Timeline*. At: <http://www.greenhousenet.org/resources/timeline.html> (viewed 5 September 2008).

In 1998, the UNEP created, in partnership with the World Meteorological Organisation, the Intergovernmental Panel on Climate Change (IPCC). It is constituted by governments, scientists, and the United Nations body (representing the people). The role of the IPCC is to 'assess on a comprehensive, objective, open and transparent basis, the latest scientific, technical and socio-economic literature produced worldwide relevant to the understanding of the risk of human induced climate change, its observed and projected impacts and options for adaptation and mitigation'.⁶ The findings of the first IPCC Assessment Report in 1990 played a decisive role in establishing the United Nations Framework Convention on Climate Change (UNFCCC). The UNFCCC was signed in 1992 and commenced in 1994. The well-known Kyoto Protocol is a protocol to this convention.

A number of reviews have also been conducted which consider the impacts of climate change and suggest solutions to address issues arising from climate change. The more recent of these reports, recognise that climate change is supported by scientific evidence, is more advanced than initially thought, and is a global issue that requires global solutions.

Unfortunately, many of these reviews have focused on the economic implications of climate change and the development of new technologies to assist with the mitigation and adaptation of climate change, without specifically addressing the human rights implications. One of the original government initiated reviews was the British government's 'Stern Review'⁷ which examined the evidence of the economic impacts of climate change and explored the economics of stabilising greenhouse gases in the atmosphere. It also considered the policy challenges involved in establishing and transitioning to a low-carbon economy. Australia has begun its own review, *The Garnaut Review*, which is discussed later in this chapter.

Text Box 2: Responding to climate change

The main focus for responses to climate change have generally included:

- *Mitigation*: The United Nations Development Programme (UNDP) refers to mitigation as one part of a twin strategy that offers 'insurance against catastrophic risks for future generations of humanity, regardless of their wealth and location'.⁸ Governments have considered a primary response to minimise the impacts of climate change as the introduction of measures to lower its rate of acceleration, mainly by aiming to reduce greenhouse gas emissions.

6 Intergovernmental Panel on Climate Change, About IPCC. At: www.ipcc.ch/about/index/htm (viewed 3 September 2008).

7 HM Treasury, *Stern Review on the economics of climate change*, Executive Summary. At: http://www.hm-treasury.gov.uk/media/4/3/executive_summary.pdf (viewed 6 September 2008).

8 United Nations Development Programme, *Fighting climate change: Human solidarity in a divided world*, Human Development Report 2007/2008 (2008), p 167.

- *Adaptation*: 'Adaptation' refers to actions taken to adjust lives and livelihoods to the new conditions brought about by warming temperatures and associated climate changes.⁹ The impacts of climate change are significantly advanced and in some instances irreversible, even with successful mitigation. Governments will be required to establish measures that support affected communities to adapt to climate change.
- *Relocation*: there are communities around the world that are already being displaced by climate change. While some migration policies have been introduced, to date there has been no coordinated response from the international community to address the needs of 'climate change refugees'.¹⁰

These responses are considered in the Australian Indigenous context in chapter 5.

2. The International Framework

For at least the last 60 years, governments in the developed world in particular have downplayed the significance of climate change, in order to secure their place in the world as economic leaders. This is despite the fact that they are the same governments that developed the international treaties and standards designed to assist in managing the risk of climate change.

At international law there are two instruments that address the issue of climate change specifically:

- The United Nations Framework Convention on Climate Change (UNFCCC) developed at the Earth Summit in Rio de Janeiro in 1992
- The Kyoto Protocol, negotiated in Japan in 1997, and entered into force in February 2005.

Appendix 4 provides a comprehensive summary of the existing international and domestic frameworks that directly or indirectly addresses climate change.

(a) The United Nations Framework Convention on Climate Change

The UNFCCC has been ratified by 192 countries, including Australia, all of whom have committed to stabilising their greenhouse gas emissions to what they were in 1990. The Convention provides for a minimum standard of emissions and reporting mechanisms on progress, including submitting periodic statements of greenhouse gas emissions, developing strategies to adapt to climate change, and cooperating on research and technology.

Although the Convention is not binding on its signatories, the emissions targets apply to developed countries in recognition of the fact that industrialised or developed countries have contributed more to climate change than developing countries.¹¹ To date no emission cuts have been imposed on developing countries.

9 International Council for Human Rights Policy, International Council for Human Rights Policy, *Climate change and human rights: a rough guide*, (2008), p 14. At: http://www.ichrp.org/files/reports/36/136_report.pdf (viewed 28 August 2008).

10 Australian Human Rights Commission, *Climate Change and Human Rights*. At: <http://www.humanrights.gov.au> (viewed 26 August 2008).

11 Developed countries are also referred to as Annex countries which are further divided into Annex I and Annex II countries. Annex II countries are industrialised nations which pay for the costs of any developing country's emission reductions. For further discussion see State Library of New South Wales, Hot Topics: Legal Issues in Plain Language, *Climate Change*, Hot Topics 63 (2007), p 3.

However, some countries were able to negotiate different emission reduction targets. Australia obtained special concessions allowing greenhouse gas emissions to increase 8 percent above 1990 emission levels up to 2012.¹²

Each year, a ‘Conference of the Parties’ (COP) is held for parties to the UNFCCC. At the third COP (otherwise known as COP-3) in 1997, the first set of binding rules to the UNFCCC, the Kyoto Protocol, was negotiated.¹³

(b) The Kyoto Protocol

The Kyoto Protocol is an international agreement linked to the UNFCCC. To date, it has been ratified by 182 nations. The Kyoto Protocol was adopted in Kyoto, Japan, on 11 December 1997, and entered into force on 16 February 2005. The objective of the Protocol is the ‘stabilisation of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system’.¹⁴ It sets binding targets and timetables for emissions reductions. While the Convention encouraged industrialised countries to stabilise greenhouse gas emissions, the Kyoto Protocol commits them to do so.

Signatory countries must meet their targets primarily through national measures. However, the Kyoto Protocol also includes market based mechanisms to assist them to meet their targets. The Kyoto mechanisms are:

- Emissions trading – known as ‘the carbon market’
- The clean development mechanism
- Joint implementation.¹⁵

These mechanisms are discussed further in chapter 5.

The Protocol also includes systems for:

- the registration of Party transactions under the Kyoto mechanisms
- the submission of annual emissions inventory reports and national reports by the Parties¹⁶
- compliance, to ensure Parties are meeting their commitments and if they are not assists them to do so
- adaptation, designed to assist countries in adapting to the adverse effects of climate change. The Protocol facilitates the development and deployment of techniques that can help increase resilience to the impacts of climate change.¹⁷

12 Australian Government, *Implementing the Kyoto Protocol in Australia, Fact Sheet*, Department of Climate Change. At: <http://www.climatechange.gov.au/international/publications/fs-kyoto.html> (viewed 26 September 2008).

13 State Library of New South Wales, Hot Topics: Legal Issues in Plain Language, *Climate Change*, Hot Topics 63, (2007) p 3.

14 State Library of New South Wales, Hot Topics: Legal Issues in Plain Language, *Climate Change*, Hot Topics 63, (2007) p 3.

15 United Nations Framework Convention on Climate Change, *Kyoto Protocol*. At: http://unfccc.int/kyoto_protocol/items/2830.php (viewed 5 August 2008).

16 Under the Kyoto Protocol, Australia must submit a national inventory of emissions and removals of greenhouse gases to the United Nations in accordance with the UN Framework Convention on Climate Change. For further information, see National Greenhouse Gas Inventory. At: www.greenhouse.gov.au/international/unfccc.html (viewed 5 August 2008).

17 United Nations Framework Convention on Climate Change, *Kyoto Protocol*. At: http://unfccc.int/kyoto_protocol/items/2830.php (viewed 5 August 2008).

Parties to the Kyoto Protocol developed and adopted detailed rules for implementation at COP-7 in Marrakesh in 2001, they are called the ‘Marrakesh Accords’.¹⁸

(c) International human rights framework

The international human rights framework recognises the basic, but fundamental rights that each individual is entitled to. These rights are provided for under particular international instruments, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

However, the international framework also provides for the recognition and protection of distinct rights of peoples’ whose way of life comes under threat from particular circumstances such as climate change. This includes issues that relate to specific areas of concern such as the ownership of traditional lands and territories, natural and cultural heritage, biodiversity, intellectual property rights, poverty reduction, and economic development.

Although the international climate change framework is integrally linked to a number of other international instruments that address issues related to climate change, this link is rarely given the weight it deserves. Appendix 4 provides an overview of the international human rights framework that provides specifically for the engagement of Indigenous peoples in climate change policy.

Text Box 3: Examples of how human rights will be negatively affected by climate change

- **Right to Life:** The effect of climate change on the right to life may be immediate; for example, death caused by extreme climate-change induced weather. It may also appear gradually; for example, when climate change causes people’s health to deteriorate, limits their access to safe drinking water and makes them more susceptible to disease.
- **Right to Adequate Food:** Increased temperatures and changes in rainfall patterns will lead to erosion and desertification. This will make previously productive land infertile and reduce crop and livestock. Rising sea levels will make coastal land unusable and cause fish species to migrate, while more frequent extreme weather events will disrupt agriculture.
- **Right to Water:** As the earth gets warmer, heat waves and water shortages will make it difficult to access safe drinking water and sanitation. There will be lower and more erratic rainfall in the tropical and sub-tropical areas of the Asia Pacific, which will get worse as the Himalayan glaciers melt.
- **Right to Health:** Climate change will have many impacts on human health. These will mainly be caused by disease and malnutrition. For example, changes in temperature will affect the intensity of a wide range of vector-borne, water-borne and respiratory diseases.

18 United Nations Framework Convention on Climate Change, *Kyoto Protocol*. At: http://unfccc.int/kyoto_protocol/items/2830.php (viewed 5 August 2008).

- **Human Security:** Climate change has the potential to aggravate existing threats to human rights. The impacts of climate change will increase people's vulnerability to poverty and social deprivation. People whose rights are poorly protected are also generally less equipped to adapt to climate change impacts.
- **Rights of indigenous peoples:** Climate change has a big impact on indigenous peoples around the world. It impacts them in a unique way; due to the deep engagement they have with the land. For example, it has been predicted that Aboriginal and Torres Strait communities will bear the brunt of climate change and will face serious health risks from malaria, dengue fever and heat stress, as well as loss of food sources from floods, drought and more intense bushfires.¹⁹

2.2 The Millennium Development Goals

The Millennium Development Goals (MDGs) were established under the Millennium Declaration and adopted at the Millennium Summit in 2000.

The MDGs are time-bound and quantified targets for addressing extreme poverty in its many dimensions including: poverty, hunger, disease, lack of adequate shelter, and exclusion; while promoting gender equality, education, and environmental sustainability. They are also basic human rights, the rights of each person on the planet to health, education, shelter, and security.²⁰

Governments around the world, including Australia,²¹ have committed to accomplishing all eight MDGs aimed at eradicating global poverty by 2015.²²

Text Box 4: The Millennium Development Goals

- Goal 1:** Eradicate Extreme Hunger and Poverty
- Goal 2:** Achieve Universal Primary Education
- Goal 3:** Promote Gender Equality and Empower Women
- Goal 4:** Reduce Child Mortality
- Goal 5:** Improve Maternal Health
- Goal 6:** Combat HIV/AIDS, Malaria and other diseases
- Goal 7:** Ensure Environmental Sustainability
- Goal 8:** Develop a Global Partnership for Development

19 Australian Human Rights Commission, *Climate Change and Human Rights*. At: <http://www.humanrights.gov.au> (viewed 26 August 2008).

20 The Millennium Project, Commissioned by the UN Secretary General, and supported by the UN Development Group. At: <http://www.unmillenniumproject.org/index.htm> (viewed 28 August 2008).

21 Australia is a signatory to the MDGs. However, our government is not currently using the goals as specific targets. Additionally, the Australian Government see the MDGs as only related to their regional and international obligations rather than as a mechanism to guide the advancement of their Indigenous peoples domestically. This also means that Indigenous Australians are not often able to access international mechanisms such as the MDGs to assist with the development of poverty reduction strategies. This is a significant issue for Indigenous communities where not only are we over represented in all areas of socio-economic disadvantage, but the impacts of climate change will exacerbate this situation.

22 For more information about the Millennium Development Goals see: <http://www.unmillenniumproject.org/index.htm>.

Climate change poses a significant threat to biodiversity, addressed by Goal 7 of the MDGs to achieve a sustainable environment. Biodiversity conservation and maintenance of ecosystem integrity are essential to the reduction of people's vulnerability to climate change and to the achievement of the MDGs.

Consequently, those who are signatories, to the MDGs are obliged to:

...make every effort to ensure the entry into force of the Kyoto Protocol...and to embark on the required reduction in emissions of greenhouse gases.²³

Recent reports of the World Health Organization (WHO) and the Millennium Ecosystem Assessment²⁴ reveal that biodiversity resources provide the necessary food to combat malnutrition and undernourishment, an important cause of child mortality. Other ecosystem services provided by biodiversity includes the promotion of health by filtering toxic substances from air, water and soil, and by breaking down waste and recycling nutrients, as well as providing an irreplaceable source of medicines.

The United Nations and governments should consider the MDGs a guiding framework in the development of climate change policy. This will ensure that mitigation and adaptation strategies do not undermine progress that has been made towards achieving the goals and that the targets for poverty reduction remain firmly on the agenda.

2.3 United Nations Permanent Forum on Indigenous Issues

The UN Permanent Forum on Indigenous Issues (UNPFII) is an advisory body to the Economic and Social Council, with a mandate to discuss indigenous issues related to economic and social development, culture, the environment, education, health and human rights.

The seventh session of the UNPFII firmly placed the issue of climate change for Indigenous people on the international agenda, recognising that:

...[T]he magnitude, accelerated pace and compound effects of climate change today are unprecedented, thus presenting major challenges to indigenous peoples' capacity to adapt. Further, some of the mitigation measures seen as solutions to climate change are also having negative impacts on indigenous peoples.

As stewards of the world's biodiversity and cultural diversity, Indigenous peoples' traditional livelihoods and ecological knowledge can significantly contribute to designing and implementing appropriate and sustainable mitigation and adaptation measures. Indigenous peoples can also assist in crafting the path towards developing low-carbon release and sustainable communities.²⁵

At the session held in April 2008, indigenous peoples from around the world voiced concerns, predicting that Indigenous people will bear the brunt of climate change impacts. We also expect that we will be required to contribute our cultural and intellectual knowledge on valuable biodiversity, to develop mitigation strategies 'in the national interest'.

23 State Library of New South Wales, Hot Topics: Legal Issues in Plain Language, *Climate Change*, Hot Topics 63, (2007), p 16.

24 Millennium Ecosystem Assessment. Biodiversity Synthesis. 2005, as cited by: The Secretariat of the Convention on Biological Diversity, *Biodiversity, Climate Change, and the Millennium Development Goals (MDGs)*. At: <http://www.cbd.int/doc/bioday/2007/ibd-2007-factsheet-03-en.pdf> (viewed 26 August 2008).

25 United Nations Economic and Social Council, *Recommendations on the special theme, 'Climate Change, biocultural diversity and livelihood: the stewardship role of indigenous peoples and new challenges'*, Permanent Forum on Indigenous Issues, E/C.19/2008/14 (2008), p 1.

(a) Outcomes of the Permanent Forum

The Permanent Forum found that as indigenous peoples have the smallest ecological footprints, we should not be asked to carry the 'heavier burden of adjusting to climate change.' The forum concluded that mitigation and adaptation strategies must be 'holistic and take into account not only the ecological dimensions of climate change, but also the social impacts, human rights, equity and environmental justice'.²⁶

The members of the UNPFII made a number of recommendations to the United Nations Economic and Social Council regarding the impacts of climate change on indigenous peoples, including:

- that States develop mechanisms through which they can monitor and report on the impacts of climate change on indigenous peoples, which considers our socio-economic limitations as well as our spiritual and cultural attachment to lands and waters
- a call to all UN agencies and States to support traditional practices and laws which can contribute to global solutions to climate change, and respects the right to self-determination of indigenous peoples to decide on mitigation and adaptation measures in the our lands and territories
- a call to States to implement the United Nations Declaration on the Rights of Indigenous Peoples and the principles of sustainability. This is particularly relevant to transnational corporations and highly industrialised States engaging in development activities.²⁷

The Permanent Forum have also appointed two of their members as special rapporteurs to prepare a report on various models and best practices of mitigation and adaptation measures undertaken by indigenous peoples from around the world. This report will include a draft declaration of action on climate change and indigenous peoples.

2.4 Declaration on the Rights of Indigenous Peoples

The Declaration on the Rights of Indigenous Peoples (the Declaration), adopted by the United Nations General Assembly in September 2007, also forms part of the international framework addressing climate change. In particular, the declaration supports the full participation and engagement of Indigenous peoples in the development and implementation of national and international policy. This will be particularly important for Indigenous peoples in responding to climate change.

The Declaration strengthens the international human rights system as a whole, elaborating upon existing international human rights norms and principles as they apply to indigenous peoples.

The Declaration on the Rights of Indigenous Peoples specifically recognises our rights to our lands and territories, our waters, our culture, our natural resources and our rights to self determination and sustainable economic development. It also formalises the right of indigenous people to give our free, prior and informed consent before certain actions affecting our lands and waters can occur. The declaration recognises:

26 United Nations Economic and Social Council, *Recommendations on the special theme, 'Climate Change, biocultural diversity and livelihood: the stewardship role of indigenous peoples and new challenges'*, Permanent Forum on Indigenous Issues, E/C.19/2008/14 (2008), p 1.

27 United Nations Economic and Social Council, *Recommendations on the special theme, 'Climate Change, biocultural diversity and livelihood: the stewardship role of indigenous peoples and new challenges'*, Permanent Forum on Indigenous Issues, E/C.19/2008/14 (2008), pp 3-7.

- a right to the land we traditionally own
- a right to compensation for land if it is taken, occupied, used or damaged without our free, prior and informed consent
- a right to the conservation and environmental protection of our country
- a right to determine and develop priorities and strategies for the development or use of our lands and resources.

This approach to Indigenous rights is also reflected in the 1992 Rio Declaration, which recognises the vital role of indigenous communities' knowledge and traditional practices in environmental management; and Agenda 21, which promotes the development of national policy approaches to indigenous participation in land and resource management through caring for country and economic development.

It is imperative that those governments who have not yet adopted the Declaration, including Australia, do so as a priority.

2.5 The Second International Decade on the World's Indigenous People

The Second International Decade on the World's Indigenous People which commenced on 1 January 2005,²⁸ follows on from the First International Decade which took place from 1995-2004. The Second Decade covers the period 2005-2015 and recognises the continued problems that indigenous peoples around the world face across all social indicators of disadvantage.

A Programme of Action was developed by the Coordinator of the Second Decade and Under-Secretary-General for the Department of Economic and Social Affairs with the input of member States, the United Nations system and other intergovernmental organisations, indigenous peoples' organisations, other non-governmental organisations, the private sector and other parts of civil society. The Programme of Action includes five objectives for the Decade, including:

- **promoting non-discrimination and inclusion** of indigenous peoples in the design, implementation and evaluation of international, regional and national processes regarding laws, policies, resources, programmes and projects
- **promoting full and effective participation** of indigenous peoples in decisions which directly or indirectly affect their lifestyles, traditional lands and territories, their cultural integrity as indigenous peoples with collective rights or any other aspect of their lives, considering the principle of free, prior and informed consent
- **redefining development policies** that depart from a vision of equity and that are culturally appropriate, including respect for the cultural and linguistic diversity of indigenous peoples

28 In December 2004, the General Assembly adopted a resolution (59/174) for a Second International Decade on the World's Indigenous people. International Work Group for Indigenous Affairs, *Second International Decade of the World's Indigenous Peoples (2005-2014)*, Fact Sheet. At: <http://www.iwgia.org/sw8961.asp> (viewed 11 December 2008).

- **adopting targeted policies, programmes, projects and budgets** for the development of indigenous peoples, including concrete benchmarks, and particular emphasis on indigenous women, children and youth
- **developing strong monitoring mechanisms and enhancing accountability** at the international, regional and particularly the national level, regarding the implementation of legal, policy and operational frameworks for the protection of indigenous peoples and the improvement of their lives.²⁹

The Second Decade addresses the areas of action consistent with the United Nations Permanent Forum on Indigenous Issues being: Culture; Education; Health; Human Rights; the Environment; and Social and Economic Development.

The Programme of Action³⁰ recognises that:

Climate change and other stressors, in particular pollutants and the ecologically unsustainable use of natural resources, present a range of challenges for the health, culture and well-being of indigenous peoples, and pose risks to the species and ecosystems that those communities and cultures rely on.³¹

The Coordinator of the Second Decade and Under-Secretary-General for the Department of Economic and Social Affairs recommend that it will be essential to:

- a) work closely with indigenous and local communities to help them to adapt to and manage the environmental, economic and social impacts of climate change and other stressors
- b) implement, as appropriate, sustainable and adaptive management strategies for ecosystems, making use of local and indigenous knowledge and indigenous peoples full and effective participation, and review nature conservation and land and resource- use policies and programmes
- c) stress the importance of promoting procedures for integrating indigenous local knowledge into scientific studies, and partnerships among indigenous peoples, local communities and scientists in defining and conducting research and monitoring associated with climate change and other stressors.

29 United Nations General Assembly, *Draft Programme of Action for the Second International Decade of the World's Indigenous People, Report of the Secretary General*, Sixtieth session, Item 70 of the Provisional Agenda, Indigenous Issues, A/60/207, 18 August 2005. At: <http://daccessdds.un.org/doc/UNDOC/GEN/N05/464/96/PDF/N0546496.pdf?OpenElement> (viewed 3 December 2008).

30 The Programme of Action for the Second International Decade of the World's Indigenous People was adopted by the General Assembly on 29 November 2005. For further information see United Nations General Assembly, *Indigenous issues, Report of the Third Committee*, Sixtieth session, Agenda item 68, A/60/506, (2005). At: <http://daccessdds.un.org/doc/UNDOC/GEN/N05/622/49/PDF/N0562249.pdf?OpenElement> (viewed 2 December 2008).

31 United Nations General Assembly, *Draft Programme of Action for the Second International Decade of the World's Indigenous People, Report of the Secretary General*, Sixtieth session, Item 70 of the Provisional Agenda, Indigenous Issues, A/60/207, (2005). At: <http://daccessdds.un.org/doc/UNDOC/GEN/N05/464/96/PDF/N0546496.pdf?OpenElement> (viewed 3 December 2008).

Text Box 5: The Second International Decade on the World's Indigenous People – Programme of Action – Recommendations regarding the Environment

It is recommended that:

- the indigenous related elements of the programme of work of the Convention on Biological Diversity and the Cartagena Protocol on Biosafety, especially on fair and equitable sharing of benefits from the use of genetic resources, should be considered as part of the Programme of Action, and in particular sustainable development and the protection of traditional knowledge should remain urgent priorities regarding the world's indigenous peoples.
- programmes to strengthen synergies between indigenous knowledge and science should be developed to empower indigenous peoples in processes of biodiversity governance and assessment of impacts on territories, as part of the intersectoral project of UNESCO on Local and Indigenous Knowledge Systems.
- the Akwe:Kon Guidelines for the conduct of cultural, environmental social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites on lands and waters traditionally occupied and used by indigenous local communities, must be taken into consideration and implementation in programmes and projects carried out during the Decade.
- programmes and projects planned on traditional indigenous territories or otherwise affecting the situation of indigenous peoples should foresee and respect the full and meaningful participation of indigenous peoples.
- indigenous persons who promote the protection of the environment should not be persecuted or harassed for their activities.
- all relevant actors are encouraged to develop and implement programmes and projects for natural disaster management at the national and community levels with indigenous peoples' full and meaningful participation.³²

The Programme of Action for the Second International Decade on the World's Indigenous People provides guidance for action during the Decade. As such I recommend that the Australian Government and its State and Territory counterparts fully implement the Programme of Action for the Second Decade on the World's Indigenous People, and use these guidelines in the development of climate change and related law and policy.

³² United Nations General Assembly, *Draft Programme of Action for the Second International Decade of the World's Indigenous People, Report of the Secretary General, Sixtieth session, Item 70 of the Provisional Agenda, Indigenous Issues, A/60/207*, (2005). At: <http://daccessdds.un.org/doc/UNDOC/GEN/N05/464/96/PDF/N0546496.pdf?OpenElement> (viewed 3 December 2008).

3. The Domestic Framework

Australia has not yet decided on a comprehensive response to the climate change dilemma. With a new government elected in October 2007, the Australian Government has stepped up its efforts to address the climate change catastrophe. It began this effort by ratifying the Kyoto Protocol in December 2007, and by initiating the Garnaut Review. Shortly after, it began developing its national climate change policy.

Identified as one of the highest priorities requiring action, the Australian Government has acknowledged that 'addressing climate change is one of the key economic and environmental challenges facing Australia and the rest of the world'.³³

While the main focus of the Australian Government has been on the development of an emissions trading scheme, during the 2007 election, the Australian Government committed to establishing a legal framework providing for Indigenous participation in carbon markets.

This is intended to be achieved by:

- encouraging partnerships between the private sector and Indigenous communities
- conducting research around scientific and market potential.

This will include supporting land councils and Indigenous businesses to develop carbon credit schemes.³⁴ It is still unclear what this policy will actually entail in practice.

The Australian Government has also identified potential benefits the carbon market has to offer Indigenous communities:

Together with emerging carbon market opportunities, biodiversity benefits created by Indigenous land management services also have the potential to be a commodity in Australia and markets overseas. Management of those natural resources sits alongside the other land based industries offering huge potential for these communities, like sustainable time productions, tourism, horticulture and pastoral work.³⁵

Again, it is unclear how these potential benefits for Indigenous communities will be realised.

However, what is clear is that, as a party to a series of international treaties and protocols, and in the light of other international guidelines and standards, Australia has an obligation to protect individuals against threats posed to human rights by climate change. The challenge for the Australian Government is to develop a response to climate change that distributes rights and responsibilities equally. This challenge is further complicated by the need to address the migration of peoples from the neighbouring Asia Pacific region.

33 Australian Government, Department of Climate Change, *Carbon Pollution Reduction Scheme, Green Paper, July 2008 Summary Report*. (At: <http://www.climatechange.gov.au/greenpaper/summary/summary-report.html> (viewed 29 August 2008).

34 Australian Labor Party, 'Federal Labor to create up to 300 Rangers as part of Indigenous Economic Development Strategy', (Media Release, 5 October 2007).

35 Australian Labor Party, 'Federal Labor to create up to 300 Rangers as part of Indigenous Economic Development Strategy', (Media Release, 5 October 2007).

3.1 Australian Government Reviews

The Australian Government has begun to consider its response to climate change for Australia and the broader Asia Pacific Region. It has done this through a number of reviews including *The Garnaut Review*, and the *Green Paper – Carbon Pollution Reduction Scheme*.

(a) The Garnaut Review

The Garnaut Climate Change Review³⁶ has been commissioned by Australia's Commonwealth, state and territory governments to examine the impacts, challenges and opportunities of climate change for Australia. The Garnaut Review is a compilation of reports including:

- an Interim Report³⁷ released in February 2008
- the Draft Report³⁸ released on 4 July 2008
- a Supplementary Draft Report³⁹ released on 5 September 2008
- the Final Report⁴⁰ released on 30 September 2008.

The Garnaut Review considers a number of issues concerning Australia's response to climate change including:

- the evaluation of the costs and benefits of climate change mitigation
- the application of the science of climate change to Australia
- the international context of Australian mitigation
- Australian mitigation policy.⁴¹

The Review focuses on economic implications and the costs involved in mitigating climate change, and does not specifically consider in any detail the human rights implications. In particular, it provides a detailed discussion on the impacts of climate change to the national and global economy, and the development of a national emissions trading scheme. It is anticipated that the Supplementary Draft Report will consider four categories of climate change:

- The first category is market impacts, about which there is already sufficient information to assess economic effects through a general equilibrium model.
- The second is the market impacts, about which there is currently insufficient information to assess through general equilibrium modelling.

36 Garnaut Climate Change Review, *Garnaut Climate Change Review*. At: <http://www.garnautreview.org.au/CA25734E0016A131/pages/home> (viewed 6 September 2008).

37 R Garnaut, *Garnaut Climate Change Review, Interim Report to the Commonwealth, State and Territory Governments of Australia*, Commonwealth of Australia, February 2008.

38 R Garnaut, *The Garnaut Climate Change Review, Draft Report*, Commonwealth of Australia, 4 July 2008. At: <http://www.garnautreview.org.au/CA25734E0016A131/pages/all-reports--resources-draft-report> (viewed 17 October 2008).

39 R Garnaut, *The Garnaut Climate Change Review, A Supplementary Draft Report – Targets and Trajectories*, Commonwealth of Australia, September 2008. At: [http://www.garnautreview.org.au/CA25734E0016A131/WebObjGarnautReviewTargetsandtrajectoriesSupplementaryDraftReport5Sept2008\(Accessibilityenabled\)/\\$File/Garnaut%20Review%20Targets%20and%20trajectories%20Supplementary%20Draft%20Report%205%20Sept%202008%20\(Accessibility%20enabled\).pdf](http://www.garnautreview.org.au/CA25734E0016A131/WebObjGarnautReviewTargetsandtrajectoriesSupplementaryDraftReport5Sept2008(Accessibilityenabled)/$File/Garnaut%20Review%20Targets%20and%20trajectories%20Supplementary%20Draft%20Report%205%20Sept%202008%20(Accessibility%20enabled).pdf) (viewed 17 October 2008)

40 R Garnaut, *The Garnaut Climate Change Review, Final Report*, Cambridge University Press, Commonwealth of Australia (2008). At: <http://www.garnautreview.org.au/chp22.htm> (viewed 17 October 2008).

41 Garnaut Climate Change Review, *Garnaut Climate Change Review*. At: <http://www.garnautreport.org.au/draft.htm> (viewed 6 September 2008).

- The third is the chance of much more serious and possibly catastrophic outcomes. Here the issue is how much it is worth paying for insurance against outcomes that may not be very likely, but which will be extremely damaging if they occur.
- The fourth and final category is the impacts that are not valued in conventional markets but have considerable worth to Australians.⁴²

The human rights implications and the impacts on the lives of Aborigines and Torres Strait Islanders should be considered in the final report, particularly under the third and fourth category above.

(b) The Green Paper – Carbon Pollution Reduction Scheme

In July 2008, the Australian Government released a Green Paper outlining a three pillar strategy which seeks to:

- reduce Australia's greenhouse gas emissions
- adapt to the climate change we cannot avoid
- help shape a global solution that both protects the planet and advances Australia's long-term interests.⁴³

The Green Paper also includes a proposal to introduce a Carbon Pollution Reduction Scheme in 2010.

The Carbon Pollution Reduction Scheme, more broadly referred to as an 'emissions trading scheme', is a market based approach based on a 'cap and trade' scheme. There are two elements of a cap and trade scheme— a cap, and an ability to trade. The cap achieves the environmental outcome of reducing greenhouse gas pollution. It is the limit on greenhouse gas emissions imposed by the Carbon Pollution Reduction Scheme.⁴⁴ The act of capping emissions creates a carbon price, while the ability to trade ensures that emissions are reduced at the lowest possible cost.

Text Box 6: What is an emissions trading scheme?

Emissions trading aims to achieve the reduction of greenhouse gas emissions through efficient, low cost strategies. Emissions trading schemes are also called 'cap and trade' schemes. These schemes may apply to all industries and sectors, however many of them begin with the 'stationary energy sector' which includes coal-fired and gas-fired power stations.⁴⁵

42 Garnaut Climate Change Review, *Garnaut Climate Change Review Update*, Bulletin 3, (2008). At: [http://www.garnautreview.org.au/CA25734E0016A131/WebObj/FINALAuguste-bulletin_29Aug08/\\$File/FINAL%20August%20e-bulletin_29%20Aug%2008.pdf](http://www.garnautreview.org.au/CA25734E0016A131/WebObj/FINALAuguste-bulletin_29Aug08/$File/FINAL%20August%20e-bulletin_29%20Aug%2008.pdf) (viewed 6 September 2008).

43 Australian Government, *Carbon Pollution Reduction Scheme, Green Paper*, July 2008 Summary Report, Department of Climate Change, (2008). At: <http://www.climatechange.gov.au/greenpaper/summary/summary-report.html> (viewed 29 August 2008).

44 Australian Government, *Carbon Pollution Reduction Scheme, Green Paper*, July 2008 Summary Report, Department of Climate Change, (2008). At: <http://www.climatechange.gov.au/greenpaper/summary/summary-report.html> (viewed 29 August 2008).

45 State Library of New South Wales, Hot Topics: Legal Issues in Plain Language, *Climate Change*, Hot Topics 63, (2007) p 9.

Emissions trading programs involve the creation of a market based mechanism that introduces an annual cap or limit on greenhouse gas emissions. The limit of emissions a party has is allocated through permits and is decreased progressively to ensure that the parties overall emissions are reduced over time. The permits may be allocated for free, or sold at auction. However, many schemes have preferred to provide industry with free permits to compensate for the reduction of their emissions levels.⁴⁶ The cap applied should not be exceeded and in most cases penalties apply for non-compliance.

The creation of a carbon market provides for those parties who have gone over their limit to purchase permits from other parties who may not have reached their limit. The parties may also bank left over permits for future use. An important objective of an emissions trading scheme is that it encourages emitters to introduce technologies which will reduce their emissions. The levels of abatement achieved through the use of new technologies provides cash incentives created from tradable credits resulting from lower emissions.

There are many 'carbon markets' including compulsory markets (the Kyoto Protocol), voluntary markets (Chicago climate exchange, Australian carbon exchange, general contract offsets for advertising/carbon neutral ambitions) as well as emissions offsetting required under other regulatory regimes (planning and environmental approvals for development – the Western Arnhem Land Fire Abatement Project in Australia).

Emissions trading schemes are already operating around the world, including in the United Kingdom, the United States and the European Union. While Australia is in the process of developing a national emissions trading scheme, the New South Wales Government has had a scheme in place since 2003.⁴⁷

For example:

The New South Wales Greenhouse Gas Abatement Scheme

The NSW Greenhouse Gas Abatement Scheme began in 2003 and applies only to electricity retail suppliers and electricity generators. Emitters are given annual emissions reductions targets which are on a per capita basis until 2021. To achieve these targets industry can either take onsite measures to reduce their emissions, or offset emissions by purchasing 'abatement certificates' from companies that have not reached the limits and have 'credits'.

While the scheme is thought to have worked well, the NSW Government has been criticised for failing to set new per capita reduction targets for the period 2007-2021. This means that as the population continues to grow overall emissions will also increase.

The Government have identified:

...emissions trading as the key mechanism for achieving substantial emissions mitigation in a responsible and flexible manner and at the lowest possible cost. The Carbon Pollution Reduction Scheme represents a continuation of Australia's economic reform path, addressing economic and social matters by harnessing flexible market processes.⁴⁸

46 State Library of New South Wales, Hot Topics: Legal Issues in Plain Language, *Climate Change*, Hot Topics 63, (2007) p 9.

47 State Library of New South Wales, Hot Topics: Legal Issues in Plain Language, *Climate Change*, Hot Topics 63, (2007) pp 8-9.

48 Australian Government, *Carbon Pollution Reduction Scheme, Green Paper*, July 2008 Summary Report, Department of Climate Change, (2008). At: <http://www.climatechange.gov.au/greenpaper/summary/summary-report.html> (viewed 29 August 2008).

A challenge for government in its attempt to substantially reduce Australia's national emissions, will be getting the right balance between the need for significant structural economic reform, and convincing the Australian people and industry, that in order to achieve the necessary results and significantly curb the impacts of climate change, each and every one of us will need to take some responsibility. This means that we will all need to contribute and compromise.

While the government argues that a cap and trade scheme will achieve the environmental outcome of reducing greenhouse gas emissions, the environment itself will be increasingly stressed by the imposition of carbon investors seeking out lands with high biodiversity value to cash in on carbon abatement opportunities. The government have already identified Australia's Indigenous Protected Areas⁴⁹ (IPAs) and other Indigenous owned or managed lands and waters. Sixteen percent of Australia is identified as important 'biodiversity hotspots' for carbon abatement and biodiversity protection, with an increasing economic value in environmental and carbon related markets.⁵⁰

To date, Indigenous engagement in carbon markets is predominantly considered in the context of forestry and fire management. The Governments Green Paper states that:

The Government is committed to facilitating the participation of Indigenous land managers in carbon markets and will consult with Indigenous Australians on the potential for offsets from reductions in emissions from savanna burning and forestry opportunities under the scheme.⁵¹

Emissions trading offers a number of opportunities to Indigenous communities across a broad range of areas. However the government must be mindful in their development of a national emissions trading scheme that projects and policies developed with the intent of reducing Australia's greenhouse gas emissions, and mitigating and adapting to the impacts of climate change, are not to the detriment of Indigenous peoples, our lands and waters, and the sustainability of our livelihoods and our communities. Further consideration of the impacts and opportunities arising from climate change relevant to Indigenous people is discussed in chapter 5.

4. Complimentary Legislation

There are existing laws and policies in Australia that will affect and compliment the response to climate change. At the federal level the main piece of legislation relevant to climate change and the environment is the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBCA). With rights to water also becoming increasingly significant, the *Water Act 2007* has also been recently enacted. This legislation is also a federal act and is particularly relevant to the Murray-Darling River Basin. Further consideration on issues regarding Indigenous peoples' rights to water will be discussed at chapter 6.

49 The World Conservation Union (IUCN) defines a protected area as 'an area of land or sea specially dedicated to the protection and maintenance of biodiversity and associated cultural resources and management through legal and/or other effective means'. In Australia, they include areas of land also known as national parks, nature reserves and marine parks and traditional Indigenous owners enter into agreements with the Australian Government to promote biodiversity and cultural resource conservation. For more information see: <http://www.environment.gov.au/indigenous/ipa/background.html> (viewed 6 September 2008).

50 Australian Labor Party, 'Federal Labor to create up to 300 Rangers as part of Indigenous Economic Development Strategy', (Media Release, 5 October 2007).

51 Australian Government, *Carbon Pollution Reduction Scheme, Green Paper*, July 2008 Summary Report, Department of Climate Change, (2008) p 136. At: <http://www.climatechange.gov.au/greenpaper/summary/summary-report.html> (viewed 29 August 2008).

State and territory governments have also begun to consider what is required to respond to the impacts of climate change in their regions. Appendix 5 provides a summary of the legislative arrangements, policies and programs currently being implemented by the states and territories.

4.1 Environmental Protection and Biodiversity Conservation Act 1999

The *Environmental Protection and Biodiversity Conservation Act 1999* (EPBCA) was passed in response to the international Convention on Biodiversity (CBD).

The EPBCA provides a legal framework to protect and manage matters of national and international environmental significance being:

- world heritage sites
- national heritage places
- wetlands of international importance⁵²
- nationally threatened species and ecological communities
- migratory species
- Commonwealth marine areas
- nuclear actions.⁵³

The EPBCA applies to any individual or group who may have an impact on matters of environmental significance: developers; farmers; local councils and state and territory governments and land owners. It aims to balance the protection of these crucial environmental and cultural values with our society's economic and social needs. As well as providing a legal framework, the EPBCA creates a decision-making process based on the guiding principles of ecologically sustainable development.

Unfortunately, as this law was passed prior to Australia's adoption of the Kyoto Protocol, there is currently no trigger for the EPBCA to address issues affected by climate change. The provisions of the Act are only triggered where there is a likely impact on a matter of national environmental significance listed above.

At the recent Conference of the Parties to the Convention on Biodiversity, (COP-9) held in Bonn, Germany, the Parties to the Convention were urged to:

[E]nhance the integration of climate change considerations related to biodiversity in their implementation of the Convention with the full and effective involvement of relevant stakeholders...and consider consumption and production models, including vulnerable components of biodiversity within these areas with regard to the impacts on indigenous and local communities.⁵⁴

This illustrates how important it will be for the Australian Government to ensure it takes a broad holistic perspective when determining its climate change policy. The government must conduct a review of all domestic legislation to evaluate how existing mechanisms affect the response to climate change.

52 Often called 'Ramsar' wetlands, as covered by the Ramsar Convention.

53 Australian Government, *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) Fact Sheet*. At: <http://www.environment.gov.au/epbc/publications/pubs/epbc-act-fact-sheet.pdf> (viewed 29 August 2008).

54 Convention on Biodiversity, *Conference of the Parties- COP-9 – Decisions, Biodiversity and climate change*, COP-9 Decision IX/16 (2008). At: <http://www.cbd.int/decisions/cop9/?m=COP-09&id=11659&lg=0> (viewed 1 September 2008).

5. The need for a human rights-based approach to climate change policy

The International Council on Human Rights Policy observed in its seminal report on climate change and human rights⁵⁵ this year that the worst effects of climate change are likely to be felt by those individuals and groups whose rights are already precarious. This is because populations whose rights are poorly protected are likely to be less well-equipped to understand or prepare for climate change effects; and more likely to lack the resources needed to adapt to expected alterations of their environmental and economic circumstances.

In February 2008 Ms Kyung-wha Kang, the United Nations Deputy High Commissioner for Human Rights stated that:

[G]lobal warming and extreme weather conditions may have calamitous consequences for the human rights of millions of people. They can be among the leading causes or contributing factors that trigger hunger, malnutrition, lack of access to water and adequate housing, exposure to disease, loss of livelihoods and permanent displacement. Ultimately, climate change may affect the very right to life of countless individuals.⁵⁶

Archbishop Desmond Tutu, voiced his concern that we are drifting into a world of 'adaptation apartheid' where the world's poor are left to sink or swim through a problem that is not of their making, while citizens of the rich world are protected from harm.⁵⁷

Yet, while governments have traditionally focused on the environmental and more recently the economic, dimensions of climate change, the social and human rights implications have not been considered in great detail.

Under a human rights-based approach:

- Individuals are seen as rights-holders, putting responsibility on government to make channels available for their participation and input into policy development.
- There is an emphasis on local knowledge of the environment and ways to protect it, for example, incorporating traditional cultural practices of indigenous communities into climate change responses.
- The principles of non-discrimination and substantive equality are a key element of policy formulation. Decision makers must weigh up the likely impact on disadvantaged or vulnerable groups when deciding on policy, ensuring 'that measures taken in response to climate change do not disproportionately impact low-income, disadvantaged or marginalised groups'.⁵⁸

55 International Council for Human Rights Policy, *Climate change and human rights: a rough guide*, (2008), p 1. At: http://www.ichrp.org/files/reports/36/136_report.pdf (viewed 28 August 2008).

56 K Kang, *Climate Change, Migration and Human Rights*, (Speech delivered at the Conference on Climate Change and Migration: Addressing Vulnerabilities and Harnessing Opportunities, Geneva, 19 February 2008). At: http://www.iom.int/jahia/webdav/shared/shared/mainsite/events/docs/hsn/hsn_address_kang.pdf (viewed 5 September 2008).

57 United Nations Development Program, *Human Development Report 2007/2008 – Fighting climate change: Human solidarity in a divided world* (2007), p 166.

58 J von Doussa, *Climate change and human rights: a tragedy in the making*, (Speech delivered at the Australian Human Rights Commission Human Rights Law Seminar, Sydney, 20 August 2008) At: <http://www.humanrights.gov.au/legal/seminars/index.html> (viewed 26 August 2008).

- Core minimum human rights standards guide decision makers when they are weighing up competing demands on limited resources.⁵⁹

To support and strengthen the human rights approach, there must be the capacity for monitoring and assessing policies. This can be done through human rights compliance statements which would accompany new laws and policies. Where either the policy or enabling legislation does not meet recognised human right norms, the statement would have to identify and explain the reasons for the shortcoming. This type of policy formulation process would be analogous to the processes enacted into the Human Rights Charters now in place in the United Kingdom, New Zealand, the Australian Capital Territory and Victoria.⁶⁰

This human rights based approach should be guiding policymakers and legislators when weighing competing demands on limited resources; helping to ensure, for example, that budget allocations prioritise the most marginalised and disadvantaged.⁶¹

6. Indigenous peoples', human rights, and climate change

Climate change presents a unique risk to the livelihoods of indigenous peoples. In particular, indigenous peoples could face further political and economic marginalisation, increasing the potential for human rights violations through the disengagement and exploitation of indigenous lands, waters and natural resources. It also poses a significant threat to the health of our communities, and the maintenance and sustainability of our social life, traditional knowledge's, languages and cultures.⁶²

Climate change will have an impact on every aspect of Indigenous peoples' lives. Not only in the obvious situation where our lands and territories may become uninhabitable due to the impacts of climate change, but in situations where government and industry will continue to use Indigenous lands to maintain and increase the wealth of the country through the exploitation of resources.

Additionally, both Australia and those from other countries around the world will be looking to indigenous peoples, our lands and territories to help them to mitigate or lessen the impacts of climate change, threatening the ownership and custodianship of our lands, waters and resources. This is despite the fact that Indigenous people have a significantly lower carbon footprint than the wider global population, and our efforts to care for and maintain our lands, territories and waters have been significantly strained by the ever increasing industrialisation of the world.

Despite this, there is little analysis on the direct impacts of climate change on Indigenous peoples.

59 Australian Human Rights Commission, *Submission to the Australia 2020 Summit, April 2008*. At: http://www.humanrights.gov.au/legal/submissions/2008/080415_2020summit.html (viewed 26 August 2008).

60 J von Doussa, *Climate change and human rights: a tragedy in the making*, (Speech delivered at the Australian Human Rights Commission Human Rights Law Seminar, Sydney, 20 August 2008) At: <http://www.humanrights.gov.au/legal/seminars/index.html> (viewed 26 August 2008).

61 J von Doussa, *Climate Change: Catastrophic Impacts and Human Rights*, (Speech delivered at the Presentation by John von Doussa and Chancellor of the University of Adelaide, Adelaide, 11 December 2007). At: http://www.humanrights.gov.au/about/media/speeches/speeches_president/2007/20071211_Climate_Change.html (viewed 26 August 2008).

62 International Work Group for Indigenous Affairs, *Indigenous Affairs, Climate Change and Indigenous Peoples*, 1-2/08, ISSN 1024-3283.

In order to fully appreciate the impact of climate change on the world's indigenous peoples, The United Nations Permanent Forum on Indigenous Issues recommended that:

The United Nations University Institute of Advanced Studies, university research centres and relevant United Nations agencies conduct studies on the impacts of climate change and climate change responses on Indigenous peoples. Particularly, those who are living in highly fragile ecosystems; semi-arid and arid lands and dry and sub-humid lands; tropical and subtropical forests; and high mountain areas.⁶³

Additionally, the Permanent Forum recommended that States develop mechanisms to monitor and report on the impacts of climate change on Indigenous peoples, keeping in mind the socio-economic limitations as well as spiritual and cultural attachments to lands and waters.⁶⁴

6.1 Indigenous participation in climate change policy

So far, the policy debate around climate change has had little participation from Indigenous stakeholders. Indigenous people must be recognised as major stakeholders in climate change policy and the development of policies concerning climate change.

Governments around the world must work together with the full engagement and participation of Indigenous people in developing domestic and international policies from the outset. Involvement of Indigenous peoples in policy development is essential to ensure the effectiveness and success of adaptation and mitigation strategies relevant to both Indigenous communities and broader society.

There are a number of reasons why. In developing a global climate change strategy, reliance on Indigenous traditional knowledge, innovations, and land management and conservation practices will be crucial to maintaining biological diversity. The reduction of greenhouse gases and carbon abatement globally will also rely heavily on Indigenous lands and waters. The human rights approach tells us that this must be on the basis of obtaining the free, prior and informed consent of Indigenous people.

An example of where Indigenous participation is critical, is in international negotiations for a post Kyoto climate change regime.

In these negotiations, it is essential for the international community to develop and commit to international principles for Indigenous engagement that link directly to the Kyoto mechanisms: emissions trading; the clean development mechanism; and joint implementation. This will be particularly important in the protection of Indigenous peoples' rights to their lands, territories, waters, natural resources and their intellectual property.

With the demand for carbon credits growing, both here in Australia and overseas, the Government have also committed to developing an *Indigenous Emissions Trading Program*.⁶⁵

63 United Nations Economic and Social Council, *Recommendations on the special theme, 'Climate Change, biocultural diversity and livelihood: the stewardship role of indigenous peoples and new challenges'*, Permanent Forum on Indigenous Issues, E/C.19/2008/14 (2008), p 5.

64 United Nations Economic and Social Council, *Recommendations on the special theme, 'Climate Change, biocultural diversity and livelihood: the stewardship role of indigenous peoples and new challenges'*, Permanent Forum on Indigenous Issues, E/C.19/2008/14 (2008), p 5.

65 Australian Labor Party, 'Federal Labor to create up to 300 Rangers as part of Indigenous Economic Development Strategy', (Media Release, 5 October 2007).

Emissions trading markets will provide opportunities for the purchase of carbon credit from changes in land management, and specifically fire management in Northern Australia.

A Rudd Labor Government will provide opportunities for Indigenous participation in fledgling carbon markets by establishing the legal framework for creation of carbon credits for altered fire regimes and providing \$10m to build local capacity, build partnerships between the private sector and Indigenous communities, research its scientific and market potential and promote sales to growing national and international markets.

Indigenous engagement in national and international carbon and emissions trading markets, will require the development of national principles that ensure the protection of Indigenous people's rights. During the 2007 election campaign, the Rudd Labor Government committed to the development of a *National Standard for Carbon Offsets* in order to ensure consumer confidence in the rapidly developing carbon offset market.⁶⁶ However, with Indigenous land, waters, natural resources, and traditional knowledge considered important in climate change mitigation measures, national principles will also require specific provisions related to Indigenous peoples and our interests.

Guidelines for engagement with Indigenous peoples, contained in *Engaging the marginalised: Partnerships between indigenous peoples, government and civil society*,⁶⁷ provide an excellent framework to build upon to formulate an extensive set of principles for Indigenous engagement in climate change negotiations. Further discussion on this topic is included in chapter 5 of this report.

Additionally, there is currently no support for Indigenous attendance at other relevant international forums, (outside the UNPFII) such as the Conference of the Parties to the Kyoto Protocol and the Convention on Biodiversity.

In order to facilitate this, governments must ensure that the economic and technical resources required to respond to social and environmental challenges created by climate change, are available to Indigenous communities. This may require the United Nations to work proactively with member states to establish a well-funded mechanism which facilitates Indigenous engagement at the international level on climate change related matters.

7. Conclusion

While I acknowledge that in any response to climate change the economic and environmental implications are crucial, governments and others working on the development of strategies to address climate change, must also be mindful of the social and human rights implications.

This chapter argues that at both the international and domestic levels we have an existing framework with which to start. However, an urgent stocktake is required on what policy is already available to address climate change, and where further development is required.

This framework can be built upon to ensure that global and domestic responses to climate change are holistic in their approach and do not disproportionately impact low-income, disadvantaged or marginalised groups.

66 Australian Labor Party, *Credible Credits: A National Standard for Carbon Credits*, (Media Release, 6 June 2007).

67 Human Rights and Equal Opportunity Commission and United Nations Permanent Forum on Indigenous Issues, *Engaging the marginalised: Report of the workshop on engaging with Indigenous communities*, (2005). At: http://www.humanrights.gov.au/social_justice.

Recommendations

- 4.1 That the Australian Government formally support and develop an implementation strategy on the Declaration on the Rights of Indigenous Peoples as a matter of priority.
- 4.2 That particular attention be paid to the impacts of climate change on Indigenous peoples in the formulation of Australia's climate change strategies. The recommendations of the United Nations Permanent Forum on Indigenous Issues (on the special theme of climate change and Indigenous peoples) and the provisions of the Program of Action for the Second International Decade of the World's Indigenous People provide important guidance in this regard.
- 4.3 That the Australian Government review the existing domestic mechanisms that are relevant to Indigenous peoples and climate change, and identify any inconsistencies or impediments and where further policy development or amendment is required.
- 4.4 That the Australian Government actively engage Indigenous Australians in post Kyoto negotiations, particularly in relation to the utilisation of the Kyoto mechanisms, international investment in carbon abatement, and issues around the urban migration of both internally displaced peoples and those that will require relocation in the region.
- 4.5 That the Australian Government actively engage Indigenous Australians in the development of the Carbon Pollution Reduction Scheme, particularly in relation to:
 - a. the protection and maintenance of Indigenous lands, waters, natural resources, and cultural heritage
 - b. to identify and facilitate access to economic opportunities arising from carbon abatement and mitigation.
- 4.6 That the regulatory framework for Australia's climate change policy guarantees and protects Indigenous peoples' engagement and participation. This should include Indigenous involvement in all aspects of climate change law and policy such as development, implementation, monitoring, assessment and review.