

PRESIDENT'S PAGE

Ecologically Sustainable Development! We have a draft national strategy for it, but do we know what it means? In an article in the recent *Australian Financial Review Survey on the Environment*, it was suggested that environmental terms such as biological diversity and precautionary principle were not widely understood, and there was a need to settle clear parameters for the interpretation of such terms. The article argued that clearer legal definitions of environmental terms are needed, both to assist decision-makers and to avoid extensive and costly litigation for developers. According to Greenpeace in the same Survey, too much time is spent trying to define ESD down to dotting the "Is" and crossing the "Ts". Elsewhere it was stated that the general response to the ESD groups has been indifference. Certainly the issues involved in ESD are complex and the strategies to achieve ESD across Australia will only be resolved after an open and frank discussion by all the stakeholders, including the consumers. However, such discussion can only be fruitful if there is an acceptance by all parties of ESD as a goal.

Back to meanings! What about "development that improves the quality of life, both now and in the future, in a way which maintains the ecological processes on which life depends"? That is the suggestion in the draft ESD Strategy discussion paper! We are told that business accepts that ESD must be the philosophy underpinning all development and operations in the future. To quote the Business Council of Australia in its recent publication *Principles of Environmental Management*: "Australian business recognises the need to protect the environment by reducing the adverse impacts of its operations and products on air, water, land and living organisms to the level where the costs to society of further reductions would exceed the benefits". However the BCA prefers to achieve this goal through industry self-regulation. The clear message is that it will resist the imposition of environmental regulations, in the absence of such measures overseas, because it believes this would increase the cost of doing business in Australia and undermine the competitiveness of Australian industry.

How then do we achieve the goal of ESD? And what is the role of law? It is worthy of note here that the engineers have taken a step in the direction of the goal. The Institution of Engineers Australia has developed a Code *Environmental Principles for Engineers*, designed to ensure that engineers apply the principles of ecologically sustainable development in their work.

The draft ESD Strategy says: "Careful consideration will need to be given to the optimum mix of economic, regulatory and educational policies to ensure ESD is implemented in a manner that is as efficient and cost-effective as possible". So much is obvious! More importantly for those interested in the law, careful consideration must be given to the regulatory process, interpretation, enforcement and dispute resolution.

The concerns of the lawyer quoted in the first article referred to above, will not, I suspect be overcome by attempting to strictly and unambiguously define terms which have become principles of ESD. Lawyers will tell you this is not easy. Besides, there is more than the developer to consider. The primary focus of ESD and therefore environmental regulation is the protection of the community (local and global, now and in the future), who must therefore have rights and access to the forum for dispute resolution and enforcement.

What does need consideration is the expertise of those sitting to adjudicate upon matters of environmental law. In the USA, the Environmental Law Institute in 1990 conducted the first educational programme for judges on the dynamics of environmental disputes - in response to requests from the judiciary. "The programme attempted to untangle some of the scientific issues and inconsistencies of the statutes and regulations that make environmental cases that much more difficult to decide", according to the senior attorney who managed the programme. Justice Murray Wilcox suggested that a judicial environmental education programme could be offered by NELA for the benefit of the judges in the Region, in his closing remarks at the Second International Environmental Law Conference in Bangkok, last year.

Another approach to be considered for the adjudication of environmental law matters is a multi-disciplinary adjudicating panel or court. Such is operating in Australia; the most obvious example being that of the New South Wales Land and Environment Court. However, Sir Harry Woolf, of the English Court of Appeal, would go further. Delivering the 5th Garner Environmental Law Lecture in October 1991, he said "environmental law raises problems to which a multi-discipline approach, including a proper involvement of technology and science may be the appropriate response". As Sir Harry contemplated "a multi-faceted, multi-skilled body which would combine the services provided by existing courts, tribunals and inspectors in the environmental field", which would be 'a one-stop shop' which should lead to faster, cheaper and the more effective resolution of disputes in the environmental area", it is obvious that we are in advance of the English, in some jurisdictions. However, our environmental dispute resolution systems are far from perfect.

The legal profession, including environmental lawyers and judges, has much to contribute to the discussion on an effective ESD strategy for Australia, but recognising that the complexity of the scientific and technical issues will require multi-disciplinary approaches and solutions.

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