

Going Green? Lawyer Regulation and Climate Change

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International Bar Association

Climate Crisis Statement (2020)

- The legal profession “must be prepared to play a leading role in maintaining and strengthening the rule of law and supporting responsible, enlightened governance in an era marked by a climate crisis”.
- Lawyers urged, acting in accordance with their professional conduct rules and the rule of law, to “consider taking a climate-conscious approach to problems encountered in daily legal practices”.

We are all climate lawyers now

Where are you on the spectrum of green?

- environmental lawyers
- public international lawyers
- human rights lawyers
- trade lawyers
- tort lawyers
- corporate lawyers
- government lawyers
- refugee lawyers
- national security lawyers
- disaster lawyers

Lawyer competence & ethics

- Competent delivery of legal services
 - Pressing need for continuing legal education and upskilling
 - Knowledge of taxonomy and knowledge of climate science
 - Understanding climate risk (physical, transition, and liability risks)
- Ethical conduct
 - Does 'climate conscious lawyering' give license to choose & refuse?
 - Working in an ethical climate and its role in modelling ethical behaviour
 - Climate ethics
 - Rights debates: Climate change as a human rights issue
 - Who has responsibility to do what: differentiating, distributing, and limiting responsibility
 - Individual obligation and collective action

Law Council of Australia

Climate Change Policy Statement (2021)

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

<https://lawcouncil.au/resources/policies-and-guidelines/policy-statement-climate-change-policy>

- “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.”
- “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.”

'Client Climate': *pro bono publico*

- IBA's *Climate Crisis Statement* urges lawyers to act "on a pro bono, volunteer, or reduced fee basis for those negatively affected by the climate crisis".
- Law Council of Australia *Policy Statement* states lawyers should be encouraged to consider how they can contribute to efforts to address climate change, including:
 - 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.

Australian Pro Bono Centre

Useful guides:

- *Pro Bono Legal Work – A Guide for In-house Corporate Lawyers* (2017)
- *Pro Bono Legal Work – A Guide for Government Lawyers* (2020)
- *Pro Bono Guide to the Climate Crisis* (2020)
 - Authorisation issues
 - Professional indemnity insurance issues
 - Conflict of interest management
 - 15 ways to get involved

<https://www.probonocentre.org.au>

Pro Bono Guide

- Running strategic climate litigation
- Working on law reform activities
- Offering commercial legal advice to not-for-profit organisations and social enterprises
- Establishing a Climate Justice Clinic in collaboration with a university
- Providing a secondee to a civil society organisation working to combat climate change (or for individual lawyers or law students, volunteering there)
- Providing legal assistance to indigenous peoples who are proportionately affected by the climate crisis
- Conducting legal research about the intersection between human rights and climate change
- Providing legal advice, information and advocacy to those fighting climate change
- Providing legal information and advice to those affected by a natural disaster

- Offering immigration law advice to people displaced by the effects of climate change
- Giving legal support to NGOs and developing country delegations in international climate change negotiations
- Providing community legal education
- Providing legal assistance to communities particularly affected by the climate crisis
- Delivering training to community lawyers
- Expanding the role of the pro bono lawyer - embedding climate transition and environmental factors in commercial decision-making