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Australia

ENVIRONMENT

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This country-specific Q&A provides an overview of environment laws and regulations applicable in Australia.

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AUSTRALIA
ENVIRONMENT

1. What is the environmental framework and the key pieces of environmental legislation in your jurisdiction?

Australia has a federal legal system with an environmental regulatory framework governed by both Commonwealth and State/Territory legislation. The key piece of Commonwealth environmental legislation is the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) which outlines the legal framework for managing significant impacts on matters of national environmental significance.

However, state and territory legislation provides the principal form of environmental regulation in Australia. The states/territories have the power to legislate on environmental matters generally. Each state/territory has its own framework of environmental legislation, and the scope of each legislative framework differs between jurisdictions.

All states except New South Wales mandate a general statutory duty to prevent environmental harm with penalties for a breach of this duty typically determined by reference to the extent of environmental harm caused.

Key pieces of environmental legislation in each Australian jurisdiction include:

Jurisdiction	Environment Legislation	Scope / Commentary
Commonwealth	Environment Protection and Biodiversity Conversation Act 1999 (Cth)	Outlines the legal framework for managing significant impacts on matters of national environmental significance such as world heritage properties, wetlands of international importance, and nationally threated species and ecological communities as well as Commonwealth actions that could have a significant impact on the environment. The EPBC Act is currently in the process of undergoing substantive reforms as part of the Government's Nature Positive Plan (see Section 13.1 below). The administration of the EPBC Act is currently the responsibility of the Commonwealth Department of Climate Change, Energy, the Environment and Water (DCCEEW).
Australian Capital Territory	Environment Protection Act 1997 (ACT) (ACT EP Act)	The ACT EP Act protects the environment from pollution and its effects. It provides the regulatory framework to help reduce and eliminate the discharge of pollutants into the air, land and water. Further, the ACT EP Act requires people engaging in polluting activities to make progressive environmental improvements and achieve effective integration of environmental, economic and social considerations in decision-making processes.

New South Wales	Protection of the Environment Operations Act 1997 (NSW) (POEO Act)	The POEO Act is the key environment protection legislation in NSW and is administered by the NSW Environment Protection Authority. Amongst other things, the POEO Act sets out a licensing regime for certain activities that exceed particular thresholds which regulate emissions to air, water, land as well as waste management and noise. Currently, there is no general duty to prevent environmental harm. Instead, the POEO Act has a tiered system of fault based and strict liability offences for various pollution offences. The POEO Act also provides for clean-up notices, prevention notices, and prohibition notices to be issued in order to protect the environment as well as enforceable undertakings and restoration orders.
Northern Territory	Environment Protection Act 2019 (NT) (NT EP Act)	The NT EP Act sets the basis for the general environmental assessment approach and for environmental protection in the Northern Territory. It includes guiding principles for ecologically sustainable development, follows the 'avoid, mitigate, offset' decision-making hierarchy, and requires consideration of a 'changing climate' in environment and planning decisions. Further, the NT EP Act provides that the relevant Minister can enhance environmental protection by declaring protected areas and prohibited actions within the territory.
Queensland	Environmental Protection Act 1994 (QLD) (Qld EP Act)	In Queensland, the environment is predominately regulated under the Qld EP Act which, amongst other things, lists obligations and offences to prevent environmental harm, nuisances, and contamination. This includes a general environmental duty – which means a person must not carry out any activity that causes or is likely to cause environmental harm, unless measures to prevent or minimise the harm have been taken. The Qld EP Act also provides for the development of specific environmental protection policies including for the management of the air environment, water, and wetland biodiversity.
South Australia	Environment Protection Act 1993 (SA) (SA EP Act)	The primary goal of the SA EP Act is to advance ecologically sustainable development and ensure the adoption of all reasonable and practicable measures to safeguard, restore, and improve the environmental quality in South Australia. To realize this objective, the EP Act establishes a licensing system for activities with potential pollution and outlines a policy development framework. The SA EP Act delegates detailed pollution and waste standards to Environment Protection Policies (EPPs). These EPPs, akin to regulations, specify maximum pollution levels and other environmental standards.
Tasmania	Environmental Management and Pollution Control Act 1994 (Tas) (EMPC Act)	The EMPC Act is the primary environmental protection legislation in Tasmania which forms part of the broader integrated development assessment process and addresses environmental harm associated with development activities. The EMPC Act also outlines a number of management and enforcement options available to regulate activities that cause environmental harm. These include environmental infringement and protection notices, environmental agreements between proponents and regulators, environmental improvement programmes and civil enforcement provisions.
Victoria	Environment Protection Act 2017 (Vic) (Vic EP Act)	The Vic EP Act sets out the legislative framework for the protection of human health and the environment in Victoria from pollution and waste. The Vic EP Act is underpinned by a general environmental duty that requires anyone engaging in an activity that could pose risks to human health and the environment, to understand the risks and take reasonably practicable steps to eliminate or minimise them. It also establishes a permitting scheme that enables the Victorian Environment Protection Authority to issue or grant licences, permits, and registrations and issue sanctions and penalties to hold environmental polluters to account.
Western Australia	Environmental Protection Act 1986 (WA) (WA EP Act)	The WA EP Act provides for the prevention, control, and abatement of pollution and environmental harm for the purpose of conservation, preservation, protection, enhancement, and management of the environment. The WA EP Act establishes the WA Environmental Protection Authority as well as offences and penalties relating to environmental harm.

2. Who are the primary environmental regulatory authorities in your jurisdiction? To what extent do they enforce environmental requirements?

At the national level, the DCCEEW is currently the primary environmental regulatory authority. DCCEEW is responsible for granting approvals and taking enforcement action under the EPBC Act.

However, the Australian Government has recently committed to establishing an independent national environment protection agency – Environment Protection Australia – as part of the Nature Positive Plan that was developed following the Samuel Review of the EPBC Act (see Section 13.1). Once formally established, Environment Protection Australia will be responsible for:

- issuing permits and licences
- project assessments, decisions and post-approvals
- compliance and enforcement
- assuring states, territories and other Commonwealth decision makers apply National Environmental Standards under accredited arrangements.

Notwithstanding this, the regulation of environmental requirements is primarily the responsibility of the States and Territories. Whilst varying in terms of wording and application, the key statutory legislation for each jurisdiction reflects a common objective to regulate and reduce harm to the environment. This is achieved by several similar controls employed by the jurisdictions including, for example, licensing and work approvals, protection policies and offences relating to environmental harm and pollution.

Each jurisdiction has an environmental regulator responsible for the administration of these controls and ensuring the relevant environmental protection legislation is enforced. Queensland is currently the only state or territory that does not have an independent environment protection authority. The environmental regulator for each jurisdiction is:

- **New South Wales –** NSW Environment Protection Authority
- **Northern Territory –** NT Environmental Protection Authority
- **Queensland –** Qld Department of Environment, Science, and Innovation
- **South Australia –** SA Environment Protection Authority
- **Tasmania –** Environment Protection Authority Tasmania
- **Victoria –** Environment Protection Authority Victoria
- **Western Australia –** WA Environmental Protection Authority

The powers granted to an environmental regulator varies in each jurisdiction. However, in order to enforce the environmental requirements expressed in the relevant environmental regulatory framework of each jurisdiction, nearly all regulators possess the power to search and enter premises, conduct investigations, perform environmental audits, take samples, pose inquiries, demand the production of records and information, and impose penalties. Additionally, local governments in Australia possess powers relating to land use planning, community waste management, minor pollution incidents, and public health. Moreover, local government authorities also possess powers in relation to civil enforcement for environment and planning matters.

3. What is the framework for the environmental permitting regime in your jurisdiction?

Nationally, the EPBC Act establishes the framework for environmental permits by regulating 'matters of national environmental significance' (**MNES**). Examples of MNES include wetlands of international importance, listed threatened species and endangered communities, listed migratory species, and nuclear actions. More precisely, the EPBC Act applies to 'actions', that are likely to have a significant impact on a MNES and are prohibited unless approved in accordance with the EPBC Act.

Accordingly, Commonwealth approvals are required to carry out certain 'controlled actions' specified under the EPBC Act. Approval applications are determined by the Federal Environment Minister, assisted by the DCCEEW, by reference to prescribed considerations. Where projects require assessment at both State/Territory and Commonwealth levels, actions may be assessed under a single bi-lateral assessment process. The Samuel Review of the EPBC Act has recommended that the Commonwealth also devolve its decision making to the states/territories in circumstances where prescribed national environmental standards are objectively met.

At a state/territory level, the approval process for an environmental action depends on the type of permit/licence required. For example, in NSW applicants are typically required to obtain development consent prior to applying for an environmental protection licence from the NSW EPA to undertake certain activities that have the potential to impact on the environment. In QLD, state regulators issue environmental licences, permits or authorisations, to owners or operators that undertake activities which have a potential high risk to human health or the environment. In Victoria, requirements for an environmental licence, permit, or registration, depends on the level of risk to the environment and the type of activity.

4. Can environmental permits be transferred between entities in your jurisdiction? If so, what is the process for transferring?

Yes. Environmental approvals granted under the EPBC Act are held by either a person or entity but can be transferred by application to DCCEEW. Where the DCCEEW agrees to the conditions of the transfer, notice of confirmation is sent to the respective parties and the decision is published on the EPBC Act Public Portal.

In NSW, proponents must file an application to the NSW EPA for the transfer of a licence issued under the POEO Act. Similarly, in the ACT, Victoria, South Australia, Tasmania, Queensland, and Western Australia, licence /environmental authority holders must apply to the relevant environmental protection authority for the licence to be transferred. In the NT, licence holders can simply transfer an environment protection licence using the NT Environment Protection Authority's online portal.

5. What rights of appeal are there against regulators with regards to decisions to grant environmental permits?

The EPBC Act provides mechanisms where decisions made regarding the environment can be reconsidered and empowers the relevant Minister to revoke a decision and substitute it with a new decision, where satisfied by certain criteria and considerations. Further, the EPBC Act also provides an alternative right of appeal whereby a person other than a State or Territory Minister can request reconsideration of a decision.

Appeal rights are also available in other jurisdictions, including:

- In NSW, under the POEO Act, licensees may appeal licensing decisions of the EPA including decisions to revoke or suspend a licence and refusals to approve an application to surrender, transfer or vary the conditions of a licence. If the licensee is not satisfied with the outcome of the internal EPA review, they can seek external review in the NSW Land and Environment Court.
- In Victoria, any person whose interests are affected (including third parties) by the EPA issuing a licence or removing the suspension of an operating licence may make an application for review of the decision with the

Victorian Civil and Administrative Tribunal. Similarly, decisions of the ACT EPA in respect of environmental authorisations can be reviewed internally and by the ACT Civil and Administrative Appeals Tribunal.
- The Queensland EP Act provides the right to internal review for a refusal of an application for an environmental authority and the imposition of conditions. Where a proponent is not satisfied with the results of an internal review, there are circumstances where they can appeal the decision in the Queensland Land Court.

6. Are environmental impact assessments (EIAs) for certain projects required in your jurisdiction? If so, what are the main elements of EIAs and to what extent can EIAs be challenged?

Environmental impact assessment (**EIA**) is a systematic process for the examination and evaluation of the environmental effects of proposed activities that are considered likely to significantly affect the environment. Potential environmental impacts can therefore be identified and mitigated. Ideally, an EIA should include possible alternatives to the proposal, mechanisms to monitor predicted and actual impacts, and an auditing system for determining compliance with any conditions of approval. At minimum, an EIA should provide regulatory authorities with enough information to formulate conditions regulating the activity. EIA requirements are developed under environmental protection and planning legislation for the relevant jurisdiction.

EIAs generally follow these procedural steps:

- Referral of an activity of potential environmental significance to a decision-maker for a decision as to the need for an environmental impact statement (**EIS**) or some alternative form of documentation;
- A screening decision as to the need for an EIS based on whether the activity is likely to significantly affect the environment;
- A scoping procedure by which the range of matters required to be addressed in an EIS is defined in some detail;
- Consultation with relevant government authorities and the public;
- Review of the final EIS by the relevant assessing authority, which usually results in recommendations being made to the decision-making authority as to whether or not to approve the project together with conditions regulating the activity; and
- Monitoring of the proposal, which involves requirements that operate after the activity has commenced.

The procedure for determining the need for EIA is similar in all jurisdictions. To determine whether a proposal requires an EIA, decision-making authorities usually require a prospective developer to file a 'notice of intent' or preliminary advice outlining the proposal. The authority can then seek further information to determine whether the proposal is likely to significantly affect the environment. An activity can be assessed at both national and state levels, although bilateral arrangements exist with the aim of avoiding duplication of assessment efforts.

Projects/activities at the national level which are likely to require EIAs include:

- major industrial developments;
- large-scale agricultural projects;
- mining projects;
- major residential or commercial developments; and
- large infrastructure projects such as highways, railways, and airports.

Types of industries and activities that may be specifically targeted for EIA at a state/territory level generally include:

- sewage treatment works;
- chemical plants;
- marinas;
- landfill sites; and
- mines and quarries.

The role of an EIA overall is not to introduce an environmental 'veto' power into the administrative decision-making landscape, rather, it is a means of ensuring environmental considerations receive due weight in the decision-making process. The EIA is intended to alert decision-makers to the environmental and social impacts so that these can be weighed up against any economic or other public benefits. The decision-maker is not bound to follow any recommendations made in the EIA. Aside from Western Australia and Tasmania, no Australian jurisdictions provide a general right to appeal a decision to require, or not to require, an EIA.

7. What is the framework for determining and allocating liability for contamination of

soil and groundwater in your jurisdiction, and what are the applicable regulatory regimes?

In Australia, the regulation of contaminated land is generally carried out at the state and local level. There is a national environment protection measure which aims to establish a nationally consistent approach to the assessment of contaminated land (known as the National Environment Protection (Assessment of Site Contamination) Measure 1999) but the identification and remediation of contaminated land (including the allocation of liability) is typically regulated at the state/territory level with the regime for each state/territory varying between the jurisdictions. Most of the regulatory regimes are embedded within the applicable general environmental legislation for the state/territory. However, specific contaminated land legislation operates in NSW and WA.

Broadly, each regulatory regime includes:

- reporting or notification duties and requirements;
- the ability for the relevant regulatory authority (typically the environment protection authority) to issue site investigation and/or management/remediation orders for contaminated land on the relevant responsible parties; and
- compensation mechanisms whereby impacted neighbours and public authorities can recover costs.

Environmental laws in Australia are generally based on an overarching polluter pays principle. In all jurisdictions, the party responsible for contaminating the land (including soil and groundwater contamination) will generally be held liable for carrying out or paying for environmental investigation and clean-up/remediation costs (where the party is still in existence and has funds). If more than one party caused the contamination, the relevant regulatory authority may deem more than one party responsible and liable for costs. For contaminated land where there is no solvent owner and the polluter is no longer in existence, the State may assume responsibility for the contamination.

However, despite the broad application of the polluter pays principle, a number of other parties may also be held liable for contaminated land (especially where the polluter is no longer in existence), including:

- the owner of the land, particularly where the owner knew or ought to have known of the contamination. This can include new owners of land who did not cause historical contamination where the original polluter cannot be identified or is unable to pay;
- the occupier of the land (e.g. lessee, mortgagee in possession, liquidator or receiver in control of a site);
- a party that exacerbates the risk of harm from the contamination;
- a party that changes the approved use of the contaminated land or re-develops the land to a more sensitive use and consequently increases the risk of harm posed by the contamination; or
- the State/a public authority.

8. Under what circumstances is there a positive obligation to investigate land for potential soil and groundwater contamination? Is there a positive obligation to provide any investigative reports to regulatory authorities?

As discussed above, Australian environmental laws typically include a general duty to notify the relevant regulatory authority of contamination. Once notified of contamination, a regulatory authority may issue preliminary investigation orders or similar statutory notices requiring a party to investigate the land to determine the nature, extent and potential risks of the contamination. Subsequent site investigations and/or assessments may also be required.

Additionally, where a regulatory authority reasonably believes or suspects that land may be or is contaminated, it can issue statutory notices requiring investigation and/or clean-up action. In all jurisdictions, the relevant regulatory authority may issue a notice requiring a person or owner of land to investigate and report the nature and extent of contamination. Parties subject to such an order or notice are obliged to comply with the terms of the order or notice and failure to do so can result in enforcement actions and/or penalties.

Typically, contamination investigation reports prepared in accordance with the terms of an order or notice from a regulatory authority must be disclosed.

Generally, there is no positive obligation on a party to investigate potential or actual contamination where it is not instructed to do so by a regulatory authority. However, where a party is aware of contamination that meets notification requirements and does not notify the relevant regulatory authority, the party may be subject to enforcement actions and/or penalties for breach of the duty to notify.

9. If land is found to be contaminated, or pollutants are discovered to be migrating to neighbouring land, is there a duty to report this contamination to relevant authorities?

Reporting or notification requirements vary between each jurisdiction. Generally, there is a duty to report or notify the relevant regulatory authority of contamination. However, reporting or notification obligations vary between jurisdictions, but these obligations are typically triggered where:

- a pollution incident (including soil or groundwater pollution) occurs that meets a prescribed threshold of volume or significance;
- a contaminant has entered, or will foreseeably enter, neighbouring land, the atmosphere, groundwater or surface water at a level that exceeds that specified in the relevant guidelines or regulations (including pre-existing or legacy contamination that may have previously been unknown); or
- circumstances specified in development or operational approvals or licences occur.

Notification requirements can apply to the party that caused the pollution/contamination, the owner of the land (and the occupier where they are not the owner), and the employer of the party responsible (where relevant).

Each jurisdiction also specifies timeframes in which pollution incidents or contamination must be reported to the relevant regulatory authority. Although specific times may vary, generally the regulatory authority must be notified of the pollution incident and/or contamination as soon as reasonably practicable after the notifying party (usually the owner or occupier) becomes aware, or reasonably should have become aware, of the pollution incident and/or contamination.

10. Does the owner of land that is affected by historical contamination have a private right of action against a previous owner of the land when that previous owner caused the contamination?

In Australia, common law tortious actions can be commenced in respect of historically contaminated land. Where the contamination interferes with the current owner's use and enjoyment of the land, the current owner may be able to bring an action for nuisance. Where the polluter (be it the previous owner, occupier or other relevant party) owed a duty of care to the current owner and that duty is breached resulting in damage, the current owner may be able to bring an action in negligence.

However, new owners of land affected by historical contamination can be held liable for management/remediation costs where the original polluter cannot be identified or is unable to pay. In addition, as discussed in response to question 4.1 above, owners can also become liable under statute for historical contamination they did not cause in certain cases. In WA, the contaminated land legislation allows for a liability sharing regime where there are multiple liable parties.

11. What are the key laws and controls governing the regulatory regime for waste in your jurisdiction?

Jurisdiction	Waste Legislation	Summary
Federal	National Waste Policy	This provides a national framework for waste and resource recovery in Australia. The policy outlines the five key principles for waste management to enable the transition to a circular economy. These include: • Avoid waste; • Improve resource recovery; • Increase use of recycled material and build demand and markets for recycled products; • Better manage material flows to benefit human health, the environment and the economy; and • Improve information to support innovation, guide investment and enable informed consumer decisions.
	Recycling and Waste Reduction Act 2020 (Cth)	This Act regulates the export of waste material, including the granting of export licences, product stewardship, including setting out requirements around the Minister's Priority List, voluntary product stewardship and co-regulatory product stewardship arrangements.
New South Wales	Protection of the Environment Operations Act 1997 (NSW)	This Act regulates waste transfer stations, landfills and resource recovery facilities through its environmental permitting regime and also sets out waste levy requirements.
	Waste Avoidance and Resource Recovery Act 2001 (NSW)	This Act requires that the EPA must develop and approve a waste strategy for the State and addresses responsibilities with respect to industry waste reduction. It also establishes NSW's container deposit scheme for the recovery, reuse and recycling of empty beverage containers.
	Protection of the Environment (Waste) Regulation 2014 (NSW)	These regulations support the operation of the POEO Act and address waste offences, provides clarity on the obligations of generators, processors and consumers of waste, and also creates requirements for licensing and reporting.
Victoria	Environment Protection Act 2017 (Vic)	This Act regulates waste though setting out requirements in relation to industrial waste, priority waste and the waste levy scheme as well as a permitting regime for waste management and disposal facilities.
Australian Capital Territory	Waste Management and Resource Recovery Act 2016 (ACT)	This Act establishes a framework to support the resource recovery objectives set out in the ACT Waste Management Strategy 2011-2025 (the key policy for resource recovery in the ACT). It establishes a licensing and registration scheme for waste facilities and waste transporters as well as offences and an enforcement regime. It also sets out the container deposit scheme for beverage product packaging.
	Waste Management and Resource Recovery Regulation 2017 (ACT)	These regulations support the operation of the Waste Management and Resource Recovery Act and provides clarity around responsibilities in dealing with waste and waste disposal schemes.
Queensland	Waste Reduction and Recycling Act 2011 (Qld)	This Act sets out requirements around the waste management strategy, provides for waste levies and obligations for operators of waste disposal sites and identifies resource recovery areas. It also allows for product stewardship schemes.
South Australia	Environment Protection Act 1993 (SA)	This Act provides for the protection of the environment and establishes the Environment Protection Authority as well its function and powers. It also sets out SA's container deposit scheme.
	Plastic Shopping Bags (Waste Avoidance) Act 2008 (SA)	This Act bans the provision of single use plastic shopping bags.
	Zero Waste SA Act 2004 (SA)	This Act establishes the statutory corporation, Zero Waste SA, with the function of reforming waste management in the State. Zero Waste SA had the primary objective to promote waste management practices that: • eliminate waste or its consignment to landfill; • advance the development of resource recovery and recycling; and • are based on an integrated strategy for the State.
Northern Territory	Waste Management and Pollution Control Act 1998 (NT)	This Act provides for the protection of the environment through encouragement of effective waste management and pollution prevent and control practices. The Act sets out the general environmental duty which requires that a person who conducts an activity or performs an action that is likely to generate waste must take all measures that are reasonable and practicable to reduce the amount of waste. The Act also sets out the requirements for environment protection approvals and licences for waste facilities.
Western Australia	Environment Protection Act 1986 (WA)	This Act provides for an Environmental Protection Authority, for the prevention, control and abatement of pollution and environmental harm, for the conservation, preservation, protection, enhancement and management of the environment.
	Waste Avoidance and Resource Recovery Act 2007 (WA)	This Act establishes the Waste Authority and sets out its functions. The Act provides for product stewardship plans and sets out the requirements for the container deposit scheme. It also addresses the provision of waste services including waste collection permits and services provided by local governments.
Tasmania	Environmental Management and Pollution Control (Waste Management) Regulations 2020 (TAS)	These regulations support the Environment Management and Pollution Control Act 1994 and are used to regulate and manage controlled waste and some aspects of the general waste disposal within Tasmania.

12. Do producers of waste retain any liabilities in respect of the waste after having transferred it to another person for treatment or disposal off-site (e.g. if the other person goes bankrupt or does not properly handle or dispose of the waste)?

This is a complicated and highly contested area of law and the question of liability can vary depending on individual circumstances.

In terms of waste that is not considered to be hazardous, or constitute a special class of waste, generally once the producer of the waste has disposed of the waste at a licensed facility, they are not responsible or liable for the waste. However, if the waste is hazardous or a special class of waste, such as asbestos, it may be the case that the producer of waste retains some liability for the waste. This is dependent on the factual scenario and jurisdiction of the waste producer.

13. To what extent do producers of certain products (e.g. packaging/electronic devices) have obligations regarding the take-back of waste?

The *Recycling and Waste Reduction Act 2020* (Cth) (**RAWR Act**) establishes co-regulatory product stewardship arrangements. A co-regulatory scheme is a combination of industry action, supported by Australian Government regulation, to achieve specific outcomes for particular types of products, such as plastic packaging. The co-regulatory approach involves a mix of voluntary industry-led initiatives, supported by government regulation to ensure that businesses that join the industry schemes are not disadvantaged in the marketplace. The application for a co-regulatory scheme must be approved by the relevant Minister.

The RAWR Act also identifies the requirement for the Minister's priority list, which requires the Minister to set out a list of products in relation to which the Minister is proposing to consider some form of regulation under the RAWR Act, including the actions to be taken and the timeline for these actions.

This Act also sets out situations where mandatory product stewardship requirements may be prescribed by rules. The RAWR Act also establishes o government accredited industry-led voluntary schemes for other products including mobile phones, tyres and batteries.

The *National Environment Protection (Used Packing Materials) Measure 2011* (**NEPM**) establishes a national,

co-regulatory product stewardship arrangement for consumer packaging which sets obligations for certain businesses to manage their packaging waste in a sustainable way. A co-regulatory scheme is a mechanism where industry develops and administers its own arrangements, but government provides legislative backing to enable the arrangements to be enforced. The scope of the NEPM is limited to the recovery, re-use and recycling of used consumer packaging materials and focuses on:

- materials used for packaging retail products consumed in industrial, commercial and domestic premises and public places; and
- distribution packaging that contains multiples of products intended for consumer use.

The responsibility for enforcing the NEPM rests with the Commonwealth and relevant State and Territory governments concerning companies operating within the jurisdictions. In terms of plastics and packaging, the Australian Packaging Covenant requires companies to minimise their packaging waste. This agreement is between the Commonwealth, state and territory governments and businesses across Australia, and is administered by the Australian Packaging Covenant Organisation.

Co-regulatory schemes also exist for other types of products including televisions and computers and oil.

14. What are the duties of owners/occupiers of premises in relation to asbestos, or other deleterious materials, found on their land and in their buildings?

All Australian jurisdictions regulate the management, removal, transport and disposal of asbestos and asbestos-containing materials (**ACMs**) commonly found in buildings via both work, health and safety legislation and environmental protection legislation. The various regulatory regimes also contain measures to ensure land contaminated with asbestos and/or ACMs is satisfactorily assessed and remediated.

The primary obligations in respect of asbestos and ACMs are contained in workplace safety legislation. By law, the person who manages or controls a workplace is obliged to identify, monitor and record the presence of asbestos and/or ACMs in a register and develop and maintain an asbestos management plan. The person must also eliminate health and safety risks posed by asbestos and/or ACMs as far as reasonably practical.

Further, a licence or permit is required for persons involved in removing asbestos and/or ACMs depending on the type and volume of asbestos being removed. Licence classifications are determined in reference to the type of asbestos being handled and can be issued by either the relevant state or territory workplace health and safety agency or environment protection authority. Licences are also required for the transportation and disposal of asbestos and/or ACMs.

15. To what extent are product regulations (e.g. REACH, CLP, TSCA and equivalent regimes) applicable in your jurisdiction? Provide a short, high-level summary of the relevant provisions.

The REACH, CLP and TSCA regimes relate to the classification, labelling and packaging of certain hazardous chemicals.

In Australia, the management and storage of hazardous chemicals is largely governed by the relevant State or Territory. However, there are several national chemical management schemes to regulate chemical import, use and disposal.

Jurisdiction	Relevant Legislation/Scheme	Summary of Provisions
Federal	Australia Industrial Chemicals Introduction Scheme	This scheme assesses industrial chemicals for health and environmental risks when used in Australia. The scheme provides information on chemicals and compliance obligations for businesses.
	Industrial Chemicals Environmental Management Standard (IChEMS)	This is a national approach to managing chemical import, use and disposal and sets specific risk management measures for chemicals. The IChEMS Online Register lists chemicals in one of seven schedules based on their relative environmental risk.
	Australian Code for the Transport of Dangerous Goods by Road and Rail	The Australian Dangerous Goods Code sets out the requirements for transporting dangerous goods by road or rail. The code is given legal force in each Australian state and territory by each jurisdiction's dangerous goods transport laws. This code should be read in conjunction with these laws because they provide important information, including supply chain member duties, licence requirements and competent authority panel powers.
New South Wales	Environmentally Hazardous Chemicals Act 1985 (NSW)	This is the primary legislation for specifically regulating environmentally hazardous chemicals throughout their life system. The Act sets out requirements for: • chemical control orders which are used to manage hazardous chemicals and chemical wastes (Division 5 of the Act); • technology assessments, which ensure that premises treating or destroying chemicals are safe and appropriate for their purpose (Division 4 of the Act); and • licensing of individuals or industries who manage chemicals that are subject to a chemical control order (Part 4, Division 5 of the Act).
	Dangerous Goods (Road and Rail Transport) Act 2008 (NSW)	This Act regulates the transport of dangerous goods by road and rail in order to promote public safety and protect property and the environment.
	Work Health and Safety Act 2011 (NSW)	SafeWork NSW, through the Work Health and Safety Act 2011 (NSW), regulates the health, safety and welfare of people in the workplace. SafeWork's Model Code of Practice-Managing Risks of Hazardous Chemicals in the Workplace helps businesses manage health and safety risks associated with hazardous chemicals.
Victoria	Dangerous Goods Act 1985 (Vic)	This Act aims to promote the safety of persons and property in relation to the manufacture, storage, transfer, transport, sale, purchase and use of dangerous goods and the import of explosives, to consolidate and amend the law relating to explosives and other dangerous goods. The Act sets out requirements for: • licensing of individuals or industries who manage chemicals (Part III section 21); • requirements on the provision of information concerning dangerous goods (Part IV section 27); • power to issue directions and notices (Division 8);
	Occupational Health and Safety Act 2004 (Vic)	WorkSafe, via this Act, regulates the health, safety and welfare of people in the workplace. WorkSafe's Code of Practice for the Storage and Handling of Dangerous Goods helps businesses manage health and safety risks associated with hazardous chemicals.
Australian Capital Territory	Work Health and Safety Act 2011 (ACT)	Chapter 4 addresses the requirements for licenses for dangerous substances. Chapter 12 sets out regulations about dangerous substances.
	Dangerous Substances Act 2004 (ACT)	Chapter 3 sets out the safety duties for dangerous substances, while Chapter 4 identifies requirements for licences for dangerous substances.
Queensland	Work Health and Safety Act 2011 (Qld)	This Act ensures that regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work or from particular types of substances as is reasonably practicable.
	Work Health and Safety Regulation 2011 (Qld)	Under this Regulation, hazardous chemicals must be classified according to the globally harmonised system for the classification and labelling of chemicals (GHS). Chapter 7.1 of the WHS regulation regulates hazardous chemicals and imposes duties on manufacturers, importers and suppliers of hazardous chemicals in relation to classification, packing and labelling, safety data sheets, and disclosure of chemical identities. In addition, it prohibits the supply of certain carcinogenic substances.
South Australia	Dangerous Substances Act 1979 (SA)	This Act regulates the keeping, handling, transporting, conveyance, use and disposal, and the quality, of dangerous substances. There is a general duty that a person must, in keeping, handling, conveying, using or disposing of a dangerous substance, take necessary precautions to avoid endangering the health and safety of any person, property or the environment (clause 11). Division 2 sets out the licence requirements to keep dangerous substances.
	Work Health and Safety Act 2012 (SA)	This Act provides for the health, safety and welfare of persons at work.
Northern Territory	Dangerous Goods Act 1998 (NT)	Part 3 of this Act deals with general duties and offences in relation to dangerous goods.
	Dangerous Goods Regulations 1985 (NT)	Division 2 addresses licenses, and the requirements for dangerous goods.
Western Australia	Work Health and Safety (General) Regulations 2022 (WA)	Chapter 7 concerns hazardous chemicals and applies to the use, handling and storage of hazardous chemicals at a workplace and the generation of hazardous substances at a workplace.
Tasmania	Work Health and Safety Regulations 2022 (Tas)	Chapter 7 concerns hazardous chemicals and applies to the use, handling and storage of hazardous chemicals at a workplace and the generation of hazardous substances at a workplace. Section 329 requires the classification of hazardous chemicals before they are supplied to a workplace. Section 335 addresses the requirements around labelling hazardous chemicals, and the penalties for failing to correctly label hazardous chemicals. Subdivision 3 of Chapter 7 sets out the obligations of persons conducting business or undertakings in relation to labelling hazardous chemicals. Finally, section 346 states that a person conducting a business or undertaking at a workplace must ensure that a register of hazardous chemicals used, handled or stored at the workplace is prepared and kept at the workplace.

16. What provisions are there in your jurisdiction concerning energy efficiency (e.g. energy efficiency auditing requirements) in your jurisdiction?

The *Greenhouse and Energy Minimum Standards Act 2012* (**GEMS Act**) underpins the national framework for appliance and equipment energy efficiency in Australia. The GEMS Act establishes a national approach to regulate appliances and products by enabling the Australian Government to enact minimum energy efficiency thresholds / standards for products and the setting of labelling requirements.

Across the building sectors, the National Australian Built Environment Rating System (**NABERS**) is a national voluntary rating system that measures a commercial building's sustainability performance. NABERS is run by the NSW Government on behalf of the Australian Government and state and territory governments and is applied by hotels, shopping centres, apartments, offices, data centres and the like.

Policy-wise, in December 2015, the National Energy Productivity Plan (**NEPP**) was launched to meet a commitment to an energy productivity target of 40 percent improvement between 2015 and 2030. The NEPP assists consumers to manage their energy costs and improve efficiency in their energy use. It also seeks to improve the energy system (involving electricity, gas and transport fuels) to deliver least cost energy in the long-term interest of consumers. In order to meet these objectives, the NEPP implements a work plan of 34 measures which aim to provide smarter energy choices and efficiency incentives to consumers and better energy services which drive innovation and competition in modern markets and trigger updated consumer protections and standards.

Further, in 2022 the Australian Government introduced the 'Powering Australia Plan' which includes funding and initiatives to help households and businesses improve their energy efficiency and save on energy costs. The Australian Government is also developing a national energy performance strategy to provide a national plan to accelerate demand-side action, including energy efficiency and electrification.

17. What are the key policies, principles, targets, and laws relating to the reduction of greenhouse gas emissions (e.g. emissions trading schemes) and the increase of the use of renewable energy (such as wind power) in your jurisdiction?

International Commitments

Australia is a signatory to the United Nations Framework Convention on Climate Change (**UNFCCC**), the Kyoto Protocol and the Paris Agreement. To comply with the obligations arising out of these agreements, the Australian Government prepared and submitted the 8th National Communication on Climate Change and 5th Biennial Report to the UNFCCC on 22 December 2022, which provide a national picture of Australia's progress towards meeting its commitments under the UNFCCC to reduce emissions and adapt and respond to the impact of climate change.

Commonwealth

The *Climate Change Act 2022* (Cth) (**Climate Act**), which came into effect on 14 September 2022, enforces Australia's net-zero commitments and codifies the 2030 and 2050 greenhouse gas (**GHG**) emissions reduction targets under the Paris Agreement.

The legislation sets economy-wide targets, aiming to reduce GHG by 43% below 2005 levels by 2030 and achieve net-zero GHG emissions by 2050. The Climate Act imposes obligations on the Australian Government to achieve Australia's emissions reduction target. However, while not directly imposing obligations on companies, it paves the way for sector-based reforms to meet targets.

Additionally, the Safeguard Mechanism applies to industrial facilities emitting more than 100,000 tonnes of carbon dioxide equivalent and sets legislated limits on the permissible greenhouse gas emissions of these facilities. The Safeguard Mechanism is essentially a cap-and-trade scheme. The Safeguard Mechanism reforms will allow entities who emit below their baseline to generate safeguard mechanism credits that can then be traded with other liable safeguard entities.

The Australian Government has also introduced its 'Powering Australia Plan' which includes multiple policies and funding streams focussed on creating jobs, reducing pressure on consumer energy bills, and reducing emissions by boosting renewable energy. Amongst other things, the Powering Australia Plan includes funding allocated to priority electricity transmission projects as well as the delivery of a new Capacity Investment Scheme under which eligible renewable generation and storage projects will be offered long-term Commonwealth underwriting agreements.

Australian Capital Territory

The ACT has committed to cut emissions by 50 to 60% from 1990 levels by 2025 and achieve net zero emissions by 2045. These targets are legislated under the *Climate Change and Greenhouse Gas Reduction Act 2010*. The ACT has also developed a Climate Change Strategy which outlines the steps the government will take to achieve these emissions reductions targets, with a focus on lowering emissions from transport and gas, which are the two largest sources of emissions in the ACT.

The ACT Government has also made broader commitments to actively promote the development of national energy policy and market frameworks, including in support of renewable and low-carbon energy technologies, through the ACT Sustainable Energy Policy.

New South Wales

The NSW Government has legislated whole-of-government climate action through the *Climate Change (Net Zero Future) Act 2023* (NSW) (**NSW Climate Act**). Measures include new GHG reduction targets (with a ratchet mechanism), the establishment of an independent Net Zero Commission, and a focus on climate change mitigation and adaptation in development assessments and decision-making processes.

The NSW Climate Act legislates the NSW Government's current policy of net zero GHG emissions by 2050, but it also includes two interim targets which aim to achieve a 50% reduction on 2005 GHG emissions by 2030 and a 70% reduction on 2005 GHG emissions by 2035.

The NSW Department of Planning and Environment has also released a series of draft guidelines, described as the Draft Energy Policy Framework. The guidelines outline how the impacts of renewable energy projects and transmission infrastructure will be assessed and managed and are intended to promote transparency and clarity about where and how development occurs, including by clearly defining Renewable Energy Zones (**REZs**). These REZs, comprising wind and solar power generation, aim to efficiently store and transmit energy across NSW, reducing carbon emissions and supporting net-zero goals for both NSW and Australia.

Northern Territory

The Climate Change Response: Towards 2050 (**Towards 2050 Policy**), which was released in 2020, sets out the broad policy framework for action on climate change in the Northern Territory. According to the Towards 2050 Policy, the NT Government's objective is to progressively reduce net greenhouse gas emissions in the Territory, with the goal of achieving net zero emissions by 2050.

The NT Government has also committed to the target of 50% renewable energy for electricity consumed from

grid-connected installations by 2030 as part of its 'Roadmap to Renewables'. The Towards 2050 Policy annual progress report 2023 states that the NT Government is in the process of developing a net zero plan that provides a transition pathway for economic growth through decarbonisation and achieving net zero emissions by 2050.

Queensland

The Queensland Government currently has policy-based commitments to:

- A 30% reduction in emissions on 2005 levels by 2030;
- Net zero emissions by 2050;
- 50% renewable energy by 2030, 70% by 2032 and 80% by 2035; and
- A 50% reduction in energy sector emissions on 2005 levels by 2029-30, and 90% by 2035-2036.

However, the Queensland Government has proposed to legislate and intensify ambitions on climate action through the Queensland Climate Transition Bill 2023.

The Queensland Government has also committed $145 million for Queensland Renewable Energy Zones including $40 million to unlock wind and solar capacity across the state and $20 million to support Queensland's green hydrogen and renewables manufacturing industries.

South Australia

Through the *Climate Change and Greenhouse Emissions Reduction Act 2007* (SA), the SA Government has statewide goals of reducing net greenhouse gas emissions by more than 50% by 2030, achieving net zero emission by 2050, and achieving 100% renewable energy generation by 2030.

Moreover, the SA Government has allocated $593 million to build a world-leading hydrogen power plant, electrolyser, and storage facility, and accelerate the growth of the state's hydrogen economy and is developing a legislative framework for sustainable large-scale hydrogen and renewable energy projects.

Tasmania

Tasmania's Climate Change Action Plan 2023-25 (**Climate Action Plan**) outlines the Tasmanian Government's plan for action on climate change for the next two years. The Climate Action Plan was largely informed by the most recent review of the *Climate Change (State Action) Act 2008* (Tas) and the Tasmanian Emissions Pathway Review. Tasmania stands out among Australian states and territories with its distinctive emissions profile, consistently achieving net-zero emissions for several years since 2013.

The Climate Action Plan, which addresses broader environmental issues as well as emissions, sets a target to double Tasmania's renewable electricity production by 2040, with an interim goal of 150% by 2030. To encourage the adoption of renewable energy, the government pledges to maintain the lowest, or among the lowest, regulated prices in the National Electricity Market. Furthermore, there is a vision to become a significant producer of renewable hydrogen by 2030.

Victoria

The *Climate Change Act 2017* (Vic) (**Climate Change Act**) addresses both climate change mitigation and adaptation in Victoria. The Act establishes an emissions reduction target of net-zero emissions by 2050 and incorporates 5-yearly interim targets to track progress effectively.

Furthermore, the Act mandates the development of a Climate Change Strategy every 5 years from 2020. This strategy outlines Victoria's detailed plans for meeting climate targets and adapting to climate change impacts. Importantly, the Climate Change Act operates in conjunction with Victoria's Climate Change Framework and Renewable Energy Action Plan.

Victoria's Renewable Energy Action Plan which focuses on fostering large-scale solar and wind farms, along with energy storage solutions like utility-scale batteries. Notably, the plan specifies ambitious targets, aiming for at least 2.6 GW of energy storage capacity by 2030 and at least 6.3 GW by 2035.

Western Australia

The key priorities of the Western Australian Climate Policy are to:

- Support the net zero transition across the public sector.
- Drive low-carbon energy, mining, and agricultural initiatives.
- Guide decarbonisation across the rest of the economy.

In November 2023, the Western Australian Government introduced the Climate Change Bill 2023 to Parliament, seeking to formalise the state's framework for emissions reductions and climate resilience. This legislation reinforces the commitment to achieve net zero emissions by 2050 and mandates the setting of interim

emissions targets leading up to 2050. The proposed law requires the Minister for Climate Action to annually report to Parliament on Western Australia's emissions and progress against reduction targets.

The Minister for Climate Action, in collaboration with the Ministerial Taskforce on Climate Action, is also developing a Sectoral Emissions Reduction Strategy for Western Australia.

18. Does your jurisdiction have an overarching "net zero" or low-carbon target and, if so, what legal measures have been implemented in order to achieve this target.

See above response to question 17.

19. To what extent does your jurisdiction regulate the ability for products or companies to be referred to as "green", "sustainable" or similar terms? Who are the regulators in relation to greenwashing allegations?

*Australian Competition and Consumer Commission (**ACCC**)*

Engaging in 'greenwashing', which includes falsely representing a product or company's 'green' or 'sustainability' credentials, can expose products and companies to potential claims for misleading and deceptive conduct under section 18 of the Australian Consumer Law (**ACL**) and section 1041H of the *Corporations Act 2001* (Cth).

Such claims may prompt the ACCC, who is responsible for administering and enforcing the ACL, to exercise its authority to issue information gathering notices, infringement notices, impose civil penalties, or initiate court proceedings.

In December 2023, the ACCC published a guide for businesses called 'Making Environmental Claims' The core principles of the ACCC's greenwashing guidance include making accurate and truthful claims, providing evidence to support claims, avoiding the omission or concealment of important information, explaining any conditions or qualifications on claims, steering clear of broad and unqualified claims, using clear and easy-to-understand language, ensuring visual elements do not give a wrong impression, and being direct and open about sustainability transitions.

Non-compliance with the ACL and/or the Corporations Act, can result in significant financial penalties, so those conducting business or providing products or services in Australia should familiarise themselves with the ACCC guidance.

Australian Securities and Investment Commission (aSIC)

ASIC is an independent Australian Government body, set up under the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**), which regulates the conduct of Australian companies, financial markets, financial service organisations and financial professionals.

ASIC wields a range of enforcement actions available to respond to incidence of greenwashing misconduct including warning letters, infringement notices and undertakings to civil penalty proceedings in the Federal Court. Generally, ASIC utilises enforcement actions that are likely to have a broad reach such that they act as a deterrent beyond the individual issue of prosecution. A significant increase in ASIC enforcement actions targeting banks, superannuation funds, and other corporate entities has established a robust precedent emphasizing the importance of accurately portraying sustainability measures and the practical implementation of negative screens.

On 10 May 2023, ASIC released a short report detailing 35 interventions it had made in response to its greenwashing surveillance efforts from 1 July 2022 to 32 March 2023. The interventions were largely based around matters involving net zero statements and targets; use of terms such as 'carbon neutral', 'clean' or 'green'; fund labels; and the scope and application of investment exclusions and screens. Alongside enforcement and surveillance efforts, ASIC has also provided companies, issuers, and advisers with guidance documents as to avoid potential incidents of greenwashing when preparing financial disclosures.

Proposed Sustainable Finance Taxonomy

The Sustainable Finance Strategy consultation paper (the **Strategy**) was released by the Australian Government in November 2023, with an intention of aligning Australia's ambition to become a leading force in renewable energy through the delivery of the following pillars and priorities:

Pillar 1 involves improving transparency on climate and sustainability.

- In doing so, the strategy outlines several priorities including establishing a framework for sustainability-related financial disclosures;

developing a sustainable finance taxonomy; supporting viable net zero transition plans; and developing a labelling system for investment products marketed as sustainable. The aim is to ensure that markets have access to 'high quality, credible and comparable information' such that investors and companies have more certainty when managing climate-related risks.

Pillar 2 relates to maintaining financial system capabilities.

- Here, the government proposes several priorities including enhancing market supervision; identifying and responding to potential systematic financial risk; addressing data and analytical challenges; and ensuring regulatory frameworks are fit for purpose.

Pillar 3 sets objectives for the Australian Government Leadership and Engagement.

- In enhancing leadership and engagement, the government has prioritised issuing Australian sovereign green bonds; catalysing sustainable finance flows and markets; promoting the alignment of international strategies; and positioning Australia as a global leader of sustainability.

Significantly, the proposed Sustainable Finance Taxonomy will introduce new regulations aimed at supporting a classification system that defines specific 'sustainable' and 'green' economic activities. These regulations also envision the establishment of a governing body or bodies responsible for creating and updating this taxonomy.

The Sustainable Finance Taxonomy is envisaged to serve as the foundation for an investment product 'labelling regime'. This initiative aims to address greenwashing concerns by providing a clear framework for labelling investment products based on their alignment with sustainable criteria. Compliance with the taxonomy will be achieve through a requirement that where companies claim to have 'sustainable' or 'green' products, they must report on the extent to which their activities align with the sustainable finance taxonomy.

Furthermore, the taxonomy is expected to play a role in the issuance of green or transition-aligned financial instruments, such as bonds and loans. Notably, the Government's sovereign green bond program is anticipated to launch in mid-2024, marking a significant milestone in this direction.

20. Are there any specific arrangements in relation to anti-trust matters and climate change issues?

Australia employs a well-established procedure through which the ACCC can grant authorisation for conduct that might otherwise breach the country's competition rules – including cartel provisions. The ACCC will consider granting authorisation if it is convinced that the proposed conduct will not result in a significant lessening of competition, or if the public benefits derived from the conduct outweigh any detriments.

The responsibility lies with the parties seeking authorisation to demonstrate, on the balance of probabilities, that the public benefits are likely and substantial enough to offset any potential anticompetitive harm. Although the term 'public benefit' is not explicitly defined by law, the courts have clarified that it encompasses anything of value to the community at large. This includes contributions aligning with societal goals, such as the pursuit of economic efficiency and progress.

While the analysis of public benefits is often scrutinised in terms of efficiencies, environmental benefits are duly acknowledged as relevant considerations in this context. For example, in 2023, the ACCC authorised Brookfield and MidOcean's proposed acquisition of Origin Energy having determined that the likely gains for Australia's renewable energy transition would amount to a public benefit sufficient to outweigh the likely public detriments of the merger.

Accordingly, while there are not yet any specific arrangement in relation to anti-trust matters and climate change, environmental consideration (including climate change) certainly form part of the ACCC's decision making processes in granting authorisations within the competition law framework.

21. Have there been any notable court judgments in relation to climate change litigation over the past three years?

There have been numerous significant climate litigation cases in the last 3 years in various jurisdictions in Australia. We set out a few key examples below:

Minister for the Environment v Sharma [2022] FCACF 35

The Full Federal Court allowed an appeal and overturned the decision of a single judge of the Federal Court made in *Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment* [2021] FCA

560. The Court unanimously held that the Commonwealth Environment Minister does not owe the children-applicants (Children) a novel duty of care not to cause the Children (being children ordinarily resident in Australia under the age of 18) personal injury when exercising her power to approve the proposed Vickery Coal Mine extension project (the Extension Project) under the EPBC Act.

In his judgment, Chief Justice Allsop reasoned that a duty of care was not owed for the following three reasons:

1. the duty and whether or not it had been breached required "core policy questions" to be considered which were unsuitable in their nature and character for determination by the judicial branch in private litigation;
2. there are irreconcilable inconsistencies and incoherencies with the duty and the terms of the EPBC Act. Climate change and global warming were not expressly regulated under the EPBC Act and human health is not a mandatory consideration for the Minister in considering the protection of the environment; and
3. a lack of special vulnerability of the Children in the legal sense, the indeterminacy of liability and lack of control by the Minister for all damage caused by heatwaves, bushfires and rising sea levels to all Australians under the age of 18, ongoing into the future.

However, the Federal Court made no adverse findings about the scientific evidence and findings of the primary judge in relation to that evidence. According to Justice Beach it was open to the primary judge to construe that there is a real risk that even an increase in global average surface temperature of around or more than 2°C above pre-industrial levels may trigger a 4°C future world, based upon the risk of initiating a tipping cascade, which could in turn trigger the Hothouse Earth scenario.

Waratah Coal Pty Ltd v Youth Verdict & Ors [2022] QLC 21

This case involved objections in the Land Court of Queensland against the grant of a mining lease under the *Mineral Resources Act 1989* (Qld) and environmental authority (**EA**) under the *Environmental Protection Act 1994* (Qld) (**EP Act**) for the Waratah Coal Mine.

The grounds of the objections included the contribution the direct and indirect greenhouse gas emissions from the mine will make to climate change and the impacts on human rights as recognised under the *Human Rights Act 2019* (Qld).

Youth Verdict's primary argument was that the adverse contributions of the mine to climate change would impact upon First Nations Peoples' human rights. First Nations witnesses gave evidence on country, constituting the first time the Court has taken evidence from Indigenous Peoples in accordance with their traditional First Nations protocols.

The Court refused the mine on a number of grounds which centred around environmental, human rights and climate change concerns. Specifically, the Court found that the 1.58 gigatonnes of carbon emissions that would be produced from the mine would pose an 'unacceptable' risk of climate crisis for Queensland people and property, and that this would be 'a material contribution' to the global carbon budget, making it more difficult to achieve the Paris Agreement goal which Australia had adopted. Importantly, the Court found that the mine would infringe upon the human rights of First Nations Queenslanders as well as the owners of Bimblebox, whose ecological value would be "seriously and possibly irreversibly damaged by the mine".

In relation to climate change impacts on human rights, the Court found that the following rights of certain groups of people in Queensland would be limited:

a) the right to life; b) the cultural rights of First Nations peoples; c) the rights of children; d) the right to property and to privacy of home; and e) the right to enjoy human rights equally.

However, the main basis for the refusal centred around the notable rejection of the market substitution argument, being that if one mine does not supply the coal, another will (and argument which has previously been rejected in NSW). The Court considered the uncertainty surrounding the long-term global demand for thermal coal, thus declining to apply this line of argument, effectively overturning several previous decisions of the Queensland's Land Court approving the market substitution argument. Importantly, the Court found that scope 3 emissions are a relevant factor when considering what recommendation to make on the EA application under the EP Act.

Ultimately, it was held the mine would create adverse climate outcomes in its emissions of GHG and hinder Australia in meeting its emissions reduction commitments. Importantly, it was the first time the Land Court of Queensland has used 'scope 3' emissions as the basis for recommending refusal of a coal project.

Bushfire Survivors for Climate Action Inc v Environment Protection Authority [2021] NSWLEC 92

Bushfire Survivors for Climate Action (**BSCA**), a group of

Australians impacted by NSW's 2019/20 bushfires, brought proceedings in the NSW Land and Environment Court alleging the NSW Environment Protection Authority had failed to perform a statutory duty to develop certain instruments to ensure the protection of the environment from climate change. BSCA's primary argument was that the purpose of environment protection includes protection of the environment from significant threats, including climate change. Therefore, the instruments to ensure environment protection that the NSW EPA is required to develop should ensure the protection of the environment in NSW from this threat of climate change.

Chief Justice Preston held that the NSW EPA's duty to develop environmental quality objectives, guidelines and policies to ensure environment protection, in the current circumstances, includes a duty to develop instruments to ensure the protection of the environment in NSW from climate change. However, this does not demand that such instruments contain the level of specificity contended for by BSCA, such as regulating sources of greenhouse gas emissions in a way consistent with limiting global temperature rise to 1.5°C above pre-industrial levels. The Court also recognised that the NSW EPA has a discretion as to the specific content of the instruments it develops under s 9(1)(a) to ensure the protection of the environment from climate change.

22. In light of the commitments of your jurisdiction that have been made (whether at international treaty meetings or more generally), do you expect there to be substantial legislative change or reform in the relation to climate change in the near future?

Yes, please see Question 17 above and 29 below.

23. To what extent can the following persons be held liable for breaches of environmental law and/or pollution caused by a company: (a) the company itself; (b) the shareholders of the company; (c) the directors of the company; (d) a parent company; (e) entities (e.g. banks) that have lent money to the company; and (f) any other entities?

Companies

For the purposes of environmental law in Australia, legislative references to 'individuals' generally extends to companies/corporations as well as individual people. As such, where environmental legislation specifies that an 'individual' can be held liable for a breach of the legislation (including causing pollution or contamination) this extends to companies. Typically, the same enforcement actions apply for both individual people and companies, although financial penalties are considerably higher for companies. The exact nature of the enforcement action or penalty depends upon, amongst other factors, the jurisdiction and what legislation or environmental approval has been breached, the nature and severity of the breach, and the degree of harm caused.

Shareholders

Shareholders will not usually be held liable for a breach of environmental laws. In Australia, the corporate veil can be pierced if the corporate group has been used for fraudulent purposes or to shield the parent company from an existing legal obligation. If an individual shareholder is also concerned in, or takes part in, the management of the company, then they could be deemed to be an executive officer of the company. A shareholder who is also an executive officer can be liable for the conduct of the company if they were in a position to influence the company's conduct and failed to take all reasonable steps to prevent the breach of environmental law.

Directors

Where a company commits an offence under environmental law (including causing pollution), there are commonly legislative provisions in each jurisdiction which state that directors, company officers and/or people involved in the management and control of the company can be held personally liable for the offence. This liability does not always extend to every potential breach of environmental law by a company. Further, the offence provisions generally provide a defence where the director/officer exercised appropriate due diligence (or similar terms) and/or had no control over the activity of the company.

Parent companies

Similar to shareholders, parent companies will not normally be held liable for a breach of environmental laws by the subsidiary company. However, the corporate veil may be pierced if the level of control exercised by the parent company over the subsidiary company is so complete that the parent company will be deemed to be liable for the activities of the subsidiary company (such as a breach of environmental laws).

Lenders

In certain circumstances, lenders can assume liability under contaminated land laws in Australia. Broadly, a lender will be most at risk of liability where it is in possession of land. Typically, the location and the lender's degree of influence over the land will be key to determining the position of a lender and whether they have any liability in any given circumstances.

24. To what extent can: (a) a buyer assume any pre-acquisition environmental liabilities in an asset sale/share sale; and (b) a seller retain any environmental liabilities after an asset sale/share sale in your jurisdiction?

Buyer liabilities

Australian law generally applies a 'polluter pays' principle where liability for environmental damage or an environmental offence attaches first and foremost to the person who caused the damage or committed the offence. Consequently, in most cases, environmental liability (e.g. for breaching an environmental licence) is not passed on to a buyer where the transaction is an asset sale. In South Australia, buyers can assume liability for pre-existing contamination provided there is a genuine arms length transaction and the agreement to transfer liability is lodged with the EPA. Buyers could also become liable for pre-existing contamination in some cases, for example, in NSW, parties can become liable for pre-existing contamination even where they were not the original polluter if they seek to redevelop the acquired land.

A share sale will involve the buyer acquiring the shares in a business and with it the assets and historical environmental liabilities of the company. The company will retain environmental liability for the actions of the company under law.

The seller may, however, indemnify the buyer for any loss suffered by the buyer stemming from the historical environmental liability attached to the target company. Whilst contractually a buyer might be able to recover from a seller in respect of the environmental liability it inherits the statutory liability of the company acquired. Rarely will a company be able to contract out its statutory liability for the pollution or contamination caused by it (except as discussed above in relation to South Australia). It remains exposed to the possibility that regulatory action can be taken against it and if action is indeed taken, it will then need to recover costs against the seller if the contractual provisions of the share sale agreement permit it.

Seller liabilities

A seller will retain the environmental liabilities of a company following an asset sale. A seller may also retain liability for any land it contaminated depending on the jurisdiction. The contract transferring the asset can vary this position as between the buyer and seller. The seller, however, will remain liable under statute unless the legislation expressly acknowledges that a seller can contract out of its statutory liability.

If the seller did not cause the pollution or contamination of the asset and does not otherwise fall into a category of liable person under the relevant state or territory regimes, once the asset is transferred the regulator cannot pursue it to carry out clean-up work.

A buyer will assume the statutory liabilities of a company sold in a share sale. The seller may, however, retain contractual liabilities if, under the share sale agreement, it indemnifies the buyer from losses associated with environmental liabilities of the target company.

25. What duties to disclose environmental information does a seller have in a transaction? Is environmental due diligence commonplace in your jurisdiction?

Asset sale

In Australia the common law imposes a limited duty of disclosure on a seller to disclose latent defects to title which are those that cannot be discovered on inspection of the property. The common law duty has been broadened in some jurisdictions, with legislation prescribing what information must be disclosed and what standard warranties attach to the sale of land specifically. To comply with the statutory requirements, a seller will have to disclose certain listed environmental information or information which may affect a prescribed warranty.

Sellers are also subject to the Australian Consumer Law which prohibits misleading and deceptive conduct in trade or commerce and specifically, making false or misleading representations in connection with the sale of land. These include representations that concern the nature of the interest in the land, its characteristics or the use to which the land can be put. Silence can in some circumstances be considered misleading. A seller will need to disclose certain environmental information in its possession including reports concerning whether or not the land is contaminated to avoid making false or misleading representations about the land, the subject of

the transaction.

Share sale

In share sale transactions, sellers are similarly subject to the Australian Consumer Law and will need to make certain disclosures of environmental information so not to carry out misleading or deceptive conduct in the transaction. Additionally, it is usual in share sales for sellers to seek to comprehensively disclose all information in its possession or it is aware of in response to any specific environmental or contamination warranties.

Due diligence

Environmental due diligence is very common in both asset and share sale transactions. The scope of the due diligence carried out will depend on the current or proposed activities of the target company, and the nature of the land and its current or proposed use. Common areas of inquiry include: permissibility of land use, contamination or pollution issues, compliance, environmental approvals or specific environmental issues such as water licences or biodiversity offsets, asbestos and hazardous materials, European and Indigenous heritage, and native title.

26. What environmental risks can be covered by insurance in your jurisdiction, and what types of environmental insurance policy are commonly available? Is environmental insurance regularly obtained in practice?

Within Australia, commonly available environmental insurance policies include:

- transaction/environmental liability insurance – typically intended to protect sellers and/or buyers from the financial impact of unknown legacy contamination issues);
- contractor's pollution liability – covers liabilities and costs arising from pollution conditions resulting from specified contracting activities); and
- fixed-site pollution liability – covers liabilities and costs resulting from pollution conditions at, on, under or migrating from specified locations).

Common environmental risks covered by these types of policies include:

- costs of site investigation and assessment;
- on- and off-site clean-up costs (for both sudden and gradual pollution);
- emergency response costs;
- natural resource and/or biodiversity damage;
- third-party claims for bodily injury and/or property damage;
- business interruption; and
- civil fines and penalties (including enforceable undertakings), and legal defence costs.

However, the specific inclusions or exclusions can vary significantly between individual policies. Additionally, whilst public liability and other general insurance policies may provide coverage for pollution, this coverage is often restricted to sudden and/or accidental pollution, and third-party claims for compensation.

Whether environmental insurance is obtained as part of a transaction typically depends upon what is known about the environmental and contamination history of a site and the degree of risk associated with that history and any current uses and the risk appetite of the buyer.

27. To what extent are there public registers of environmental information kept by public authorities in your jurisdiction? If so, what is the process by which parties can access this information?

Reporting under the EPBC Act

At a national level, the regulator responsible for administering the EPBC Act (currently the Federal DCCEEW), maintains a public register of approvals and referrals made under the Act. Anyone can search the EPBC Act Public Portal free of charge to access information about past and current approvals and referrals made under the EPBC Act.

NGER Reporting

The *National Greenhouse and Energy Reporting Act 2007* (Cth) (**NGER Act**) introduced a single national framework for reporting and disseminating company information about greenhouse gas emissions, energy production and energy consumption. The NGER Act required captured entities to report on Scope 1 emissions from activities under the corporation's control and indirection emissions from consuming energy (Scope 2 emissions). The objectives of the NGER scheme are to:

- inform government policy
- inform the Australian public
- help meet Australia's international reporting obligations

- assist Commonwealth, state and territory government programmes and activities, and avoid duplication of similar reporting requirements in the states and territories.

In February each year, the Clean Energy Regulator publishes the National Greenhouse and Energy Reporting datasets for the previous financial year. The highlights show key points of interest in the data including reported emissions by industry, and electricity sector emissions, which account for the majority of all reported emissions. All datasets are publicly available for free.

Environmental Protection Authority Registers

In most jurisdictions, the relevant environmental protection authority is required under legislation to maintain a series of public registers of relevant environment information such as:

- environmental licences and permits;
- enforcement actions;
- contaminated land;
- planning and development approvals;
- heritage places;
- dangerous goods;
- native vegetation; and
- water entitlements.

Access to information contained in the registers varies between each jurisdiction. Some registers can be accessed online free of charge through the regulator's website, including in Queensland, NSW and Victoria. Other jurisdictions, such as South Australia and the ACT, require payment to manually inspect or otherwise request access to relevant environmental information.

28. To what extent is there a requirement on public bodies in your jurisdiction to disclose environmental information to parties that request it?

The *Freedom of Information Act 1982* (Cth) (**FOI Act**) provides parties with a legal right to request access to documents held by the Australian government (known as an FOI request) and allows for the timely and affordable disclosure of information, noting that government information is considered a public resource. A FOI request can be submitted to access environmental information held by public bodies at the national level.

A FOI request has several formal requirements including that: it must be in writing and submitted with the relevant government agency or minister, provide sufficient detail to enable identification of the requested records, and align with the purposes of the FOI Act.

FOI requests can be fully or partially refused. Government ministers have a limited number of exemptions whereby they can refuse access to requested documents, or instead provide partial access by redacting exempt sections. Broadly, access can be refused where information falls into one of three exemption categories, being: exemptions to protect the workings of the government; exemptions to protect third party interests (trade secrets); and exemptions to uphold other recognised legal interests (for example, legal professional privilege).

Similar access to information legislation exists in the state/territory jurisdictions, although the request processes and the categories of information that can be accessed vary.

29. Have there been any significant updates in environmental law in your jurisdiction in the past three years? Are there any material proposals for significant updates or reforms in the near future?

RECENT REFORMS

Nature Positive Plan

The EPBC Act requires an independent review of operations every 10 years. One of the most significant aspects of the most recent reforms, known as the Samuel Review, is the Commonwealth Government's 'Nature Positive Plan'. Under the Plan, The Australian Government has committed to protect 30% of Australia's land and seas by 2030, create a nature repair market, establish an independent national environment protection agency, and work in partnership with First Nations people, including to develop standalone cultural heritage legislation.

Nature Repair Market

The Australian Parliament passed the *Nature Repair Bill 2023* and the *Nature Repair (Consequential Amendments) Bill 2023*, establishing a voluntary national biodiversity market. The legislation allows various stakeholders, including First Nations people, conservation groups, corporations, governments, and farmers, to participate in the market by undertaking projects to enhance or protect existing habitat. Biodiversity certificates can be issued for these projects, facilitating trading without the need for direct project involvement or land ownership. The Nature Repair framework is designed to operate alongside Australia's

existing carbon market, though adjustments for consistency with ongoing carbon market reforms are unclear.

Safeguard Mechanism Reforms

The Australian Government delivered the final legislative pieces in Safeguard Mechanism reforms to regulate Australia's largest carbon emitters, by registering a suite of legislative rules which provide the detailed components of the reforms to Australia's Safeguard Mechanism scheme.

The new rules are:

- the National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023 (Safeguard Amendment Rules), which commenced on 1 July 2023, and contain the technical details of the reformed Safeguard Mechanism scheme;
- the Carbon Credits (Carbon Farming Initiative) Amendment (No. 2) Rules 2023 (Carbon Credits Amendment Rules No 2), which commenced on 6 May 2023; and
- the Australian National Registry of Emissions Units Rules 2023 which commenced on 6 May 2023.

The release of this suite of legislative rules marks the finalisation of most of the detail of the Safeguard Mechanism reforms. As of 1 July 2023, Safeguard-covered facilities are required to comply with the new requirements.

Waste Reforms

Reforms to National Co-Regulatory Framework for Packaging

In 2021, an independent legislative review examining the effectiveness of Australia's national co-regulatory framework for packaging, established under the NEPM, was completed. This was the first review of the NEPM since it was established in 1999. The report included nine recommendations for reforming the framework.

At the 21 October 2022 Environment Ministers' Meeting, ministers agreed to reform the regulation of packaging by 2025, to ensure that all packaging available in Australia is designed to be recovered, reused, recycled and reprocessed safely in line with circular economy principles.

Banning Plastic bags

Several jurisdictions have planned plastic bags in recent years. As of 1 June 2022, all states and territories have banned lightweight plastic shopping bags with handles. The specific bans are outlined below:

State/Territory	Date of Ban	Details of Ban
New South Wales	1 June 2022	Ban on all lightweight plastic shopping bags which have a thickness of 35 microns or less, including degradable, biodegradable and compostable bags.
Victoria	1 November 2019	Ban on all lightweight plastic shopping bags which have a thickness of 35 microns or less, including degradable, biodegradable and compostable bags.
Queensland	1 July 2018	Ban on lightweight plastic shopping bags less than 35 microns thick, including degradable, biodegradable and compostable bags.
Western Australia	1 July 2022	Ban on all plastic shopping bags with handles, regardless of thickness.
South Australia	May 2009	Ban on lightweight plastic bags less than 35 microns thick. The ban does not include biodegradable bags.
Northern Territory	September 2011	Ban on lightweight plastic bags with a thickness less than 35 microns including degradable bags. The ban does not include biodegradable bags.
Tasmania	November 2013	Ban on lightweight plastic bags less than 35 microns thick. The ban does not include biodegradable or compostable plastic bags.
Australian Capital Territory	November 2011	Ban on lightweight plastic bags less than 35 microns thick. The ban does not include biodegradable bags.

Container deposit schemes

Australian states and territories have introduced container deposit schemes since 2021. These schemes provide for better recycling, and increased reuse, of beverage containers across Australia. Recently introduced schemes include:

- Victoria's container deposit scheme (CDS Vic) which commenced on 1 November 2023; and
- Tasmania's container deposit scheme (Recycle Rewards) is due to begin in 2024.

Container deposit schemes, also known as container refund schemes or deposit return schemes, are examples of product stewardship schemes in which the beverage industry takes responsibility for the recovery

and recycling of empty beverage containers. These schemes increase recycling rates and create a clean waste stream to drive a circular economy.

Offshore Energy

The national regulatory framework for offshore energy came into effect in June 2022, prompting significant activity and development in the offshore wind sector. The key legislation establishing the framework includes:

- *Offshore Electricity Infrastructure Act 2021* (Cth);
- *Offshore Electricity Infrastructure Regulations 2022* (Cth); and
- *Offshore Electricity Infrastructure (Regulatory Levies) Act 2021* (Cth).

The framework introduced a licensing regime for offshore electricity infrastructure projects (such as offshore wind farms) and activities located in Commonwealth waters (starting from three nautical miles off the coast and extending to the outer boundary of Australia's exclusive economic zone). Within these waters, the Australian Government can designate certain areas to be used to develop offshore renewable energy infrastructure. Currently, the designated areas are intended for offshore wind projects. Project proponents seeking to develop within these areas must undergo an extensive licence application and development approval process.

Further regulations to support the framework are still being developed by the Australian Government. The current regulations enact mechanisms for licensing, fees and levies. Future regulations will address management plans, design notification schemes, work health and safety, and financial security.

Further, in November 2023, the Australian Government released additional guidance on the key environmental factors for the assessment of the environmental impacts off offshore windfarm projects carried out in Commonwealth waters. Proponents of offshore renewables projects, including wind farms, electricity transmission cables, and research and demonstration projects, should familiarise themselves with the guidance and the key licensing and environmental approvals process applicable to their proposed project.

Green Bond Framework

In December 2023, the Australian Government launched a Green Bond Framework that outlines how the Government will issue green bonds, including the basis for identifying, selecting, managing, and reporting on expenditures financed with green bonds. It also sets out the Government's key climate change and environmental priorities. The Australian Government Green Bond program will enable investors to purchase green bonds which will help finance certain eligible projects with targeted environmental outcomes. New South Wales, Victoria, Queensland, South Australia and Western Australia also have similar green or sustainability bond frameworks to attract investment for renewable energy and other projects (such as low carbon transport).

UPCOMING REFORMS

EPBC Act Reforms

One of the most significant environmental law policy changes on the horizon is the planned overhaul of the EPBC Act, which will include (amongst other things):

- the creation of an independent national environment protection agency;
- the introduction of legally enforceable National Environmental Standards (**NES**) to improve protections and guide decision making. Initial/priority standards will cover Matters of National Environmental Significance, First Nations engagement and participation in decision making, community engagement and consultation, regional planning and environmental offsets. NES will be subject to consultation and public comment;
- a requirement for project proponents to consider climate impacts by requiring them to publish their expected Scope 1 and 2 emissions and to disclose how their project aligns with Australia's national and international obligations to reduce emissions.
- introduction of regional plans to identify areas for protection by regional plans and to require proponents to demonstrate compliance with such plans. Regional plans will speed up decision-making and be structured around a three-level spatial system (designed to pre-identify areas for protection, restoration and sustainable development as well as priority areas for action and investment) to provide more certainty to planners and prospective proponents; and
- significantly reforming the environmental offsets framework to ensure net positive outcomes for environmental offsets and establishing a nature repair market to facilitate public and private investment in restoration activities (to operate alongside carbon market).

Mandatory Climate-related Financial Reporting

In June 2023, the International Sustainability Standards Board (**ISSB**) issued its first two International Financial Reporting Standards (**IFRS**) Sustainability Disclosure Standards – IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information and IFRS S2 Climate-related Disclosures – which are intended to set the global baseline for sustainability reporting, commencing with climate.

On 23 October 2023, the Australian Accounting Standards Board released three for-consultation draft climate-related financial disclosure standards (**ED SR1**) The Draft ED SR1 is open for comment until 1 March 2024.

The Government is proposing to mandate climate reporting, based on the ISSB standards, with the first cohort of companies, comprised of the largest listed and private companies, financial institutions, and emitters, required to report from 1 July 2024.

Guarantee of Origin Scheme

Following consultation in October and November 2023 on the Guarantee of Origin (**GO**) Scheme Paper, the GO Emissions Accounting Approach paper and calculator, and the Renewable Electricity GO Approach paper, the Government is advancing the development of Australia's GO scheme by:

- drafting primary and subordinate legislation to implement the scheme;
- expanding the scheme to cover a wide range of clean energy products and prioritising products for inclusion in the scheme;
- collaborating with international forums, including the IPHE, to align emissions accounting methodologies globally.

The proposed GO Scheme would provide a mechanism to track and verify emissions associated with hydrogen and other products made in Australia and provide an enduring mechanism for renewable electricity certification which could support a variety of renewable energy claims.

The GO scheme is intended to be legislated in 2024.

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