

ENDNOTES

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- ⁴⁶ *Australian Human Rights Commission Act 1986* (Cth) ss 11(1)(f) and 20(1).
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- ⁴⁹ Parliamentary Joint Committee on Human Rights, *Guide to Human Rights* (June 2015) 1.216-1.217.
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- ⁵¹ *Human Rights Act 2004* (ACT); *Charter of Human Rights and Responsibilities Act 2006* (Vic); *Human Rights Act 2019* (Qld).
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- ⁵⁶ *Ombudsman Act 1973* (Vic) ss 13(2) and 14.
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⁶⁷ See, e.g., the *National Environment Protection (Ambient Air Quality) Measure* established under the *National Environment Protection Council Act 1994* (Cth) and corresponding legislation in each state and territory.

⁶⁸ Australia has a wide range of laws that are intended to address Australia’s reduction of greenhouse gas emissions in line with Australia’s obligations under the *Paris Agreement*, including for example the Renewable Energy Target, the Carbon Farming Initiative, the Emissions Reduction Fund, and the Registry of Emissions Units. See for example the *Renewable Energy (Electricity) Act 2000* (Cth), the *Fuel Quality Standards Act 2000* (Cth), the *National Greenhouse and Energy Reporting Act 2007* (Cth), the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth), and the *Australian National Registry of Emissions Units Act 2011* (Cth).

⁶⁹ Toxic pollutants are measured and reported on pursuant to the *National Environment Protection (National Pollutant Inventory) Measure 1998* (Cth), which is established under the *National Environment Protection Council Act 1994* (Cth) and corresponding legislation in each state and territory.

⁷⁰ Water quality is managed nationally pursuant to the *National Water Quality Management Strategy* and through a number of Water Quality Guidelines. See ‘National Water Quality Management Strategy’ *Water Quality Australia* (Web page) <<https://www.waterquality.gov.au/about>>; ‘Water Quality Guidelines’ *Water Quality Australia* (Web page) <<https://www.waterquality.gov.au/guidelines>>.

⁷¹ The *Food Standards Australia New Zealand Act 1991* (Cth) establishes a regulatory framework for food standards in Australia. The legislation provides a mechanism for the creation of food standards, which are rules regarding the production conditions, composition, handling, and other aspects of food production. There are also national laws for the safe import and export of food through the *Biosecurity Act 2015* (Cth), *Imported Food Control Act 1992* (Cth), and the *Export Control Act 2020* (Cth). There are also a number of Australian policies and guidelines that promotes access to healthy food, such as the Australian Dietary Guidelines.

⁷² Biodiversity in Australia is protected under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), which contains a regime for the conservation of biodiversity in Australia including the protection of nationally threatened species and ecological communities, migratory species, and marine species, the protection and management of World Heritage properties and Ramsar wetlands, and the establishment of the Australian Whale Sanctuary in Australia’s exclusive economic zone.

⁷³ Farming activities that are likely to have an impact on nationally significant environmental matters – including, for example, threatened species and ecological communities – may require assessment and approval under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) before they can proceed.

⁷⁴ For example, the object of the *Fisheries Management Act 1991* (Cth), which regulates the fishing industry, includes ‘ensuring that the exploitation of fisheries resources and the carrying on of any related activities are conducted in a manner consistent with the principles of ecologically sustainable development (which include the exercise of the precautionary principle), in particular the need to have regard to the impact of fishing activities on non-target species and the long term sustainability of the marine environment’: s 3(1)(b).

⁷⁵ Each state and territory has its own environmental protection laws that regulate air pollution: *Environment Protection 1997* (ACT) and *Environment Protection Regulation 2005* (ACT) Part 2; *Protection of the Environment Operations Act 1997* (NSW) Part 5.4, *Protection of the Environment Operations (General) Regulation 2021* (NSW), and *Protection of the Environment Operations (Clean Air) Regulation 2021* (NSW); *Environment Protection Act 2019* (NT) and *Environment Protection Regulations 2020* (NT); *Environmental Protection Act 1994* (Qld), *Environmental Protection Regulation 2019* (Qld) and *Environmental Protection (Air) Policy 2019* (Qld); *Environment Protection Act 1993* (SA), *Environment Protection*

Regulations 2009 (SA) and Environment Protection (Air Quality) Policy 2016 (SA); Environmental Management and Pollution Control Act 1994 (Tas) and Environmental Management and Pollution Control (Smoke) Regulations 2019 (Tas); Environment Protection Act 2017 (Vic) and Environment Protection Regulations 2021 (Vic) Part 5.2; Environmental Protection Act 1986 (WA) and Environmental Protection Regulations 1987 (WA).

⁷⁶ The ACT, South Australia, Tasmania and Victoria have greenhouse gas emission reduction targets enshrined in their legislation: *Climate Change and Greenhouse Gas Reduction Act 2010 (ACT) ss 6(1), 7(1) and Climate Change and Greenhouse Gas Reduction (Interim Targets) Determination 2018 (ACT) s 3; Climate Change and Greenhouse Emissions Reduction Act 2007 (SA) s 5; Climate Change (State Action) Act 2008 (Tas) s 5; Climate Change Act 2017 (Vic) s 6.* The Western Australian Parliament is currently considering the *Climate Change and Greenhouse Gas Emissions Reduction Bill 2020 (WA)*, which is yet to be passed.

⁷⁷ The ACT, Tasmania and Victoria have renewable energy targets enshrined in their legislation: *Climate Change and Greenhouse Gas Reduction Act 2010 (ACT) s 9(1); Energy Co-ordination and Planning Act 1995 (Tas) s 3C; Renewable Energy (Jobs and Investment) Act 2017 (Vic) s 7.*

⁷⁸ Each state and territory has legislation regulating contaminated sites: *Environment Protection Act 1997 (ACT) and Environment Protection Regulation 2005 (ACT); Contaminated Land Management Act 1997 (NSW); Waste Management and Pollution Control Act 1998 (NT); Environmental Protection Act 1994 (Qld) Chapter 7, Part 8 and Environment Protection Regulation 2019 (Qld) Chapter 5, Part 3; Environment Protection Act 1993 (SA) Part 10A and Environment Protection Regulations 2009 (SA) Part 5; Environmental Management and Pollution Control Act 1994 (Tas) Part 5A; Environment Protection Act 2017 (Vic) Part 3.5 and Environment Protection Regulations 2021 (Vic) Chapter 2; Contaminated Sites Act 2003 (WA).*

⁷⁹ Each state and territory has its own legislation regulating access to water: *Water Resources Act 2007 (ACT); Water Management Act 2000 (NSW); Water Act 1992 (NT); Water Act 2000 (Qld); Water Industry Act 2012 (SA); Water Management Act 1999 (Tas); Water Act 1989 (Vic) and Safe Drinking Water Act 2003 (Vic); Water Services Act 2012 (WA).*

⁸⁰ Each state and territory has its own legislation regulating water pollution: *Environment Protection Act 1997 (ACT) and Environment Protection Regulation 2005 (ACT) Part 4; Water Management Act 2000 (NSW), Protection of the Environment Operations Act 1997 (NSW) Part 5.3 and Protection of the Environment Operations (General) Regulation 2021 (NSW) Chapter 3; Water Act 1992 (NT) Part 2; Environmental Protection Act 1994 (Qld) Chapter 8, Part 3C and Environmental Protection Regulation 2019 (Qld) Chapter 5, Part 5; Environment Protection Act 1993 (SA), Environment Protection Regulations 2009 (SA) and Environment Protection (Water Quality) Policy 2015 (SA); Environmental Management and Pollution Control Act 1994 (Tas); Water Act 1989 (Vic), Environment Protection Act 2017 (Vic) and Environment Protection Regulations 2021 (Vic) Part 5.4; Environmental Protection Act 1986 (WA) and Environmental Protection Regulations 1987 (WA).*

⁸¹ Queensland, Victoria, NSW and Western Australia have fisheries legislation that promotes sustainable fishing practices: *Fisheries Act 1994 (Qld); Fisheries Act 1995 (Vic); Fisheries Management Act 1994 (NSW); Aquatic Resources Management Act 1994 (WA).* All Australian states and territories also have their own food safety legislation: *Food Act 2001 (ACT); Food Act 2003 (NSW); Food Act 2004 (NT); Food Act 2006 (Qld); Food Production (Safety) Act 2000 (Qld); Food Act 2001 (SA); Food Act 2003 (Tas); Food Act 1984 (Vic); Food Act 2008 (WA).* Some Australian states, like Queensland, have programs specifically targeted to Aboriginal and Torres Strait Islander Peoples' access to food: *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984 (Qld) s 60B.*

⁸² All states and territories have their own biodiversity conservation legislation. See the *Nature Conservation Act 2014 (ACT); Biodiversity Conservation Act 2016 (NSW); Territory Parks and Wildlife Conservation Act 1976 (NT); Nature Conservation Act 1992 (Qld); Nature Conservation Act 2002 (Tas); Flora and Fauna Guarantee Act 1988 (Vic) and Wildlife Act 1975 (Vic); Biodiversity Conservation Act 2016 (WA).*

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¹⁷⁸ See for example the *Environmental Protection Act 2019* (NT) s 88(1); *Environmental Protection Act 1994* (Qld) ss 357D(f), 389(4), 466B; *Environmental Management and Pollution Control Act 1994* (Tas) s 5(2).

¹⁷⁹ For example, Australia has freedom of information laws at both the federal level and in each state and territory: *Freedom of Information Act 1982* (Cth); *Freedom of Information Act 2016* (ACT); *Government Information (Public Access) Act 2009* (NSW); *Information Act 2002* (NT); *Right to Information Act 2009* (Qld); *Freedom of Information Act 1991* (SA); *Right to Information Act 2009* (Tas); *Freedom of Information Act 1982* (Vic); *Freedom of Information Act 1998* (WA). In some circumstances, government agencies are required under legislation to provide information to the public during a decision-making process. For example, proposed actions that are referred to the Minister for the Environment under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) are published on the Department of Agriculture, Water and Environment's website for public inspection: s 74(3)(a). In addition, some government agencies are required to provide decision notices, which sometimes include detailed statements of findings of fact and reasons, to the applicant for a decision and other people whose interests are affected by a decision. Australia also undertakes periodic 'state of the environment' reporting at federal, state and territory levels, including e.g. the SoE Report.

¹⁸⁰ Most environmental or natural resources legislation in Australia mandates public consultation processes, in particular for planning or investigation stages of management. For example, the Minister for the Environment is required to invite anyone to give comments on development proposals that have been referred to the Minister under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), and the Minister must take those comments into account when deciding whether or not the proposal requires assessment and approval under the Act: ss 74(3)(b), 75(1A). In addition, some legislation also allows for public inquiries to be conducted to investigate environmental and planning matters. For example, the Minister for the Environment can decide that certain development proposals are to be assessed under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) through an inquiry, which are conducted publicly: see Part 8, Division 7.

¹⁸¹ Access to justice in environmental decision-making encompasses judicial review (review for legality), administrative or merits review (review for a correct or preferable decision), and civil enforcement of environmental laws against individuals, corporations and governments where they are failing to comply with obligations. For example, under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), some decisions are capable of reconsideration in some circumstances (ss 75, 78–79, 514Y, 74C(3)(c), 480J), a limited number of decisions can be challenged through merits review in the Administrative Appeals Tribunal (ss 206A, 221A, 243A, 263A, 473), and most decisions can be challenged in judicial review proceedings in the Federal Court of Australia (pursuant to s 487 and the *Administrative Decisions (Judicial Review) Act 1975* (Cth)). Some states have specialist courts and tribunals with jurisdiction to determine environmental matters, such as the Land and Environment Court in NSW, where any person may challenge a government decision made or undertake enforcement proceedings under planning and environmental laws: *Protection of the Environment Operations Act 1997* (NSW) ss 252–253.

¹⁸² Lee Godden, Jacqueline Peel and Jan McDonald, *Environmental Law* (Oxford University Press, 2nd ed, 2018) 70, 88, citing Australian Panel of Experts on Environmental Law, *Democracy and the Environment* (2017) Technical Paper 8; Guy Dwyer and Judith Preston, 'Striving for Best Practice in Environmental Governance and Justice: Reporting on the Inaugural Environmental Democracy Index for Australia' (2015) 32 *Environmental and Planning Law Journal* 202.

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¹⁸⁴ *Escazú Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean*, opened for signature 27 September 2018 (entered into force 22 April 2021).

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- ¹⁹⁵ *Ibid*, 676.
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