
Index

Aarhus Convention – *see* **Public participation**

Aboriginal land rights – *see* **Indigenous marine rights; Water management**

Administrative Appeals Tribunal (Cth)

merits review – *see* **Grey nurse sharks**

Alternative dispute resolution

facilitative dispute resolution and, 116 – *see also* **Dispute resolution**

Banks

climate change mitigation role, 448-468

business practices, 454-461

lending & financing, 456-459

profits & “middleman” role, 459-461

risk assessment & risk management, 454-456

finance sector & climate change, 449 -452

influence on corporate actors, 461 -464

advice & supply chains, 463 -464

credit provision & investment, 462-463

leadership & industry evolution, 464-468

overview, 452-454

Biodiversity

urban – *see* **Urban biodiversity conservation**

Book reviews

Fisher, Douglas, *Australian Environmental Law: Norms, principles and rules* (2nd ed), 469-470

McGrath, C, *Does Environmental Law Work? How to evaluate the effectiveness of an environmental legal system*, 392-395

California

climate change law – *see* **Climate change**

Canada

water management – *see* **Water management**

Carbon Pollution Reduction Scheme (Cth) (CPRS), 131-162

background, 132-136

inherent strengths & weaknesses, 134-137

- strengths, 135-136
- weaknesses, 136-138
- rise & rise of emissions trading, 132-134
- design problems, 138-148
 - forward cap-setting, 144-145
 - inadequate impact, 139-141
 - inadequate targets, 142-144
 - “leaky” cap, 141-142
 - permits as property, 145-147
- enforcement problems, 148-153
 - administrative decisions, 149-151
 - penalties, 148-149
 - public interest enforcement, 151-153
- exclusion of agriculture, 202-222
 - agricultural sector & cap-and-trade ETS, 203-210
 - abatement & monitoring methodologies, 203-204
 - government position on offsets, 208-210
 - non-government perspectives, 204-206
 - point of obligation & feasibility of including agriculture, 206-208
 - White Paper & Garnaut Review, 208
 - alternative policy approaches, 211-213
 - Australian bio-sequestration projects in context of overall approach to reducing GHG emissions, 221-222
 - considerations of equity under range of options, 219-220
 - potential offset categories, 213-219
- problematic consequences, 153-161
 - climate justice, 153-157
 - protecting polluters, 155-157
 - punishing the poor, 154-155
 - human rights, 157-161
 - legal consequences, 159-161
 - rights affected, 157-159

Cetaceans

- sonar use – *see* **Sonar**

Climate change – *see also* Carbon Pollution Reduction Scheme (Cth)

- banks’ role – *see* **Banks**
- Californian law, 169- 188
 - history, 170- 173
 - key elements, 173- 186
 - cap-and-trade program, 173- 174
 - cap, coverage & linkage, 174- 179
 - allocation, allowances & offsets, 175–177

Index

- integration of ETS with other measures, 178-179
- penalties & revenue, 177-178
- environmental assessment & climate change litigation, 181-186
 - Renewables Portfolio Standard (RPS), 179-181
- lessons from experience, 186-188
- coastal areas – *see* **Coastal zones**
- justifying measures in claims under WTO Agreements, 346-359
 - environmental sensitivity beyond GATT, Art XX, 354-358
 - lack of sensitivity beyond core, 358
 - SCM Agreement, 347, 355-358
 - TRIPS, 347, 349, 354-355, 358
- GATT, Art XX, 349-354
 - Art XX(b), 351-353
 - Art XX(g), 350-351
- chapeau, 353
- environmental turn, 353-354
- possible measures to combat climate change, 348-349

Coastal zones

- climate change (Victoria), 23-35
 - coastal strategic planning, 30-31
- consideration by VCAT and Planning Panels Victoria, 31-34
- environmental planning law framework, 24-26
- increased knowledge, 29-30
- institutional framework, 27-28
- Victorian Coastal Strategy 2008, 23-24

Corporate environmental responsibilities

- banks – *see* **Banks**

Courts

- leadership in achieving sustainability, 321-330
 - function of executing laws, 327-329
 - function of judging, 321-326
 - applying the law, 325-326
 - finding the law, 322-323
 - interpreting the law, 324-325
 - function of legislating, 329
- upholding the law, 326

CPRS – *see* Carbon Pollution Reduction Scheme (Cth)

Dispute resolution

- facilitative (State Administrative Tribunal of WA), 113-130
 - alternative dispute resolution and, 116
- benefits, 126-130
 - satisfaction, 126-127
 - scope of dispute, 128
 - speed & cost, 127
 - super resolution, 128
 - superior outcome, 127-128
 - sustainability of planning review system, 128-130
- definition, 114-115
- planning cases resolved, 122-126
- processes, 116-122
 - directions hearings, 116-118
 - invitations to respondents to reconsider decisions, 122
 - mediations & compulsory conferences, 119-121

Emissions trading – see also Climate change

- Carbon Pollution Reduction Scheme (Cth) – *see* **Carbon Pollution Reduction Scheme**

Environmental law

- evaluation of effectiveness (book review), 392-395

Environmental law (Australia)

- book review, 469-470

Environmental protection (Commonwealth)

- Environment Protection and Biodiversity Conservation Act 1999 (Cth)
 - compliance & enforcement mechanisms, 98-112
 - Commonwealth policy, 99-100
 - strategies in Act & application by Commonwealth, 100-110
 - administrative action, 101-104
 - civil action, 104-106
 - criminal action, 106-110
- fisheries – *see* **Grey nurse sharks**
- Indigenous land rights sea claims, 195-196
- sonar use – *see* **Sonar**

Environmental regulation

- merits review of decision-making (Cth)
 - grey nurse sharks – *see* **Grey nurse sharks**

Europe

public participation – *see* **Public participation**

Facilitative dispute resolution – *see* **Dispute resolution**

Financial institutions

banks – *see* **Banks**

Fisheries

grey nurse sharks – *see* **Grey nurse sharks**

Fresh water – *see* **Water management**

General Agreement on Tariffs and Trade (GATT)

climate change measures – *see* **Climate change**

Grey nurse sharks

merits review of decision under EPBC Act, 223-244

case, 225-226

Commonwealth regulation of State fisheries, 239-243

interaction with Commonwealth assessment, 239-240

NSW fisheries assessment & OTLF, 239

restricted role for Commonwealth, 240-242

sustainability, 240

conservation protection, 225

decision, 230-234

“detrimental”, 230-232

objects of PT 13A, 232-233

precautionary principle, 233-234

EPBC Act, Part 13A & NSW Nature Conservation Council’s application, 226-230

assessment of OTLF, 229

EPBC Act, Part 13A, 227-228

NCC’s application, 229-230

Offshore Constitutional Settlement, 227

scope of power to issue WTO, 228-229

merits review of environmental decisions, 234-239

AAT’s decision in context, 237-238

aims, 235-236

challenge of reviewing environmental decisions, 236-237

impacting decision-making, 238

regulating threatening activities, 224-225

Indigenous marine rights – *see also* Water management

- land rights sea claims, 189-201
 - conflicting Western & Indigenous ideologies, 192-194
- Environment Protection and Biodiversity Conservation Act, 195-196
- High Court ruling (Blue Mud Bay), 194-195
 - cooperation & joint management opportunities, 196-198
- Indigenous protected areas, 198-199
 - legal & political implications, 199-201
- inter-tidal zone, 192
- legal interpretations, 190-191
- “sea country”, 189-190

Integrated planning – *see* Planning (Queensland)**Land and Environment Court (NSW)**

- processes compared with Victorian Civil and Administrative Tribunal, 42-49
- participation, 43-45
 - formality, 45
- issue generation & rationalisation, 44
- parties & objectors, 43-44
- responsiveness, 45-48

Land rights – *see* Indigenous marine rights; Water management**Merits review**

- adversarial vs inquisitorial processes, 36-52
- comparison of Land and Environment Court (NSW) & Victorian Civil and Administrative Tribunal, 42-49
- participation, 43-45
 - formality, 45
- issue generation & rationalisation, 44
- parties & objectors, 43-44
- responsiveness, 45-48
- development assessment, 40-42
- participation & responsiveness, 38-40
- grey nurse sharks decision – *see* **Grey nurse sharks**

Murray Darling Basin River system

- wetlands – *see* **Wetlands**

National security

- sonar use – *see* **Sonar**

Index

Native title

water management – *see* **Water management**

Nature Conservation Council (NSW)

grey nurse sharks – *see* **Grey nurse sharks**

Navy

sonar use – *see* **Sonar**

Neighbourhood environment improvement plans (NEIP)

public participation – *see* **Public participation**

New environmental governance – *see* Public participation

New South Wales

courts – *see* **Land and Environment Court (NSW)**

grey nurse sharks – *see* **Grey nurse sharks**

solar access – *see* **Solar access**

New Zealand

Environment Court

history, 69-79

enforcement jurisdiction, 73-74

plan & consent jurisdiction, 72-73

planning acts (1926-1977), 69-70

Planning Tribunal become Environment Court, 72

procedural features, 75-76

alternative dispute resolution, 75

case management & procedure, 75-76

code of conduct for expert witnesses, 76

direct referral, 75

Maori issues & court composition, 76

public participation, 74

recent changes, 77-78

Resource Management Act 1991, 70-72

sustainable management, 77

water management – *see* **Water management**

Ocean Trap and Line Fishery (OTLF) (NSW)

grey nurse sharks – *see* **Grey nurse sharks**

Offshore Constitutional Settlement

grey nurse sharks – *see* **Grey nurse sharks**

Participation – see Public participation**Planning (Queensland)**

history, 53-68

influencing factors in 1990s, 53-55

ecologically sustainable development, 55

local government's changing role, 54-55

public sector reform, 54

Integrated Planning Act 1997 – *see below* Integrated Planning Act

law reform – arguments for new approach, 55-56

Sustainable Planning Act 2009 – *see below* Sustainable Planning Act

Integrated Development Assessment System (IDAS), 57

changes to, 65-66

criticism of, 58-59

Integrated Planning Act 1997 (Qld), 57-58

criticism of, 58-62

dispute resolution, 62

ecological sustainability & community participation, 61-62

IP Act planning instruments, 59-60

State and regional planning policy, 60-61

ecological sustainability, 58

infrastructure charges and conditions, 57

performance-based planning, 57

private certification, 57-58

Sustainable Planning Act 2009, 62-67

compensation entitlements, 67

consolidation & clarification of State planning powers, 63

dispute resolution, 67

new types of development & approval categories, 64-65

other changes to IDAS, 65-66

standard planning scheme provisions, 62-63

Public participation

Aarhus Convention (UNECE), Art 6, 272-295

Aarhus Convention, 282-290

definition of “public concerned”, 285-286

due account of public participation & access to reasons, 289-290

early notification of public concerned of specific information, 286-288

forms of public participation, 288-289

projects to which Art 6 applies, 283-285

timeframes, 289

Australian public review procedures, 275-281

Index

- access to reasons, 281
- account of public comment by decision-maker, 281
- early public participation, 279-280
- forms of public participation, 277-278
- information given to the public, 280
- public review of draft environmental impact statement, 277
- timeframes, 278
- comparative review of Australian procedures with Aarhus Convention, 290-294
 - account of public comment in final decision, 294
 - designated development, 290-291
 - early notification, 293
 - forms of public participation & timeframes, 293-294
 - information the public has access to, 293
 - notifying “public concerned”, 292-293
 - significant impact/effect, 291-292
- merits review – *see* **Merits review**
- new environmental governance, 360-391
 - case study methodology, 368-369
 - discussion, recommendations & conclusions, 386-391
 - findings, 376-386
 - explanations of patterns, 381-385
 - neighbourhood environment improvement plan, 385-386
 - participation patterns across cases, 376-381
 - literature, 364-368
 - participation, inclusiveness & representation, 364-368
 - inclusiveness, 365-366
 - representativeness, 366-368
 - programs, 369-376
 - overview, 369-372
 - environment improvement plan, 371-372
 - neighbourhood environment improvement plan, 370-371
 - regional natural resource management, 369-370
 - procedural criteria & design features, 372-376
 - inclusiveness, 373
 - legal design & support mechanisms, 374-376
 - representativeness, 373-374

Ramsar Convention – *see* **Wetlands**

Risk assessment

- banks – *see* **Banks**

SCM Agreement (Agreement on Subsidies and Countervailing Measures)

climate change measures, 347, 355-358

Sharks – see Grey nurse sharks**Solar access**

legal history, 5-22

common law protection, 6-8, 21

comprehensive controls (US), 22

court role in interpreting & applying legislation, 15-17

legislation, 8-15

NSW, 8-13

building envelopes, 12

general provisions relating to overshadowing, 10-11

height and setback controls, 12

overshadowing at certain times of day, 11

overshadowing of percentage of neighbouring land, 11

problems of terminology, 9-10

special controls on advertising signs, 12-13

special controls on architectural roof features, 13

special controls on heritage items, 13

South Australia, 13-15

access to sunlight between certain hours of day, 14

encouragement of solar energy & need to protect existing solar collectors, 15

limiting overshadowing – general statements, 14-15

limits on building height to prevent overshadowing, 15

overshadowing as amenity of surrounding area, 14

preservation of sunlight as development objective, 14

overseas legislation, 17-20

hypothetical solar fences, 20

private nuisance, 18

public nuisance, 17-18

right as separate, novel interest in property, 18-19

solar envelopes, 19-20

planning & development law approach, 21-22

Sonar

regulation of use, 426-447

Australian & US outcomes compared, 445-446

Australian environmental law, 436-441

assessment & approval of actions, 436-437

cetacean provisions, 437-438

exemptions, 438

Index

- referrals under EPBC Act, 438-441
- stranding incident review panel, 438
- environmental impacts, 428-429
- self-regulation & Navy environmental management plan, 441-445
 - assessment issues & recent recommendations, 443-445
 - non-referral undermining objects, 442-443
 - non-referred actions, 441-442
 - maritime activities environmental management plan, 441
- Winter litigation (US), 429-436
 - background & relevant law, 430-431
 - lower courts, 431-432
 - significant features, 433-436
 - deference to Navy, 433-434
 - limitations of National Environmental Policy Act regime, 435-436
 - undermining environmental statutes, 434-435
 - Supreme Court, 432-433
- South Australia**
 - solar access – *see* **Solar access**
- Sustainable development**
 - court leadership – *see* **Courts**
- Sustainable planning** – *see* **Planning (Queensland)**
- TRIPS (Trade-Related Aspects of Intellectual Property) Agreement**
 - climate change measures, 347, 349, 354-355, 358
- United Nations Economic Commission for Europe (UNECE)**
 - Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) – *see* **Public participation**
- United States environmental law**
 - climate change (California) – *see* **Climate change**
 - solar access – *see* **Solar access**
 - sonar use – *see* **Sonar**
 - water law – *see* **Water management**
- Urban biodiversity conservation**
 - science & local environmental policy, 249-271
 - Australian conservation approaches, 254-259
 - ecologically sustainable development, 254
 - local government, 256-259

- national & state approaches, 254-256
- local environmental policy, 259-263
 - community engagement, 262-263
 - goal setting, 260
 - local vs regional goals, 260-261
 - policy, theory & empirical data, 261-262
 - way forward, 263
- multi-scale land-use planning, 263-271
 - collaboration, 269-271
 - land-use planning, 263-268
 - regulation, 268-269
- science of biodiversity, 251-253
 - defining biodiversity, 251-252
 - measurement & assessment, 252-253

VACT – *see* **Victorian Civil and Administrative Tribunal**

Victoria

- coastal zones – *see* **Coastal zones**

Victorian Civil and Administrative Tribunal (VCAT)

- processes compared with Land and Environment Court (NSW), 42-49
- participation, 43-45
 - formality, 45
 - issue generation & rationalisation, 44
 - parties & objectors, 43-44
- responsiveness, 45-48

Water efficiency plans (WEPs)

- policy & practice, 331-345
 - evaluating WEPs, 341-343
 - opportunities for national extension, 343-345
- regulatory, policy & implementation challenges, 331-341
 - auditing, reporting & reviewing, 336-338
 - degrees & types of compulsion, 332-334
 - energy efficiency initiatives, 340-341
 - enforcement & incentives, 334-335
 - external contractors & assessors, 338
 - funding programs, 338-339
 - policy overload/duplication, 340
 - scope of participation, 335-336
 - water pricing, 339

Water management – *see also* **Wetlands**

efficiency – *see* **Water efficiency plans**

Indigenous legal rights, 296-315

accounting for Indigenous interests in water, 312-314

commercial water rights, 305-308

Australia, 307-308

Canada, 306

key lessons for Australia, 308

New Zealand, 306-307

US, 305-306

Indigenous water management, 308-312

Australia, 311-312

Canada, 309-310

key lessons for Australia, 312

New Zealand, 310-311

United States, 308-309

native title & other sources of water rights, 299-305

Australia, 303-304

Canada, 300-302

key lessons for Australia, 304-305

New Zealand, 302-303

US, 299-300

water rights generally, 297-298

rights & interests in water, 85-97

High Court decision (ICM Agriculture case, 2009)

Constitution, s 51(xxxi), 88-89

context, 87-88

critical function of property, 94-96

acquisition, 95-96

doctrinal foundations, 94

property, 94-95

doctrinal foundations of water law, 89-94

acquisition, 92-93

property, 89-90

reasoning process, 93-94

water entitlements as property, 91-92

water resources as common property, 90-91

instrumental rules

functions, 87

matrix, 86-87

public domain regime, 86

WEPS – *see* **Water efficiency plans**

Western Australia

State Administrative Tribunal – *see* **Dispute resolution**

Wetlands – *see also* **Water management**

Murray Darling Basin

Ramsar Convention & climate change, 401-425

conflicts between Convention and Water Act 2007 (Cth), 419-425

compensation through designation of new areas, 422-423

managing sites undergoing change, 423-425

Ramsar processes, 421-422

implications for government & Convention, 418-419

negative human-induced change, 418-419

legal framework for managing wetlands, 403-409

Australian institutions, 406-409

Ramsar obligations, 403-406

management of wetlands, 409-418

data for Ramsar sites, 409-416

recent government responses, 416-418

Whaling

sonar use – *see* **Sonar**

Wildlife Trade Operation (WTO)

grey nurse sharks – *see* **Grey nurse sharks**

World Trade Organisation (WTO)

climate change measures – *see* **Climate change**

WTO – *see* **Wildlife Trade Operation; World Trade Organisation**