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# Update Summary

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**PLANNING LAW IN AUSTRALIA**

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## Planning Systems and Development Approvals WA

Commentary on Planning Systems and Development Approvals WA has been updated, including:

- New commentary on development of state significance. See [WA.1.4417].
- In 2023 the PD Act was amended to insert a new Part 13 Division 4, granting entry and inspection powers to officers authorised by the WAPC. The WAPC membership is to be revamped during 2024. See [WA.1.4070].
- Updated commentary in relation to the Minister for Planning’s statutory responsibilities. See [WA.1.4080].
- The Planning and Development (Region Planning Schemes) Regulations 2023 now provide more detailed procedures regarding amendments. See [WA.1.4120].
- In McComish and Shire of Peppermint Grove [2023] WASAT 121 Senior Member Willey considered whether a ‘deemed provision’ in Sch 2 to the LPS Regs is required to be read down in light of a ‘model provision’ in Sch 1 to the LPS Regs. See [WA.1.4130].
- Updated commentary on state planning policies with reference to case Reid v Western Australian Planning Commission [2023] WASC 110. See [WA.1.4150].
- In Taylor v Western Australian Planning Commission 108 SR (WA) 307; [2023] WASAT 16 although the parties agreed that the R-Codes are incorporated into the local scheme (and the Tribunal so found at [144]), the applicant submitted that the R-Codes are concerned with development and in their application to the WAPC’s decisions on subdivision the requirements of cl 5.1.1 were for guidance only. See [WA.1.4160].
- Updated commentary on local heritage surveys with reference to PC Infrastructure Pty Ltd and City of Armadale [2023] WASAT 45. See [WA.1.4240].
- The SCRM Act was amended in 2023, principally to extend the powers of the CEO to grant certain licences for activities in reserved land. See [WA.1.4260].
- In De Jonge and Metropolitan Redevelopment Authority [2023] WASAT 91 [215] the Tribunal found that the land is injuriously affected and has been set aside for a public purpose, but not by the MRA’s Scheme. See [WA.1.4270].
- Updated commentary regarding constitution of the DAPs with reference to General Nominees Pty Ltd (ATF Family Trust Four) v The Metro Inner-North Joint Development Assessment Panel [2022] WASC 114. See [WA.1.4390].
- The Minister for Planning has announced that the introduction of a new category of “significant development” where the WAPC is the decision-maker will commence from 1 March 2024. See [WA.1.4417].
- In West Australian Shalom Group Inc v City of Joondalup 109 SR (WA) 371; [2023] WASAT 63 the Tribunal decided that the MRS requires development approval for every development not specifically exempt under the MRS. See [WA.1.4580].

- Updated commentary concerning the ability of a local government to characterise its plan to develop a works depot as “public works”, with reference to *Reid v City of Gosnells* [2023] WASC 48. See [WA.1.4690].
- Provisions of the MRS are to prevail to the extent that they are inconsistent with provisions of a local scheme. See [WA.1.4900].
- Updates made to the Region Planning Scheme table found in Appendix B – A comparison of procedures for making or amending a Region Planning Scheme.

### Environmental Law VIC

Commentary on Environmental Law VIC has been updated, including:

- While parts of the EP Act were modelled on the work, health and safety regime, the Occupational Health and Safety Act 1985 (Vic) (OHS Act) and the EP Act are different creatures with distinctive structures and language. See [VIC.5.2090].
- Commentary on Recycling Victoria, the W&R Act and the Victorian Recycling Infrastructure Plan (VRIP). See [VIC.5.2160].
- Under the EP Act, the EPA can require persons undertaking certain activities to provide a financial assurance as security for the costs of remediation or clean up in connection with the specified activity. See [VIC.5.2230].
- Updated commentary concerning matters which the Minister has regard to in considering whether an Environment Effects Statement (EES) is required, as well as matters which the EES will normally address. See [VIC.5.2270].
- Updated targets set by the Victorian Government to cut the state's emissions on the path to net zero emissions by 2045, as well as updated renewable energy targets. See [VIC.5.2600] and [VIC.5.2620].
- Updated commentary in relation to notices to investigate. See [VIC.5.2730].

### Environmental Law WA

Commentary on Environmental Law WA has been updated, including:

- Updated commentary on public and private nuisance and the defence of statutory authority with reference to *Jalla v Shell International Trading and Shipping Co Ltd* [2023] EWHC 424. See [WA.5.4060].
- Key elements of the response provided by the Albanese Government to the Samuel Independent Review. See [WA.5.4280].
- Requiring the Minister to obtain the advice of the Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development before deciding whether to approve the taking of an action for the purposes of a controlling provision. See [WA.5.4290].

- Part 14 of the EPBC Act provides for Conservation Agreements between the Commonwealth and persons relating to the protection and conservation of biodiversity and other matters of national environmental significance. See **[WA.5.4330]**.
- In *Cooke v Ritchie* [2023] WASC 45 Forrester J considered an appeal against sentence for 6 convictions: 2 of taking fauna without authority contrary to s 149, and 4 of possessing fauna without authority contrary to s 152 of the Biodiversity Conservation Act 2016. See **[WA.5.4340]**.
- Updated commentary regarding the new Part 6A of the Land Administration Act 1997. See **[WA.5.4360]**.
- Added new commentary on the Climate Change Bill 2023. See [WA.5.4565].
- A review of the WA Environmental Approvals Processes and Procedures was undertaken in 2023. The Government has released the recommendations along with its responses. See **[WA.5.4620]**.