

# MINING AND ENERGY LAW

SECOND EDITION

*Mining and Energy Law* provides students with a comprehensive overview of the national electricity, resources and energy markets and how they are regulated. It explores the law governing the current mix of sources utilised in the Australian energy sector, from petroleum and natural gas to renewable energy sources including wind and solar power.

The second edition has been comprehensively updated to include new content on the *United Nations Convention on the Law of the Sea (UNCLOS)*, the Australian Energy Market Commission (AEMC), the gas export market, resource royalties and environmental impact assessments. It also discusses the impacts of climate change and environmental regulation on energy policies in Australia, including climate legislation, the regulation of renewable energy sources, initiatives such as carbon capture and storage (CCS), and the transition away from fossil fuels.

Each chapter includes review questions and suggested further readings to engage students with the various aspects of the energy and resources sectors. Updated case and legislation extracts articulate the nature of the regulatory and statutory obligations that impact Australia's mining, offshore and onshore petroleum, natural gas and resources companies.

*Mining and Energy Law* is a thorough examination of the contemporary mining and energy sectors in Australia.

**Samantha Hepburn** is a Professor in the School of Law at Deakin University who teaches mining, energy, environmental and natural resource law.

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SAMANTHA HEPBURN



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## FOREWORD

Mining and energy law ranges across many issues and has always been complex everywhere. Australia's federal constitution makes it especially complex, with laws in the six states and two territories being different from each other and sometimes in conflict with Commonwealth law. It has become even more complex over recent years, with new technologies and concern for climate change generating new policy, law and regulation – and with conflicts over policy leading to major changes over short periods.

Hepburn manages to provide an intelligible, comprehensive account of Australian minerals and energy policy and law without losing the reader in the detail. The greatest strength of the book is to make a bewildering reality comprehensible to the reader who comes new to the subject.

This book takes the reader through the major issues, explains how these have led to the adoption of laws, reviews comprehensively the more difficult issues to ensure that the reader has not been left behind, presents detail from important laws, discusses cases to demonstrate how the law has worked in practice, and suggests many avenues for further reading for those who want to dig deeper into the subject.

It is an excellent book for those seeking to understand the broader context of her or his subject. It is just as useful for those who are seeking to understand minerals and energy from other disciplines and wanting to see how their subject is affected by law.

The treatment of the conventional resources issues is thorough and reliable. The early chapters, 2 to 4, deal authoritatively with old and familiar minerals and energy issues. Resource titles differentiated at the exploration and mining stages of resources development have their own history in Australia, with the history and surviving law varying across states and territories. The resource production leases may be old, but have new overlays of complexity with the recent introduction of international legal issues – with the globally unique joint development zone with Timor, with the law of the sea, with world heritage listing of some prospective areas, and with new international obligations of varying kinds under the *United Nations Framework Convention on Climate Change*. Natural gas operations introduce new areas of complexity related to pipeline access. Chapter 10 discusses the important question of taxation of minerals rents and manages to make comprehensive treatment of a complex subject readable.

The most impressive and exciting innovation in the book is the treatment of the issues arising out of new technologies and products (unconventional gas) and new policy objectives (notably, climate change, leading into policy on renewable energy and carbon capture and storage). The discussion of unconventional gas introduces us to new issues arising out of new technologies and to the polarised political response to them – varying across Australia – and to the interaction of new laws covering the new issues with laws on biodiversity and conservation that themselves have been subject to recent change.

Renewable energy has become much more important in Australia over the past decade as a result of federal and state governments' interest in having Australia contribute to the global effort to reduce the impact of climate change. Renewable energy raises

different issues in respect of access to land and resources than the exploitation of fossil fuel resources, and has generated new law and regulations. Chapter 6 manages to relate the evolution of regulation designed to promote growth in renewable energy to the international discussion and negotiation of emissions reduction targets. Chapter 7 takes us into deep exploration of another set of laws and regulations that have their origins in mitigation of climate change: the capture and storage of carbon emissions from fossil fuel combustion, and then the many ways in which climate change concerns have interacted with energy policy. The discussion of international climate change mitigation notes the discordance today between Australian and other countries' approaches.

The first edition of this book, published in 2015, was widely acclaimed. It met an important gap in the literature available for teachers and students and for practitioners in law, business and government needing to comprehend quickly a complex legal reality. The world of laws related to resource development, renewable energy and climate change has evolved rapidly over recent years. This second edition is a welcome update of discussion of many aspects of the changing reality. Especially welcome is the new content on the *United Nations Convention on the Law of the Sea (UNCLOS)*, the Australian Energy Market Commission (AEMC), the gas export market, resource royalties and environmental impact assessments.

Climate change mitigation and regulation of carbon emissions has accelerated at both state and Commonwealth levels. That change continues with the more ambitious emissions reductions targets of the Albanese Commonwealth Government elected in May 2022. This second edition is especially welcome for its discussion of the impacts of climate change and environmental regulation on energy policies in Australia, including climate legislation, the regulation of renewable energy sources, regulation of carbon capture and storage (CCS) in geological structures, and the transition away from fossil fuels.

The reality in which Australian minerals and energy law operates in the years immediately ahead will continue to change rapidly, forcing more change in policy, law and regulation. Better understanding of the realities, including the realities of other countries' action on climate change, will also be a source of pressure for change. Readers who have established a strong and intelligible foundation of Australian minerals and energy policy and law through reading this comprehensive and insightful book will be at an advantage in understanding complex new realities as they reveal themselves to us.

**Ross Garnaut**

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# CONTENTS

<i>Foreword by Ross Garnaut</i>	v
<i>About the author</i>	xiii
<i>Acknowledgements</i>	xiv
<i>List of acronyms</i>	xvi
<i>Table of cases</i>	xx
<i>Table of statutes</i>	xxiii
<b>1 Ownership of minerals and natural resources</b>	<b>1</b>
1.1 Introduction	2
1.2 Ownership of the subsurface strata at common law	3
1.3 Public resource ownership	7
1.4 The proprietary status of mining tenements	11
1.5 Royal minerals: gold and silver	14
1.6 Ownership of renewable energy resources	17
1.6.1 Hydro-electrical power	18
1.6.2 Geothermal energy	18
1.6.3 Ownership of water in Australia	19
1.6.4 Access entitlements for wind and sunlight	23
1.6.5 Market progression	24
1.7 Division of land and resources: overlapping tenures	25
1.8 Land access and compensation	28
1.9 Native title, cultural heritage and mining rights	33
1.10 Review questions	37
1.11 Further reading	38
<b>2 Resource titles: permits, licences and leases</b>	<b>39</b>
2.1 Introduction	40
2.2 Mining approval process: exploration, assessment and extraction phases	41
2.3 Exploration licences and permits	42
2.3.1 Approval process	42
2.3.2 The character of an exploration licence/permit	45
2.3.3 Relevant legislative provisions	47
2.3.3.1 New South Wales	47
2.3.3.2 Western Australia	50
2.3.3.3 Queensland	50
2.3.4 Proprietary status of the exploration licence	53
2.3.5 Legal status of offshore exploration permits: s 51(xxxi) of the <i>Commonwealth Constitution</i>	54
2.4 Retention licences and assessment leases	58

2.5	Mining and production leases	62
2.5.1	Statutory character of a mining lease	62
2.5.2	General terms and conditions of a mining lease	65
2.5.3	State agreements	70
2.6	Review questions	70
2.7	Further reading	71
<b>3</b>	<b>Australian offshore petroleum and minerals regulation</b>	<b>73</b>
3.1	Introduction	74
3.2	<i>United Nations Convention on the Law of the Sea</i>	76
3.2.1	Background to <i>UNCLOS</i>	76
3.2.2	Maritime zones: baselines, the contiguous and exclusive economic zones, and the continental shelf	77
3.2.3	The high seas	83
3.2.4	The right of innocent passage	84
3.3	State and Commonwealth constitutional arrangements for offshore regulation	86
3.4	<i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i> (Cth)	91
3.5	NOPTA and NOPSEMA	93
3.6	<i>OPGGSA</i> (Cth) titles	95
3.6.1	Petroleum exploration permit	95
3.6.2	Petroleum retention lease	96
3.6.3	Petroleum production licence	97
3.6.4	Infrastructure licence	98
3.6.5	Pipeline licence	99
3.7	Sea installations	100
3.8	Joint petroleum area and Greater Sunrise: Australia and Timor-Leste	100
3.9	<i>Offshore Minerals Act 1994</i> (Cth)	103
3.10	<i>Offshore Electricity Infrastructure Act 2021</i> (Cth)	104
3.11	Review questions	107
3.12	Further reading	107
<b>4</b>	<b>The national energy market: focus on gas</b>	<b>110</b>
4.1	Introduction	111
4.2	National Electricity Market and the <i>National Electricity Law</i>	111
4.3	What is natural gas?	112
4.4	The gas export market	114
4.5	<i>National Gas Law</i>	117
4.6	The Australian Energy Regulator and the Economic Regulation Authority	120
4.7	Australian Energy Market Commission	124
4.8	Australian Energy Market Operator	127
4.9	Australian gas pipelines and the <i>NGL</i>	129
4.10	Review questions	138
4.11	Further reading	139



<b>5 Unconventional gas regulation</b>	<b>141</b>
5.1 Introduction	142
5.2 What is unconventional gas?	145
5.2.1 Shale gas	145
5.2.2 Tight gas	145
5.2.3 Coal seam gas	146
5.3 How is unconventional gas extracted?	146
5.3.1 Hydraulic fracturing and horizontal drilling	147
5.3.2 Water pumping for CSG extraction	149
5.4 Environmental and social issues associated with unconventional gas extraction	152
5.5 Regulatory frameworks for unconventional gas: focus on Queensland and New South Wales	157
5.5.1 Queensland: <i>Petroleum and Gas (Production and Safety) Act 2004</i>	158
5.5.1.1 Regulatory requirements	158
5.5.1.2 Access, entry and conduct and compensation agreements	164
5.5.2 New South Wales: the regulatory framework	168
5.5.2.1 <i>Petroleum (Onshore) Act 1991</i>	169
5.5.2.2 Land access, compensation and access disputes	172
5.5.2.3 Codes of practice for CSG: fracture stimulation and well integrity	174
5.5.2.4 Strategic Regional Land Use Policy and the gateway process	176
5.5.2.5 <i>Environmental Planning and Assessment Act 1979</i>	178
5.5.2.6 <i>Water Management Act 2000</i> and the Aquifer Interference Policy	181
5.6 Regulatory framework: <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth)	184
5.7 Review questions	185
5.8 Further reading	186
<b>6 Renewable energy: regulation, the Renewable Energy Target scheme, wind energy and the market framework</b>	<b>189</b>
6.1 Introduction	190
6.2 What is renewable energy?	191
6.3 The renewable energy market	194
6.4 Statutory regulation: the Renewable Energy Target	195
6.4.1 Commonwealth and state development of renewable energy targets	195
6.4.2 Economic justification for the RET	199
6.4.2.1 Outline of the federal RET	199
6.5 Background to the RET	201
6.6 The Australian Renewable Energy Agency, Clean Energy Regulator and Clean Energy Finance Corporation	202

6.7	The Large-scale Renewable Energy Target	204
6.8	The Small-scale Renewable Energy Scheme and Solar Credits Scheme	206
6.9	The economics of renewable energy	208
6.10	The National Electricity Market	210
6.11	Onshore wind energy	212
6.11.1	<i>Best Practice Guidelines for Implementation of Wind Energy Projects in Australia</i>	216
6.11.2	Onshore wind farm cases: <i>Bald Hills Wind Farm Pty Ltd v South Gippsland Shire Council</i> and <i>SPIC Pacific Hydro Pty Ltd v Chief Commissioner of State Revenue</i>	220
6.12	Offshore wind energy: <i>Offshore Electricity Infrastructure Act 2021</i> (Cth)	223
6.13	Review questions	227
6.14	Further reading	227
<b>7</b>	<b>Carbon capture and storage</b>	<b>230</b>
7.1	Introduction	231
7.2	What is carbon capture and storage?	232
7.3	Why do we need CCS?	235
7.4	Capturing carbon dioxide	237
7.4.1	Pre-combustion technology	238
7.4.2	Post-combustion technology	238
7.4.3	Oxyfuel combustion	238
7.4.4	Applications of pre-combustion, post-combustion and oxyfuel combustion	239
7.4.4.1	Enhanced oil recovery operations	239
7.4.4.2	CCS operations in the cement sector	239
7.5	Transporting carbon dioxide	240
7.6	Storing carbon dioxide	242
7.7	International CCS projects	242
7.8	Regulating carbon capture in Australia	243
7.8.1	Commonwealth laws	243
7.8.2	State and territory laws	247
7.9	CCS state frameworks: focused review	248
7.9.1	Victoria: <i>Greenhouse Gas Geological Sequestration Act 2008</i>	248
7.9.2	Queensland: <i>Greenhouse Gas Storage Act 2009</i>	252
7.9.3	Victoria: <i>Offshore Petroleum and Greenhouse Gas Storage Act 2010</i>	254
7.10	Legal liability for carbon capture in Australia	255
7.10.1	Environmental concerns	255
7.10.2	Tortious actions	255
7.10.3	Regulatory standards	256
7.11	Review questions	257
7.12	Further reading	258

<b>8</b>	<b>Climate change and energy policy</b>	<b>261</b>
8.1	Introduction	262
8.2	Changes in the climate system: atmosphere, ocean, cryosphere and sea level	264
8.3	International and domestic legal frameworks	267
8.3.1	<i>United Nations Framework Convention on Climate Change</i>	267
8.3.2	Intergovernmental Panel on Climate Change	271
8.3.3	<i>Kyoto Protocol</i>	271
8.3.4	<i>Paris Agreement</i>	273
8.3.4.1	Nationally determined contributions	275
8.3.4.2	Critical analysis of the <i>Paris Agreement</i>	277
8.3.5	<i>The Energy Charter Treaty</i>	277
8.3.6	Australian climate regulation	280
8.3.6.1	Emissions Reduction Fund	281
8.3.6.2	The safeguard mechanism	281
8.3.6.3	Climate legislation: legislating emission reduction targets	284
8.3.6.4	Climate litigation	286
8.4	Pricing carbon	289
8.5	The energy transition	293
8.6	Review questions	296
8.7	Further reading	296
<b>9</b>	<b>Environmental regulation</b>	<b>300</b>
9.1	Introduction	301
9.1.1	Cost–benefit analysis versus precautionary principle approach	302
9.1.2	Environmental rights	304
9.2	Jurisdictional framework	306
9.2.1	Commonwealth environmental legislation: <i>Environment Protection and Biodiversity Conservation Act 1999</i>	308
9.2.2	Bilateral agreements	312
9.2.3	Principles of ecologically sustainable development	313
9.3	Environmental impact assessment	317
9.4	Environmental assessment of energy and mining projects in Western Australia	319
9.5	Environmental assessment of energy and mining projects in Queensland	323
9.6	Environmental assessment of energy and mining projects in New South Wales	328
9.7	Review questions	335
9.8	Further reading	335

<b>10 Mining agreements and revenue frameworks</b>	<b>339</b>
10.1 Introduction	340
10.2 Form and scope of resource mining agreements	344
10.2.1 Fossil fuels: concession agreements	344
10.2.2 Fossil fuels: profit-sharing contracts	345
10.2.3 Fossil fuels: risk service contracts	347
10.2.4 Fossil fuels: joint venture agreements	348
10.2.5 Renewable energy: power purchase, engineering, procurement, connection and operation agreements	349
10.3 Resource royalties in Australia	351
10.3.1 Royalty frameworks	351
10.3.2 Coal royalty rates	353
10.3.3 Petroleum royalty rates	354
10.3.4 Royalties payable on private minerals	355
10.3.5 Meaning of ‘well-head’ for calculation of royalties	356
10.3.6 Public benefit of royalties	358
10.4 Resource taxation in Australia	360
10.4.1 Carbon tax	361
10.4.2 Minerals resource rent tax	361
10.4.3 Petroleum resource rent tax	362
10.4.4 Public benefit of resource taxes	364
10.5 Review questions	365
10.6 Further reading	366
<i>Index</i>	370

## ABOUT THE AUTHOR

Professor Samantha Hepburn has made significant contributions to energy, mining, climate and environmental narratives. Her research and public profiles are extensive. She has published in Australia, the United States and other countries, and is the author of numerous highly regarded legal texts and journal articles. She is a prolific public academic, contributing to print, electronic and broadcast media on energy, climate and environmental governance discussions. Samantha teaches mining, energy, environmental and natural resource law at Deakin Law School.

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## ACRONYMS

ABARE	Australian Bureau of Agriculture and Resource Economics
ACCC	Australian Competition and Consumer Commission
ACCU	Australian carbon credit units
ADGSM	Australian Domestic Gas Security Mechanism
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
AIP	Aquifer Interference Policy
ANP	Autoridade Nacional do Petróleo
APPEA	Australian Petroleum Production Exploration Association
ARENA	Australian Renewable Energy Agency
BSAL	biophysical, strategic agricultural land
CBA	cost-benefit approach
CBAM	European Carbon Border Adjustment Mechanism
CBM	coal bed methane (used internationally to describe CSG)
CCS	carbon capture and storage
CDM	clean development mechanism
CEFC	Clean Energy Finance Corporation
CER	Clean Energy Regulator
CLCS	United Nations Committee on the Limits of the Continental Shelf
CMATS	<i>Treaty on Certain Maritime Arrangements in the Timor Sea</i>
COAG	Council of Australian Governments
CSG	coal seam gas
DEHP	Department of Environment and Heritage Protection
DMP	Department of Mines and Petroleum (WA)
DWGM	Declared Wholesale Gas Market
EA	environmental authority
<i>ECHR</i>	<i>European Convention on Human Rights</i>
<i>ECT</i>	<i>Energy Charter Treaty</i>
<i>EEA</i>	<i>Environment Effects Act 1978 (Vic)</i>
EES	environmental effects statement
EEZ	exclusive economic zone
EIA	environmental impact assessment
EIS	environmental impact statement
EM	environmental management
<i>EMPC</i>	<i>Environmental Management and Pollution Control Act 1994 (Tas)</i>
EOR	enhanced oil recovery
EOW	end of waste
EPA	Environmental Protection Authority
<i>EPAA</i>	<i>Environmental Planning and Assessment Act 1979 (NSW)</i>
<i>EPBCA</i>	<i>Environment Protection and Biodiversity Conservation Act 1999 (Cth)</i>

EPC	engineering, procurement and construction agreement
EPHC	Environment Protection and Heritage Council
EPL	environmental protection licence
ERA	Economic Regulation Authority (WA)
ERF	Emissions Reduction Fund
ESD	ecologically sustainable development
ESG2	Environmental Impact Assessment Guidelines for NSW
FSMP	fracture stimulation management plan
GGGSA	<i>Greenhouse Gas Geological Sequestration Act 2008</i> (Vic)
GGSA	<i>Greenhouse Gas Storage Act 2009</i> (Qld)
GHG	greenhouse gas
GS	Greater Sunrise oilfield
HRA	<i>Human Rights Act 2019</i> (Qld)
ICCPR	<i>International Covenant on Civil and Political Rights</i>
ICESCR	<i>International Covenant on Economic, Social and Cultural Rights</i>
IEA	International Energy Agency
IEC	<i>International Energy Charter</i>
IESC	Independent Expert Scientific Committee on CSG and Large Coal Mining Development
ILUA	Indigenous Land Use Agreement
IPCC	Intergovernmental Panel on Climate Change
ISA	International Seabed Authority
IUA	International Unitisation Agreement
JORC Code	<i>Australasian Code for Exploration Results, Mineral Resources and Ore Resources</i>
JPDA	Joint Petroleum Development Area
LEP	local environmental plan
LGC	Large-scale Generation Certificate
LNG	liquid natural gas
LPG	liquid petroleum gas
LREC	Large-scale Renewable Energy Certificate
LRET	Large-scale Renewable Energy Target
MBT	<i>Maritime Boundary Treaty</i>
MNES	matters of national environmental importance
MREMP	Mining, Rehabilitation and Environmental Management Process
MRET	Mandatory Renewable Energy Target
MRRT	Minerals resource rent tax
MRSDA	<i>Mineral Resources (Sustainable Development) Act 1990</i> (Vic)
MTOFSA	<i>Maritime Transport and Offshore Facilities Security Act 2003</i> (Cth)
NCC	National Competition Council
NDC	nationally determined contributions
NEL	<i>National Electricity Law</i>
NEM	National Electricity Market
NEO	National Electricity Objective

NERO	National Energy Retail Objective
NGERA	<i>National Greenhouse and Energy Reporting Act 2007</i> (Cth)
NGL	<i>National Gas Law</i>
NGO	National Gas Objective
NGR	<i>National Gas Rules</i>
NNTT	National Native Title Tribunal
NOPSEMA	National Offshore Petroleum Safety and Environmental Management Authority
NOPTA	National Offshore Petroleum Titles Administrator
NPACSG	National Partnership Agreement on Coal Seam Gas
NTA	<i>Native Title Act 1993</i> (Cth)
NTESMO	Northern Territory Electricity System and Network Operator
NTPC	Native Title Protection Conditions
NWI	National Water Initiative
OECD	Organisation for Economic Cooperation and Development
OEIA	<i>Offshore Electricity Infrastructure Act 2021</i> (Cth)
OMA	<i>Offshore Minerals Act 1994</i> (Cth)
OPA	<i>Offshore Petroleum Agreement 1967</i> (Cth)
OPGGSA (Cth)	<i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i> (Cth)
OPGGSA (Vic)	<i>Offshore Petroleum and Greenhouse Gas Storage Act 2010</i> (Vic)
OSPAR Convention	<i>Convention for the Protection of the Marine Environment of the North-East Atlantic</i>
PEC	partial exemption certificate
PEERA	<i>Protocol on Energy Efficiency and Related Environmental Aspects</i> (under <i>Energy Charter</i> )
PEOA	<i>Protection of the Environment Operations Act 1997</i> (NSW)
PGERA	<i>Petroleum and Geothermal Energy Resources Act 1967</i> (WA)
PGPSA	<i>Petroleum and Gas (Production and Safety) Act 2004</i> (Qld)
PLAC	<i>Petroleum Land Access Code</i> (NSW)
POA	<i>Petroleum (Onshore) Act 1991</i> (NSW)
PPA	power purchase agreement
PPSA	<i>Personal Property Securities Act 2009</i> (Cth)
PRRT	petroleum resource rent tax
PSC	profit sharing contract
PSLA	<i>Petroleum (Submerged Lands) Act 1967</i> (Cth)
REC	renewable energy certificate
REEA	<i>Renewable Energy (Electricity) Act 2000</i> (Cth)
REF	review of environmental factors
RET	Renewable Energy Target
RFC	reasons for concern
RPP	Renewable Power Percentage
SDPWOA	<i>State Development and Public Works Organisation Act 1971</i> (Qld)
SEPP	state environmental planning policy

SGC	Small-scale Generation Certificates
SMC	safeguard mechanism credits
SRES	Small-scale Renewable Energy Scheme
SRLUP	Strategic Regional Land Use Policy
SSD	state significant development
SSI	state significant infrastructure
SSLA	<i>Seas and Submerged Lands Act 1973 (Cth)</i>
STC	Small-scale Technology Certificates
STTM	short term trading market
TCF	trillion cubic feet
TST	<i>Timor Sea Treaty 2003</i>
UNCED	United Nations Conference on Environmental Development 1992
UNCLOS	<i>United Nations Convention on the Law of the Sea</i>
UNFCCC	<i>United Nations Framework Convention on Climate Change</i>
VTS	Victorian Transmission System
WAL	water access licence
WEM	Wholesale Electricity Market
WMA	<i>Water Management Act 2000 (NSW)</i>

## TABLE OF CASES

- Adamson v Hayes* (1973) 130 CLR 276, 12
- Akiba (on behalf of the Torres Strait Regional Sea Claims Group) v Commonwealth* (2013) 250 CLR 209, 87
- Akiba v Queensland (No 2)* (2010) 204 FCR 1, 87
- Anaconda Nickel Ltd v Tarmoola Australia Pty Ltd* (2000) 22 WAR 101, 54
- Attorney-General for British Columbia v Attorney-General for Canada* [1914] AC 153, 84
- Australian Conservation Foundation Inc v Minister for the Environment* (2021) 174 ALD 286, 185, 311–12
- Bald Hills Wind Farm Pty Ltd v South Gippsland Shire Council* [2020] VSC 512, 220–1
- Bernstein v Skyviews & General Ltd* [1978] QB 479, 481, 6
- BHP Billiton Iron Ore Pty Ltd v National Competition Council* (2007) ATPR 42–141, 132–3
- BHP Petroleum Pty Ltd v Balfour* (1987) 180 CLR 474, 357
- Bocardo Ltd v Star Energy UK Onshore Ltd* [2010] 1 Ch 100, 5, 13–14
- Bocardo SA v Star Energy UK Onshore Ltd* [2011] 1 AC 380, 5
- Bonsa v La Macchia* (1970) 122 CLR 177, 86
- Brown (on behalf of the Ngarla People) v Western Australia* (2012) 208 FCR 505, 69–70
- Brown (on behalf of the Ngarla People) v Western Australia (No 2)* (2010) 268 ALR 149, 69
- Bursill Enterprises Pty Ltd v Berger Brothers Trading Pty Ltd* (1971) 124 CLR 73, 7
- Bury v Pope* (1586) 78 ER 375, 5
- Cadia Holdings Pty Ltd v New South Wales* (2010) 242 CLR 195, 14–16
- Case of Mines* (1568) 75 ER 472, 14, 15
- ChongHerr Investments Ltd v Titan Sandstone Pty Ltd* (2007) Q ConvR 54–669, 63
- Commissioner for Railways v Valuer General* [1974] 1 AC 382, 5
- Commissioner of State Revenue v OZ Minerals Ltd* (2013) 46 WAR 156, 12
- Commissioner of State Revenue (WA) v Placer Dome Inc* (2018) 265 CLR 585, 12, 27
- Commissioner of Taxation v Sharpcan Pty Ltd* (2019) 269 CLR 370, 56–7
- Commissioners of Crown Lands v Page* [1960] 2 QB 274, 253
- Commonwealth v WMC Resources Ltd* (1998) 194 CLR 1, 54–8
- Commonwealth v Yarmirr* (1999) 101 FCR 171, 84
- Commonwealth v Yarmirr* (2001) 208 CLR 1, 245
- Connected IO Ltd v Paterson* [2019] WASCA 70, 45
- Connell v Santos NSW Pty Ltd* [2014] NSWLEC 1, 171–2
- Cudgen Rutile (No 2) Pty Ltd v Chalk* [1975] AC 520, 344
- Doe d Douglas v Lock* (1835) 111 ER 271, 7
- Duke of Sutherland v Heathcote* [1892] 1 Ch 475, 54
- Edwards v Sims* (1929) Ky 24 SW (2d) 619, 255
- Embrey v Owen* (1851) 155 ER 579, 20



- Finlay Stonemasonry Pty Ltd v JD & Sons Nominees Pty Ltd* (2011) 28 NTLR 183, 6  
*Foreman v Free Fishers and Dredgers of Whitstable* (1869) LR 4 HL 266, 84  
*Forrest & Forrest Pty Ltd v The Honourable William Richard Marmion, Minister for Mines and Petroleum* (2017) 51 WAR 425, 45  
*Fortescue Metals Group Ltd v Commonwealth* (2013) 250 CLR 548, 360  
*Friends of Leadbeater's Possum Inc v VicForests (No 4)* [2020] FCA 704, 303–4  
*Fullerton Cove Residents Action Group Inc v Dart Energy Ltd (No 2)* [2013] NSWLEC 38, 179–80
- Gloucester Resources Ltd v Minister for Planning* [2019] NSWLEC 7, 316–7  
*Golden Pig Enterprises v O'Sullivan* [2021] WASC 396, 13  
*Goldus Pty Ltd (Subject to a Deed of Co Arrangement) v Cummins (No 4)* (2021) 157 ACSR 118, 54  
*Gowan v Christie* (1873) LR 2 Sc & Div 273, 58, 63  
*Grant Pastoral Co Pty Ltd v Thorpes Ltd* (1954) 54 SR (NSW) 129, 19  
*Gray v Minister for Planning* (2006) 152 LGERA 258, 316  
*Grimaldi v Chameleon Mining NL (No 2)* (2012) 200 FCR 296, 349  
*Gullen Range Wind Farm Pty Ltd v Minister for Planning* [2009] NSWLEC 1444, 221
- Hancock Prospecting Pty Ltd v Wright Prospecting Pty Ltd* (2012) 45 WAR 29, 13  
*Harper v Minister for Sea Fisheries* (1989) 168 CLR 314, 84  
*Hijazi v Georges River Council* [2020] NSWLEC 36, 172  
*Hinkley v Star City Pty Ltd* (2010) 15 BPR 28,983, 5, 14  
*Hospital Products v United States Surgical Corporation* (1986) 156 CLR 41, 349
- ICM Agriculture Pty Ltd v Commonwealth* (2009) 240 CLR 140, 56, 58
- Jacob v Save Beeliar Wetlands (Inc)* (2016) 50 WAR 313, 320  
*Juliana v United States of America*, 947 F 3d 1159 (9th Cir, 2020), 287
- King v Minister for Planning* [2010] NSWLEC 1102, 221
- Lord v Commissioners of Sydney* (1859) 2 Legge 912, 19
- Mabo v Queensland (No 2)* (1992) 175 CLR 1, 253  
*Martin v Hume Coal Pty Ltd* [2016] NSWLEC 51, 174  
*Millar v Wildish* (1863) 2 W & W (E) 37, 15  
*Minerology v Western Australia* (2021) 393 ALR 551, 70  
*Minister for the Environment v Sharma* (2022) 291 FCR 311, 287–9, 309–10  
*Ministry of the State for the Army v Dalziel* (1944) 68 CLR 261, 9
- New South Wales v Commonwealth* (1975) 135 CLR 337, 87–9  
*Newcrest Mining (WA) Ltd v Commonwealth* (1997) 190 CLR 513, 57–8  
*North Ganalanja Aboriginal Corporation v Commonwealth* (1996) 185 CLR 595, 35  
*O'Connor v Arrow (Daandine) Pty Ltd* [2009] QSC 432, 165  
*O'Keefe v Williams* (1910) 11 CLR 171, 253
- Peabody West Burton Pty Ltd v Mason* [2012] QLC 23, 167  
*Pilmer v The Duke Group Ltd* (2001) 207 CLR 165, 349  
*PJ Magennis Pty Ltd v Commonwealth* (1949) 80 CLR 382, 9

- R v Keyn* (1876) 2 Ex D 63, 84, 86  
*R v Wilson* (1874) 12 SCR (L) (NSW) 258, 15  
*Re Epic Energy (WA) One Pty Ltd v Commissioner of State Revenue* (2011) 43 WAR 186, 26–7  
*Re Minister for Resources; Ex parte Cazaly Iron Pty Ltd* (2007) 34 WAR 403, 44–5, 59, 64  
*Re Racal Communications Ltd* [1981] AC 374, 357  
*Re Williams v De Biasi* (Federal Court of Australia, Drummond J, 18 August 1992), 54  
*Red Hill Iron Ltd v API Management Pty Ltd* [2012] WASC 323, 27, 348–9  
*Rossmar Park Pastoral Co Pty Ltd v Coal Mines Australia Pty Ltd* [2008] NSWSC 1385, 54
- Sharma (by her litigation representative Sister Marie Brigid Arthur) v Minister for the Environment* (2021) 391 ALR 1, 288  
*Southern Properties (WA) Pty Ltd v Executive Director of the Department of Conservation and Land Management* (2012) 42 WAR 287, 221  
*Spencer v Commonwealth* (2010) 241 CLR 118, 57  
*SPIC Pacific Hydro Pty Ltd v Chief Commissioner of State Revenue* (2021) 20 BPR 41,275, 222  
*Star Energy Weald Basin Ltd v Bocado SA* [2011] 1 AC 380, 5–6  
*State of the Netherlands v Urgenda Foundation*, Supreme Court of the Netherlands, 20 December 2019, case 19/00135, 340–1  
*Stow v Mineral Holdings (Australia) Pty Ltd* (1977) 180 CLR 295, 54, 64  
*Straits Exploration (Australia) Pty Ltd v Kokatha Uwankara Native Title Claimants* (2012) 114 SASR 516, 34
- Tate v Lyle Industries v Greater London Council* [1983] 2 AC 509, 19  
*TEC Desert Pty Ltd v Commissioner of State Revenue* (2010) 241 CLR 576, 12  
*The Pilbara Infrastructure Pty Ltd v Australian Competition Tribunal* (2012) 246 CLR 379, 132  
*The Uniting Church in Australia Property Trust (NSW) v Parramatta City Council* [2018] NSWLEC 158, 193
- Ulan Coal Mines Ltd v Minister for Mineral Resources* [2007] NSWSC 1299, 65  
*Ulan Coal Mines v Minister for Mineral Resources* (2008) 161 LGERA 391, 65  
*United Dominion Corporation v Brian* (1985) 157 CLR 1, 348  
*Urgenda v State of the Netherlands* [2015] HAZA C/09/00456689 (24 June 2015), 287
- Valuer-General v Perilya Broken Hill Ltd* (2013) 195 LGERA 416, 63, 65  
*Valuer-General Victoria v AWF Prop Co 2 Pty Ltd* (2021) 65 VR 327, 223
- Wade v New South Wales Rutile Mining Co Pty Ltd* (1969) 121 CLR 177, 12, 15, 54, 63–5  
*Walker Superannuation Fund v Clough Property Fairmont Pty Ltd* [2010] WASCA 232, 7  
*Waratah Coal Pty Ltd v Youth Verdict Ltd* [2020] QLC 33, 341  
*Waratah Coal Pty Ltd v Youth Verdict Ltd (No 5)* [2022] QLC 4, 342  
*Western Australia v Manado* (2020) 270 CLR 81, 64, 87  
*Westmoreland and Cambria Natural Gas Co v DeWitt*, 130 Pa 235 (1889), 10  
*Wik Peoples v Queensland* (1996) 187 CLR 1, 64, 253  
*Woolley v Attorney-General of Victoria* (1877) 2 App Cas 163, 14–15  
*Wurridjal v Commonwealth* (2009) 237 CLR 309, 56

# TABLE OF STATUTES

## COMMONWEALTH

- Aboriginal and Torres Strait Islander Heritage Protection Act 1984*, 36
- Australian Consumer Law*, 350
- Australian Energy Market Act 2004*, 117
- Australian National Registry of Emissions Units Act 2011*  
 pt 2, 202
- Australian Renewable Energy Agency Act 2011*  
 s 7, 202  
 s 8, 202
- Carbon Credits (Carbon Farming Initiative) Act 2011*, 281  
 s 23, 243  
 s 308, 281
- Carbon Credits (Carbon Farming Initiative) Regulations 2011*, 281
- Clean Energy Act 2011*, 361  
 pt 5, 202
- Clean Energy Finance Corporation Act 2012*  
 s 3, 203  
 s 9, 203
- Clean Energy Regulator Act 2011*, 202
- Climate Change Act 2022*, 195, 206, 231, 275, 284  
 s 6, 285  
 s 10, 198, 275–6, 280, 284
- Coastal Waters (State Powers) Act 1980*, 89  
 s 5, 89
- Coastal Waters (State Title) Act 1980*, 89  
 s 4, 90–1
- Competition and Consumer Act 2010*, 117  
 pt IIIA, 134  
 s 86C, 124  
 s 86D, 124
- Competition and Consumer (Gas Market Emergency Price) Order 2022*, 117
- Constitution*, 308  
 s 51(i), 306  
 s 51(xx), 306  
 s 51(xxix), 87, 88, 306, 308  
 s 51(xxxi), 9, 54–8, 245  
 s 52, 308  
 s 90, 308  
 s 96, 57
- Customs (Prohibited Exports) Regulations 1958*  
 div 6, 116
- Environment Protection and Biodiversity Conservation Act 1999*, 36, 100, 106, 144, 184–5, 214, 215, 224, 225, 288, 301, 306, 308–12  
 ch 3 pt 5, 185  
 div 1 sub-div F, 100  
 pt 3, 226  
 pt 3 div 1, 184  
 pt 3 div 1 sub-div AA, 36  
 pt 7 div 1, 184  
 pt 8 div 3, 185, 309  
 s 3(1)(b), 184  
 s 3A, 314  
 s 9, 184  
 s 10, 184  
 s 22, 309  
 s 24D, 184, 310–11  
 s 24D(1), 184  
 s 24E, 310–11  
 s 44, 312  
 s 45, 312–13  
 s 46, 312  
 s 47, 312  
 s 75, 318  
 s 130, 309  
 s 133, 309  
 s 136, 314–16

- Environment Protection (cont.)*  
 s 136(1), 316  
 s 136(2)(a), 316  
 s 178(1), 308  
 s 523, 309  
 s 528, 184, 311
- Environmental Protection (Sea Dumping) Act 1981*, 226
- Great Barrier Reef Marine Park Act 1975*, 90, 226
- Maritime Transport and Offshore Facilities Security Act 2003*, 86
- National Greenhouse and Energy Reporting Act 2007*, 281, 282  
 s 22XD, 282
- Native Title Act 1993*, 33, 215  
 s 24MD(6B), 43  
 s 26(1A), 35  
 s 26A, 36  
 s 29, 35  
 s 31(1)(a), 35  
 s 31(1)(b), 35  
 s 32, 34  
 s 35, 35  
 s 38, 35  
 s 41, 35  
 s 42, 36  
 s 43, 35  
 s 43(2)(1), 35  
 s 139, 35  
 s 223, 33  
 s 237, 34
- Navigation Act 1912*, 92
- Navigation Act 2012*, 85
- Northern Territory (Self-Government) Act 1978*  
 s 69(4), 7
- Offshore Constitutional Settlement 1979*, 89
- Offshore Electricity Infrastructure Act 2021*, 104–6, 191, 213, 223, 225, 350  
 s 4, 223  
 s 15, 223  
 s 17, 224  
 s 28, 225  
 s 33, 104–5
- s 34, 104, 105  
 s 44, 105  
 s 53, 105  
 s 62, 105  
 s 116, 226–7
- Offshore Electricity Infrastructure Regulations 2021*, 104
- Offshore Minerals Act 1994*, 103–4  
 ss 29–32, 61  
 ss 29–34, 104  
 s 37, 103  
 s 132, 61  
 ss 132–133, 61–2  
 s 134, 61  
 s 137(1), 61  
 s 439A, 53
- Offshore Petroleum Act 2006*, 245
- Offshore Petroleum (Royalty) Act 2006*, 355  
 s 6, 355  
 ss 6–10, 354  
 s 9, 355  
 s 10, 355  
 s 11, 357
- Offshore Petroleum and Greenhouse Gas Storage Act 2006*, 76, 91–2, 100, 103, 244, 245–7, 355  
 pt 1.3, 61  
 pt 2.3, 61  
 pt 2.9, 92  
 pt 3.3, 246  
 pt 3.4, 246  
 pt 6.8, 92  
 pt 6.9, 94  
 pt 6.10, 93  
 s 5, 91–2  
 s 7, 92  
 s 8, 92  
 s 19, 106  
 s 21(1), 246  
 s 24A, 251  
 s 56, 93  
 s 59(2), 94  
 s 80, 91  
 s 98, 95  
 s 110, 97

- s 135, 96  
 s 141, 95–6  
 s 142, 96–7  
 s 145, 96  
 s 148, 96  
 s 161, 97–8  
 s 165, 97  
 s 166, 97  
 s 168(2), 95  
 s 178, 97  
 s 198, 98, 99  
 s 211, 99  
 s 215, 99  
 s 217, 99  
 s 226, 99  
 s 227, 99  
 s 297, 247  
 s 304, 247  
 s 319, 246  
 s 357, 246  
 s 357(1)(c)–(h), 246  
 ss 359–360, 254  
 s 379(1), 257  
 s 379(1)(b), 257  
 s 380(1)(g), 257  
 s 380(1)(h), 257  
 s 383, 246  
 s 458, 246  
 ss 470–471, 94  
 s 572, 95  
 ss 616–623, 92  
 ss 631–635, 355  
 s 638, 94  
 sch 3, 92, 94
- Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011*  
 pt 5, 94  
 pt 6, 247
- Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009*, 94
- Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures) Act 2013*, 95  
 sch 2A, 95
- Offshore Petroleum and Greenhouse Gas Storage Regulations 2011*  
 regs 157–161, 254
- Personal Property Securities Act 2009*, 12  
 s 8, 12  
 s 10, 12
- Petroleum (Onshore) Act 1991*  
 s 69E, 172–3
- Petroleum (Submerged Lands) Act 1967*, 55,  
 88, 91  
 s 42, 356
- Petroleum (Submerged Lands) (Royalty) Act 1967*  
 s 5, 356
- Petroleum (Timor Sea Treaty) Act 2003*, 100
- Petroleum Resource Rent Tax Assessment Act 1987*  
 s 32, 362–3
- Property Securities Act 2009*, 169
- Protection of Movable Cultural Heritage Act 1986*, 36
- Racial Discrimination Act 1975*, 34
- Rail (Dangerous Goods) Rules*, 241
- Renewable Energy (Electricity) Act 2000*,  
 191, 193, 195, 199, 200  
 s 3, 201–2  
 s 17, 204–5  
 s 39, 201
- Renewable Energy (Electricity) (Large-Scale Generation Shortfall Charge) Act 2000*,  
 200–1  
 s 6, 201
- Renewable Energy (Electricity) (Small-Scale Technology Shortfall Charge) Act 2010*,  
 200–1
- Renewable Energy (Electricity) Regulations 2001*, 200
- Road Transport Reform (Dangerous Goods) Act 1995*, 241
- Road Transport Reform (Dangerous Goods) Regulations 1997*, 241
- Sea Installations Act 1987*, 100  
 s 4, 100  
 s 14, 100  
 s 15, 100