Ashurst

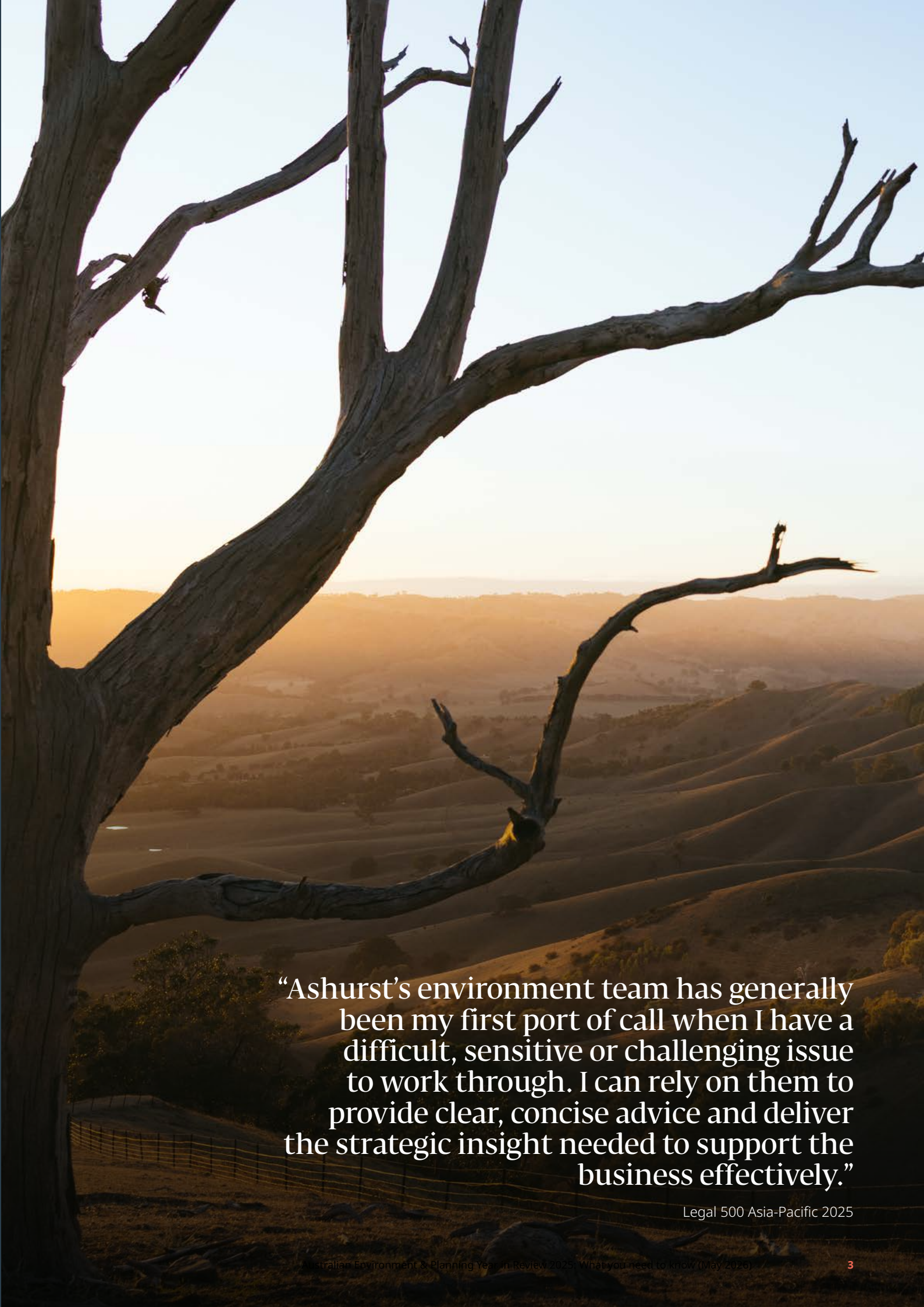
Australian Environment & Planning Year in Review 2025

What you need to know

May 2026

Outpacing change

contents



"Ashurst's environment team has generally been my first port of call when I have a difficult, sensitive or challenging issue to work through. I can rely on them to provide clear, concise advice and deliver the strategic insight needed to support the business effectively."

Legal 500 Asia-Pacific 2025

Foreword

Welcome to a bite-size version of Ashurst's inaugural Australian Environment & Planning 2025 Year in Review

This publication covers legislative, policy and judicial developments in Australia during 2025 relating to environmental and planning law, climate regulation, protection of biodiversity and contamination.

2025 was a significant year for environmental and planning reform in Australia. At a macro level, the year saw Australia grappling with the transition towards renewable generation, the ongoing phase-out of coal fired generation, housing affordability and the heightened need to balance development with environment protection, particularly for biodiversity conservation.

The highlight of the year was the Federal Government's success in enacting the long-awaited EPBC Act reforms designed to implement the recommendations of the Samuel Review. The EPBC Act reforms required extensive engagement with business and community groups and, not surprisingly, there were a range of compromises made to obtain support for the passage of the legislation. The reforms are significant and will reshape for the next generation the process for assessment and approval of Australia's largest projects and the protection of our national environment. The reforms introduce new requirements for decisions on new EPBC Act projects to meet national environmental standards, to not have unacceptable impacts and to provide a "net gain" in respect of biodiversity. They also provide the opportunity for greater participation by the States in the granting of EPBC Act approvals.

A consistent theme across Australia in 2025 was reform to State planning frameworks to tackle housing affordability, accelerate the roll out of renewable energy infrastructure and improve the efficiency of approvals processes. This was coupled with major advancements in biodiversity protection laws which are becoming ever more complex at both the State and Federal level.

As the rollout of renewable projects gathered pace across rural areas in eastern Australia and the impact on local communities rapidly increased, it became increasingly important during 2025 for proponents to take positive action to build a social licence for major projects. State Governments responded during the year by introducing measures for social impact assessments and community benefit agreements between project proponents and local communities to assist in managing the community impacts arising from the roll out of the infrastructure. The need to manage project impacts on the local community was also highlighted by the High Court in a 2025 decision on private nuisance arising from the impact of a major infrastructure project on local community business.

Finally, at a global level, the law and policy around climate change continued to evolve during 2025 and the growing world-wide problem arising from PFAS contamination required further regulatory intervention at the domestic level.

Looking ahead, over the next 12 months we will see appeal court decisions on a number of climate change disputes, the commencement of implementation of the EPBC Act reforms and more interaction between project developers and the community as the rollout of renewable energy generation and transmission infrastructure accelerates.

We hope you enjoy reading the publication and encourage you to reach out to us if you would like to discuss any aspect of the articles.

The articles in this publication are current as of 20 April 2026.

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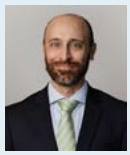

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Federal environment regulation

EPBC Act reforms: most significant change to Australia's environmental law in decades

In December 2025, the Federal Government passed its long-awaited reform of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). The reforms comprise the most significant change to Australia's environmental approvals process in over 20 years.

They particularly impact major project approvals, environmental compliance for existing projects, management of environmental incidents and engagement with stakeholders (including First Nations groups). They will also change the way that environmental decision-making occurs at both a State and Federal level.

With the exception of the few provisions that have already commenced, the reforms will largely commence on a rolling basis during 2026.

Read here for more.

Climate regulation

Deep dive into global climate change litigation in 2025

International climate change cases of 2025 reveal a number of recurring themes and tensions in contemporary climate change litigation:

- **The limits of traditional tort law** - The cases demonstrate that while traditional tort law (particularly negligence) continues to be a key vehicle for climate litigants, the elements of this cause of action (duty, breach, causation and loss) present significant obstacles in the climate context. In *Pabai v Commonwealth of Australia (No 2)*, the court found that the applicants faced "effectively insurmountable legal hurdles and roadblocks" in establishing negligence against the Commonwealth. In *Lliuya v RWE*, the plaintiff's claim failed due to an inability to prove imminent harm, even though the court was satisfied that the defendant's emissions could in principle cause climate change harm to the plaintiff.
- **The justiciability barrier -** The judiciary recently considered the fundamental question of whether courts are the appropriate forum for resolving climate policy disputes. In *Pabai v Commonwealth of Australia (No 2)*, the court held that decisions about national emission-reduction targets are matters of "core policy" that "should be passed at the ballot box".
- **The de minimis principle under pressure -** *The Doctors for the Environment (Australia) Incorporated v National Offshore Petroleum Safety and Environmental Management Authority (No 2)* case highlights a growing battlefield in climate litigation: whether the [indirect / scope 3] greenhouse gas emissions of a single project can legitimately be characterised as "de minimis" in the context of the global carbon budget. While the "de minimis" argument was favoured in the specific circumstances and on this occasion, the litigation strategy of attacking the absence of a defined threshold may be adapted and refined in future proceedings.
- **Statutory compliance and the planning imperative -** The case of *Alternative A5 Alliance v Northern Ireland* demonstrates that even where legislation does not prevent emission-intensive projects, statutory climate targets can be a basis for judicial review. The court's emphasis on "robust planning, synchronisation and co-ordination" across government departments sets a significant precedent for infrastructure decision-making in the United Kingdom.

Read here for more.

NSW EPA's new prescriptive climate change mitigation requirements mean big changes for high-emitting industries

The NSW Environment Protection Authority's (EPA) has proposed new prescriptive climate change mitigation requirements for high-emitting licensees.

The proposed reforms include the phasing in of new climate mitigation requirements into environmental protection licences (EPLs) for licensed facilities that emit more than 25,000 tonnes of CO_2-e (scope 1 and scope 2) per year. There will also be new reporting obligations for these licensees, including an obligation to report annual climate change emissions to the EPA as well as three-yearly Climate Change Mitigation and Adaptation Plans (CCMAP). The EPA will expect coal mine operators to meet prescriptive mitigation measures to address fugitive methane emissions and reduce emissions from diesel combustion.

The proposed reforms represent a significant change to climate change mitigation practices for existing and new licensees in NSW and, importantly, impose more ambitious climate-related measures on licensees than is currently required under existing Federal climate-relate regimes and reporting frameworks.

Consultation on the proposed reforms concluded in October 2025. The EPA is currently considering the responses received. A report on the consultation outcomes is expected but the timing of this is unknown.

Read here for more.

Hefty fines for failing to report SF6 synthetic greenhouse gas imports

In December 2025, the Federal Court imposed a hefty fine on an Australian energy company for failing to report imports of electrical switchgear equipment containing synthetic greenhouse gas SF6, in breach of the *Ozone Protection and Greenhouse Gas Management Act 1989* (Cth).

This follows a record fine issued in June 2024 against a company for importing electrical switchgear equipment without a licence under the same Act.

These enforcement decisions are a stark reminder to businesses of the importance of knowing their compliance obligations under the ozone protection and GHG management legislation in Australia and that failing to comply may lead to costly enforcement action.

We expect the Department will continue to prioritise monitoring and enforcing compliance with Australia's national environmental laws including the Ozone Act. Businesses involved in the manufacture, import, export, use and/or disposal of products that contain or potentially contain scheduled greenhouse gases must be aware of their compliance obligations or risk enforcement action.

Read here for more.

Land Court recommends mine expansion not be approved because of inadequate GHG emissions mitigation measures

In *Re Sungela Pty Ltd & Anor* [2025] QLC 5, the Land Court recommended the Minister not approve an application for a mining lease related to the extension of a Central Bowen Basin coal mine unless and until the applicants show "real and significant progress" towards mitigating GHG emissions.

The Court also held that the mine's increased GHG emissions would engage, and limit, the right to life and right to protection of children under the *Human Rights Act 2019* (Qld), and that those limitations could only be justified on a fuller evidentiary record showing credible mitigation.

Climate change remains a relevant consideration in Land Court cases concerning objections to mining lease applications and any Queensland project expected to increase GHG emissions will likely engage the right to life and the right to protection of children under the *Human Rights Act 2019* (Qld).

However, where an application includes credible and evidenced measures that limit impacts on those engaged rights, and those limitations are considered reasonable and demonstrably justifiable, the limitations may not be a bar to approval.

Read here for more.

Major changes to State-based planning laws and policies to facilitate development of housing and renewable energy projects

Amendments to NSW environmental laws: a major number of minor amendments

In September 2025, the NSW Government passed the *Environmental Legislation Amendment Act 2025* (ELA Act). The ELA Act makes a raft of "minor amendments" to eleven environmental Acts and one regulation to reduce duplication, increase consistency, remove loopholes and clarify areas of ambiguity across those Acts.

Key amendments made by the ELA Act include increased transparency for environmental notices and environmental management plans (EMPs); an ability to re-use or recycle asbestos waste onsite; an increased financial trigger for the duty to notify pollution incidents; a strengthening of certain penalties and enforcement provisions; the introduction of additional sentencing considerations; an expansion of protection of the environment policies; and an express acknowledgement of the need for an environmental protection licence for livestock processing.

While a small number of provisions commenced in September 2025 on royal assent, the remaining provisions commence on days to be appointed by proclamation. The NSW Government issued its first proclamation on 11 December 2025 declaring a large number of provisions in effect from 12 December 2025. Further proclamations declaring the remaining provisions in effect are expected but the timing of these is unknown.

Read here for more.

NSW Planning systems reforms

In December 2025, NSW passed major planning system reform in the *Environmental Planning and Assessment Amendment (Planning System Reforms) Act 2025*.

The key motivator for the proposed reform is the Government's commitment to deliver 377,000 new homes by July 2029.

The amendments: change the matters which a consent authority must consider when approving development applications to focus on "significant" environmental impacts; create a streamlined approval pathway for Targeted Assessment Developments; establish the Development Coordination Authority, which is responsible for coordinating multiple Government agencies during the DA process, including exercising concurrence functions; and make a series of other changes to the detail of the planning assessment process in NSW.

Read here for more.

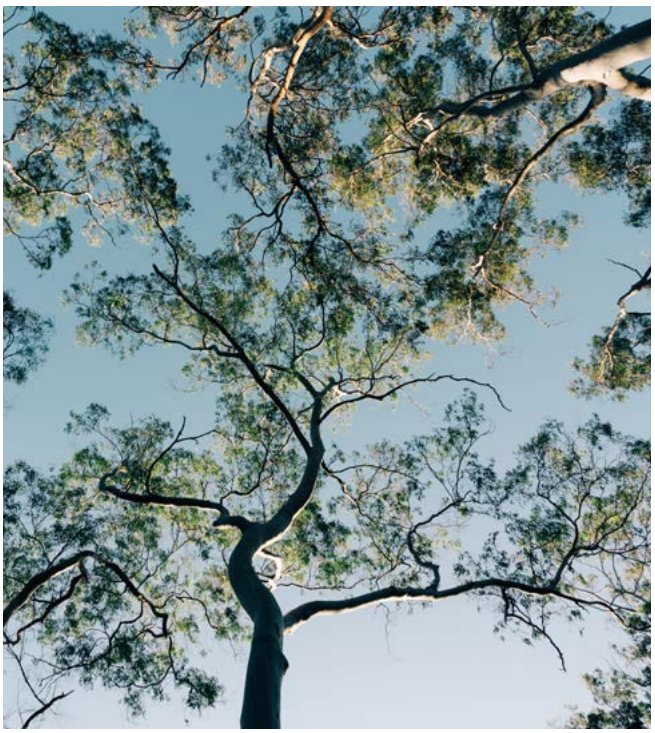
Amendments to Victoria's planning laws have commenced, but there is much more to come

In November 2025, Victoria passed the *Consumer and Planning Legislation Amendment (Housing Statement Reform) Act 2025* (Vic) to amend the *Planning and Environment Act 1987* (Vic) (P&E Act).

The amendments contain two tranches of reforms to the P&E Act which refine processes relating to planning scheme amendments and grant greater powers to Planning Panels Victoria and the Minister for Planning. The reforms are said to be critical to ensuring Victoria's planning system is transparent, efficient, timely and fit for purpose in order to support the State's continued growth.

But it's not over yet, with the Victorian Government making further amendments to the P&E Act through the *Planning Amendment (Better Decisions Made Faster) Act 2026* (Vic), which are expected to commence in October 2027.

Read here for more.



Queensland environmental reform continues

Another round of proposed amendments to the *Environmental Protection Act 1994* (Qld) were introduced into Queensland Parliament in November 2025. This follows ongoing reforms to the Act during 2023 and 2024.

The latest round of proposed amendments largely reflect changes flagged during consultation in early 2025, though some proposals have since been abandoned. Key amendments include the introduction of "ERA codes" as an alternative to environmental authorities for low-risk activities, increased time limitations for prosecuting summary offences, and amendments to the transitional PRCP provisions.

The Health, Environment and Innovation Committee has recommended that the Bill be passed, and it is likely to receive assent sometime in the first half of 2026.

Read here for more.

Environmental and planning developments in Western Australia

From 1 January 2026 the EPA's new Environmental Impact Assessment (EIA) Practice Guide became the primary reference for the WA EIA process.

The Department of Water and Environmental Regulation (DWER) has introduced a Priority Project Pathway which provides a single-interface approvals model, parallel progress on secondary approvals, and a dedicated green energy fast-track for priority projects of State significance.

The Legislative Assembly's decarbonisation inquiry is examining WA's contribution to the decarbonisation of major trading partners via LNG, hydrogen/ammonia, green iron and carbon capture, and the barriers to large-scale investment.

Timing for stage 3 of the *Environmental Protection Act 1986* (WA) (EP Act) reforms remains uncertain. Proposed stage 3 amendments are to introduce prescribed activity regimes, modernise Schedule 1 licensing, enable environmental monitoring programmes and establish offset fund management.

Planning reforms propose a 10-year review cycle and updated rules for local planning policies, with consultation on the draft 2025 regulations now closed.

Read here for more.

WA's new State Development Act 2025 to streamline regulatory approval process for State significant development

Western Australia's new *State Development Act 2025* provides the Minister for State Development (or the Coordinator General acting on delegation) with statutory functions and powers that will allow them to designate a project as having strategic significance to the State and be processed through a new streamlined framework in an "investment-friendly timeframe".

Major clean energy (green energy transition as well as green steel), critical minerals and defence (AUKUS related works and naval shipbuilding) have been flagged by the State as project types that could be given priority status.

The State has specifically flagged that the Act will respect the independence of the WA Environmental Protection Authority and existing Aboriginal Heritage protections.

Read here for more.

New powers to facilitate significant projects in Northern Territory

The Northern Territory has passed the *Territory Coordinator Act 2025* (NT) to accelerate significant projects and drive economic growth in the Northern Territory.

Key powers of the newly established Territory Coordinator include the ability to designate projects as "significant", step in as decision-maker for specific statutory processes, and in some circumstances, issue exemption notices in relation to the application of "Schedule Laws".

Once significant projects, Program of Works, or Territory Development Areas (TDA) are designated, the Territory Coordinator and Minister can expediate the approvals process.

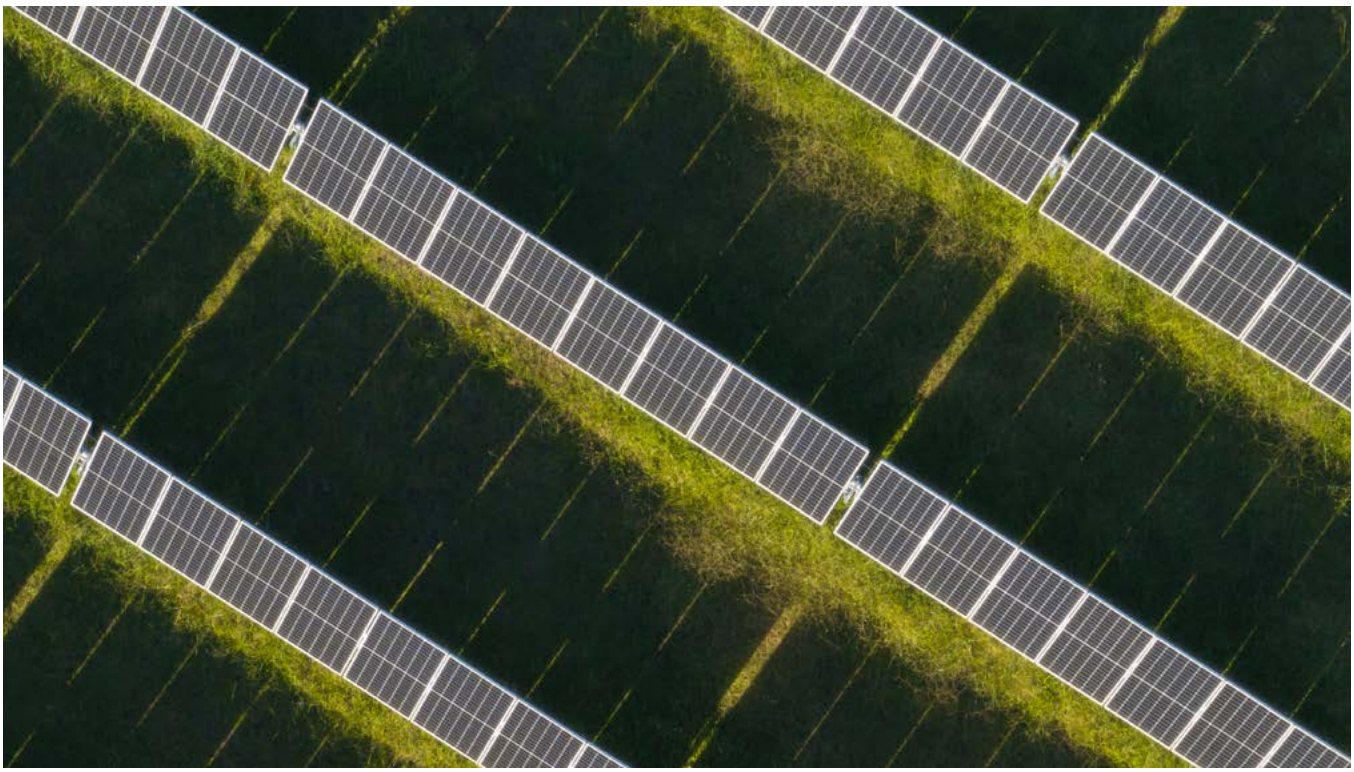
Read here for more.

Increased rights for landholders and communities affected by development

Common law liability in private nuisance; compliance with planning approvals is not enough

In *Hunt Leather Pty Ltd v Transport for NSW* [2025] HCA 53, the High Court of Australia has clarified that the elements of private nuisance include reasonableness considerations.

The High Court explained the circumstances in which a public authority may be found to have caused a private nuisance at common law and when they might have a defence of statutory authority. It also confirmed that compliance with a planning approval is not sufficient to avoid a finding of private nuisance.



New Community Benefit System means additional challenges for Queensland renewable energy projects

Queensland changed its planning rules for renewable energy projects in July 2025.

Proponents of certain wind, solar and battery developments must now complete social impact assessments and reach community benefit agreements with local councils before they can make a development application for their project.

Read here for more.

Big changes for regulation of WA renewable energy projects

Western Australia is advancing its renewable energy transition through two key regulatory initiatives.

The WA Government has released a draft Community Benefits Guideline seeking to ensure local communities hosting renewable energy projects receive meaningful and lasting benefits. The draft Guideline is targeted at large-scale, grid connected renewable energy generation and storage projects, such as wind turbines, solar farms and battery installations.

The WA Planning Commission is developing a Renewable Energy Planning Code to establish consistent, statewide standards for energy infrastructure development, including battery energy storage systems, transmission systems and renewable energy facilities. The recently released draft Code focuses on criteria for wind farm development applications.

Read here for more.

Biodiversity updates

NSW implements "net positive" Biodiversity Conservation Act reforms

Reforms to NSW's biodiversity offsets scheme contained in the *Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Act 2024* now recognise the "avoid, minimise and offset hierarchy" as the key principle for managing impacts on biodiversity values when carrying out biodiversity assessment. The ultimate aim is to deliver "net positive biodiversity outcomes".

Multiple aspects of the reforms have not yet been fully implemented. The NSW Government is still developing amendments to the *Biodiversity Conservation Regulation 2017* to implement some of these reforms and deliver other commitments in the 2024 *NSW Plan for Nature*.

Ultimately, these reforms are likely to result in more onerous biodiversity assessment and offsetting requirements for proposed State significant projects and modifications to approved State significant projects.

Read here for more.

South Australia's new Biodiversity Act: Key changes and next steps

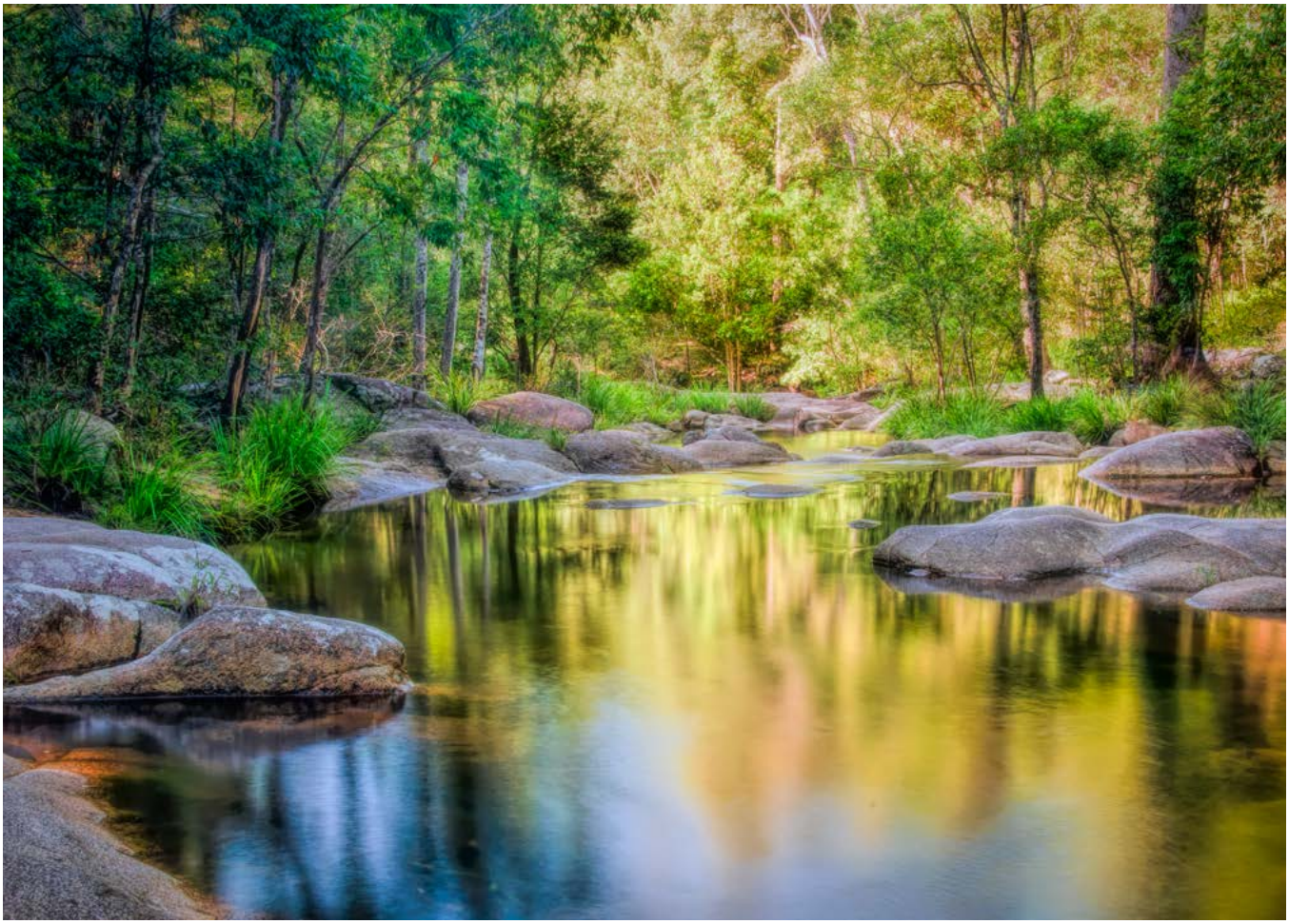
South Australia's new *Biodiversity Act 2025* (SA) is intended to consolidate and strengthen State biodiversity protections.

Although many features of the new Act mirror the existing biodiversity protection framework, the Act will also make a number of notable changes. These include broader protections for flora and fauna, a new "general biodiversity duty", increased penalties and expanded enforcement powers, and measures seeking to achieve greater First Nations involvement in decision-making.

The general biodiversity duty is the first of its kind in Australia, requiring duty holders in South Australia to implement reasonable and practicable measures to prevent or minimise harm to biodiversity from their activities.

The Act has not yet commenced and will be implemented in stages over the next two years. Until then, the existing biodiversity protection frameworks continue to apply.

Read here for more.



Other developments

A new age of enforcement under the NSW Water Management Act

Recent reform to the *Water Management Act 2000* (NSW) (WM Act) has made it easier to prosecute individuals and corporations for contraventions of the Act.

A range of civil penalties have been introduced with a lower burden of proof than the equivalent criminal offences. Courts can now consider potential or likely harm caused by offending when determining an appropriate penalty, not just the actual harm arising from the offence.

For the first time, Courts can now consider potential harm to spiritual, social, customary or economic use or value of the land or water by Aboriginal people and the views of the impacted Aboriginal persons.

There is a new broader range of orders, allowing enforcement of the Act to occur in new ways, including to directly impact the ability to rely on existing water access licenses or approvals. Directors and employees of corporations can now be personally liable for offences.

Read here for more.

The Victorian "general environmental duty": insights from recent decisions

It has been nearly five years since the introduction of the Victorian General Environmental Duty (GED). Recent Supreme Court and Victorian Civil and Administrative Tribunal (VCAT) decisions have shed light on what duty holders are required to do, and how the GED has been enforced.

The Court's decision in *EPA v Vista Estate Pty Ltd* suggests that duty holders should be cautious about relying on OHS analogies as a guide to complying with the GED.

The Court's decision in *Anderson v PWM (Lyndhurst) Pty Ltd* demonstrates the breadth of risks that can enliven the GED – including risks of harm to amenity from psychological distress and/or risks associated with foreseeable future land uses.

In *Barr v Roff*, the Court observed that the EPA may be subject to the GED in conducting operational activities, however, eligible persons cannot use section 309 of the *Environment Protection Act 2017* (Vic) (EP Act) as a means to compel the EPA to exercise its discretionary regulatory powers.

VCAT decisions indicate that, in considering whether to grant a planning permit, VCAT may consider the applicant's perceived ability to comply with the GED as a relevant factor.

Read here for more.

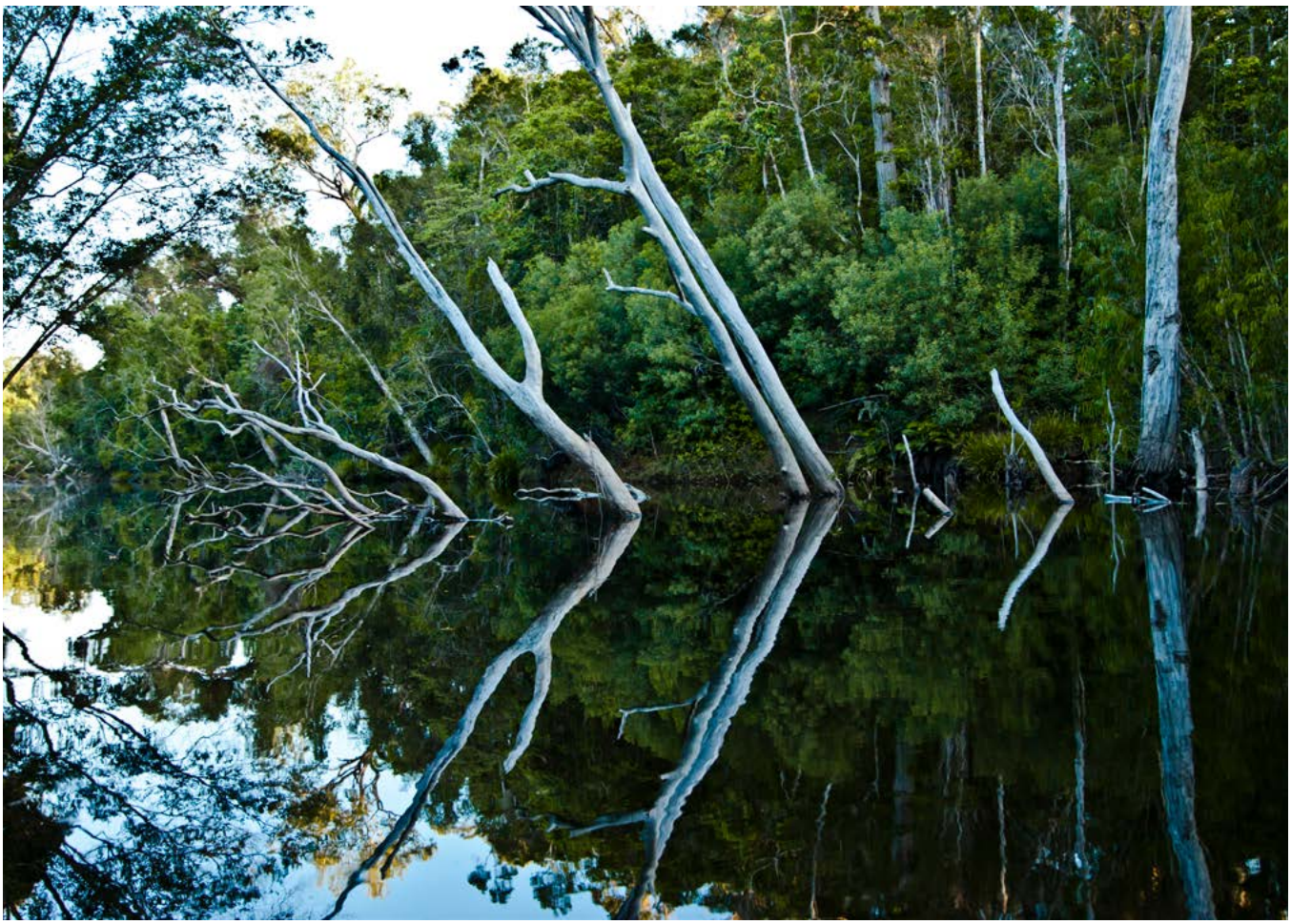
VCAT affirms EPA's broad discretion on remedial notices recipients

Two recent Victorian Civil and Administrative Tribunal (VCAT) decisions confirm the EPA can issue clean up notices to the polluter, current occupier or current owner of land. The recipient need not have knowledge of or responsibility for the waste or contamination (*Moorabool SC v Environment Protection Authority* [2025] VCAT 631 and *ESI Projects Pty Ltd v Environment Protection Authority* [2025] VCAT 837).

Victoria has no hierarchy of preferred recipients for remedial notices. The EPA's discretion reflects the *Environment Protection Act 2017* (Vic) core purpose: to minimise harm to human health and the environment.

Recipients can recover compliance costs from anyone who caused or contributed to the waste or contamination.

Read here for more.



Recent developments in PFAS regulation

PFAS (per- and polyfluoroalkyl substances) contamination in soil, surface water and groundwater has become an increasingly important issue to manage for sites and operations around Australia, given tightening regulatory controls and increasing liability exposures.

2025 was a significant year for the regulation of PFAS in Australia.

The release of the National Environmental Management Plan 3.0, a ban on key PFAS chemicals under the Industrial Chemicals Environmental Management Standard, updated drinking water guidelines, and the final report of the Senate Select Committee on PFAS have collectively reshaped the national regulatory landscape.

At the State and Territory level, implementation of these national frameworks is happening at different rates and in different ways, resulting in differing compliance obligations depending on where an entity operates.

Read here for more.

Paving the way for 2032 – Recent amendments to the Brisbane Olympic and Paralympic Games Arrangements Act 2021 (Qld)

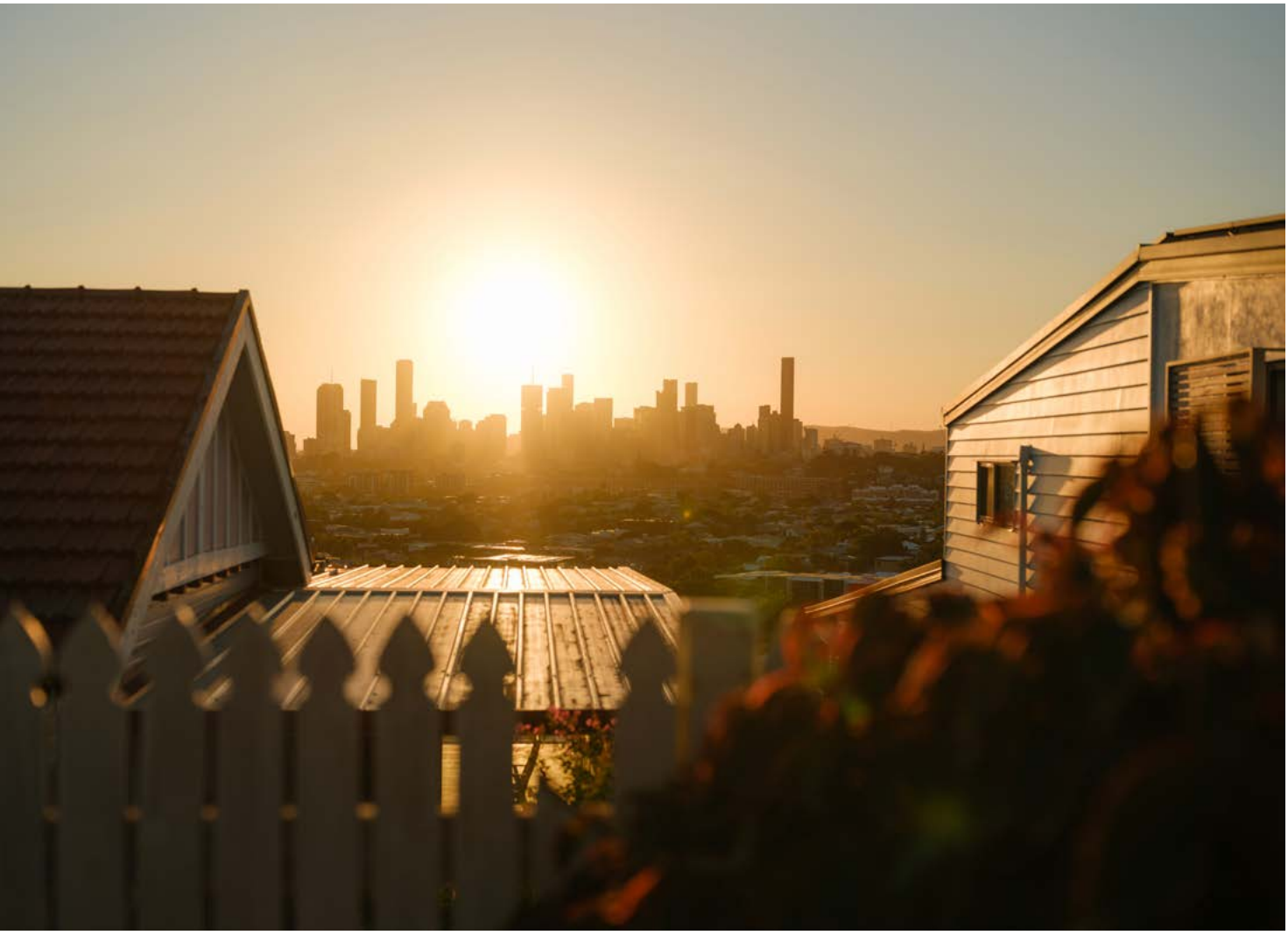
The *Brisbane Olympic and Paralympic Games Arrangements Act 2021* (Qld) establishes the framework for planning, organising and delivering the Brisbane 2032 Olympic and Paralympic Games.

The Act has been amended several times throughout 2024 and 2025. The most recent of these amendments commenced in February 2026.

A key 2025 amendment was the insertion of Chapter 3A. This provides that the development of venues, villages and games-related transport infrastructure is lawful despite the requirements of key environment, planning and water legislation.

The amendments also provide that decisions relating to the delivery of a venue or village, the construction of games-related transport infrastructure will largely be final decisions that cannot be challenged, appealed, reviewed or set aside.

Read here for more.



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