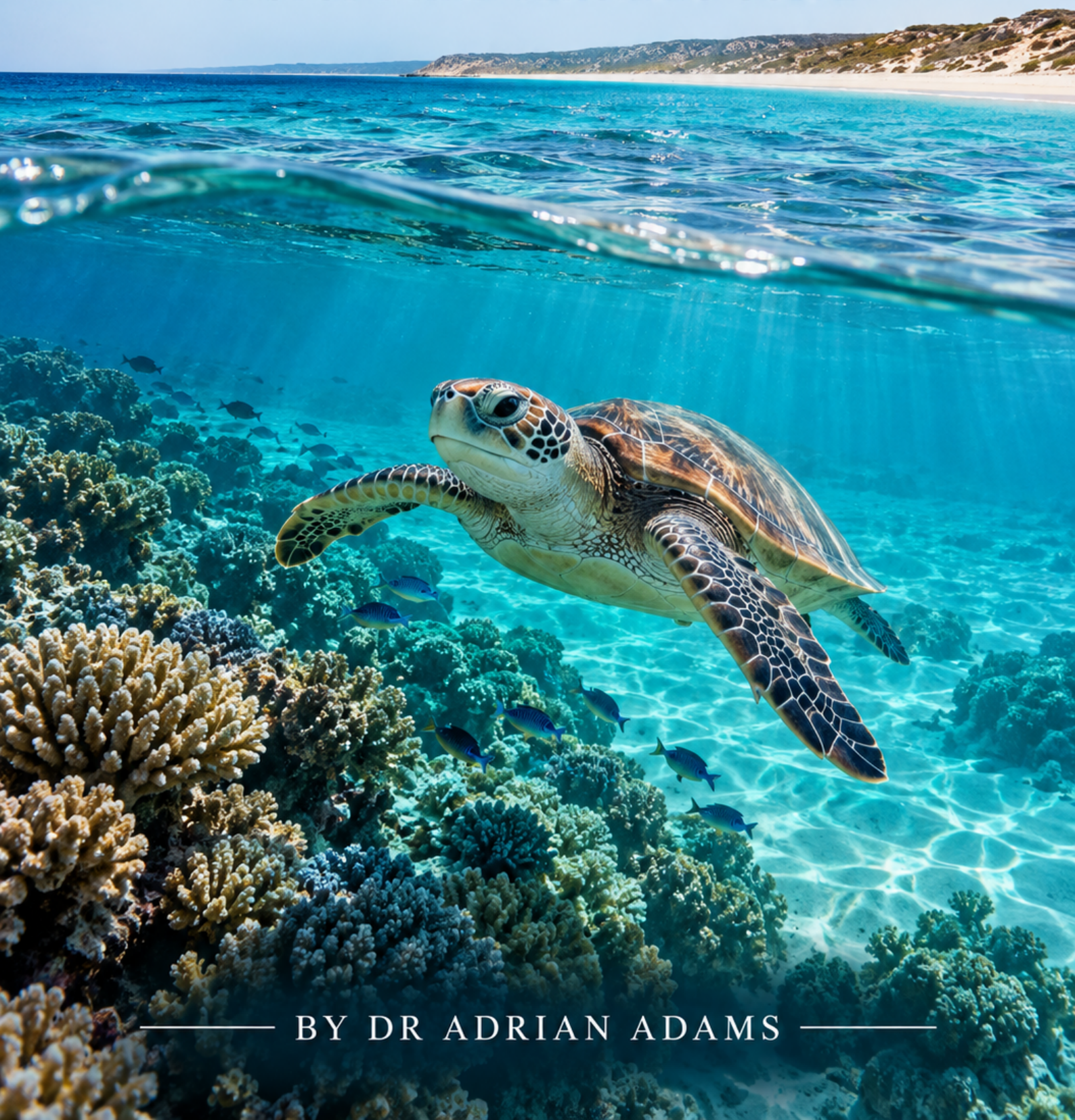
ENVIRONMENTAL LAW

A STUDY AND TEACHING GUIDE



BY DR ADRIAN ADAMS

PREFACE

Preface

BY DR ADRIAN ADAMS

This book is written for law students who want more than a collection of rules. It is designed to help students understand *why* environmental law exists, *how* its legislation fits together, *how* courts and decision-makers reason with it, and eventually *how a lawyer uses it to advise real people and organisations*.

Environmental law is an unusually practical legal discipline. It reaches into land development, property transactions, infrastructure, energy and resources, corporate governance, government decision-making, biodiversity, pollution, planning, contaminated land, environmental impact assessment, licensing, enforcement and litigation. A single project may require a lawyer to move between Commonwealth legislation, Queensland legislation, local planning controls, scientific reports, expert evidence and administrative decision-making.[1]

For a student, that can initially feel fragmented. The purpose of this book is to make the structure visible. Every chapter begins with the problem the law is trying to solve, then moves through the legal architecture, the exact legislation, defined terms, statutory purpose, cases and authorities, evidence, application and practical consequences.

THE LEARNING JOURNEY

STUDENT -> LAWYER -> ADVISER. First learn what the rule means. Then learn how to find, interpret and apply it. Finally learn how to explain the risk, options and next steps to a client, developer, corporation, consultant, regulator, government department, financier, community organisation or other stakeholder.

1. Queensland Legislation (Web Page).

Preface - continued

The book therefore treats environmental law as both an academic subject and a professional method. Students are shown how to identify issues, navigate Acts and subordinate legislation, check definitions, read objects clauses, use the *Acts Interpretation Act 1954* (Qld) and *Acts Interpretation Act 1901* (Cth), work with authority, understand expert evidence and convert legal analysis into advice.[2], [3]

That progression is deliberate. University problem questions teach the same underlying discipline that legal practice demands: identify the decision-maker, identify the source of power or obligation, find the controlling provision, understand the statutory purpose, test the evidence against the legal elements, recognise uncertainty, and state what should happen next.

Environmental law also requires an understanding of values. Whether the law is protecting nature for human welfare, recognising the intrinsic value of ecosystems, or balancing ecological protection against development and social needs can shape statutory design and legal argument. For that reason, this book begins with anthropocentric, biocentric and ecocentric perspectives before moving into the legal meaning of the word *environment*.

The prescribed text for the subject is Gerry Bates, *Environmental Law in Australia*[4] (LexisNexis Butterworths, 11th ed, 2023). It is an important secondary source and will be used throughout the project alongside the current primary law. This guide does not reproduce the prescribed text; it presents environmental law in its own original structure, informed by tertiary and professional education, experience and legal research, and directs students back to primary sources and authoritative research materials.

HOW TO USE AUTHORITY IN THIS BOOK

Blue links take the reader to legislation, cases or authoritative resources where a direct source is available. A legal proposition should ultimately be tied to the controlling source of law. Tertiary and professional education, practical experience and respected secondary commentary help explain the law; they are not substitutes for the law itself.

2. *Acts Interpretation Act 1954* (Qld) ss 14A-14B.
3. *Acts Interpretation Act 1901* (Cth) ss 15AA-15AB.
4. Gerry Bates, *Environmental Law in Australia* (LexisNexis Butterworths, 11th ed, 2023).

Preface - conclusion

Environmental law changes frequently. Departmental structures change, statutes are amended, standards are introduced and administrative responsibilities move. Students should develop the habit of checking the current authorised version of legislation and the current regulator before advising anyone. That is not merely an examination skill; it is a professional responsibility.

The central aim of this book is confidence through method. A student should finish a chapter knowing not only the legal rule, but also how to recognise the issue in facts, where to find the law, how to interpret it, what evidence matters, what can go wrong, and what a competent adviser would do next.

That is why the chapters deliberately move from **understanding**, to **application**, to **advice**. The reader first learns the concept in plain English, then the exact legal architecture, then the authorities and evidence, then how the same material appears in tutorials, examinations and professional decision-making.

May this book help you approach environmental law with clarity, discipline, curiosity and a growing sense of professional judgment.

PUBLICATION AND SOURCE NOTE

Publication and Source Note

ENVIRONMENTAL LAW - A STUDY AND TEACHING GUIDE is being developed from the author's tertiary and professional education, environmental law experience and a broader programme of legal research. The book is designed as an original teaching work rather than a reproduction of any seminar, transcript or prescribed textbook.

This book is informed by tertiary and professional education, practical experience, legal research, problem-based learning, tutorial and application exercises, and authoritative primary and secondary sources. Together, these help identify the concepts, statutes, cases, authorities and practical skills that students and future practitioners need to understand.

The prescribed secondary text is Gerry Bates, *Environmental Law in Australia*[5] (LexisNexis Butterworths, 11th ed, 2023). It is treated as a major supporting source. Primary law remains controlling.

SOURCE HIERARCHY USED IN THIS BOOK

1. Current legislation and regulations. **2.** Binding and persuasive judicial authority. **3.** Official regulator/government materials. **4.** Tertiary education, professional understanding and environmental law experience. **5.** Prescribed and respected secondary commentary. Every chapter is written so students can see where explanation ends and legal authority begins.

5. Gerry Bates, *Environmental Law in Australia* (LexisNexis Butterworths, 11th ed, 2023).

Currency, accuracy and hyperlinks

Environmental law is particularly vulnerable to rapid change. A statute can be amended; a regulator can be renamed or restructured; a National Environment Standard can commence; a court can alter the interpretation of a provision; and administrative responsibility can move between agencies. For that reason, the electronic edition uses blue hyperlinks to authoritative current sources wherever technically possible.

Where legislation is cited, the book identifies the relevant Act and provision at section, subsection and paragraph level where that precision matters. Where a case is relied upon, the case name and citation are connected to a verified judgment source where available. Links are a research aid only: the legal proposition in the text remains tied to the cited authority.

The book also distinguishes historical teaching examples from current law. Older legislation and historical decisions remain important where they explain legal development, but a current problem must be answered using the current legal framework unless the question specifically asks for a historical position.

PUBLICATION PRINCIPLE

Never assume that an educational resource, textbook, summary or prior edition is current merely because it is useful. Verify the governing law before relying on it in an assessment, memorandum, opinion, client meeting, transaction, approval strategy or litigation.

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HOW TO USE THIS BOOK

How to Use This Book

Environmental Law becomes manageable when you know what to look for. Use this book as a working study guide: start with the facts, identify the environmental concern, determine which government level and decision-maker matter, find the controlling legislation, check the definitions and purpose, identify the cases and evidence, apply the law, and then state the practical consequence.

The learning method

THE CORE METHOD

FACTS -> ISSUE -> SUB-ISSUES -> JURISDICTION -> DECISION-MAKER -> EXACT LAW: ACT / PART / DIVISION / SECTION / SUBSECTION / PARAGRAPH -> DEFINITIONS -> OBJECTS / PURPOSE -> INTERPRETATION ACT -> CASE / AUTHORITY -> EXPERT EVIDENCE -> APPLICATION -> CONCLUSION -> ADVICE -> NEXT STEP / APPROVAL / CONDITION / REVIEW / ENFORCEMENT RESPONSE.

Start with the facts, but do not stop at the environmental concern. A lawyer must identify the legal pathway. Is the issue Commonwealth, Queensland, local, international or common law? Does the problem involve an approval, a prohibition, a licence, a referral, a condition, an offence, a judicial review ground or a civil dispute?

Read each chapter in three passes

> **PASS 1 - UNDERSTAND.** Read the plain-English explanation and chapter narrative. Ask what problem the law is trying to solve and why the rule exists.

> **PASS 2 - MASTER THE LAW.** Work through the exact statute, definitions, objects, interpretation provisions, cases, authorities and expert-evidence requirements.

> **PASS 3 - APPLY AND ADVISE.** Use the tutorials, FAQs, multiple-choice questions, short-answer questions and IRAC problems. Then convert the legal conclusion into advice: what should the client, developer, organisation, consultant or decision-maker do next?

Prescribed and recommended text

The prescribed textbook is Gerry Bates, *Environmental Law in Australia*[6] (LexisNexis Butterworths, 11th ed, 2023). Use it for deeper commentary, context, cases and statutory discussion. This book is designed to sit beside that text and direct the student back to current primary sources.

6. Gerry Bates, *Environmental Law in Australia* (LexisNexis Butterworths, 11th ed, 2023).

How the end-of-chapter learning suite works

Each chapter ends with a deliberate progression from recall to legal reasoning:

FAQs & Answers. Resolve the questions students most often ask and correct common misunderstandings.

Multiple Choice Questions. Test precise recognition of rules, cases, statutory structure and distinctions. Answers and explanations begin on the following page.

Short Answer Questions. Require the student to explain law in their own words. Model answers begin on the following page.

IRAC Problems. Move from doctrine to facts, law, application, conclusion and advice. Model answers begin on the following page.

Student -> Lawyer -> Adviser. The final revision page asks what the issue means for a real client or decision-maker.

FUN REVISION RESOURCE

Interactive Glossary of Terms

This glossary is an alphabetical revision resource. The **term itself is bold**. The blue bracketed subject label is a genuine internal hyperlink that takes the reader to the relevant teaching section in Chapter 1. The definition that follows is regular body text, the same size and weight as the rest of the book.

Study note: these are short-form revision definitions. For an assessment answer or legal advice, use the exact current legislation, full authorities and the detailed chapter explanation.

A

Acts Interpretation Act 1901 (Cth) *[Statutory Interpretation]* The Commonwealth interpretation statute. Sections 15AA-15AB are central to purposive interpretation and the controlled use of extrinsic materials.[7]

Acts Interpretation Act 1954 (Qld) *[Statutory Interpretation]* The Queensland interpretation statute. Sections 14A-14B guide purposive interpretation and the use of extrinsic materials.[8]

Anthropocentric *[Environmental Ethics and Values]* Human-centred. The environment is valued principally because of its instrumental contribution to human welfare, health, property, prosperity, culture or quality of life.

Anthropogenic change *[Historical Development]* Environmental change caused or accelerated by human activity.

B

Biocentric *[Environmental Ethics and Values]* A value position recognising inherent moral value in living beings. It is narrower than ecocentrism, which extends to ecological systems and relationships.

C

Controlled action *[Commonwealth Environmental Regulation]* An EPBC Act concept linking a proposed action to the Commonwealth approval regime where taking the action without approval would be prohibited by a relevant Part 3 provision.[9]

7. *Acts Interpretation Act 1901* (Cth) ss 15AA-15AB.
8. *Acts Interpretation Act 1954* (Qld) ss 14A-14B.
9. *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ss 67-69.

E

Ecocentric *[Environmental Ethics and Values]* Nature- and ecosystem-centred. Ecological systems and the natural world are treated as possessing intrinsic value independent of direct human benefit.

Environment *[Meaning of Environment]* A legally significant concept whose meaning depends on the governing statute, its definitions, context and purpose. Modern legislation commonly adopts broad ecological and human/social dimensions.

Environmental ethics *[Environmental Ethics and Values]* The study of values and norms governing relationships between humans and the natural world.

Environmental impact assessment *[Environmental Assessment]* A structured process for identifying, assessing and informing decisions about the environmental consequences of proposed actions or projects.

Expert evidence *[Experts and Evidence]* Scientific or technical evidence supplied by appropriately qualified experts. The lawyer identifies the legal test; the expert addresses the technical facts relevant to that test.

Extrinsic material *[Statutory Interpretation]* Material outside the enacted statutory text that may be considered in the circumstances permitted by interpretation legislation, such as explanatory materials or certain parliamentary materials.

I

Instrumental value *[Environmental Ethics and Values]* Value derived from usefulness to another end, commonly human welfare.

Intrinsic value *[Environmental Ethics and Values]* Value possessed independently of usefulness to humans.

L

Land ethic *[Historical Development]* Aldo Leopold's idea that humans should see themselves as members of a wider ecological community rather than conquerors of it.[10]

M

Mon Repos *[Meaning of Environment]* The Queensland turtle-rookery setting for the litigation culminating in The Crown v Murphy, used in this book to teach contextual interpretation of the word environment.[11]

10. Aldo Leopold, *A Sand County Almanac, and Sketches Here and There* (Oxford University Press, 1949).
11. *The Crown v Murphy* [1990] HCA 42; (1990) 64 ALJR 593.

N

National Environmental Protection Agency *[Institutions and Regulators]* Australia's national environmental regulator, operating from 1 July 2026. Its functions and current delegations should always be checked against current official sources.[12], [13]

NIMBY *[Stakeholders and Environmental Values]* “Not In My Back Yard”: shorthand for support or opposition shaped strongly by localised personal impacts. It is a descriptive stakeholder concept, not a legal test.

O

Objects clause *[Statutory Interpretation]* A provision stating or helping identify the purposes of legislation. It can be important when applying purposive interpretation.

P

Planning and Environment Court *[Institutions and Regulators]* A specialist Queensland court dealing with relevant planning and environmental disputes within its statutory jurisdiction.

Purposive interpretation *[Statutory Interpretation]* The method of preferring the interpretation that best achieves the purpose or object of an Act, subject to the statutory text and applicable interpretation legislation.

R

Rights of nature *[Environmental Ethics and Standing]* The idea that natural objects or ecological entities may possess legally recognised rights or interests capable of representation through guardians or other persons.

S

Sierra Club v Morton *[Environmental Ethics and Standing]* A 1972 United States Supreme Court case important to this chapter for standing, environmental injury and the debate about legal rights for nature.[14]

Standing *[Environmental Litigation]* The legal capacity of a person or organisation to bring a proceeding or seek review. The governing test depends on the jurisdiction and statutory framework.

12. National Environmental Protection Agency, 'What is the National EPA?' (Web Page) <https://www.nationalepa.gov.au/about/national-epa/what-is>.
13. *National Environmental Protection Agency Act 2025* (Cth) ss 2-3.
14. *Sierra Club v Morton*, 405 US 727 (1972).

Statutory definition *[Reading Environmental Legislation]* A definition enacted within legislation. Where applicable it controls the legal meaning of the defined term and may differ from scientific or ordinary usage.

Statutory purpose *[Statutory Interpretation]* The objective purpose or object of the legislation as revealed by its text, structure and legally relevant context.

T

The Crown v Murphy *[Meaning of Environment]* High Court authority used here to illustrate contextual interpretation of an undefined statutory reference to environment in the Mon Repos turtle-rookery setting.[15]

15. *The Crown v Murphy* [1990] HCA 42; (1990) 64 ALJR 593.

LEGAL RESEARCH

Legal Research: Cases, Legislation and Authorities

Environmental Law is not learned from one textbook or one Act. A strong law student learns how to find the controlling legislation, identify the judicial authority behind a proposition, understand the legal effect of regulator materials, distinguish current law from historical material and then apply those sources to facts.

Research platforms students should know

Federal Register of Legislation.[16] Use the official Commonwealth source for current legislation, commencement information, amendments, instruments and historical versions.

Queensland Legislation.[17] Use the official Queensland source for current Acts, regulations, subordinate legislation and legislative history.

AustLII.[18] A major free Australian legal research database. Use it to locate judgments, legislation and related authorities. Where this book provides a verified direct judgment link, use that direct source.

National Environmental Protection Agency.[19] Use the current federal regulator's official site for national environmental regulatory information and current institutional arrangements.

16. Federal Register of Legislation (Web Page) <https://www.legislation.gov.au/>.
17. Queensland Legislation (Web Page) <https://www.legislation.qld.gov.au/>.
18. Australasian Legal Information Institute, AustLII (Web Page) <https://www.austlii.edu.au/>.
19. National Environmental Protection Agency, 'What is the National EPA?' (Web Page) <https://www.nationalepa.gov.au/about/national-epa/what-is>.

Primary law before commentary

Secondary commentary is valuable because it explains structure, identifies authorities and helps a student see connections. It should not be mistaken for the controlling legal source. A useful research sequence is:

QUESTION -> CURRENT ACT / REGULATION -> DEFINED TERMS -> OBJECTS / PURPOSE -> CASES INTERPRETING THE PROVISION -> OFFICIAL REGULATOR MATERIAL -> SECONDARY COMMENTARY -> APPLICATION TO FACTS.

Know what source of law you are using

A statute creates legal rules. A regulation or other legislative instrument may add detail. A case interprets and applies law. Official guidance may explain regulatory practice but does not automatically have the same legal status as legislation. A textbook explains the law but does not enact it. Always identify the source and its legal weight.

RESEARCH DISCIPLINE

Before relying on a proposition, ask: What is the source? Is it current? Is it binding? Does it apply in this jurisdiction? Has later legislation or authority altered the position? Which exact provision or paragraph supports the proposition?

CHAPTER 1

ENVIRONMENTAL LAW: CONTEXT, VALUES, EVOLUTION AND MEANING

From understanding why environmental law exists to learning how a lawyer reads, applies and explains it.

THE LEARNING JOURNEY

STUDENT -> LAWYER -> ADVISER. First understand what the idea or rule means. Then learn how to find the controlling law, interpret it and apply it. Finally, learn how to explain the risk, options and next steps to a client, developer, corporation, consultant, regulator, government department, financier, community organisation or other stakeholder.

1.1 Why this chapter comes first

Environmental law is often introduced through statutes, approvals and offences. That is necessary, but it is not enough. A student who begins only with section numbers can quickly become lost because environmental legislation sits on top of deeper choices about how society values land, water, species, development, health, culture, economic activity and future generations.

This chapter therefore begins one step earlier. It asks why environmental protection is legally important, how environmental ideas changed over time, what lawyers mean by the word *environment*, and how Parliament turns those ideas into legislation. Those foundations matter later when the book moves into federal responsibility, international environmental law, environmental impact assessment, licensing, contaminated land, land clearing, business liability, common law and environmental litigation.

The objective is practical. By the end of the chapter, you should be able to move from an abstract environmental concern to a disciplined legal method: identify the relevant jurisdiction, find the Act, locate the operative provision, check the definitions, read the objects and purpose, apply the relevant interpretation legislation, identify the cases and evidence, then explain the outcome and next step.

CHAPTER 1 — THE LECTURER'S COMPLETE TEACHING NARRATIVE

1A. The question before the legal question: what exactly are we protecting?

Imagine that a coastal developer asks for advice about constructing apartments beside a beach where turtles nest. A student may immediately look for a planning statute. A lawyer first asks a series of prior questions: who owns the land, who is making the decision, which activities are proposed, which species and ecological processes may be affected, whether the species is nationally protected, and what evidence is available? That distinction between identifying the *problem* and identifying the *law* runs through the entire subject. The environment is not a collection of unrelated objects. The beach, artificial lighting, dunes, hatchlings, human activity and adjacent land all form part of the factual setting. The legal question is whether the particular statute recognises these relationships and imposes an obligation on this decision-maker.

The Week 1 seminar deliberately begins with philosophical perspectives. That is not a diversion from law. Our ideas about why nature matters affect the wording of legislation, how a Minister exercises a discretion, what counts as relevant evidence and how a court interprets a term such as *environment*. Environmental regulation can be justified on the basis of human health and economic security; the welfare of individual living creatures; or the continuing health of ecological communities. A project can meet a conventional economic test and still raise difficult questions about irreversible ecological loss. Conversely, a rigid preservation response may neglect urgent human needs. Good environmental legal analysis neither assumes development is always justified nor assumes it is automatically prohibited. It identifies the lawfully relevant considerations and explains how a rational decision could be made on the evidence.

An **anthropocentric** argument focuses on the environment's significance for people: safe water, food, health, tourism, recreation, cultural heritage and future generations. A **biocentric** argument holds that living organisms have moral significance beyond what they provide for human beings. An **ecocentric** argument looks at the integrity of ecological systems, including relationships between species, habitat, water and soil. These are lenses for analysing values; they are not, by themselves, legal tests. In an exam, identify the value choice, then show whether a statute expresses it through an

object, definition, mandatory consideration or prohibition. Do not substitute a preferred ethical viewpoint for the applicable enactment.

Consider the university's supermarket-and-endangered-legless-lizard hypothetical. Suppose it is the only potential supermarket site within a 180-kilometre radius and the only Queensland breeding site for the lizard. From a human-centred approach, access to affordable food carries great weight. From a life-centred approach, destroying the last breeding ground could be morally unacceptable even if the town would benefit. From an ecosystem-centred approach, the loss may be part of a wider decline in habitat and ecological resilience. Now change the supermarket to a hospital: the human welfare argument strengthens, but extinction has not become a minor consequence. Change the species to a koala: popular affection should not be mistaken for a legally relevant measure of ecological value. This exercise teaches a lawyer to articulate opposing interests clearly rather than hiding the disagreement behind slogans. Because the tutorial expressly removes relevant legislation, do not manufacture a statutory approval test in the ethical answer. In a real advice, one must then reintroduce current legal controls.

1B. How environmental ethics developed into legal reasoning

The Week 1 reading traces a movement from viewing land mainly as property and resources towards recognising ecological interdependence. **Aldo Leopold**, in *A Sand County Almanac* (1949), proposed a *land ethic*: human beings are members of a larger ecological community, not simply masters of it. Leopold's work is important because it provides a language for evaluating effects on the integrity and stability of ecological relationships. It is moral philosophy, however, not an Australian source of enforceable obligations. Use it to explain *why* a law might protect ecosystems, and then locate the operative statute that gives a decision-maker power to do so.

Rachel Carson's *Silent Spring* (1962) exposed the limits of treating a chemical discharge or pesticide application as an isolated local event. Substances can move through waterways and food chains, accumulate in organisms and have delayed consequences. For legal problem solving the implication is immediate: do not stop an impact assessment at the fence line or the direct footprint of a development. A farmer's chemical may enter a creek and harm waterbirds downstream; an access road may fragment habitat beyond the strip of cleared land; a dam may alter flows and enable subsequent irrigation. These are factual propositions requiring scientific evidence, but they explain why modern statutes define impacts more broadly than immediate physical contact.

Christopher D Stone, ‘Should Trees Have Standing?—Toward Legal Rights for Natural Objects’ (1972) 45 *Southern California Law Review* 450, challenged the assumption that injury to the natural world mattered legally only when a human owner or user could prove a personal loss. His discussion arose alongside **Sierra Club v Morton** 405 US 727 (1972), concerning the proposed development of a ski resort in California's Mineral King Valley. The United States Supreme Court required the Sierra Club to establish injury to an interest of its members rather than allowing a general interest in environmental protection, although the litigation generated a famous debate about representation of natural objects. The case is an illustrative United States standing authority, not the Australian standing test. The important teaching distinction is between (i) an ethical claim that nature should have a voice, (ii) the legal existence of a right, and (iii) the procedural rule determining who may sue to enforce it.

Apply this to the university article about the Cobaki Lakes wildlife dispute. Residents, scientists, developers, local councils, conservation associations and different levels of government can speak for themselves or exercise statutory powers. The affected wildlife cannot instruct lawyers or make submissions. Environmental organisations may advocate on their behalf; whether an organisation has legal standing to challenge a decision is a further statutory or common-law inquiry. Saying ‘the animals need a voice’ makes a powerful ethical point, but an examiner expects you to distinguish that proposition from enforceable legal rights.

1C. The Mon Repos litigation: teach the facts before reciting the result

In the Week 1 materials, the **Mon Repos turtle-rookery litigation** provides the central illustration of statutory interpretation. A proposal for residential development near the nesting beaches at Mon Repos raised a question under legislation requiring consideration of deleterious effects on the *environment*. At the time, the particular statutory provision did not define that term. The controversy was whether likely harm to nesting turtles and hatchlings belonged to the ‘environment’ relevant to the development land. The initial Queensland judgment is discussed in the slides as *Murphy & Anor v R* (1989) 68 LGRA 286; the High Court's decision is reported as **R v Murphy** (1990) 64 ALJR 593. These references are stages of the same dispute, not two unrelated factual scenarios.

The competing interpretations matter. A narrow account could treat the land's surrounding physical conditions as the focus and regard turtles as separate animals rather than part of those surroundings. A broader interpretation recognises that the land is environed by adjacent coastal land whose defining characteristics include its

function as a turtle rookery. The High Court's reasoning, explained in the Week 1 slides, establishes why the relevant *reference point* matters. One must identify **what is being environed** and ask how the proposed activity affects the surrounding conditions and features. Even an effect transmitted indirectly to the turtle nesting area may alter a feature of the land surrounding the proposal. This is not the proposition that every species anywhere is automatically part of every statutory 'environment'; the interpretation remains grounded in text, purpose and the identified locality.

Here is a practical way to write the analysis. First, quote or accurately summarise the statutory obligation to consider deleterious environmental effects. Secondly, identify that *environment* is undefined in the particular statute. Thirdly, consider ordinary meaning and legislative purpose, informed by *Murphy*. Fourthly, identify the development site's physical surroundings and the ecological connection to the turtles. Fifthly, identify evidence: seasonal nesting records, light-spill studies, coastal processes and hatchling survival. Finally, state why the decision-maker must evaluate the alleged impact before granting approval. Avoid the unsupported leap from 'turtles live nearby' to 'the development is automatically unlawful'—the legal obligation may be to assess, weigh or avoid specified impacts rather than to refuse every proposal.

The Week 1 case is especially useful later when dealing with the EPBC Act. It trains students to read words carefully, explain indirect effects and recognise the importance of an ecological relationship. The later *Nathan Dam* authority deals with indirect impact under a different federal statutory scheme. Students should connect the **method of reasoning**, but not pretend that the cases apply identical provisions.

1D. Parliament defines 'environment' for particular purposes

Modern legislation often supplies its own definition. **Section 8 of the Environmental Protection Act 1994 (Qld)** is the logical starting point when that Act applies. It defines *environment* expansively, addressing ecosystems and their constituent parts, including people and communities, natural and physical resources, qualities and characteristics of locations, places and areas, and the social, economic, aesthetic and cultural conditions affecting or affected by those things. The precise statutory paragraphs should be read with the current Queensland legislation. The legal significance is not that every economic or social issue automatically defeats an approval; it is that the statutory concept is broader than a narrow inquiry into trees, animals or pollution alone.

For Commonwealth EPBC Act questions, go to **s 528**, the definitions provision, and then to the operative Part 3 prohibition or the applicable assessment criteria. A broad definition does not independently create a criminal offence or assessment duty. The Act's operation still depends on its control mechanisms, protected matters and statutory thresholds. This is the difference between a defined term and an operative rule. A student who quotes s 528 without identifying the relevant controlling provision has explained a word but has not answered whether the developer needs Commonwealth approval.

Different Acts may define environmental concepts differently because they regulate different risks. A pollution-prevention regime may focus on contamination, emissions and receiving environments. A planning or impact-assessment scheme may look at land use, amenity, cultural and social conditions. A biodiversity statute may emphasise habitat, threatened ecological communities and conservation status. A definition is not a universal legal dictionary; it is a rule for interpreting *that Act*. When Tutorial 1 asks students to find two other Acts bearing ‘environment’ or ‘environmental’ in their title, the correct method is to set out the enactment, pinpoint its definition and compare the legal tasks those definitions perform. Never borrow the Queensland definition to interpret another jurisdiction's statute without an interpretive basis.

1E. Statutory interpretation is a disciplined sequence, not an instinct

A lawyer should open the current authorised version of the relevant Act and read the provision in its statutory setting. Identify the Act's short title, jurisdiction, commencement and relevant version. Read the objects, definitions, prohibition or permission, exceptions, decision-making power, procedural provisions, subordinate legislation and any applicable transitional arrangements. The **Acts Interpretation Act 1954 (Qld) s 14A** requires an interpretation that best achieves an Act's purpose; **s 14B** deals with the permitted consideration of extrinsic material. The Commonwealth's **Acts Interpretation Act 1901 (Cth) s 15AA** directs a purposive approach, and **s 15AB** regulates use of extrinsic materials. These provisions support context-sensitive reading, but they do not authorise rewriting clear statutory language.

An example: suppose an approval provision says the Minister ‘must consider’ specified threatened-species impacts. That creates a mandatory consideration; it does not necessarily direct the Minister to refuse whenever an adverse effect exists. If another provision says a person ‘must not take an action’ without an approval, that is a different type of obligation. If it says the Minister ‘may’ impose a condition,

identify the breadth of the discretion and statutory limits on its exercise. The difference between **must**, **may**, **must not**, **unless** and **subject to** is examinable. The correct question is always ‘what precise consequence follows from these words?’, not merely ‘does the environment matter?’

Case law then helps explain the operation of the statutory text. A court may decide what a term means, whether relevant information was omitted, whether a statutory assessment was adequate, whether a Minister took account of an irrelevant consideration, or whether a condition exceeded a grant of power. Each proposition needs its own authority. Use judgments for the principle they establish; do not cite a famous environmental case as a decorative reference to support an unrelated element.

1F. Scientific evidence, responsibility and the professional role

Lawyers are not ecologists, toxicologists or hydrologists. Their task is to frame the legal question so the appropriate expert can gather evidence responsive to it. Consider a developer who has commissioned a flora survey in the dry season only. A lawyer should ask whether a listed frog is detectable only after rain, whether nesting habitat changes seasonally, whether a water-quality model includes downstream pathways, and whether the reporting method responds to the statutory significant-impact criteria. The lawyer must not invent a biological conclusion. Equally, lawyers cannot absolve themselves of responsibility by saying ‘the consultant handled it’ if they know the wrong question was asked or material information was omitted from the referral.

The course uses **Plath v Fish; Plath v Orogen Pty Ltd** [2010] NSWLEC 144 to illustrate professional accountability in connection with unlawful clearing and ecological consultancy. The Week 1 slides describe the consultants' contractual role in ensuring legislative compliance and the court's use of conviction, monetary penalties and habitat-related remedial and publicity orders. The central lesson is that environmental compliance advice is not a box-ticking exercise. Where a professional has a significant measure of control over what happens and how laws are followed, poor advice or involvement in a prohibited activity may have serious consequences. Do not assume the case creates a universal rule that every consultant is automatically criminally liable; liability depends on the statute, the acts proved and the court's findings.

A practical due-diligence file should therefore record: the proposed action and all related components; all relevant land and water parcels; the controlling statute and

protected matter; whether permits, licences or assessment referrals are needed; dates of desktop searches; survey limitations; expert reports; regulatory correspondence; and a clear plan for avoiding works that could be unlawful before an approval. Think about the advice the client can actually follow: 'Do not clear the access corridor before we have identified protected habitat and confirmed the applicable approval pathway' is more useful than 'The EPBC Act might be relevant'.

1G. A complete worked lesson: advising a coastal development client

Facts. A company proposes a small accommodation complex near a beach used by nesting turtles. It will install floodlighting, remove vegetation and build a road. The company has a local development consent in principle and assumes nothing more is required. Residents have photographs of turtles nesting nearby, but the company's ecological report makes no mention of the nesting season.

Issue identification. Separate the construction, vegetation clearing, lighting and access works. Identify the responsible proponent for each. Identify State planning and environmental permissions, and assess possible nationally protected threatened or migratory species under the EPBC Act. The turtles' listing status cannot be assumed; it must be checked in current official resources. Remember that local approval does not itself discharge federal requirements.

Law and evidence. Read Queensland legislation relevant to the land use and any clearing, the EPBC Act's current controlling provisions, the listing database and significant-impact guidance. Use *R v Murphy* to show that effects on nearby rookery features can be relevant even where the main development footprint is elsewhere. Ask specialists to assess light pollution, nesting patterns, hatchling orientation, traffic and cumulative effects. Identify information gaps openly.

Application and advice. The report's omission of the nesting season is an evidence problem, not proof that there is no impact. The practical recommendation is further seasonal survey work and a redesign exploring lighting shields, buffers, timing restrictions, habitat protection and monitoring. If a significant impact on a federally protected matter is likely, advise the client on referral and approval before proceeding. If the legal threshold is not met, record the evidence and advice; explain what State permissions remain necessary. The conclusion should always tell the client what happens next, not simply repeat the law.

1H. How Chapter 1 connects to the rest of the course

Chapter 1 teaches the habits underlying every later topic. Chapter 2 asks **which level of government can regulate** and which head of constitutional power supports the rule. Chapter 3 asks how **international environmental obligations and principles** influence Australian law. Chapters 4 and 5 ask whether a particular **action** is caught by the EPBC Act, whether its impact is sufficiently significant, how the Minister obtains and evaluates evidence, whether the action may be approved and on what conditions. The reasoning is cumulative: the values explain the purpose, interpretation gives meaning to the words, jurisdiction identifies the regulator, science establishes the impacts, and administrative law controls the decision. That is how students begin thinking like environmental lawyers.

Primary research and course alignment

Course basis. Week 1 Forum transcript; Week 1 university slides; Tutorial 1 discussed in Week 2; primary legislation and identified judgments. This expanded teaching narrative is designed to be studied alongside the original university tutorial questions and the separate answers in this book.

Important: Current legislation controls where slide material predates the 2026 amendments. The present narrative explains the course approach; transitional application must be checked for actual projects.

- EPBC Act
- Queensland Environmental Protection Act 1994
- R v Murphy

THE CORE METHOD FOR THIS BOOK

FACTS -> ENVIRONMENTAL ISSUE -> JURISDICTION -> DECISION-MAKER -> EXACT ACT / PART / DIVISION / SECTION / SUBSECTION / PARAGRAPH -> DEFINITIONS -> OBJECTS / PURPOSE -> ACTS INTERPRETATION ACT -> CASE / AUTHORITY -> SCIENTIFIC OR EXPERT EVIDENCE -> APPLICATION -> CONCLUSION -> ADVICE -> NEXT STEP / APPROVAL / CONDITION / REVIEW / ENFORCEMENT RESPONSE.

1.2 Environmental law is about relationships

Environmental law regulates the relationship between human activity and the environment. It is therefore broader than conservation law. A planning decision about housing, a mining approval, clearing native vegetation, pollution controls, the protection of threatened species, a road through habitat, contaminated land, a corporate acquisition and a judicial review application can all become environmental law problems.

The field is also interdisciplinary. Lawyers work with ecologists, planners, hydrologists, engineers, economists, heritage specialists, scientists and government officers. The experts answer scientific and technical questions. The lawyer identifies the legal test those experts must address, the evidence required to satisfy that test, the decision-maker who has power, the procedure that must be followed and the consequence if the law is breached.

> **Practice point.** A good environmental lawyer does not try to become the ecologist, engineer or hydrologist. The lawyer must instead understand enough to frame the correct legal question for the expert and then translate the expert evidence back into the statutory test.

1.3 Environmental ethics: why values matter to law

Environmental ethics examines the values and norms that govern relationships between humans and the natural world. In a law subject this may initially seem philosophical rather than legal. It matters because environmental statutes are created within political and social systems. Parliament decides what to protect, what to regulate, what to permit, what to prohibit, what evidence to require and which interests a decision-maker must consider.

Those choices are influenced by different views about the value of nature. The Week 1 seminar frames two principal positions on a spectrum: **anthropocentric** values and

ecocentric values. The point is not that one end of the spectrum cares about the environment and the other does not. Both can support environmental protection. Their reasons for doing so are different.

1.4 Anthropocentrism: nature valued through human welfare

Anthropocentric reasoning is human-centred. The environment is valuable because it contributes to human welfare, health, safety, comfort, prosperity, recreation, culture or quality of life. This is sometimes described as **instrumental value**: nature is valuable because of the benefit it provides to people.

Anthropocentrism can justify strong environmental protection. Clean air matters because pollution causes disease. Wetlands may be protected because they reduce flooding and improve water quality. Forests may be protected because they provide recreation, water catchment functions and climate benefits. A reef may be protected because it supports tourism, food, cultural identity and economic activity.

The distinction appears when environmental protection conflicts with another human interest. An anthropocentric decision-maker may be more willing to accept environmental damage where the countervailing human benefit is sufficiently important. Cost, convenience, housing, jobs, infrastructure or health care may therefore become central to the balance.

1.5 Ecocentrism: nature has value in its own right

Ecocentric reasoning treats ecosystems and nature as having **intrinsic value**. Protection is justified even where no immediate human benefit can be demonstrated. Species, habitats, rivers, forests, reefs and ecological processes matter because they are part of a functioning ecological community.

An ecocentric perspective therefore asks a different question. Instead of asking only what the environment does for people, it asks what the ecosystem needs in order to remain healthy, intact and resilient. That may justify protection even where conservation imposes economic costs or restricts development.

EASY WAY TO REMEMBER THE DIFFERENCE

Anthropocentric: protect nature **for people**.
Biocentric: protect **living things** because they have value.
Ecocentric: protect the **whole ecological system** because nature itself has value.

1.6 Biocentrism: the value of living things

Biocentrism is a useful third concept. It focuses on the inherent value of living beings. Ecocentrism is broader because it can include the integrity of habitats, water systems, soils and the relationships between living and non-living components of ecosystems.

In legal analysis, these labels are explanatory tools rather than substitutes for statutory interpretation. A statute may contain ecocentric language about ecosystems and biodiversity while also requiring consideration of communities, economic consequences and development. Modern environmental law is often *integrated* or *hybrid* rather than purely anthropocentric or purely ecocentric.

1.7 The spectrum matters more than the label

Environmental disputes rarely fit into clean philosophical boxes. Consider a proposal to clear a wetland for a hospital. A strongly ecocentric response may emphasise irreversible habitat loss. An anthropocentric response may emphasise access to essential medical care. A pluralist position may accept that both interests matter and ask whether the need can be met through a lower-impact alternative.

This is why the seminar treats environmental values as a spectrum. In tutorials, assessments and practice, the better analysis usually identifies the competing values, explains why they conflict and then moves to the legal framework that determines how the conflict is resolved.

HISTORICAL DEVELOPMENT

1.8 The evolution of environmental thought

Modern environmental law developed over time. Early legal controls often protected property, public health or access to resources rather than the environment for its own sake. During the twentieth century, scientific understanding and environmental writing increasingly challenged the assumption that nature existed principally for human use.

1700s-1800s	Industrialisation accelerates extraction, urbanisation and large-scale transformation of land and resources.
1949	Aldo Leopold's *A Sand County Almanac* advances a “land ethic” and challenges the idea of humanity as conqueror of nature.[20]
1962	Rachel Carson's *Silent Spring* draws public attention to the far-reaching effects of pesticides such as DDT.[21]
1971-1972	*The Lorax*, Christopher Stone's “Should Trees Have Standing?” and *Sierra Club v Morton* bring the idea of speaking for nature into public and legal debate.[22], [23], [24]
1970s onward	Modern environmental statutes, environmental impact assessment systems and specialist regulatory institutions expand.
1990s onward	International environmental conferences, treaties and sustainable-development principles increasingly influence domestic law.
2026	Australian environmental law continues to change, including the operation of the National Environmental Protection Agency from 1 July 2026.[25], [26]

1.9 Aldo Leopold: from conqueror to member of the ecological community

Aldo Leopold's 1949 work *A Sand County Almanac* is important because it challenged the prevailing anthropocentric assumption that humans stand above nature. His “land ethic” proposed that humans should understand themselves as members of a wider ecological community.[27]

20. Aldo Leopold, *A Sand County Almanac, and Sketches Here and There* (Oxford University Press, 1949).
21. Rachel Carson, *Silent Spring* (Houghton Mifflin, 1962).
22. Dr Seuss, *The Lorax* (Random House, 1971).
23. Christopher D Stone, 'Should Trees Have Standing? - Toward Legal Rights for Natural Objects' (1972) 45 *Southern California Law Review* 450.
24. *Sierra Club v Morton*, 405 US 727 (1972).
25. National Environmental Protection Agency, 'What is the National EPA?' (Web Page).
26. *National Environmental Protection Agency Act 2025* (Cth) ss 2-3.

For law students, the significance is not that Leopold created a legal rule. He did not. His importance is conceptual. Environmental law later began to reflect a similar shift: ecosystems, biodiversity and ecological integrity increasingly appeared as objects of legal protection rather than as matters protected only because of their usefulness to people.

1.10 Rachel Carson: environmental harm can travel through systems

Rachel Carson's *Silent Spring* (1962) exposed the broader ecological consequences of pesticide use, especially DDT. A chemical applied to one target could affect many species, move through waterways and food chains, and ultimately affect human health as well.[28]

The deeper legal lesson is that environmental harm may be indirect, cumulative and delayed. Environmental regulation therefore cannot always wait for visible damage. Modern environmental assessment and precautionary approaches are partly responses to this difficulty: by the time harm is obvious, it may be costly or impossible to reverse.

1.11 Christopher Stone and the idea of legal rights for nature

Christopher D Stone, a law professor, attempted to translate environmental ethics into legal doctrine. In "Should Trees Have Standing? - Toward Legal Rights for Natural Objects" (1972) 45 Southern California Law Review 450[29], Stone argued that legal systems are capable of recognising legal interests in entities that cannot act personally and must be represented through human agents.

Stone's question was radical for its time: if corporations and other legal entities can possess legally recognised interests, could a river, forest or other natural object also be represented before a court? Whether or not a legal system accepts that proposition, the article changed the way environmental standing and rights of nature could be discussed.

1.12 Sierra Club v Morton: standing and the difficulty of speaking for nature

> Sierra Club v Morton, 405 US 727 (1972)[30]
>
> **Facts.** The Sierra Club challenged federal action connected with a major ski-development proposal in Mineral King Valley. It relied on the environmental and

27. Aldo Leopold, *A Sand County Almanac, and Sketches Here and There* (Oxford University Press, 1949).
28. Rachel Carson, *Silent Spring* (Houghton Mifflin, 1962).
29. Christopher D Stone, 'Should Trees Have Standing? - Toward Legal Rights for Natural Objects' (1972) 45 *Southern California Law Review* 450.

aesthetic importance of the area but did not allege that the organisation or its members themselves would suffer the necessary injury.

Issue. Was a special interest in environmental protection enough to establish standing?

Holding. The majority held that environmental and aesthetic injury could be legally cognisable, but the plaintiff had to show injury to itself or its members. Sierra Club had not done so on the pleaded case.

Why it matters. Justice Douglas's dissent argued for a more ecocentric model in which natural objects could effectively be represented by guardians. For Australian students, the decision is not binding authority. Its importance here is conceptual: it places the rights-of-nature debate on a legal stage.

THE LEGAL MEANING OF “ENVIRONMENT”

1.13 Why definitions matter

In environmental law, ordinary words often have statutory meanings. The word *environment* is a good example. A statutory definition can determine what a decision-maker must consider, what counts as environmental harm, what an approval can regulate and whether an offence or duty is engaged.

The first professional habit is therefore simple: **never assume you know what a statutory word means until you have checked the Act.** The Week 1 seminar repeatedly emphasises the need to move between the operative provision, the Act's dictionary, surrounding provisions and subordinate legislation.

1.14 The Mon Repos case and the meaning of “environment”

The Mon Repos litigation arose from a proposed residential subdivision near the well-known turtle rookery at Mon Repos on the Queensland coast. The governing legislation required the decision-maker to consider whether the proposal would cause a deleterious effect on “the environment”, but it did not define the word.

The legal problem was therefore not simply whether turtles are important. The problem was interpretive: what did *environment* mean in the particular statutory context, and what was the relevant reference point?

The Crown v Murphy [1990] HCA 42; (1990) 64 ALJR 593[31]

30. ***Sierra Club v Morton*, 405 US 727 (1972).**

Rule and reasoning. The High Court explained that what constitutes the relevant environment must be identified by reference to the person, object or group surrounded or affected. The land the subject of the proposal was surrounded by coastal land used by turtles as a rookery. A use of the land that reduced turtle use or hatchling survival could alter a feature of that surrounding land and therefore alter the environment of the subject land.

Exam point. Do not reduce the case to “turtles are the environment”. The stronger statement is that the statutory word was interpreted contextually and that the turtle rookery was a feature of the relevant surrounding environment.

1.15 How statutes define the environment

Definitions have evolved. Older legislation sometimes described the environment mainly by reference to human surroundings. Modern legislation more commonly includes ecosystems, natural and physical resources, places, ecological relationships, heritage and social, economic or cultural conditions.

This does not mean every modern definition is purely ecocentric. A contemporary definition may recognise ecosystems and intrinsic ecological value while also expressly including people, communities and economic conditions. That is why a lawyer must apply the enacted wording rather than impose a philosophical label on the statute.

1.16 Current Queensland definition - Environmental Protection Act 1994 (Qld) s 8

The current Environmental Protection Act 1994 (Qld)[32] uses an inclusive definition. Section 8 includes:

- ecosystems and their constituent parts, including people and communities;
- all natural and physical resources;
- the physical characteristics of locations, places and areas;
- the physical surroundings of people, including land, waters, atmosphere, climate, sound, odours and tastes; and
- social, economic, aesthetic and cultural conditions that affect, or are affected by, the preceding matters.

31. *The Crown v Murphy* **[1990] HCA 42; (1990) 64 ALJR 593.**
32. *Environmental Protection Act 1994* (Qld) s 8.

> **Current-law alert.** Section 8 was amended in 2024. When older educational materials reproduce earlier wording, a current-law problem should be checked against the authorised current legislation.

1.17 Commonwealth definition - EPBC Act s 528

The Environment Protection and Biodiversity Conservation Act 1999 (Cth)[33] contains an extensive general dictionary in s 528. The Act's definition of *environment* is broad and supports a national regime concerned with ecosystems, natural resources, places, heritage and social, economic and cultural aspects.

For a lawyer, the important method is not to memorise a definition in isolation. Read the definition together with the specific protected matter, approval test, object and decision-making provision that makes the definition legally relevant.

33. *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s 528.

STATUTORY INTERPRETATION

1.18 Reading environmental legislation properly

Environmental law is statute-heavy. The ability to navigate and interpret legislation is therefore a core professional skill. It is not enough to locate a section that looks relevant. You must determine how the section fits into the Act, whether key terms are defined, whether exceptions or subordinate instruments apply, what purpose the Act serves and how courts have interpreted the provision.

TEXT -> DEFINITION -> CONTEXT -> OBJECTS / PURPOSE -> INTERPRETATION ACT -> EXTRINSIC MATERIAL (WHERE PERMITTED) -> CASE LAW -> EVIDENCE -> APPLICATION -> CONSEQUENCE.

1.19 What did Parliament intend?

Students often say that statutory interpretation is about discovering "what Parliament intended". That is useful shorthand only if it is expressed carefully. Courts do not ordinarily search for the private mental state of an individual minister or parliamentarian. The task is objective: interpret the enacted text in context and in a way that best achieves the statutory purpose or object, using legally recognised interpretive materials where appropriate.

This matters in environmental law because legislation often reflects compromise. An Act may pursue environmental protection while also establishing workable approval processes, recognising social or economic conditions, allocating responsibility between levels of government, or creating enforcement and review pathways.

1.20 Queensland - Acts Interpretation Act 1954 (Qld) ss 14A-14B

Section 14A of the Acts Interpretation Act 1954 (Qld)[34] requires the interpretation that will best achieve the purpose of the Act to be preferred. The rule applies whether or not the purpose is expressly stated, subject to the statutory limits.

Section 14B permits consideration of relevant extrinsic material capable of assisting interpretation in the circumstances specified by the section. Examples include explanatory notes, certain reports, treaties mentioned in the Act and the speech introducing the Bill.

34. *Acts Interpretation Act 1954* (Qld) ss 14A-14B.

HOW TO USE THIS IN A PROBLEM

Do not simply cite s 14A and move on. First identify the competing interpretations. Then explain the Act's purpose and why one interpretation better achieves that purpose. If you use extrinsic material, explain what material it is and why the legislation permits you to consider it.

1.21 Commonwealth - Acts Interpretation Act 1901 (Cth) ss 15AA-15AB

Section 15AA of the Acts Interpretation Act 1901 (Cth)[35] requires the interpretation that would best achieve the purpose or object of the Act to be preferred. Section 15AB governs consideration of extrinsic material capable of assisting the ascertainment of meaning.

These provisions are especially important when working with Commonwealth environmental legislation such as the EPBC Act. The practical sequence remains the same: start with text, read the provision in context, identify purpose, check definitions and then use cases or extrinsic material where relevant.[36]

1.22 Scientific meaning and legal meaning are not always identical

Scientists may use terms according to their discipline. Legislation may define the same term differently. That is not a mistake; it is a feature of statutory law. An ecologist may explain what constitutes habitat, a hydrologist may describe a catchment, and a planner may assess land use. The lawyer must then identify whether the legislation adopts, modifies or replaces the scientific concept with a legal definition.

> **Professional habit.** Before briefing an expert, identify the exact statutory question the expert needs to answer. An excellent scientific report can still be legally unhelpful if it does not address the relevant statutory test.

35. *Acts Interpretation Act 1901* (Cth) ss 15AA-15AB.
36. *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

FROM LAW STUDENT TO LAWYER

1.23 The professional method

Environmental legal work usually begins before litigation. A client may want to know whether a development can proceed, whether an approval is required, whether land can be cleared, whether contamination creates a disclosure or remediation issue, whether a federal referral is required, or whether a regulator's decision can be challenged.

The lawyer's first job is therefore to organise the problem. The following method can be used throughout this book.

Step	Question	Professional purpose
1	What activity is proposed or what harm has occurred?	Define the factual action precisely.
2	Where is the site and who is acting?	Identify jurisdiction, land tenure, government level and potential statutory regimes.
3	What environmental values or protected matters may be affected?	Identify habitat, species, water, heritage, contamination, emissions, vegetation or other triggers.
4	Which Act and operative provision control?	Move from environmental concern to legal rule.
5	What definitions, objects, exceptions and instruments matter?	Read the statutory scheme as a whole.
6	What evidence is required?	Brief the correct experts and collect factual material.
7	Who decides and what procedure applies?	Map referral, assessment, application, consultation and decision pathways.
8	What are the risks?	Identify delay, refusal, conditions, offences, civil penalties, remediation, review and reputational exposure.
9	What should the client do next?	Give clear advice, not merely legal description.

1.24 Example: advising a developer before site acquisition

Assume a developer is considering purchasing land for a residential project. The land contains native vegetation, a drainage line and possible habitat for a listed threatened species. The client asks a simple commercial question: “Can we develop it?”

A poor answer is: “Environmental approvals may be required.” A useful legal answer identifies the investigation pathway. Before acquisition, the lawyer should consider the site's planning controls, State environmental legislation, vegetation constraints, species records, Commonwealth protected-matter risk, water issues, heritage and any contamination history. The lawyer may recommend ecological due diligence and searches before the client becomes contractually committed.

If a potential Commonwealth protected matter is identified, the lawyer should assess whether the proposed action may engage the EPBC referral and approval regime. Section 67 defines a controlled action; s 67A prohibits taking a controlled action without the required approval or recognised legal basis; s 68 deals with referral by the person proposing the action; and s 69 permits a State, Territory or relevant agency to refer a proposal in the circumstances specified.

The point is not that every project goes to the Commonwealth. The point is to identify whether a federal trigger exists instead of assuming that State planning approval is the whole answer.

1.25 Current federal institutional context

The National Environmental Protection Agency[37] began operating on 1 July 2026. It is Australia's national environmental regulator and brings together regulatory functions under national environmental laws, including assessment and approvals functions under the updated EPBC framework., [38], [39]

Institutional change reinforces an important research lesson: environmental law changes. A textbook can teach the structure and method, but a lawyer must still verify the current statute, current agency, current delegation and current regulatory process before giving advice.

1.26 The cost of getting environmental advice wrong

Environmental mistakes can produce more than an administrative inconvenience. They may cause project delay, refusal, remediation obligations, civil penalties, criminal prosecution, legal costs and reputational damage. The Week 1 seminar uses the Taylors Beach prosecution to demonstrate this professional risk.[40]

> **Gordon Plath ... v Fish; ... v Orogen Pty Ltd [2010] NSWLEC 144**[41]
>
> A consultant had accepted a role involving legislative compliance for vegetation-clearing works. The clearing affected koala habitat and movement corridors. The

37. National Environmental Protection Agency, 'What is the National EPA?' (Web Page) <https://www.nationalepa.gov.au/about/national-epa/what-is>.
38. *Environment Protection and Biodiversity Conservation Act 1999* (Cth).
39. *National Environmental Protection Agency Act 2025* (Cth) ss 2-3.

adviser and company were prosecuted. Orders included fines, habitat-mapping work, publication orders and prosecution costs.

Why it matters. A lawyer or consultant cannot safely rely on assumptions about whether an approval or licence is required. Statutory due diligence is a professional discipline. The cost of being wrong can greatly exceed the original professional fee.

1.27 From student answer to client advice

THE DIFFERENCE IN WRITING STYLE

Student answer: identify the issue, state the rule with exact authority, apply the facts and reach a conclusion.

Client advice: explain the conclusion in practical terms, identify uncertainty, quantify or describe the risk, identify information still required, and recommend the next step.

A client does not usually need a lecture on every legal principle. The client needs to know what the law means for the project or decision. The lawyer's work behind the advice may be complex; the advice itself should be clear.

1.28 How to write an Environmental Law problem in IRAC form

Issue Identify the proposed action, environmental harm or decision, the relevant jurisdiction, decision-maker and legal trigger. Break broad disputes into separate legal issues.

Rule / Law Start with the exact Act and operative provision. Add definitions, objects, interpretation provisions, exceptions, regulations and the cases that explain the rule.

Application Apply one fact to one legal element at a time. Use expert evidence where the statute requires factual or scientific judgment. Address the strongest alternative argument.

Conclusion

41. *Gordon Plath of the Department of Environment and Climate Change v Fish; Gordon Plath of the Department of Environment and Climate Change v Orogen Pty Ltd* **[2010] NSWLEC 144.**
40. *Gordon Plath of the Department of Environment and Climate Change v Fish; Gordon Plath of the Department of Environment and Climate Change v Orogen Pty Ltd* [2010] NSWLEC 144.

State the likely legal consequence, then add the practical next step: referral, further studies, approval application, condition negotiation, review, compliance action or other response.

1.29 Chapter synthesis

- Environmental law is a body of law that manages relationships between human activity and the environment.
- Anthropocentric, biocentric and ecocentric perspectives explain different reasons for environmental protection.
- Modern environmental statutes often combine ecological, social, cultural and economic values.
- Leopold, Carson and Stone help explain the historical movement toward recognising ecological systems and intrinsic value.
- *Sierra Club v Morton* illustrates the difficulty of translating rights-of-nature ideas into standing doctrine.[42]
- *The Crown v Murphy* shows why statutory context and the relevant reference point matter when interpreting “environment”.[43]
- Environmental Protection Act 1994 (Qld) s 8 provides a current broad definition of environment.[44]
- Acts Interpretation Act 1954 (Qld) ss 14A-14B and Acts Interpretation Act 1901 (Cth) ss 15AA-15AB are central interpretive tools.[45], [46]
- Good environmental legal practice depends on accurate statutory navigation, current-law research and properly framed expert evidence.
- The professional endpoint is advice: tell the client what the law means, the risk, the evidence needed and the next step.

42. *Sierra Club v Morton*, 405 US 727 (1972).
43. *The Crown v Murphy* [1990] HCA 42; (1990) 64 ALJR 593.
44. *Environmental Protection Act 1994* (Qld) s 8.
45. *Acts Interpretation Act 1954* (Qld) ss 14A-14B.
46. *Acts Interpretation Act 1901* (Cth) ss 15AA-15AB.

CHAPTER 1 LAWYER'S CHECKLIST

1. What is the environmental concern?
2. What value conflict sits beneath it?
3. Which level of government has the relevant statutory role?
4. What Act and operative provision control?
5. What does the Act define?
6. What is the statutory purpose?
7. What interpretation legislation applies?
8. What cases or authorities explain the provision?
9. What expert evidence is required?
10. What should the client do next?

ENVIRONMENTAL LAW — CHAPTER 1

Environmental values, definitions and legal reasoning

CHAPTER 1 — EXTENDED CLASSROOM TEACHING AND CONNECTED AUTHORITIES

In-depth explanation of what the law requires, why each authority matters and how to move from facts to effective client advice.

Classroom method: Identify the actor and concrete action. Break the legal issue into elements. Read the exact statute and its defined terms. Use the case for the proposition it actually decides. Apply each element to evidence and plausible counterarguments. Finish with a proportionate conclusion and the remedy that this particular cause of action supports.

1K. WHY A DEFINITION CHANGES THE WHOLE CASE

Imagine I am advising a landowner who plans a coastal housing estate. The council says the development will affect a nearby wetland, but the property itself is dry and already disturbed. The first task is not to announce that the development is environmentally harmful. It is to ask which decision is being made, the statutory provision authorising that decision, and what that provision requires the decision-maker to examine. Suppose a particular planning law requires consideration of adverse effects on the environment, without defining that word. The question is then one of statutory interpretation: what is the ordinary meaning of the word, what is the purpose of the Act, and what relationships are relevant to this land? That is where **The Crown v Murphy** becomes useful. The case concerned Mon Repos, a beach associated with marine turtle nesting, and proposed rezoning of nearby land. Its significance is not a simplistic rule that all development near wildlife must be refused. It explains why the environmental significance of surrounding land may matter when determining the environment of the land in question. A student who merely writes 'Murphy means environment is broad' has missed the reasoning. The proper application identifies the adjoining rookery, explains the ecological pathway (lighting, pets and human activity), and identifies evidence needed to determine likely effects. Only then can counsel advise whether the decision-maker omitted a legally material consideration or whether an appropriate buffer, lighting restriction or redesign might address the risk.

In a second problem, the statute might expressly define environment to include air, water, land, organisms, cultural characteristics and interactions between them. Here, there is less room to treat the term as an open-ended ordinary-language concept: the enacted definition governs, and its particular words matter. **Environmental Protection Act 1994 (Qld) s 8** supplies a useful comparison. It demonstrates why 'environment' in one Act does not automatically mean the same thing in another. The NSW planning scheme and the Queensland pollution scheme serve different functions. For a Queensland site, a lawyer must not rely on a NSW statutory definition; for a Tweed Shire proposal, Queensland planning legislation does not become applicable merely because the site is near the border.

The conclusion should be client-specific: 'On the present evidence, I cannot advise that approval is impossible. However, the authority must consider the protected ecological connections identified under the applicable statutory test. Commissioning ecological surveys and modelling light spill before the decision is critical. If approval is granted without considering a mandatory statutory matter, judicial review may be arguable; an injunction, damages or a compensation claim would require a separate cause of action and standing.' Notice how the conclusion follows from the interpretation, the evidence and the legal consequences. That sequence is the habit the subject is designed to develop.

1L. LEGISLATION, ETHICS AND THE DIFFERENCE BETWEEN A STRONG OPINION AND A GOOD LEGAL ANSWER

The tutorial asks whether I would approve a supermarket on the only Queensland breeding ground of an endangered legless lizard. There is a genuine conflict: residents currently travel 180 kilometres for essential groceries, but the project would extinguish the species' only breeding ground in the State. The question deliberately says to assume there is no applicable environmental legislation. A good answer therefore separates an ethical judgment from legal doctrine. Under an **anthropocentric** account, human welfare and cost-of-living hardship are significant. Under a **biocentric** account, the threatened animal has moral significance independently of its economic utility. Under an **ecocentric** account, protecting a breeding site may preserve ecological processes and system resilience. These viewpoints can be explained without pretending that one of them is a statutory prohibition.

My answer should then identify the facts that sharpen rather than resolve the tension. The remoteness of the town matters to people. The absence of alternative land matters to feasibility. The impossibility of relocating the species matters to reversibility. The loss of the last breeding site matters to the gravity of the environmental consequence. If the proposal becomes a hospital rather than a supermarket, the urgency of human welfare

rises. If it becomes affordable housing, the social need is substantial but might admit greater design and location flexibility. If the animal is a koala rather than a legless lizard, popular sympathy may rise but does not, by itself, make the species legally or morally more significant. A lawyer must resist deciding the question by visual attractiveness or public relations value.

Now suppose we remove the tutorial's artificial restriction and apply real law. The analysis changes. Check whether the species is a **listed threatened species** under the Commonwealth **EPBC Act** **ss 18–18A**, the legally protected population or taxon, whether the project is an action under **ss 523–524A**, and whether it is likely to have a significant impact. Under **s 68**, relevant proposed actions may require referral; the Minister determines controlled-action status under **s 75**. Queensland planning and nature-conservation obligations may also operate. If a protected matter is affected, ethical balancing is not a substitute for the threshold test. Nor does it follow that every adverse effect is necessarily prohibited: the statutory pathway may provide for assessment, conditions, refusal, offences and enforcement depending on the facts. **The professional lesson is to give two separate answers when the question demands it: first the ethical decision on the stipulated facts, and then (only if asked) the legal pathway under applicable legislation.**

1M. WHO CAN SPEAK FOR THE ENVIRONMENT, AND WHAT CAN A COURT ACTUALLY ORDER?

In the *Wildlife fight taken to top* newspaper exercise the interested parties include the developer, residents, affected businesses, conservation groups, local council and potentially the Commonwealth regulator. There is also a group that cannot attend a public hearing: the affected animals and ecosystems. **Christopher Stone's Should Trees Have Standing? raises the normative possibility of granting legal status to natural objects so that a representative could assert their interests. Sierra Club v Morton** illustrates the procedural obstacle: sincere organisational concern is not identical to legal standing. The decision is American and persuasive only as background to the debate, not a statement of Australia's standing law.

The Australian lawyer must then identify the specific enforcement pathway. Under the **EPBC Act** **s 475**, certain persons can seek an injunction in respect of a threatened or actual contravention of Part 3 or another specified environmental requirement. The statute sets conditions that cannot be bypassed by citing the general importance of wildlife. Other judicial-review avenues may turn on standing, jurisdictional error, limitation periods and the nature of the decision. In NSW planning proceedings, available remedies depend on the particular legislation and court jurisdiction. The remedy question must be addressed after the wrong and applicant's entitlement to

seek relief are identified. An injunction may prevent further clearing; an order setting aside a flawed administrative decision may force lawful reconsideration; environmental remediation may be authorised under another express power; damages usually require a compensable legal wrong and proof of loss. There is no universal law that every community concerned about habitat receives compensation.

A buffer is a good example of translating controversy into enforceable advice. An authority might attach a valid condition preventing construction or vegetation removal within a defined strip, requiring fencing, seasonal works restrictions, monitored lighting or habitat management. Whether that particular condition is lawful depends on the enabling Act, the nexus to the environmental harm, precision, reasonableness and required procedure. The adviser should define measurable obligations, monitoring responsibility, breach consequences and review mechanisms. An aspirational statement about protecting wildlife has much less legal value than a condition with coordinates, timing restrictions and enforceable performance criteria. This is why a lawyer is not simply an advocate for one value: the lawyer turns a legitimate concern into a workable statutory decision.

JUDGMENTS, LEGISLATION AND RESEARCH — FULL TEACHING EXPLANATIONS

For each resource below I explain its factual or legislative setting, legal point, significance and role in practice. Blue underlined source titles open the research material. A legal authority must never be treated as a substitute for identifying and applying the controlling provision.

The Crown v Murphy [1990] HCA 42; (1990) 64 ALJR 593

THE FACTS. Landowners near Mon Repos turtle-nesting beach sought rezoning that could enable residential subdivision. The local council resisted development because artificial lighting, domestic pets and altered activity could harm the adjacent turtle rookery. There were earlier planning and resumption steps. The question on appeal concerned the meaning of environmental impact for the statutory decision, not whether a turtle literally occupied the applicant's subdivided land. THE REASONING AND RESULT. The High Court explained that the relevant environment must be identified by reference to the object or land being considered. Features of adjoining land may form part of its environment. Harmful effects on nesting turtles next door could therefore properly inform consideration of the rezoning, even when the site itself was not the rookery. It was wrong to exclude the effect merely because the rookery was on adjoining land. WHY IT MATTERS IN PRACTICE. The student's first job is to read the definition and the particular planning power. The second is to identify *how* an off-site ecological feature relates to the land under assessment. In an exam about a beachside

apartment or resort, identify lights, pets, traffic and the ecological pathway to an adjacent protected area. Do not overstate Murphy as a nationwide rule overriding every planning statute. It shows how a court uses statutory language and the factual setting to identify environmental effects.

Sierra Club v Morton 405 US 727 (1972)

THE FACTS. A United States environmental organisation attempted to challenge a proposed Disney recreational development in California's Mineral King Valley. The organisation relied heavily on the value of the landscape itself rather than identifying the concrete injury required for its standing. THE DECISION. The Supreme Court rejected standing on the way the case was presented: an environmental organisation's concern, however sincere, did not by itself satisfy the required injury test. Justice Douglas proposed in dissent that natural objects themselves should be capable of legal representation. That approach stimulated discussion but was not the majority holding. THE TEACHING CONNECTION. Christopher Stone's article, 'Should Trees Have Standing?', makes a normative case for legal rights of nature. Sierra Club illustrates why an ethical argument and a legal entitlement to sue are different. For an Australian problem, identify the **actual** standing rule in the relevant statute, such as the interested-person rules in EPBC Act s 475, or applicable judicial review principles. Do not cite this US case as binding Australian standing law. It helps articulate the issue and explain the evolution of thinking.

Christopher D Stone, Should Trees Have Standing? (1972)

WHY THIS IS A RESOURCE, NOT A JUDGMENT. Stone asks a deeper question: if corporations and other legal constructs can hold rights through representatives, why must a forest, river or species be unable to have an advocate appointed for its interests? His argument is a proposal for legal design; it does not itself change Australian law. READ IT AGAINST THE WEEK 1 NEWS ARTICLES. The Cobaki Lakes wildlife corridor and the 'Held to ransom' species dilemma show that humans make decisions for ecosystems that cannot attend court or a planning meeting. Ask who speaks for the affected species, what standing the existing law allows, and what evidence supports the proposed protection. In advice, distinguish (a) the moral desirability of protection, (b) binding statutory obligations, and (c) the avenue by which a community group may enforce those obligations.

Plath v Fish; Plath v Orogen [2010] NSWLEC 144

THE CASE IN CONTEXT. Environmental offences frequently turn on what was actually done, the defendant's legal responsibility, the protected statutory element and evidence connecting conduct to ecological harm. The course uses these related proceedings to

illustrate the importance of examining the factual record and the precise charging provisions instead of announcing that conduct was 'bad for the environment'. HOW TO READ IT. Start with the parties, the particular offence and each statutory element; then identify the evidence the court relied on, the finding, and any sentencing or remedial orders. Identify whether a principle described in a criminal or civil enforcement decision can legitimately carry over to a proposed development consent problem. EXAM USE. If a problem involves clearing, harm to wildlife or negligent management, specify the Act and exact provision applicable at the time, then prove each element and identify the correct consequences. Do not invent a damages remedy merely because damage occurred. Use this case as an enforcement-method teaching resource, not as a generic authority that every adverse environmental effect is unlawful.

NSW planning legislation and Queensland environmental definitions

THE STATUTES. The Environmental Planning and Assessment Act 1979 (NSW) regulates environmental planning and development assessment in NSW. The Environmental Protection Act 1994 (Qld), including its interpretation provisions such as s 8, uses a broad conception of 'environment' for Queensland's regulatory purposes. The terms are not necessarily interchangeable because each Parliament is solving different regulatory problems and may include or exclude social, built, aesthetic and ecological features differently. HOW A LAWYER USES THEM. First locate the site. Then use the correct State law and its definitions, objects, planning instruments and regulatory threshold. For a cross-border newspaper story, the closeness of Tweed to Queensland does not make a Queensland planning statute apply to NSW land. Identify potential Commonwealth overlay separately. An exam answer should explain the *purpose* of the definition before quoting it.

EPBC Act: national protection and public-interest injunctions

THE LINK TO LATER CHAPTERS. Chapter 1's values debate develops into binding law when an action is likely to have a significant impact on a federally protected matter. In the EPBC Act, s 18 concerns listed threatened species/ecological communities, s 20 listed migratory species, s 68 the referral obligation, and s 475 an injunction mechanism for eligible persons in the event of an actual or threatened contravention. PRACTICAL METHOD. Do not assume every koala, potoroo or bird receives the same protection. Check the exact listed entity, the action and the likely significance of its impacts. A community group may be concerned for excellent reasons but still needs a legal cause of action and standing. For the developer, early assessment and carefully designed buffers can avoid a problem rather than merely defend litigation after clearing begins.

THE COMPLETE PROFESSIONAL APPLICATION — AN EXAM-READY METHOD

When I advise a client, I do not begin with an attractive remedy and work backwards. First I identify the particular conduct, actor and decision-maker; then I identify the statute and its relevant time of operation. Secondly, I specify each element of the legal test. Thirdly, I connect the strongest case authority to the proposition being applied, explaining its facts and why the reasoning is comparable or distinguishable. Fourthly, I test the evidence supporting each element and take the opposing argument seriously. Fifthly, I advise on the practical course: further studies, a referral, a revised project, a lawful condition, judicial review, an injunction or enforcement, depending on the statute. This is the transition from knowing rules to practising environmental law.

Legislative date: The course discusses the EPBC Act framework in force for its 2026 seminars. The Environment Protection Reform Act 2025 has staged commencement. The August 2026 transitional rules may affect some cases. For any past project, check the version operative at the relevant decision date; do not apply a future reform retrospectively without legal authority.

CHAPTER 1 FAQ QUESTIONS

Chapter 1 FAQs - Questions

1. Is anthropocentrism anti-environment?

2. Is ecocentrism the same as biocentrism?

3. Why do lawyers care about environmental philosophy?

4. What is the safest way to use *The Crown v Murphy*?

5. Do I always use an ordinary dictionary first?

6. What does “purpose” mean in statutory interpretation?

7. Should I cite tertiary or professional educational material as legal authority?

8. Why is current-law checking so important in Environmental Law?

CHAPTER 1 FAQ ANSWERS

Chapter 1 FAQs - Answers

1. No. Anthropocentric reasoning can support extensive environmental protection. The difference is the reason: protection is justified because environmental quality contributes to human welfare. The position becomes most visible when protection conflicts with another important human interest.

2. No. Biocentrism focuses on the inherent value of living beings. Ecocentrism is broader and includes ecological systems, habitats, relationships and physical components of ecosystems.

3. Because values help explain statutory objects, definitions, protected matters and policy choices. Philosophy does not replace the legal rule, but it helps explain why the legal rule exists and how competing arguments are framed.

4. Use *The Crown v Murphy* [1990] HCA 42 as an example of contextual statutory interpretation. Do not state simply that “turtles are the environment”. Explain that the relevant environment was identified by reference to the land and its surroundings, and the turtle rookery was a feature of that environment.

5. No. First check whether the Act defines the word. A statutory definition controls where applicable. Ordinary meaning becomes more important where the legislation does not define the term or the definition still leaves an interpretive question.

6. It means the objective statutory purpose or object revealed by the enacted text, structure and legally relevant context. It is not simply the private subjective intention of an individual member of Parliament.

7. No. Tertiary and professional education, practical experience and textbooks can help explain the law, but a legal proposition should ultimately be tied to legislation, a case, an authorised regulatory source or another legally relevant authority.

8. Because statutes, agency structures, delegations, standards and regulatory processes change. The current Queensland definition in *Environmental Protection Act 1994* (Qld) s 8 and the commencement of the National EPA in 2026 illustrate why teaching materials must be checked against current authorised sources before legal reliance.

CHAPTER 1 MASTERY QUIZ - MULTIPLE CHOICE

Chapter 1 Mastery Quiz - Multiple Choice

1. Anthropocentric environmental value is best described as:
A. value that exists only in non-living things
B. value nature has because of its contribution to human welfare
C. a rule giving ecosystems legal personality
D. a rule requiring every development to be refused

2. Ecocentric reasoning is most closely associated with:
A. intrinsic value in ecological systems
B. taxation of environmental harm
C. private property rights only
D. human convenience as the sole value

3. Christopher Stone's 1972 article is significant because it:
A. enacted the EPBC Act
B. abolished standing rules
C. argued for legal rights for natural objects
D. created Queensland's Planning and Environment Court[50], [51]

4. In Sierra Club v Morton, the majority held that:
A. natural objects automatically had standing
B. Sierra Club lacked standing because it did not allege injury to itself or its members
C. all environmental claims were non-justiciable
D. Disney's project was approved by the Supreme Court[52]

50. Christopher D Stone, 'Should Trees Have Standing? - Toward Legal Rights for Natural Objects' (1972) 45 *Southern California Law Review* 450.
51. *Environment Protection and Biodiversity Conservation Act 1999* (Cth).
52. *Sierra Club v Morton*, 405 US 727 (1972).

5. The best way to state The Crown v Murphy is:

A. every animal is legally the environment

B. the High Court treated statutory meaning as context-dependent and linked turtle use of surrounding land to the relevant environment

C. dictionaries can never be used

D. environmental statutes must always be interpreted ecocentrically[53]

6. Under Environmental Protection Act 1994 (Qld) s 8, "environment":

A. means only land and water

B. excludes people and communities

C. includes ecosystems, resources, places, physical surroundings of people and relevant social/economic/aesthetic/cultural conditions

D. is undefined[54]

7. Acts Interpretation Act 1954 (Qld) s 14A primarily requires:

A. the narrowest possible interpretation

B. an interpretation favouring development

C. the interpretation that best achieves the purpose of the Act

D. use of ministerial speeches in every case[55]

8. Acts Interpretation Act 1901 (Cth) s 15AB deals with:

A. extrinsic material

B. criminal sentencing

C. standing

D. environmental impact statements[56]

53. *The Crown v Murphy* [1990] HCA 42; (1990) 64 ALJR 593.
54. *Environmental Protection Act 1994* (Qld) s 8.
55. *Acts Interpretation Act 1954* (Qld) ss 14A-14B.
56. *Acts Interpretation Act 1901* (Cth) ss 15AA-15AB.

9. A controlled action under the EPBC framework is relevant because:
A. every State approval is automatically federalised
B. an action may require federal approval where a relevant Part 3 prohibition would otherwise apply
C. only Commonwealth agencies can refer actions
D. local government approval replaces federal approval[57]

10. The best professional response to an environmental-law problem is to:
A. start with tertiary teaching material and stop there
B. assume technical terms have ordinary meaning
C. identify facts, jurisdiction, exact law, definitions, purpose, evidence, application and next step
D. rely on one textbook regardless of amendments

57. *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ss 67-69.

ANSWERS AND EXPLANATIONS

Chapter 1 Mastery Quiz - Answers and Explanations

1. B. Anthropocentrism values environmental protection because of its instrumental benefit to humans.

2. A. Ecocentrism recognises intrinsic value in ecological systems and nature.

3. C. Stone argued that legal systems could recognise rights or legally cognisable interests in natural objects.[58]

4. B. The majority required injury to the plaintiff or its members; Sierra Club had not pleaded that injury.[59]

5. B. The case is about contextual statutory meaning and the environmental features surrounding the land.[60]

6. C. Current s 8 is broad and expressly includes ecological, physical and human/social dimensions.[61]

7. C. Section 14A is a purposive interpretation provision.[62]

58. Christopher D Stone, 'Should Trees Have Standing? - Toward Legal Rights for Natural Objects' (1972) 45 *Southern California Law Review* 450.
59. *Sierra Club v Morton*, 405 US 727 (1972).
60. *The Crown v Murphy* [1990] HCA 42; (1990) 64 ALJR 593.
61. *Environmental Protection Act 1994* (Qld) s 8.
62. *Acts Interpretation Act 1954* (Qld) ss 14A-14B.

8. A. Section 15AB regulates the use of extrinsic material in interpreting Commonwealth Acts.[63]

9. B. Controlled-action status links a proposed action to the federal approval regime where Part 3 would otherwise prohibit the action without approval.[64]

10. C. The professional method integrates factual, statutory, interpretive, evidentiary and practical analysis.

63. *Acts Interpretation Act 1901* (Cth) ss 15AA-15AB.
64. *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ss 67-69.

SHORT ANSWER QUESTIONS

Chapter 1 Short Answer Questions

1. Explain the difference between instrumental value and intrinsic value.

2. Why is the anthropocentric/ecocentric distinction best understood as a spectrum?

3. What contribution did Aldo Leopold make to environmental thought?[65]

4. What is the legal significance of Christopher Stone's “Should Trees Have Standing?” for this chapter?[66]

5. Explain the central interpretive lesson from The Crown v Murphy.[67]

6. Why should Environmental Protection Act 1994 (Qld) s 8 be checked in the current authorised legislation rather than copied from older educational material?[68]

7. Explain how Acts Interpretation Act 1954 (Qld) s 14A changes the way a student should approach ambiguous environmental legislation.[69]

8. Why is expert evidence important in environmental law, and what is the lawyer's role in relation to that evidence?

65. Aldo Leopold, *A Sand County Almanac, and Sketches Here and There* (Oxford University Press, 1949).
66. Christopher D Stone, 'Should Trees Have Standing? - Toward Legal Rights for Natural Objects' (1972) 45 *Southern California Law Review* 450.
67. *The Crown v Murphy* [1990] HCA 42; (1990) 64 ALJR 593.
68. *Environmental Protection Act 1994* (Qld) s 8.
69. *Acts Interpretation Act 1954* (Qld) ss 14A-14B.

SHORT ANSWER MODEL ANSWERS

Chapter 1 Short Answer Model Answers

1. Instrumental value is value derived from usefulness to another end, commonly human welfare. Intrinsic value is value that exists independently of usefulness to humans.

2. Both positions can support environmental protection. They differ in justification and in how they respond when environmental protection conflicts with human cost, convenience or development. Real-world positions often fall between the two ends.

3. Leopold's land ethic challenged human moral superiority over nature and described humans as members of an ecological community rather than conquerors of it. The importance is conceptual rather than statutory.[70]

4. Stone attempted to translate ecocentric ethics into legal form by arguing that natural objects could possess legally recognised rights or interests represented through guardians.[71]

5. The meaning of an undefined statutory term must be found contextually. The High Court identified the relevant environment by reference to the land and its surrounding features, including the turtle rookery.[72]

6. Environmental statutes are amended. The current authorised s 8 differs from older wording and is the correct starting point for a present-day legal problem.[73]

70. Aldo Leopold, *A Sand County Almanac, and Sketches Here and There* (Oxford University Press, 1949).
71. Christopher D Stone, 'Should Trees Have Standing? - Toward Legal Rights for Natural Objects' (1972) 45 *Southern California Law Review* 450.
72. *The Crown v Murphy* [1990] HCA 42; (1990) 64 ALJR 593.
73. *Environmental Protection Act 1994* (Qld) s 8.

7. Section 14A requires the interpretation that best achieves the Act's purpose. A student should therefore identify competing interpretations, identify statutory purpose and explain why the preferred construction better advances that purpose.[74]

8. Environmental legal tests frequently depend on scientific facts. Experts provide the technical evidence; the lawyer identifies the statutory test, frames the questions for the expert and explains how the evidence satisfies or fails to satisfy the legal elements.

74. *Acts Interpretation Act 1954* (Qld) ss 14A-14B.

IRAC PROBLEM QUESTIONS

Chapter 1 IRAC Problem Questions

IRAC Question 1 - Undefined “environment” and a turtle rookery

A Queensland local authority is required by a hypothetical older statute to consider whether a proposed coastal subdivision will cause a “deleterious effect on the environment”. The Act does not define environment. Ecologists advise that increased lighting and vehicle movement are likely to reduce nesting success on an adjoining turtle rookery. Advise how a court should approach the meaning of environment.

IRAC Question 2 - Developer near threatened-species habitat

A developer proposes 600 residential lots on land containing potential habitat for a nationally listed threatened species. State planning approval appears achievable. The developer asks whether the State approval is enough to start clearing. Identify the environmental-law steps a lawyer should take before advising that works may commence.

IRAC Question 3 - Professional advice and unlawful clearing

An environmental consultant is retained to “ensure all environmental approvals for clearing are identified”. The consultant advises that no further approval is required. Clearing begins and destroys protected habitat. A regulator alleges that a licence was in fact required. Explain the legal and professional issues that should be investigated before advising the consultant and its director.

IRAC MODEL ANSWERS

Chapter 1 Detailed IRAC Model Answers

IRAC Answer 1 - Undefined “environment” and a turtle rookery

Issue

What does “environment” mean where the governing statute does not define it, and can predicted effects on turtle nesting amount to a deleterious effect on the environment of the proposed subdivision land?

Rule

Begin with the statutory text and context. Where the term is undefined, ordinary meaning may assist, but the provision must be read purposively. In Queensland, Acts Interpretation Act 1954 (Qld) s 14A requires the interpretation that best achieves the Act's purpose. The Crown v Murphy illustrates that the relevant environment is identified by reference to the object or land surrounded or affected and that the turtle rookery can be a feature of that surrounding environment.[75][76]

Application

The subdivision land adjoins a turtle rookery. The ecological evidence links lighting and traffic generated by the proposed use to reduced nesting success. The court should therefore consider whether that predicted change alters a feature of the surrounding coastal environment relevant to the land rather than artificially separating the turtles from their habitat.

Conclusion

There is a strong basis to treat the predicted effect on the rookery as an effect on the relevant environment. The exact conclusion would still depend on the statute's purpose and factual evidence.

IRAC Answer 2 - Developer near threatened-species habitat

Issue

Whether State planning approval alone authorises clearing, or whether additional State or Commonwealth environmental approvals/referrals are required.

Rule

The lawyer must identify all applicable statutory layers. At Commonwealth level, EPBC Act ss 67 and 67A address controlled actions and the prohibition on taking

75. *Acts Interpretation Act 1954* (Qld) ss 14A-14B.

them without the required approval or recognised legal basis; s 68 provides for referral by the person proposing the action. Relevant protected matters include listed threatened species and ecological communities. State legislation and planning controls must also be checked.[77]

Application

Potential habitat for a nationally listed species creates a federal-risk question but does not automatically prove that federal approval is required. The lawyer should obtain current species and habitat information, define the proposed action, commission ecological assessment if necessary, assess likely impacts, review the current referral guidance and determine whether a referral is required or prudent. State clearing, vegetation, water, heritage and other approvals must be mapped separately.

Conclusion

The developer should not be advised that State planning approval alone is sufficient. Further due diligence is required before clearing. The advice should identify approval risk, required studies, referral options, program implications and the risk of enforcement if works commence prematurely.

IRAC Answer 3 - Professional advice and unlawful clearing

Issue

What statutory exposure and professional responsibility may arise where a consultant accepted responsibility for identifying approvals but advised incorrectly and protected habitat was cleared?

Rule

First identify the actual clearing offence or approval requirement and the parties to whom liability can attach under the current legislation. Investigate any executive-officer provisions, accessorial liability, due-diligence obligations and sentencing/remedial powers. The Taylors Beach / Orogen prosecution is a useful historical illustration of the consequences that can follow when a professional adviser accepts a compliance role and gets the approval position wrong.[78]

Application

The retainer wording is important because it may show the scope of responsibility accepted. The lawyer should review the advice, factual assumptions, site information provided, whether the consultant undertook appropriate searches, whether further expert work was required, who made the clearing decision and

76. *The Crown v Murphy* [1990] HCA 42; (1990) 64 ALJR 593.
77. *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ss 67-69.
78. *Gordon Plath of the Department of Environment and Climate Change v Fish; Gordon Plath of the Department of Environment and Climate Change v Orogen Pty Ltd* [2010] NSWLEC 144.

whether the director was personally involved. Separate civil/professional-negligence exposure may also require investigation.

Conclusion

The adviser should not assume liability follows automatically from a wrong answer, but the facts create serious regulatory and professional-risk issues. Immediate steps should include preserving documents, stopping further potentially unlawful works, identifying remediation or regulator-notification obligations and obtaining advice on response strategy.

WEEK 1 APPLICATION / TUTORIAL QUESTIONS

Chapter 1 Tutorial Questions

These questions test the transition from environmental values and definitions to legal analysis. Read the questions first and attempt your own response before turning to the model answers on the following page.

Question 1 — Comparing statutory definitions of “environment”

Find two different Acts, other than those discussed in the Week 1 seminar, from any Australian State or Territory that have “environment” or “environmental” in their title. Compare their definitions of “environment”. What reasons can be advanced for any differences?

Question 2 — Wildlife fight taken to the top

(a) Identify the stakeholders with an interest or role in the development. **(b)** Using the Mineral King / *Sierra Club v Morton* discussion and Christopher Stone’s “Should Trees Have Standing?”, identify stakeholders who may need others to speak for them. **(c)** Explain what it means, in environmental-law terms, to take the dispute “to the federal arena” and seek Commonwealth action. **(d)** If stopping the project is unlikely, explain how an “adequate buffer” or other improvement could be achieved legally.

Question 3 — Environmental ethics and competing development needs

A proposed supermarket in regional Queensland would destroy the only Queensland breeding ground of an endangered legless lizard, and no alternative site or translocation option exists. The nearest supermarket is about 180 km away. Assume there is no governing environmental law and decide the problem purely from an environmental-ethics perspective. Would your answer change if the project were a hospital, affordable housing, the affected species were a koala, or the proposal were agricultural clearing in a developing nation?

WEEK 1 APPLICATION / MODEL ANSWERS

Chapter 1 Tutorial Model Answers

Question 1 — Model answer. The legal lesson is that "environment" is not a universal statutory constant. Compare, for example, the *Environmental Management and Pollution Control Act 1994* (Tas), whose interpretation provisions and statutory objectives operate within a broad pollution-control and environmental-management scheme, with the *Environmental Planning and Assessment Act 1979* (NSW), where "environment" is framed around the surroundings of humans within a planning-and-assessment statute. A lawyer should not simply label one statute "ecocentric" and another "anthropocentric". The better method is to connect the definition to the Act's date, subject matter, objects, operative provisions and regulatory purpose. A broader definition may be needed where the statute regulates pollution, ecosystems and diffuse environmental harm; a planning statute may use a definition that reflects the human and built environment as well as natural systems. The key examination and professional point is: **read the definition with the statutory purpose, then ask what legal work the definition performs in the operative provision you are applying.**

Question 2(a) — Stakeholders. The development illustrates why environmental practice begins with stakeholder mapping. Relevant interests may include the developer; current and future residents; construction and operational employees; commercial participants; Tweed Shire Council; the City of Gold Coast where cross-border effects arise; State decision-makers; the Commonwealth Environment Minister and regulator; local communities using the water system for recreation or drinking water; flora, fauna, habitat, terrestrial and aquatic ecosystems; and environmental organisations advocating for interests that cannot speak for themselves.

Question 2(b) — Representation and standing. The species, habitat and ecological systems cannot commence proceedings themselves under conventional legal personality rules. The Mineral King debate, *Sierra Club v Morton*, 405 US 727 (1972), and Christopher Stone's "Should Trees Have Standing?" show the conceptual problem: who may invoke legal processes to protect nature where the environmental interest is not reducible to ownership or commercial injury? The correct legal answer in a real Australian matter then depends on the standing provisions and review/enforcement pathways in the governing statute.

Question 2(c) — "Federal arena". This means asking whether Commonwealth environmental law is engaged, rather than assuming State or local approval is the end of the matter. Under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), a proposed action may engage a controlling provision if it has, will have or is likely to have a significant impact on a protected matter. The legal inquiry is therefore: identify the protected matter; identify the relevant controlling provision; determine whether referral/approval obligations arise; and consider Commonwealth enforcement if unlawful works are threatened or undertaken.

Question 2(d) — Conditions, mitigation and enforcement. Environmental disputes are not always binary "approve/refuse" contests. A decision-maker may have statutory power to impose enforceable approval conditions requiring buffers, habitat protection, timing restrictions, monitoring, rehabilitation, water-quality controls or other mitigation. A lawyer must identify the exact source and limits of the conditioning power and ensure the condition is sufficiently certain and connected to the statutory purpose. Breach of a valid condition can then create an enforcement issue.

Question 3 — Model reasoning. The point is not to discover one morally "correct" answer. It is to expose how the weight assigned to environmental and human interests changes with the facts. The supermarket scenario pits irreversible extinction and habitat loss against cost-of-living and access to essentials. A hospital strengthens the human-life and health interest. Affordable housing introduces need, social equity and infrastructure consequences. Replacing an obscure lizard with a koala tests whether decision-makers subconsciously value species differently because of cultural, economic or emotional significance. Moving the problem to a developing nation introduces the "North–South" tension between conservation and poverty alleviation, food security, employment and development. In actual legal practice, however, a minister or regulator cannot decide merely on personal values. The decision-maker is constrained by the governing statute, mandatory considerations, protected-matter rules, evidence and legally permissible discretion. That transition —from values to lawful statutory decision-making—is the bridge from Chapter 1 into Chapter 2.

CHAPTER 1 FINAL REVISION

From Student to Lawyer - One-Page Attack Sheet

IF YOU REMEMBER ONLY ONE METHOD

WHAT HAPPENED? -> WHERE? -> WHO IS ACTING? -> WHICH GOVERNMENT LEVEL? -> WHICH ACT? -> WHICH SECTION? -> WHAT DOES THE ACT DEFINE? -> WHAT IS THE PURPOSE? -> WHAT DOES THE INTERPRETATION ACT REQUIRE? -> WHAT DO THE CASES SAY? -> WHAT EVIDENCE IS NEEDED? -> WHAT IS THE CONSEQUENCE? -> WHAT SHOULD THE CLIENT DO NEXT?

Core concepts

- **Anthropocentric:** nature protected because of human benefit.
- **Biocentric:** living things have inherent value.
- **Ecocentric:** ecosystems and nature have intrinsic value.
- **Instrumental value:** value through usefulness.

- **Intrinsic value:** value in its own right.
- **Purposive interpretation:** prefer the construction that best achieves the Act's purpose, subject to the text and statutory framework.

Authorities to know from Chapter 1

- *Sierra Club v Morton*, 405 US 727 (1972) - standing and the rights-of-nature debate.[79]
- *The Crown v Murphy* [1990] HCA 42; (1990) 64 ALJR 593[80] - contextual meaning of “environment”.
- Environmental Protection Act 1994 (Qld) s 8 - current Queensland definition of environment.[81]
- Acts Interpretation Act 1954 (Qld) ss 14A-14B - purpose and extrinsic material.[82]
- Acts Interpretation Act 1901 (Cth) ss 15AA-15AB - Commonwealth purposive interpretation and extrinsic material.[83]
- EPBC Act ss 67-69 - controlled-action/referral framework introduced here and developed later in the book.[84]

PROFESSIONAL ENDPOINT

The chapter is complete when you can do more than define the concepts. You should be able to explain why they matter, find the controlling law, apply the law to facts, identify the evidence still needed, and tell a real client what to do next.

79. *Sierra Club v Morton*, 405 US 727 (1972).
80. *The Crown v Murphy* [1990] HCA 42; (1990) 64 ALJR 593.
81. *Environmental Protection Act 1994* (Qld) s 8.
82. *Acts Interpretation Act 1954* (Qld) ss 14A-14B.
83. *Acts Interpretation Act 1901* (Cth) ss 15AA-15AB.
84. *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ss 67-69.

CHAPTER 1 SOURCES

Bibliography

The consolidated bibliography at the end of the completed book will build cumulatively from these chapter sources and will be arranged in AGLC4 categories.

A Articles / Books / Reports

Bates, Gerry, *Environmental Law in Australia* (LexisNexis Butterworths, 11th ed, 2023)

Carson, Rachel, *Silent Spring* (Houghton Mifflin, 1962)

Leopold, Aldo, *A Sand County Almanac, and Sketches Here and There* (Oxford University Press, 1949)

Seuss, Dr, *The Lorax* (Random House, 1971)

Stone, Christopher D, 'Should Trees Have Standing? - Toward Legal Rights for Natural Objects' (1972) 45 *Southern California Law Review* 450

B Cases

Gordon Plath of the Department of Environment and Climate Change v Fish; Gordon Plath of the Department of Environment and Climate Change v Orogen Pty Ltd [2010] NSWLEC 144

Sierra Club v Morton, 405 US 727 (1972)

The Crown v Murphy [1990] HCA 42; (1990) 64 ALJR 593

C Legislation

Acts Interpretation Act 1901 (Cth)

Acts Interpretation Act 1954 (Qld)

Environment Protection and Biodiversity Conservation Act 1999 (Cth)

Environmental Protection Act 1994 (Qld)

National Environmental Protection Agency Act 2025 (Cth)

CHAPTER 1 RESEARCH

Resources

Gerry Bates, *Environmental Law in Australia* (11th ed, 2023) - prescribed text

Federal Register of Legislation - current Commonwealth Acts, regulations, compilations, commencement and historical versions.

Queensland Legislation - current Queensland Acts, subordinate legislation and authorised historical versions.

AustLII - free Australian judgments and legislation.

National Environmental Protection Agency - current national regulatory information, EPBC assessment and approvals material.

The Crown v Murphy [1990] HCA 42

Sierra Club v Morton, 405 US 727 (1972)

Christopher D Stone, 'Should Trees Have Standing? - Toward Legal Rights for Natural Objects'

Gordon Plath ... v Fish; ... v Orogen Pty Ltd [2010] NSWLEC 144

RESEARCH RULE

Use hyperlinks as navigation aids, not as substitutes for authority. The legal proposition in the text must be supported by its AGLC4 footnote and the current source should be checked before reliance.

End of Chapter 1.

ENVIRONMENTAL LAW

Semester 263

Weekly questions

Perspectives and definitions

Question 1

Find two different Acts (other than those discussed in the Week 1 seminar) from any State/territory in Australia that have 'environment' or 'environmental' in their title.

Consider the definition of 'environment' in them. What reason/s can be advanced for the differences, if any, in the way the Acts define "environment"?

Question 2

This question will require you to do some advanced learning – you will need to explore and become familiar with some environmental law terms and concepts that we will cover later in this subject.

Read the article '*Wildlife fight taken to top*' and answer the following questions:

(a) Identify the various stakeholders with an interest/role in this development.

(b) Think back to the Walt Disney / Mineral King Valley case discussed in the week 1 seminar and Professor Christopher Stone's 'Should Trees Have Standing' article contending that the environment should be granted legal rights:' do you think in the context of the 'Wildlife fight taken to top' scenario there are any identified stakeholders who need others to speak for them?

(c) The article mentions environmentalists taking their fight '*to the federal arena*' and asking the Federal Government to take some action. In the context of environmental law, what is meant by this?

(d) The Tweed Shire Councillor cited in the article acknowledges that they have '[no] *hope of getting the development stopped but we have hope of at least improving it*' and mentions trying to ensure 'an adequate buffer'. Legally, how could this improvement be achieved?

Question 3

Read the article '*Held to ransom*' to gain a sense of contemporary environmental dilemmas. Now consider the following hypothetical scenarios—

Scenario A

Assume the legless lizard is an endangered species.

In a regional town in Queensland, developers propose a supermarket on a site which has recently been discovered to be a breeding ground for the legless lizard. The proposal is impeccable in terms of the usual planning criteria such as need, access, design, car parking, etc. There are no other suitable sites in the locality.

The nearest supermarket is currently approximately 180km away (approximately a 2.5 hour drive). This means that the cost of essential household groceries for residents of the town is considerably more, adding to cost of living pressures.

Assume also that the supermarket development will extinguish the legless lizard's only breeding ground in Queensland, since such a development is wholly inconsistent with the continued existence of legless lizards on the site. There is nothing that could be done to adequately manage any impact on the breeding ground and the fragility of the species is such that that they cannot survive translocation to another site.

If you were the Minister as decision-maker, *purely from an environmental ethics perspective (assume the absence of relevant environmental laws)*, would you approve the supermarket development?

Scenario B

Would your answer differ if the proposed development was a hospital, in circumstances where the nearest hospital is similarly a 2.5 hour drive away?

Scenario C

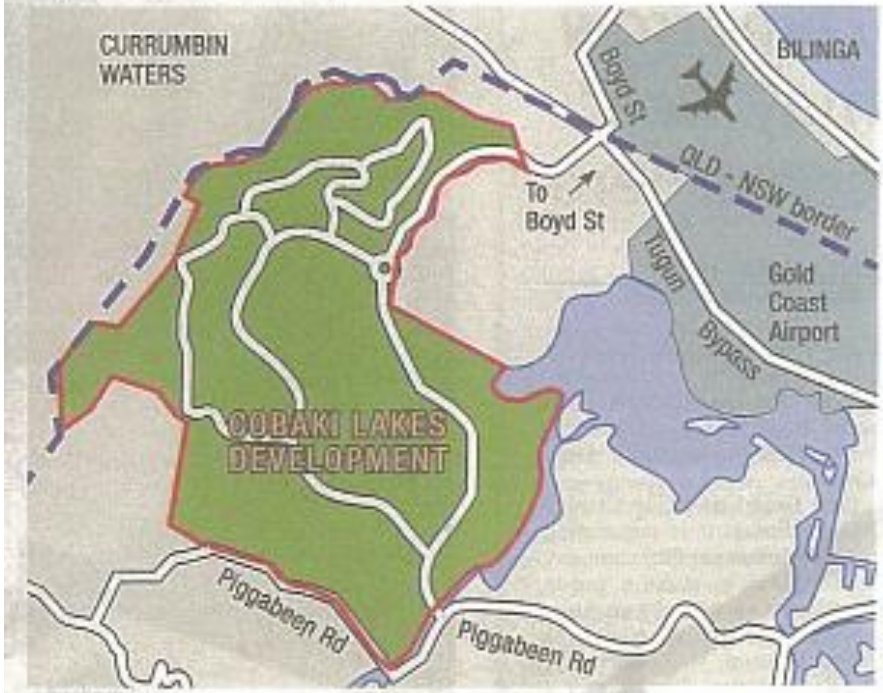
Would your answer differ if the proposed development was for affordable housing?

Scenario D

Would your position in respect of the supermarket development differ if the endangered species was the koala?

Scenario E

Would your answer differ if the scenario was in a developing nation and the development in question was to clear an area for agriculture?



Wildlife fight taken to top

MIKKI TODD
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ENVIRONMENTALISTS are considering taking their fight against the massive Tweed development of Cobaki Lakes to the federal arena.

Construction of core infrastructure at the proposed estate just south of John Flynn Hospital is set to begin as early as July. This follows approval of the first 916 residential lots by the Joint Regional Planning Panel last month.

Tweed Greens councillor Katie Milne said she was disappointed the panel had approved the development application lodged by Leda Developments without taking into account several environmental concerns. Those concerns included water quality in the Cobaki and Terranora broadwater systems and several threatened species, particularly the koala and potoroo.

Cr Milne said a wildlife corridor was essential at Cobaki to connect with a recovery corridor at Currumbin proposed by Gold Coast City Council.

"It is not that we have any hope of getting the development stopped but we have hope of at least improving it," Cr Milne said. "We will be asking the Federal Government to ensure there is an adequate buffer along the NSW-Queensland border which is one of the prime wildlife corridors that we are hoping to protect."

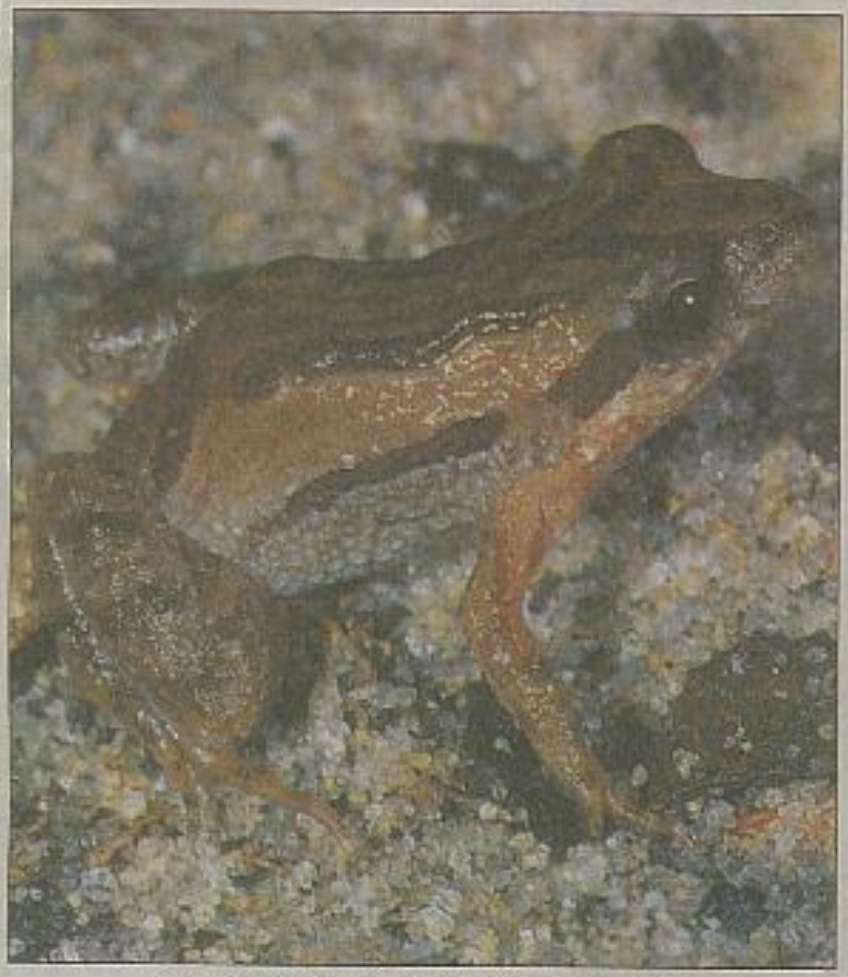
Cr Milne said the current buffer zone had been "whittled down to just a 60 to 70m corridor", but needed to be at least 500m wide to be functional.

Cr Milne said she would seek a meeting with federal MP Justine Elliot to discuss her concerns and would also write to federal Environment Minister Tony Bourke about the issue.

The Cobaki development – which is located on land on the western side of the M1, behind the Tugun Bypass and John Flynn Hospital – is valued at $3 billion and is expected to create 20,000 full-time jobs and 12,000 homes when it is complete.

Its first stage has a $500 million price tag and will employ 3200 people.

Held to ransom



ENDANGERED SPECIES: The wallum froglet

Rare amphibian has developers on hop

By DARYL PASSMORE

THE wallum froglet is only the size of your thumbnail but the mere mention of its name can strike fear into the hearts of developers.

The tiny endangered amphibian stands in the way of plans for a $100 million supermarket and residential development in the northern New South Wales coastal town of Kingscliff.

The NSW Land and Environment Court has ordered a study to ascertain whether the wallum froglet can climb an embankment and get across a road to safety.

If it is part of the same population group as those on the other side of the road, Gales Holdings will get the green light to clear the site and build. If it is a separate colony, as Tweed Shire Council argues, the project will be blocked.

The wallum froglet is said to make a small tinkling sound, but its plight has provided a loud call from environmentalists and wildlife protection groups in case after case.

The Queensland Government's plan for a Tugun bypass road was delayed for months after protests by NSW residents that habitats of the wallum froglet and the wallum sedge frog would be destroyed.

Eventually, the route was altered at the insistence of NSW's then-roads minister Carl Scully, adding about $300 million to the cost, according to Queensland.

The wallum froglet also had a starring role in the successful campaign to stop an $85 million Club Med resort being built at Byron Bay in the mid-90s.

Larissa Waters, a solicitor with the Environmental Defenders Office in Brisbane, says successes are rare.

"We are disappointed that more developments are not stopped when there are significant wildlife impacts," she said.

But Glen Ingram, of Biodiversity Assessment and Management, a Queensland consultancy which prepares expert witness reports for both sides in disputes, said the system is much better at protecting fauna and flora that in previous decades.

"In the '80s there were no environmental impact considerations. In the '70s, you would pull your hair out — no one would listen. Now there is due process to follow and much of the environmental activism is within government departments," he said.

"The major thing that distresses me is that animals have become a political tool on both sides rather than being treated as a genuine concern."

CHAPTER 1 — HIGH-DISTINCTION IRAC MODEL ANSWERS

Issue → Rule and case authority → fact-specific application → strongest counterargument → conclusion and advice.

MODEL ANSWER 1 — Q1 — Comparing definitions of environment in two Australian enactments

Issue

The task is to identify two different environmental statutes beyond the Week 1 examples, compare the definition each legislature adopted, and explain the legal significance of their differences.

Rule

A statutory definition controls the meaning of an expression within its own enactment; it is not automatically portable to another Act. In Queensland, Acts Interpretation Act 1954 (Qld) s 14A; in Commonwealth matters, Acts Interpretation Act 1901 (Cth) s 15AA, emphasise a construction promoting statutory purpose. Compare the broader ecosystem/pollution-control framing of the Environment Protection Act 1986 (WA) with the regulatory objectives, interpretation provisions and environmental impact assessment scheme of the Environment Protection Act 2019 (NT). The precise definition must be checked in each current enactment before quoting it. The High Court in The Crown v Murphy [1990] HCA 42 demonstrates how the relevant statutory setting governs what surrounding environmental features count.

Application

Both enactments address environmental impacts but have distinct legislative histories, institutions and regulatory tasks. Ask whether each definition includes ecological systems, the physical surroundings, human amenity, cultural values or interactions among them; note whether the Act is directed at pollution, impact assessment or approvals. Then relate each listed limb of the definition to a real issue: polluted air, cultural heritage, marine fauna or adverse visual amenity. Broader definitions allow the regulator to examine a wider range of harms, but only if an operative duty or power is engaged; a definition by itself imposes no prohibition.

Strongest counterargument

A superficial answer would conclude that one Act is anthropocentric and the other ecocentric simply from a word or two. That overlooks purpose, exceptions, and operative sections. The question also requires Acts not used in the Week 1 seminar: check the seminar examples before finalising these chosen comparators.

Conclusion, consequence and advice

The correct High Distinction response is a structured comparison of the exact statutory words, their legislative objects and practical consequences, not an assumption that "environment" has one meaning in Australian law. Authority: the two current Acts and their objects/interpretation provisions; The Crown v Murphy; statutory interpretation provisions.

MODEL ANSWER 2 — Q2 — Wildlife fight, stakeholders, representation, Commonwealth power and buffers

Issue

Who has a legally relevant interest in the development described in the prescribed newspaper article, and how might stakeholder representation, Commonwealth jurisdiction and approval conditions alter the project?

Rule

Stakeholder analysis is a method of identifying actors, not a freestanding legal test. The constitutional starting point is Commonwealth and State competence; the EPBC Act protects specified matters, notably threatened species and World Heritage values, through Part 3. Section 68 deals with referral and s 75 the controlled-action screening decision. At common law, standing is distinct from the merits of protecting a species. Sierra Club v Morton, 405 US 727 (1972), and Christopher Stone, “Should Trees Have Standing?”, explain the theoretical debate about who speaks for non-human nature. Protective conditions can be imposed under the governing planning or environmental statute and, where federal approval is required, EPBC Act s 134.

Application

The supplied Gold Coast Bulletin article identifies the Cobaki Lakes development near the NSW–Queensland border, undertaken by Leda Developments, with an initial 916 residential lots endorsed by a joint

regional planning panel. Tweed Greens councillor Katie Milne and environmentalists objected over Cobaki and Terranora water quality, koala and potoroo protection, and a cross-border wildlife movement corridor linking Cobaki with Currumbin restoration land on the Gold Coast. The article contrasts an existing 60–70 metre wildlife buffer with a requested buffer of at least 500 metres. The proposed federal escalation includes approaches to federal MP Justine Elliot and Environment Minister Tony Burke. Stakeholders include the developer, local and regional planners, NSW and Queensland communities, conservation groups, the listed wildlife and their ecosystems, and relevant governments. The environmental actors cannot speak for themselves; others must establish a lawful review, submission or enforcement pathway. A wider buffer, habitat connection and water-protection conditions could be sought through the relevant State planning process or a Commonwealth approval if the protected-matter threshold is met. Note that the article is historical reporting, not proof of the current project approval status.

Strongest counterargument

Neither environmental opposition nor a politician’s support automatically establishes an EPBC trigger. A buffer cannot simply be invented as an enforceable obligation: a consent authority needs a statutory power and rational factual basis. The newspaper article is in fact embedded as an image on page 3 of the supplied Week 1 question PDF; its historical statements are evidence of what was reported, not judicial findings or current government approval records.

Conclusion, consequence and advice

Advise a jurisdictional and ecological investigation, legal review of the approval powers, and negotiated enforceable conditions. The article-specific stakeholder map is supplied above from the actual newspaper clipping. Explain separately the statutory route by which the developer could face enforceable Commonwealth or State buffer conditions, and do not assume advocacy by itself creates standing.

MODEL ANSWER 3 — Q3 — Supermarket, hospital, housing, koala and agriculture: the ethics problem

Issue

In a hypothetical without applicable environmental law, should a decision-maker approve otherwise beneficial development that permanently destroys the only Queensland breeding ground of an endangered legless lizard? How should the five stated variations affect the conclusion?

Rule

This tutorial expressly removes positive statutory law: the “Rule” in IRAC is therefore the chosen framework of environmental ethics rather than a fictional section of an Act. Anthropocentrism emphasises human welfare, including food affordability and access to treatment. Biocentrism regards individual living creatures as morally significant; ecocentrism values the integrity and persistence of species and ecological systems. Intergenerational equity asks what irreversible loss is imposed on future people. ESD and precaution are useful analytical values, not automatically enforceable legal duties in this stipulated non-legal scenario.

Application

Scenario A: cheap and accessible food is substantial in an isolated town, but complete destruction of irreplaceable breeding habitat creates a uniquely irreversible cost. The strongest ecocentric case is refusal or redesign; an anthropocentric case emphasises residents’ existing hardship. Scenario B: a hospital may avert death or serious suffering, so the weight of human need grows markedly. Scenario C: affordable housing advances dignity and social welfare, but ask whether incremental design and location alternatives reduce the harm. Scenario D: changing the legless lizard to a koala should not morally change the intrinsic value of the threatened life simply because koalas are culturally iconic; visibility may influence democratic priorities, not the logic of ecology. Scenario E: subsistence agriculture in a developing nation heightens questions of livelihood, fairness, responsibility and whether an affluent observer may impose costs without offering alternatives. For each scenario, explain the chosen ethical principle and any fact that would change the result.

Strongest counterargument

A credible opposing answer may prioritise health in B and food security in A while another refuses all irreversible extinctions. There is no single mandatory ethical outcome; unreasoned “development always wins” and “nature always wins” answers miss the assessment. Distinguish the

stipulated disappearance of a Queensland breeding ground from global extinction unless the facts establish that.

Conclusion, consequence and advice

State the decision for every scenario and defend it openly. A strong answer weighs irreversibility, necessity, alternatives, distribution of burdens and the different ethical lens. If the problem were legal rather than purely ethical, identify potentially engaged protected matters separately and apply the relevant statutory test.

AUTHORITATIVE RESEARCH LINKS

The links below use official sources. Section references in model answers identify the exact rule; the user should consult the authorised compilation and current decision notice for that rule.

EPBC Act (24 August 2026)

Nuclear Facilities Prohibition Act 2007 (Qld)

National Heritage—former High Court

EPBC Public Portal

Basin Plan review (MDBA)

Reform implementation status

Significant Impact Guidelines 1.1

Brisbane Stadium decision 2026/10472

Sydney Opera House approvals

Central Queensland Coal EIS

CHAPTER 2

ROLES AND RESPONSIBILITIES FOR ENVIRONMENTAL REGULATION

Federalism, constitutional power, cooperative regulation and the EPBC Act — learning how to identify the correct government, statute, decision-maker and protected matter before advising a client.

THE PROFESSIONAL QUESTION

When a client asks, “Can we do this project?”, an environmental lawyer cannot begin with a yes or no. The first task is jurisdictional mapping: **who has legal authority over the land, the actor, the activity and the environmental impact?** In Australia the answer may involve Commonwealth, State and local government at the same time.

2.1 Why roles and responsibilities come before approval analysis

Environmental regulation in Australia is layered. A development may require local planning approval, State environmental authorisation and Commonwealth approval under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act). Those regimes do not become relevant merely because an activity is “environmental”. They become relevant because a Constitution, statute, regulation, planning instrument or delegation gives a particular government or decision-maker legal power.

This is why issue spotting in Environmental Law starts with more than the environmental harm. Suppose a corporation proposes a port, mine, subdivision, road, energy project or tourism development. The lawyer must identify: the site and tenure; the proponent; the activity; the environmental receptors; whether a Commonwealth place or Commonwealth agency is involved; whether a matter of national environmental significance (MNES) may be affected; which State statutes regulate the activity; which local planning instruments apply; and whether any law is inconsistent with another.

CHAPTER 2 — THE LECTURER'S COMPLETE TEACHING NARRATIVE

2A. Begin with jurisdiction: who has legal authority to do what?

A developer calls to say: ‘Council has approved our project. We are ready to start.’ A lawyer cannot safely answer until the different layers of Australian government are separated. Australia is a federation. The Commonwealth, States and Territories exercise powers from different legal sources; local councils exercise authority conferred by State legislation. The Constitution does **not** contain a general Commonwealth head of power labelled 'the environment'. That does not make Commonwealth environmental regulation invalid. Instead, Parliament uses constitutional powers directed at trade and commerce, external affairs, corporations, Commonwealth places and other subjects. State planning and environmental laws commonly operate alongside the Commonwealth EPBC Act. A single project can lawfully need multiple approvals because each approval addresses a different regulatory interest.

The constitutional method begins with the power distribution. **Sections 107 and 108 of the Australian Constitution** preserve State legislative powers and continuing State laws subject to the federal constitutional structure; **s 51** contains numerous express Commonwealth legislative powers, generally concurrent with State power; **ss 52 and 90** identify important exclusive Commonwealth subjects; and **s 109** gives valid Commonwealth law priority when inconsistent with State law. Do not confuse a concurrent Commonwealth power with a general power to invalidate all State regulation. Both statutes may operate until there is a legally cognisable inconsistency. Nor does a Commonwealth Minister's decision under the EPBC Act become a general planning permission under Queensland law.

Local government is practically important but is not an independent sovereign under the federal Constitution. In Queensland, council powers arise under legislation including the **Local Government Act 2009 (Qld)** and **Planning Act 2016 (Qld)**, alongside local planning instruments and relevant environmental provisions. Councils may assess land-use proposals, impose conditions and manage local infrastructure; particular environmental functions may be administered by or delegated to local government. In an exam, always identify *which* council power or approval mechanism matters. A bare reference to ‘council control’ does not establish the source of legal authority.

2B. Case study: Commonwealth trade power and environmental ends

In **Murphyores Incorporated Pty Ltd v Commonwealth** (1976) 136 CLR 1, companies mining mineral sands on Fraser Island sought Commonwealth export permission for the minerals. The Minister considered environmental consequences when dealing with export controls grounded in **Constitution s 51(i)**, the trade-and-commerce power. The miners argued, in substance, that environmental considerations lay outside an export-control law. The High Court rejected the idea that a trade-and-commerce law becomes unconstitutional merely because its administration serves an environmental purpose. If the law is supported by the head of power, environmental policy may inform its exercise within the bounds of the law.

The teaching point is about **constitutional characterisation**. Ask whether the law, viewed according to its legal operation and effect, is with respect to interstate or overseas trade and commerce. Do not ask simply what political purpose motivated Parliament. The environmental effect may be substantial; that does not negate a valid constitutional connection. At the same time, *Murphyores* is not authority for the Commonwealth having unlimited environmental power: each federal scheme still requires a constitutional foundation.

For example, an exporter needs a federal permission to export a resource. The Minister has statutory discretion, and the statute lawfully permits environmental matters to be assessed. The exporter cannot defeat that assessment merely by describing the trade power as economic. In giving advice, however, check the *actual export statute and criteria* applicable today; the historical Customs Act provision in *Murphyores* is not a substitute for current law.

2C. Case study: can a State protect wildlife without violating free interstate trade?

Cole v Whitfield (1988) 165 CLR 360 concerns Tasmanian restrictions on the possession and sale of undersized crayfish. The trader acquired crayfish from South Australia that met South Australian rules but did not meet Tasmania's prescribed minimum size. He contended that enforcement of the Tasmanian rule contravened **Constitution s 92**, which guarantees freedom of interstate trade and commerce. The High Court re-examined s 92 and held that its protection was directed against **discriminatory burdens of a protectionist kind**. A conservation measure is not invalid merely because it affects goods moving between States.

The distinction is both legally and commercially important. Ask first whether interstate trade is burdened, secondly whether the burden is discriminatory, and thirdly whether

the discrimination is protectionist rather than a genuinely non-protectionist conservation measure. Evidence about the ecological purpose, application and structure of the rule matters. A neutral size limit designed to preserve breeding stock can operate quite differently from a rule designed to favour local industry. Students should not recite 'all interstate trade must be absolutely free'. The case supplies a workable constitutional analysis accommodating legitimate environmental regulation.

2D. Why treaties matter: the Tasmanian Dam Case in depth

In **Commonwealth v Tasmania** (1983) 158 CLR 1, the proposed Gordon-below-Franklin hydro-electric project threatened an area whose conservation attracted World Heritage protection. Commonwealth legislation restricting the project was challenged as an intrusion into State responsibilities. The High Court upheld relevant Commonwealth protections, including reliance on the **external affairs power, Constitution s 51(xxix)**, associated with Australia's international obligations. The significance is not that every environmental issue has automatically become a federal matter; it is that the subject of Australia's genuine international obligations can support federal legislation even when the activities occur physically within a State.

This is why the EPBC Act's World Heritage protection is constitutionally intelligible. Australia participates in the **Convention Concerning the Protection of the World Cultural and Natural Heritage (1972)**. Parliament legislates domestically for the protection of declared World Heritage properties, notably through EPBC Act **ss 12–15A**, with the particular offence and civil penalty provisions to be read in context. The Convention and the Act occupy distinct legal roles. The Convention supplies international commitments and a constitutional connection; the Act specifies enforceable domestic prohibitions, approvals and procedural duties.

Compare that to National Heritage protection, which does not depend on a matching international treaty for every protected place. EPBC Act **ss 15B–15C** contain carefully drafted coverage and constitutional connections. The relevant provisions may address constitutional corporations, Commonwealth bodies or actions connected with interstate or overseas trade as well as other legislative hooks. The lecturer's Week 4 tutorial stresses why words identifying *who may act* matter: they can be constitutional limits, not drafting decoration. An exam answer should examine the particular person and action before applying the restriction.

2E. Corporate activity and Commonwealth places

Under **Constitution s 51(xx)**, the Commonwealth can legislate with respect to foreign, trading and financial corporations within the constitutional meaning. Modern

development commonly involves trading corporations, making that power practically important. But a small private landholder may present different facts from a large commercial proponent. A practitioner identifies the actual entity—individual, company, State department, local council or Commonwealth authority—and checks the controlling provision's constitutional wording.

Section 52(i) concerns Commonwealth places. The course uses Commonwealth land and airports to show that ordinary State planning law cannot simply be assumed to apply in the same way as privately held suburban land. The **Commonwealth Places (Application of Laws) Act 1970 (Cth)** may apply State laws as Commonwealth laws in particular circumstances. At airports, Commonwealth legislation and applicable regulatory instruments may displace or modify ordinary State development requirements. The right answer is therefore not 'all State law always applies' or 'no State law can ever apply'. Read the applicable federal site-specific enactment, the proposed activity and the source of the purported State power.

Offshore jurisdiction requires equal care. The course distinguishes State coastal waters and Commonwealth marine areas, referring to the Offshore Constitutional Settlement and the **three-nautical-mile** coastal-water concept. EPBC Commonwealth marine-area protection engages specific geographic and environmental criteria. Use official maps and the current statutory definitions; never assume that all ocean water anywhere near Queensland is the same jurisdiction or that a project outside a marine-area boundary is incapable of affecting protected marine values.

2F. Section 109 is an inconsistency rule, not a convenient shortcut

Suppose Queensland prohibits a particular activity and the Commonwealth has authority to approve a project with specified environmental impacts. A student may say the Commonwealth approval automatically prevails. That is not enough. **Section 109** is engaged only if valid federal and State laws are *inconsistent*. The lawyer must identify the federal and State rules, their application to the same facts, and whether simultaneous obedience is possible or whether the federal law intends to cover the field. Federal approval often means only that the federal EPBC Act obstacle has been dealt with; it does not necessarily confer a positive entitlement to ignore State planning, land-use or safety controls.

The **Nuclear Facilities Prohibition Act 2007 (Qld)** tutorial is deliberately designed to make students read the provisions in sequence rather than announce a

constitutional answer from memory. **Section 4(1)** states that the Act binds persons including the State and, to the extent of Queensland's legislative power, the Commonwealth. **Section 7(1)** generally prohibits construction or operation of a nuclear facility; **s 7(2)(a)** excludes facilities for storage or disposal of radioactive waste from medical or research use, and other exceptions appear in s 7(2). Section 8 prevents an ordinary development approval from authorising prohibited construction. The Schedule's definition identifies what is a 'nuclear facility'.

Apply to the hypothetical. The Commonwealth's proposed power-generation nuclear reactor falls within the statutory definition; the general prohibition is engaged unless Commonwealth immunity, constitutional invalidity or inconsistent valid Commonwealth law alters the result. The proposed waste facility used for medical material falls within the **express s 7(2)(a) exception** on the supplied facts, so do not treat both facilities alike. A federal contract with a private operator, without more, does not prove that Queensland law has been rendered inoperative. Work through actor, definition, prohibition, exception, Commonwealth-State interaction and any further EPBC nuclear-action requirements in that order. Check the legislation's current text before stating a final advice, rather than treating public statements about nuclear policy as law.

2G. The EPBC Act and the nine national environmental matters: what each really means

The **Environment Protection and Biodiversity Conservation Act 1999 (Cth)** is the central Commonwealth statute for the course. The classic nine matters of national environmental significance (MNES) studied in the weekly seminars are: **World Heritage properties, National Heritage places, Ramsar wetlands, listed threatened species and ecological communities, listed migratory species, the Commonwealth marine environment, the Great Barrier Reef Marine Park, nuclear actions, and water resources affected by certain coal seam gas and large coal mining developments**. These are not nine identical categories. Some protect the *values* of places; some protect particular listed species and ecological communities; some concern *the environment* of a marine area; and some are defined by the *type of action* and environmental effect.

A lawyer must first identify a potentially protected matter and then locate the applicable **Part 3 controlling provision**. For example, **ss 12–15A** deal with World Heritage, **ss 15B–15C** National Heritage, **ss 16–17B** Ramsar wetlands, **ss 18–18A** listed threatened species and communities, **ss 20–20A** migratory species and **ss 22–22A** nuclear actions. Do not describe s 18A alone as the whole EPBC threatened-species regime: it must be read with s 18 and applicable approvals and

exemptions. The Great Barrier Reef Marine Park and water-resource triggers have separate provisions. Identify the listed matter from the correct database and read the current provisions and any amendments, rather than using only an older university slide.

Koalas and other mammals demonstrate why common names are insufficient. The national listing applies to a specified species, subspecies, population or ecological community, sometimes within a defined geographic area. For a koala, the relevant listed populations and their protection status should be checked in official listing instruments and the **Species Profile and Threats (SPRAT) database**. A Tasmanian devil has a separate listing. The general words 'kangaroo' and 'wombat' do not identify one nationally listed taxon: there are different species and conservation categories. The correct answer begins by identifying the precise scientific name, taxonomic entity and protected status; it does not assume every familiar native animal is an MNES.

The Antarctic minke whale, **Balaenoptera bonaerensis**, illustrates overlapping forms of protection: the relevant EPBC listings and cetacean protections should be distinguished. When a species moves internationally, the **Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention)** and migratory bird agreements may be relevant. Protection cannot be inferred merely because the animal is capable of movement; the applicable statutory listing is the operative source.

2H. Search tools are starting points, not substitutes for legal advice

The Week 2 and 3 seminars introduce **SPRAT**, the **Protected Matters Search Tool (PMST)**, the Australian Heritage Database and the EPBC public referrals portal. The tools serve different purposes. SPRAT supplies species and ecological-community listing information. The PMST maps potentially relevant protected matters around a location. Heritage databases establish listed places and values. The EPBC referrals portal records submitted projects, controlled-action determinations, assessment approaches and approvals. Students must not confuse a tool's preliminary spatial prediction with a final project-specific legal finding. PMST may indicate possible habitat based on available records; a site survey may reveal more, less or different information.

The lecturer's practical message is to connect the legal issue to the right professional expertise. If a proposed road traverses mapped habitat, obtain ecological advice about the species' actual distribution, survey timing and likely impact. If a project

affects a river, obtain hydrological modelling rather than assuming effects stop at the boundary. If a heritage-listed building is being redeveloped, check the register entry's **protected values**, not merely the age of its facade. This is why the former courthouse exercise requires identifying whether the building is on a relevant National or World Heritage list and what part of the proposal may affect its values. Being historically important in an ordinary sense is not itself enough to trigger every federal heritage control.

2I. Cooperative federalism as a working system

Environmental impacts do not respect political borders. The course discusses the **1992 Intergovernmental Agreement on the Environment**, the **1997 COAG Heads of Agreement**, and the **Murray–Darling Basin** as illustrations of why Commonwealth and States coordinate. These agreements are important institutional and policy instruments; do not automatically treat an intergovernmental statement as if it were enforceable against an individual developer in the same way as an Act. The EPBC Act permits formal bilateral arrangements to reduce unnecessary duplication of assessments, which becomes central in Chapter 5. Coordination changes the *process*, but does not inherently extinguish the Commonwealth's separate statutory decision.

The Murray–Darling Basin illustrates the problem. Rivers cross jurisdictional borders while irrigation, agricultural production, biodiversity, regional communities and water quality depend on a shared resource. The **Water Act 2007 (Cth)** and the **Basin Plan 2012** operate within this federal policy setting. When asked for the Basin Plan's *current status*, students must distinguish its legal existence, subsequent amendments, policy implementation, water-recovery progress and contemporary political claims. Historical lecture statistics are not necessarily current; a proper answer should identify the plan and its governing law, then verify recent implementation claims from the Murray–Darling Basin Authority or official government reports.

2J. Complete method for a federal environmental problem

Consider a mining company proposing an export-linked mine, access road and port operation in Queensland. First, draw an **actor/action table**: company mining; separate State agency road; local government servicing; and port operator loading. Secondly, identify Commonwealth constitutional hooks and State statutory powers. Thirdly, assess each action against the EPBC protected matters and relevant State planning and environmental requirements. Fourthly, ask whether one project forms part of a larger action and whether downstream consequences are in reasonable

contemplation; Chapters 4 and 5 supply the detailed referral rules. Fifthly, identify what information must be obtained: fauna surveys, water modelling, heritage reports, approvals register searches and discussions with regulators.

A useful final paragraph to the client is: ‘A council approval does not establish that all environmental requirements are met. The proposal may require separate State and Commonwealth permissions, and the referral question turns on the current protected listings and evidence of significant impact. Before beginning work, we should verify the protected-matters searches, obtain the specialist reports identified above and settle the sequence of applications.’ This is the difference between reciting three levels of government and providing competent environmental legal advice.

Primary research and course alignment

Course basis. Week 2 Seminar transcripts; Week 2 university slides; Tutorial 2 discussed in Week 3; primary legislation and identified judgments. This expanded teaching narrative is designed to be studied alongside the original university tutorial questions and the separate answers in this book.

Important: Current legislation controls where slide material predates the 2026 amendments. The present narrative explains the course approach; transitional application must be checked for actual projects.

- EPBC Act
- Environment Protection Reform Act 2025
- EPBC Regulations 2025
- DCCEEW 2026 reform status

PROFESSIONAL METHOD: CLIENT + OBJECTIVE → SITE / TENURE → ACTOR → ACTIVITY → IMPACT → LEVEL(S) OF GOVERNMENT → CONSTITUTIONAL / STATUTORY SOURCE OF POWER → EXACT PROVISION → DECISION-MAKER → APPROVAL / CONDITION / PROHIBITION / ENFORCEMENT PATHWAY.

2.2 Australia's federal structure

Australia is a federation. The Constitution distributes legislative power between the Commonwealth and the States. The starting point is the *Commonwealth of Australia Constitution Act*. The environmental-law significance is immediate: there is no single general Commonwealth "environment power". Commonwealth environmental legislation therefore depends on one or more constitutional heads of power.

Question	Legal source	Why it matters to environmental advice
What powers remain with the States?	Constitution ss 107–108	States retain broad law-making capacity except where the Constitution gives exclusive power to the Commonwealth or another constitutional limitation applies.
What powers are exclusive to the Commonwealth?	Constitution ss 52 and 90	Commonwealth places, parts of the Commonwealth public service and customs/excise can create distinct federal regulatory pathways.
What powers are shared?	Constitution s 51	Many Commonwealth environmental laws are supported by concurrent heads of power such as trade and commerce, corporations and external affairs.
What if Commonwealth and State laws are inconsistent?	Constitution s 109	The Commonwealth law prevails to the extent of inconsistency. The State law is not destroyed; it is inoperative to that extent while the inconsistency remains.

Lawyer's issue-spotting trigger. When facts mention Commonwealth land, an airport, defence facility, a Commonwealth department, interstate trade, a corporation, a treaty, an internationally protected species or heritage place, or inconsistent State/Commonwealth requirements, ask immediately which constitutional head of power and which federal statute are engaged.

2.3 Local government: powerful in practice, but not a third constitutional sovereign

Local government is not separately recognised as a law-making tier in the Australian Constitution. Its existence and powers derive from State legislation. In Queensland, relevant sources include the *Local Government Act 2009* (Qld), the *Planning Act 2016* (Qld), local planning instruments and, in some contexts, delegated or devolved functions under the *Environmental Protection Act 1994* (Qld).

Historically councils were associated with “roads, rates and rubbish”. Modern environmental practice is much broader. Local planning schemes, development assessment, vegetation controls, stormwater, local laws and infrastructure decisions can make local government the first regulator a property developer encounters. The legal source remains State legislation, which means State law defines the extent of local power and State supervision.

2.4 Commonwealth places and Commonwealth immunity

Section 52(i) of the Constitution gives the Commonwealth exclusive power over places acquired by the Commonwealth for public purposes with State consent. Airports and defence facilities are classic environmental-law examples. State legislation may state that it binds the Crown or even the Commonwealth “so far as Parliament permits”, but that wording cannot expand State legislative power beyond constitutional limits.

The practical lesson is to identify **tenure and legal status** before assuming a State planning or environmental statute applies. Commonwealth legislation may expressly or impliedly displace State law, and s 109 may make an inconsistent State law inoperative. Conversely, Commonwealth legislation can adopt or apply State rules. Never advise from labels such as “airport land” alone; identify the legal interest, the federal statute and any express application or exclusion provisions.

2.5 Marine jurisdiction and the Offshore Constitutional Settlement

Marine regulation demonstrates how jurisdiction can be geographically divided. The *Seas and Submerged Lands Act 1973* (Cth) asserted Commonwealth sovereignty over Australia’s territorial sea. The Offshore Constitutional Settlement later allocated title and legislative arrangements for coastal waters to the States and Northern Territory, supported by the *Coastal Waters (State Title) Act 1980* (Cth) and *Coastal Waters (State Powers) Act 1980* (Cth).

For a practitioner, the question is spatial: where exactly is the activity or impact? A project near the coast may cross local, State coastal-water and Commonwealth marine jurisdictions. Mapping is therefore legal analysis, not merely background geography.

2.6 There is no express Commonwealth “environment” power

Section 51 contains many express heads of Commonwealth legislative power, but “the environment” is not one of them. That does not mean the Commonwealth lacks environmental power. The High Court has interpreted several heads of power broadly enough to support laws with environmental objectives where the law can properly be characterised as a law with respect to the constitutional subject.

KEY HEADS OF POWER

s 51(i) trade and commerce; **s 51(xx)** foreign, trading and financial corporations; **s 51(xxix)** external affairs; plus other powers including taxation, fisheries and quarantine in appropriate contexts.

2.7 Trade and commerce: *Murphyores*

Murphyores Inc Pty Ltd v Commonwealth [1976] HCA 20; (1976) 136 CLR 1

Facts. Murphyores held Queensland leases to mine mineral sands on Fraser Island (K’gari). Export of the minerals required Commonwealth approval under customs legislation. The Commonwealth Minister deferred export approval pending inquiry into environmental effects.

Issue. Could a law supported by the trade and commerce power be administered by taking environmental considerations into account?

Principle. The High Court accepted that if the law is properly characterised as a law with respect to trade and commerce, environmental considerations do not make it constitutionally invalid merely because environmental protection is the practical objective.

Why it matters. Constitutional characterisation asks whether the law is sufficiently connected to a head of power, not whether environmental protection is the sole or dominant policy purpose. For advisers, this explains how Commonwealth control over exports and interstate/overseas trade can influence environmentally significant projects.

2.8 Section 92 and conservation: *Cole v Whitfield*

Cole v Whitfield [1988] HCA 18; (1988) 165 CLR 360

Tasmanian rules imposed minimum-size requirements for crayfish. The High Court held that s 92 prohibits discriminatory burdens of a protectionist kind. The Tasmanian rule burdened imported crayfish, but the same requirement applied to local crayfish and the conservation object could not effectively be achieved by regulating only locally caught stock.

Professional use. If a State environmental law affects interstate trade, do not assume s 92 invalidates it. Ask whether the burden is discriminatory in a protectionist sense and examine the law's practical operation and legitimate non-protectionist purpose.

2.9 External affairs and the Tasmanian Dam Case

Commonwealth v Tasmania [1983] HCA 21; (1983) 158 CLR 1

Facts. Tasmania supported construction of a hydro-electric dam in the Franklin/Gordon river system. The Commonwealth relied on legislation protecting World Heritage properties after Australia had ratified the World Heritage Convention.

Issue. Could the Commonwealth use the external affairs power in s 51(xxix) to implement international environmental obligations in an area otherwise falling within State responsibility?

Outcome and principle. A majority upheld key Commonwealth provisions. The case established the major practical significance of the external affairs power for environmental regulation and confirmed that treaty implementation can support Commonwealth legislation within constitutional limits.

Why it matters. When facts identify a World Heritage property, Ramsar wetland, migratory species or another international environmental obligation, the lawyer should connect the treaty dimension to the statutory provision implementing it. The treaty itself is not automatically self-executing domestically; the question is what Australian legislation gives it legal effect.

2.10 Corporations power

Section 51(xx) supports laws with respect to foreign corporations and trading or financial corporations formed within Australia. In the Tasmanian Dam litigation, the corporations power also supported provisions directed to the Hydro-Electric Commission as a trading corporation. For modern practice this matters because many environmentally significant actors are corporations: developers, miners, energy companies, banks and infrastructure operators.

The method is not “corporation = Commonwealth can regulate anything”. The lawyer must identify whether the entity falls within the constitutional category and whether the statutory provision is sufficiently connected to the corporation or its activities.

2.11 Cooperative federalism: why governments cooperate instead of litigating every overlap

Although s 109 provides a constitutional rule for inconsistency, environmental regulation cannot function efficiently if every overlap becomes a constitutional contest. Cooperative federalism describes arrangements through which Commonwealth, State, Territory and local-government interests are coordinated through agreements, accredited processes, national measures and shared programs.

The 1992 Intergovernmental Agreement on the Environment and the 1997 COAG Heads of Agreement helped shape a national division of responsibility and influenced the architecture later reflected in the EPBC Act. These agreements are important historically and institutionally even where they are not themselves directly enforceable as legislation.

2.12 Murray–Darling Basin: cooperative federalism under pressure

The Murray–Darling Basin crosses Queensland, New South Wales, Victoria, South Australia and the ACT. Water extraction, agriculture, communities and ecological health therefore cannot be managed coherently by one State acting alone. The *Water Act 2007* (Cth) established a federal statutory framework including the Murray–Darling Basin Authority and the Basin Plan.

As at September 2026, implementation remains active. The Water Amendment (Restoring Our Rivers) Act 2023 extended key deadlines, including the 450 GL additional environmental-water target to December 2027. Current Commonwealth reporting in 2026 records ongoing water recovery and a 2026 Basin Plan Review. The teaching point is broader than one set of numbers: cooperative schemes evolve, so

legal advisers must distinguish the statutory framework from current implementation policy and then verify both.

2.13 The EPBC Act: Australia's principal Commonwealth environmental statute

The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) consolidates major elements of Commonwealth environmental regulation. The course uses the Act repeatedly because it provides a structured way to ask whether a proposed action engages nationally protected environmental matters.

Do not begin an EPBC problem by jumping to "approval". Begin with the jurisdictional trigger. Identify the action, the protected matter, the impact and the controlling provision. The current authorised compilation must be checked because the EPBC framework has been amended over time.

2.14 Matters of National Environmental Significance (MNES)

The classic EPBC structure recognises nine categories of MNES. The Chapter 2 task is to learn what they are and how to locate the controlling provision; detailed assessment and approval procedure is developed later.

MNES	Key EPBC Act references used in this chapter	Issue-spotting trigger
World Heritage values	ss 12, 15A	World Heritage property and significant impact on listed values.
National Heritage values	ss 15B, 15C; pt 15 heritage provisions	National Heritage List place such as the former High Court at 450 Little Bourke Street.
Ramsar wetlands	ss 16, 17B	Declared Ramsar wetland and potential impact on ecological character.
Listed threatened species and ecological communities	ss 18, 18A; s 178 species list	Habitat or population of a nationally listed threatened species/community.
Listed migratory species	ss 20, 20A; s 209	Migratory fauna protected through international agreements.
Nuclear actions	ss 21–22	Reactor, uranium mining/milling, spent fuel, specified radioactive-waste facilities.
Commonwealth marine area	ss 23–24A	

MNES	Key EPBC Act references used in this chapter	Issue-spotting trigger
		Action in, or impacting, the Commonwealth marine environment.
Great Barrier Reef Marine Park	ss 24B–24C	Action in or affecting the Reef Marine Park environment.
Water resources — unconventional gas / large coal mining	ss 24D–24E	Large coal mining or unconventional gas action affecting a water resource.

2.15 “Controlled action” thinking

The controlling provisions generally prohibit taking an action that has, will have or is likely to have a significant impact on the relevant protected matter unless an applicable approval, exemption or other statutory pathway exists. That means a lawyer must distinguish four questions:

1. **Is there an “action”?**
2. **Is a protected matter engaged?**
3. **Is the impact significant or likely significant under the relevant statutory framework?**
4. **What procedural step follows before the action can lawfully proceed?**

The Protected Matters Search Tool (PMST) is a useful due-diligence tool for identifying potential protected matters in or around a project area. It is indicative, not exhaustive. A PMST report is evidence-gathering, not a legal conclusion that referral is or is not required.

2.16 Commonwealth law does not automatically replace State and local law

A recurring client mistake is to ask, “If I get the federal approval, am I finished?” Usually not. Commonwealth, State and local requirements can operate concurrently. The EPBC framework contains mechanisms intended to reduce duplication, but federal environmental approval does not ordinarily erase separate planning, pollution, heritage, vegetation or licensing requirements imposed under State or local law.

> **Exam and practice trap.** Do not treat “approval” as one permission. Build an approvals matrix. For each approval or prohibition record the jurisdiction, statute,

section, regulator, trigger, application/referral step, decision criteria, conditions, review rights and enforcement consequences.

2.17 From issue spotting to advice: four recurring client perspectives

Client	First questions	Typical legal focus
Developer / corporation	What can stop or delay the project? What approvals are needed? What studies must be commissioned?	Jurisdiction, referrals, approvals, conditions, sequencing, due diligence, finance and enforcement risk.
Government / regulator	What power do we have? What process must we follow? What evidence supports the decision?	Statutory authority, mandatory considerations, procedural fairness, rationality, conditions and enforcement.
Community / environmental organisation	What protected matter or legal error exists? Who has standing? What remedy is available?	Standing, referral, review, injunction, judicial review, merits review where available and enforcement pathways.
Board / C-suite / financier	What is the material regulatory risk and what should happen before commitment of capital?	Approval certainty, timing, conditions, liabilities, disclosure, contractual allocation and project-governance controls.

2.18 Chapter 2 synthesis

THE CHAPTER 2 DECISION TREE

WHO IS THE CLIENT? → WHAT ACTION IS PROPOSED? → WHERE? → WHO OWNS / CONTROLS THE LAND? → WHICH LEVELS OF GOVERNMENT HAVE POWER? → WHICH CONSTITUTIONAL HEAD SUPPORTS COMMONWEALTH INVOLVEMENT? → WHICH STATE / LOCAL LAWS ALSO APPLY? → IS AN MNES PRESENT? → WHICH CONTROLLING PROVISION? → WHAT EVIDENCE SHOWS SIGNIFICANT IMPACT? → WHAT REFERRAL / APPROVAL / CONDITION / ENFORCEMENT PATHWAY FOLLOWS? → WHAT SHOULD THE CLIENT DO NOW?

TUTORIAL INTEGRATION — FROM DATABASE SEARCH TO LEGAL ADVICE

2.19 What the Week 3 tutorial adds to Chapter 2

The first hour of the Week 3 seminar returns to the Week 2 questions and shows how the Chapter 2 rules are actually used. The important lesson is methodological. An environmental lawyer does not answer an EPBC Act question by naming a species, opening a database and stopping at the search result. The lawyer moves from the facts to the statutory category, checks the legal source of the listing, identifies any geographic or population limitation, and then connects the result to the controlling provision and the client's proposed action.

FACTS → IDENTIFY POSSIBLE MNES → CHECK PRIMARY LEGAL SOURCE → USE SPRAT / HERITAGE DATABASE / PMST AS RESEARCH TOOLS → READ THE LISTING SCOPE CAREFULLY → IDENTIFY THE CONTROLLING PROVISION → TEST THE PROPOSED ACTION AND IMPACT → VERIFY ON THE GROUND WHERE NECESSARY → ADVISE THE CLIENT.

2.20 SPRAT is a research interface, not a substitute for the legal source

The tutorial uses the **Species Profile and Threats (SPRAT) database** to investigate threatened and migratory species. This is the practical tool students will repeatedly use, but the lecturer emphasised an important lawyer's habit: the statutory lists and instruments are the primary legal source. SPRAT is the convenient interactive interface that helps you identify the listed species, category, distribution, listing history and recovery information.

> **Professional habit.** Use SPRAT to find the answer efficiently, but when the legal consequence matters, confirm the result against the current EPBC Act listing instrument or other primary source. Read the detail, not merely the species name.

The koala example demonstrates why. A search may show that the koala is listed as endangered, but the protected listing is geographically confined to the relevant populations in Queensland, New South Wales and the Australian Capital Territory. A lawyer advising about a project must therefore ask not only *"Is the species listed?"* but also *"Is this population, subspecies or geographic occurrence within the legal listing?"*

The same exercise distinguishes the Tasmanian devil, common kangaroos and wombats. The Tasmanian devil is listed as endangered. A generic search for “kangaroo” can produce misleading hits because the database contains many names incorporating that word; the ordinary kangaroo is not simply an MNES by reason of being iconic. The common wombat is not listed, while the northern hairy-nosed wombat is critically endangered. The tutorial also illustrates that threatened-species lists are dynamic: nominations are scientifically assessed and species can be added or moved between categories as their conservation status changes.

2.21 Migratory species: connect the database result to constitutional power

The whale question teaches students to work in both directions. A scientific-name search identifies the animal as a whale and SPRAT identifies its migratory status. The legal analysis then moves to the EPBC Act provisions for listed migratory species and the international agreement supporting the listing. The tutorial identifies the Bonn Convention as the relevant international source for the whale and links the Commonwealth’s legislative capacity back to the **external affairs power in s 51(xxix) of the Constitution**. The species does not need to be native to Australia before Commonwealth environmental protection can be supported by an international obligation.

2.22 Nuclear facilities problem: begin with application, then prohibition, definition, exception and constitutional escape routes

The nuclear PPP problem is a model of statutory navigation. Before jumping to the prohibition, the tutorial directs students to ask whether the Queensland Act purports to bind the relevant actor. Only then should the lawyer move to the operative prohibition, the definition of “nuclear facility”, and any express exception. The Week 2 question uses the *Nuclear Facilities Prohibition Act 2007 (Qld)*.

STATUTORY METHOD

APPLICATION → OPERATIVE PROHIBITION → DEFINED TERMS → EXCEPTIONS → CONSTITUTIONAL LIMIT → CONSEQUENCE → PRACTICAL SOLUTION.

The radioactive-waste facility must be analysed separately from the reactor. The tutorial identifies an exception for relevant medical-purpose radioactive waste, while the nuclear reactor remains within the type of facility the State legislation seeks to prohibit.

The constitutional analysis then asks how the Commonwealth might lawfully proceed: enact valid inconsistent Commonwealth legislation so that s 109 operates; rely on an appropriate Commonwealth head of power; locate the project on a Commonwealth place where s 52 and Commonwealth immunity become relevant; or use a Commonwealth agency structure where legally appropriate.

The tutorial also highlights the distinction between **law and politics**. The Queensland legislation's plebiscite mechanism is not itself a legally binding referendum capable of defeating valid Commonwealth law. Its function is political: it can demonstrate public opposition, influence Commonwealth politicians and affect the political feasibility of the project.

2.23 Heritage due diligence: the protected value matters more than the label

The former High Court redevelopment problem teaches a critical heritage-law point. Finding a site on the Australian Heritage Database or through the Protected Matters Search Tool does not end the analysis. For a National Heritage place, the lawyer must identify the **National Heritage values for which the place is listed**, obtain the official Statement of Values, and then ask whether the proposed action is likely to significantly impact those values.

That is why retaining a façade cannot automatically answer the question. If the protected values extend to the building's historic form, setting, internal spaces or other architectural characteristics, an eight-storey addition at the rear may still affect the protected values. Conversely, listing does not mean that no development can ever occur. The professional task is to understand the legal values, redesign or mitigate where possible, and then determine whether the EPBC assessment and approval pathway is engaged.

2.24 PMST reports are desktop information: environmental due diligence requires ground-truthing

The Protected Matters Search Tool is designed to identify possible MNES in and around a site. The tutorial adds a crucial practice step: its output is based on available desktop information. It tells the lawyer what may be present, not necessarily what is actually present on the site at the relevant time.

> **Ground-truthing.** Where a PMST report identifies a possible threatened species, ecological community, wetland or other protected matter, the next step may be to engage the appropriate ecologist, botanist, zoologist, hydrologist, heritage expert

> or other specialist to verify the conditions on the ground. The lawyer frames the legal question; the expert tests the physical facts.

Search areas also matter. Where a site is near a watercourse or another pathway through which impacts may travel, the tutorial recommends using an appropriate buffer rather than drawing the project boundary too narrowly. This links directly back to professional due diligence: the legal risk may extend beyond the cadastral boundary of the development site.

2.25 What Chapter 2 should now teach you to do

CHAPTER 2 PRACTITIONER CHECKLIST

Identify the client and objective. Identify the land and tenure. Identify each level of government. Identify the constitutional source of Commonwealth power. Identify each potentially applicable Act. Start with application and definitions before operative provisions. Identify the MNES and its exact legal listing. Use official databases intelligently. Check geographic and population limitations. Distinguish desktop data from verified site conditions. Identify the controlling provision. Analyse Commonwealth-State inconsistency if it arises. Separate legal effect from political pressure. Then give the client a practical next step.

ENVIRONMENTAL LAW — CHAPTER 2

Constitutional powers, responsibility and protected matters

CHAPTER 2 — EXTENDED CLASSROOM TEACHING AND CONNECTED AUTHORITIES

In-depth explanation of what the law requires, why each authority matters and how to move from facts to effective client advice.

Classroom method: Identify the actor and concrete action. Break the legal issue into elements. Read the exact statute and its defined terms. Use the case for the proposition it actually decides. Apply each element to evidence and plausible counterarguments. Finish with a proportionate conclusion and the remedy that this particular cause of action supports.

2K. HOW THE CONSTITUTION ALLOWS FEDERAL ENVIRONMENTAL LAWS

Start from a simple but important fact: the **Australian Constitution contains no single general Commonwealth head of power called 'the environment'**. That does not mean the Commonwealth cannot legislate about environmental effects. Parliament can make laws that are supported by another head of power, even where the policy objective is environmental protection. The student's task is to identify that constitutional connection and to test the validity of the law against it. **Section 51(i)** deals with trade and commerce with other countries and among the States. **Section 51(xx)** concerns corporations within the constitutional categories. **Section 51(xxix)** is the external affairs power. **Section 52(i)** concerns Commonwealth places. **Sections 107–108** help explain the continuing authority of States; **s 109** provides that a valid Commonwealth law prevails to the extent of genuine inconsistency.

Murphyores Inc Pty Ltd v Commonwealth is the trade-power teaching case. Queensland sand-mining operators wished to export minerals mined at Fraser Island. The Commonwealth controlled export permissions under the relevant trade legislation. The companies contended, in substance, that environmental objections to the local extraction activity should not be used in exercising a power relating to overseas trade. The High Court rejected the attempt to confine the trade power according to the government's environmental purpose. The fact that Parliament was using a trade instrument for an environmental end did not make the measure constitutionally

unrelated to trade. In an exam, identify the export activity, the statute controlling exports, the trade connection in s 51(i), and explain how this case supports use of the power; do not suggest that it gives the Commonwealth unrestricted authority over every local quarry.

Commonwealth v Tasmania (the Tasmanian Dam Case) teaches a different constitutional route. Proposed hydro-electric works threatened the Franklin-Gordon wilderness World Heritage area. The Commonwealth enacted measures intended to implement its international environmental obligations, including the World Heritage Convention. By a narrow majority, the High Court upheld relevant federal protection through s 51(xxix). The reasoning matters because a treaty, implemented through a law sufficiently connected to Australia's external affairs power, can support Commonwealth legislation in an area otherwise often regulated by a State. It is not enough to assert 'international = federal': identify the genuine external-affairs subject or obligation and the statute's implementing relation. Finally check whether the relevant federal and State provisions truly conflict for s 109 purposes.

These cases explain **why the EPBC Act is drafted around particular constitutionally supported triggers** rather than one undifferentiated national zoning code. A developer operating through a constitutional corporation, supplying export goods, affecting World Heritage values or acting on Commonwealth land may present several overlapping constitutional hooks. Good advice identifies each hook and the actual EPBC controlling provision. Bad advice assumes that because the Federal Government is powerful, every land-use permission now comes from Canberra.

2L. THE NUCLEAR FACILITIES QUESTION: HOW TO READ AN ACT IN ORDER

The university's NuEnergy hypothetical concerns two proposed Queensland facilities to be constructed for the Commonwealth under a public-private partnership: a nuclear reactor producing energy and a facility dealing with radioactive material from medical uses. The exam skill is to avoid applying a broad prohibition to both projects without reading the Act's qualifications. Begin with the **Nuclear Facilities Prohibition Act 2007 (Qld)**. Read the definitions (including 'nuclear facility'), **s 4** on binding application, **s 7(1)** on construction and operation, and **s 7(2)** on the relevant exclusions, then **s 8** on the effect of purported authorisations. These provisions form a hierarchy: jurisdiction and definitions first, prohibition second, exceptions third, intergovernmental effect fourth.

The power reactor is prima facie the kind of nuclear facility at which the prohibition is directed. The medical-waste facility cannot simply be treated as a power reactor because the Act recognises an exception relating to facilities for the storage or disposal of radioactive waste generated from medical or research purposes. The adviser needs

accurate project specifications: is the waste solely from those activities, what facilities would actually be built, who would construct and operate them, and does another regulatory scheme apply? **Section 7(2)(a)** matters because its text may change the answer completely. Writing 'Queensland has banned nuclear facilities' ignores the exception and loses the most important reasoning point in the question.

A separate constitutional question arises because the Commonwealth is involved. Is the State law intended to bind the Commonwealth, and to what extent can it do so? **Section 4's qualification** matters, but its statement about binding operation cannot enlarge Queensland's legislative power or override any constitutionally operative Commonwealth immunity. A federal contract with the private company does not itself demonstrate a valid federal authorisation to ignore Queensland law. Equally, Queensland's prohibition does not automatically invalidate a federal activity if a controlling constitutional principle applies. The lawyer should identify the legal actor, distinguish Commonwealth construction from private-company operation and analyse **s 109** only if there is an actual inconsistency between valid laws. These are not questions solved by political comments or the existence of a contract alone.

My advice would therefore be conditional and precise: the energy reactor is likely to confront the s 7 prohibition, subject to a proper constitutional analysis; the medical-waste facility may fit an express exclusion if its functions satisfy the exact words; neither conclusion eliminates the need for Commonwealth environmental checks, relevant radiation laws, land tenure and any other approvals. This is how a lawyer communicates both what the statute says and what facts must be confirmed before giving a final commercial opinion.

2M. WHY A SEARCH RESULT IS EVIDENCE TO INVESTIGATE, NOT AN APPROVAL

Consider a proposed hotel on a coastal site near nationally listed habitat. The developer supplies a screenshot from the Protected Matters Search Tool and says that because the report lists only 'possible' species, no federal assessment is required. A lawyer should not accept this inference. **SPRAT** is designed to help identify species profiles and listing status; the **Protected Matters Search Tool (PMST)** maps matters that may be relevant to a geographical area; the **Australian Heritage Database** records heritage listings and values; the public **EPBC project portal** records referral and decision information. Each answers a different question. A mapped habitat prediction is neither a conclusive survey nor an approval. The absence of a species in a preliminary search does not prove it cannot be present. Conversely, being shown in a large-area map does not prove a significant impact from this particular action.

Work step by step. Identify the scientific name and legal listing instrument; do not infer protected status from labels such as 'wombat' or 'kangaroo'. Identify the scope of the proposed action and its likely direct and indirect effects. Then apply the particular controlling provision: for example, **EPBC Act** **ss 18–18A** for listed threatened species or **ss 20–20A** for listed migratory species. The significance threshold requires a reasoned assessment using the department's **Significant Impact Guidelines** and appropriate ecological expertise. Ask whether clearing, noise, lighting, collision risks, altered hydrology or habitat fragmentation create the real impact. If a creek connects the site with protected wetlands, map downstream pathways and cumulative or indirect effects. The point is to convert a search hit into a hypothesis that can be tested with surveys, modelling and an accurate referral.

The final advice must identify separate approvals. An EPBC controlled-action determination does not necessarily replace Queensland development permission, an environmental authority or a local planning condition. Similarly, a State development approval does not itself establish Commonwealth compliance. The client needs a coherent approvals register showing decision-maker, trigger, application date, information required, works that can or cannot commence, expiry, conditions, monitoring and enforcement risk. This practical discipline explains why cooperative federalism matters: several levels of government may regulate the same undertaking for different legal purposes.

JUDGMENTS, LEGISLATION AND RESEARCH — FULL TEACHING EXPLANATIONS

For each resource below I explain its factual or legislative setting, legal point, significance and role in practice. Blue underlined source titles open the research material. A legal authority must never be treated as a substitute for identifying and applying the controlling provision.

Murphyores Inc Pty Ltd v Commonwealth (1976) 136 CLR 1

THE FACTS. Mineral-sands operators sought to export materials associated with mining on Fraser Island. Commonwealth export controls became a way to scrutinise environmental effects of the proposed operation. The issue was whether a power over overseas trade could be exercised where environmental concerns were an important reason for the decision. THE HIGH COURT'S LESSON. A law or decision supported by a constitutionally valid subject matter does not automatically cease to be valid because the decision-maker has an environmental objective. The trade and commerce power in Constitution s 51(i) can support measures in the export setting. That reasoning is not a free-standing federal power over every land-use activity. APPLICATION. If the facts involve an exporter, identify the overseas-trade element and the statute or delegated

power controlling export. Explain why a genuine constitutional hook exists and ask whether the actual decision complied with the legislation. A State development approval alone does not override valid Commonwealth export controls.

Cole v Whitfield (1988) 165 CLR 360

THE FACTS. Tasmania imposed minimum-size restrictions on crayfish, including animals caught elsewhere and later sold within Tasmania. The law was challenged as inconsistent with freedom of interstate trade under Constitution s 92. THE RULE. The High Court reformulated s 92 as prohibiting discriminatory burdens on interstate trade of a protectionist kind. Conservation rules are not invalid merely because they affect trade. The analysis turns on actual discrimination, protectionist purpose or effect, and the suitability of a non-protectionist regulatory explanation. APPLICATION. When a State claims to protect species by restricting interstate sale, compare local and interstate products, the ecological evidence and less discriminatory means. Do not write 's 92 invalidates all trade restrictions'. Build an argument and counterargument about whether the measure genuinely protects a resource or covertly protects local businesses.

Commonwealth v Tasmania (1983) 158 CLR 1 — Tasmanian Dam Case

THE FACTS. Tasmania proposed a hydro-electric dam affecting the Franklin and Gordon Rivers. Commonwealth legislation, drawing on Australia's international obligations in relation to World Heritage, attempted to protect the area. The dispute tested the constitutional extent of Commonwealth power where the affected site was in a State. THE PRINCIPLE. The High Court upheld important Commonwealth protective measures by reference to powers including the external affairs power in Constitution s 51(xxix). The case shows how an international treaty can provide a constitutional foundation for domestic Commonwealth legislation that regulates conduct occurring wholly within Australia. CONNECT THE SOURCES. The World Heritage Convention is an international commitment; the EPBC Act supplies present-day domestic statutory duties. One does not replace the other. For an answer, identify the protected World Heritage values, the Act's operative sections (notably EPBC ss 12–15A), and the concrete activity that may significantly affect those values. The 'Tasmanian Dam Case' is constitutional authority; the modern Minister's decision is still governed by the current EPBC Act.

Constitution ss 51, 52, 90, 92, 107–109

READ THE CONSTITUTION AS A MAP. Section 51 contains concurrent Commonwealth heads of legislative power, including overseas/interstate trade (s 51(i)), corporations (s 51(xx)) and external affairs (s 51(xxix)). Section 52 addresses specified

exclusive Commonwealth fields; s 90 concerns customs and excise exclusivity. Sections 107 and 108 preserve State legislative power and existing State laws subject to the Constitution. Section 109 resolves an *actual inconsistency* between valid State and Commonwealth laws. Section 92 protects interstate trade from discriminatory protectionist burdens. HOW TO APPLY IT. In a development advice problem, first identify whether the actor is Commonwealth, State or local government. Next locate the constitutional head for a challenged federal measure. Then identify the specific State Act and whether simultaneous obedience is impossible, whether Commonwealth law confers an inconsistent right, or whether it evinces an intention to cover the field. Do not presume that both Acts addressing the environment means s 109 automatically cancels the State Act.

Nuclear Facilities Prohibition Act 2007 (Qld) ss 4, 7–8

THE PROHIBITION AND THE EXCEPTION. Section 7(1) prohibits a person from constructing or operating a prescribed nuclear facility. Section 7(2)(a) expressly excludes facilities for storage or disposal of waste from nuclear material used for research or medical purposes; other exclusions appear in s 7(2)(b)–(c). Section 8 states that planning approvals and mining tenements do not themselves authorise a prohibited facility. THE FEDERAL QUESTION. Section 4 says the Act binds all persons, including the Commonwealth to the extent of Queensland's legislative capacity. It is not enough to recite 'Commonwealth wins'. Analyse Commonwealth immunity or constitutional limits and any actual inconsistency under Constitution s 109. A proposed Commonwealth reactor and an actual medical-waste facility require **separate** answers. On the given Tutorial 2 facts the medical facility appears within s 7(2)(a), while the reactor engages s 7(1); the Commonwealth aspect requires a further constitutional and statutory analysis rather than an assumption.

EPBC Act: MNES and the correct significance sequence

THE SEQUENCE. The nine nationally significant matter categories are not nine general-purpose approvals for everything environmentally controversial. The operative controls are in Part 3, including World Heritage (ss 12–15A), National Heritage (ss 15B–15C), Ramsar (ss 16–17B), listed threatened species/ecological communities (ss 18–18A), migratory species (ss 20–20A), nuclear actions (ss 21–22A), Commonwealth marine areas (ss 23–24A), Great Barrier Reef Marine Park (ss 24B–24C), and water-resource controls for the defined developments (ss 24D–24E). HOW TO TEACH IT. Ask what the proponent proposes, what precisely is listed, and whether the statutory definition of an action is met. A SPRAT or protected-matters search produces an investigative starting point; the map does not itself prove a significant impact. A State licence cannot substitute for federal approval of a controlled action.

Murray–Darling Basin and the Water Act 2007 (Cth)

WHY THIS RESOURCE MATTERS. A river system crosses State boundaries, so one State's allocation choices may change downstream ecological and agricultural outcomes. The Water Act 2007 (Cth), the Basin Plan and intergovernmental arrangements demonstrate cooperative federalism and the practical importance of national objectives implemented across jurisdictions. EXAM USE. Distinguish the existence of a federal water framework from the EPBC water-resource trigger, which applies only to specifically defined types of developments. A Basin Plan question calls for the current Plan, schedules and implementation evidence, not a generic claim that every dam requires federal EPBC approval.

THE COMPLETE PROFESSIONAL APPLICATION — AN EXAM-READY METHOD

When I advise a client, I do not begin with an attractive remedy and work backwards. First I identify the particular conduct, actor and decision-maker; then I identify the statute and its relevant time of operation. Secondly, I specify each element of the legal test. Thirdly, I connect the strongest case authority to the proposition being applied, explaining its facts and why the reasoning is comparable or distinguishable. Fourthly, I test the evidence supporting each element and take the opposing argument seriously. Fifthly, I advise on the practical course: further studies, a referral, a revised project, a lawful condition, judicial review, an injunction or enforcement, depending on the statute. This is the transition from knowing rules to practising environmental law.

Legislative date: The course discusses the EPBC Act framework in force for its 2026 seminars. The Environment Protection Reform Act 2025 has staged commencement. The August 2026 transitional rules may affect some cases. For any past project, check the version operative at the relevant decision date; do not apply a future reform retrospectively without legal authority.

CHAPTER 2 FAQ QUESTIONS

Chapter 2 FAQs — Questions

1. Why can the Commonwealth regulate environmental matters even though the Constitution contains no express “environment” power?

2. What is the practical difference between exclusive, concurrent and residual State power?

3. Why is local government important if it is not mentioned in the Constitution?

4. What does s 109 inconsistency do?

5. Why is the external affairs power central to environmental law?

6. What is cooperative federalism?

7. What is an MNES?

8. Does a PMST report decide whether referral is required?

CHAPTER 2 FAQ ANSWERS

Chapter 2 FAQs — Answers

1. The Commonwealth uses constitutionally recognised heads of power—especially trade and commerce, corporations and external affairs—to enact laws with environmental operation. Constitutional validity depends on legal characterisation, not on the word “environment” appearing in s 51.

2. Exclusive power is reserved to the Commonwealth; concurrent power can be exercised by both Commonwealth and States; residual/general State power remains with States subject to constitutional limits. The classification tells the lawyer who may legislate and whether overlap is possible.

3. Local government exercises functions conferred by State law, particularly planning and local regulation. For a developer, council may be operationally central even though its constitutional status is derivative.

4. Where a valid Commonwealth law and State law are inconsistent, s 109 makes the State law inoperative to the extent of the inconsistency while the inconsistency exists.

5. Australia is party to major environmental treaties. Section 51(xxix) allows Commonwealth legislation to implement international obligations within constitutional limits, as demonstrated by the Tasmanian Dam Case.

6. Cooperative federalism uses agreements, accreditation, shared institutions and coordinated programs to manage overlapping responsibilities without relying solely on constitutional conflict.

7. A Matter of National Environmental Significance is a nationally protected matter identified by the EPBC framework. The legal significance is that actions with significant impacts may engage a controlling provision and federal referral/ approval obligations.

8. No. PMST is a screening and information tool. It identifies potential protected matters but does not replace site-specific evidence, statutory interpretation or a legal assessment of significant impact.

CHAPTER 2 MULTIPLE CHOICE — QUESTIONS

Chapter 2 Multiple Choice Questions

1. Which constitutional provision resolves inconsistency between valid Commonwealth and State laws?
A. s 51 B. s 52 C. s 92 D. s 109

2. Which power was central to the treaty-implementation reasoning in the Tasmanian Dam Case?
A. taxation B. external affairs C. defence D. acquisition

3. Local governments principally derive their law-making authority from:
A. s 51 Constitution B. State legislation C. international law D. the EPBC Act

4. The best statement of *Murphyores* is:
A. environmental purpose always invalidates trade legislation B. a trade-and-commerce law can operate with environmental objectives if constitutionally characterised as trade/commerce C. Queensland mining law always prevails D. export permits cannot consider environmental impacts

5. A PMST report is:
A. a Commonwealth approval B. an automatic referral decision C. an indicative screening tool D. a State planning permit

6. Which is an MNES?
A. every local park B. every State heritage place C. a declared Ramsar wetland D. every native species

7. Section 92 is relevant to:
A. free interstate trade and protectionist discrimination B. judicial power C. local government creation D. treaty ratification

8. Federal approval under the EPBC Act ordinarily means:
A. all State/local laws disappear B. separate State/local requirements may still apply C. the council loses all power D. the project cannot have conditions

CHAPTER 2 MULTIPLE CHOICE — ANSWERS

Chapter 2 Multiple Choice Answers

1. D — s 109. It is the constitutional inconsistency rule.

2. B — external affairs. Section 51(xxix) supported implementation of the World Heritage Convention.

3. B — State legislation. Local government is a statutory creation of the States.

4. B. The constitutional character of the law, rather than a pure environmental motive, is central.

5. C. PMST assists due diligence but is not an approval or legal determination.

6. C. Ramsar wetlands are one of the nationally protected categories.

7. A. *Cole v Whitfield* explains protectionist discrimination under s 92.

8. B. Multiple regimes commonly operate together.

CHAPTER 2 SHORT ANSWER — QUESTIONS

Chapter 2 Short Answer Questions

1. Explain why a developer’s lawyer should identify land tenure before giving environmental advice.

2. Explain how ss 51 and 109 can operate together.

3. Explain the constitutional significance of *Commonwealth v Tasmania*.

4. Explain the difference between a protected matter and the evidence of a significant impact.

5. Why are the Murray–Darling Basin arrangements an example of cooperative federalism?

6. What should an approvals matrix contain?

CHAPTER 2 SHORT ANSWER — MODEL ANSWERS

Chapter 2 Short Answer Model Answers

1. Tenure can determine jurisdiction. Commonwealth places may involve exclusive Commonwealth power or federal statutory regimes; State and local rules may apply differently. Site identification is therefore part of legal issue spotting.

2. Section 51 supplies concurrent heads of Commonwealth power. A State may also legislate on the same subject. If valid laws are inconsistent, s 109 gives Commonwealth law priority to the extent of inconsistency.

3. The Tasmanian Dam Case confirms the breadth of the external affairs power as a basis for implementing international obligations and demonstrates how Commonwealth constitutional power can support environmental protection within a State.

4. The protected matter identifies what the EPBC Act protects. Significant impact is the factual/legal threshold connecting the proposed action to the controlling provision. The presence of a protected matter alone does not automatically answer the impact question.

5. The Basin crosses several jurisdictions, so water allocation and environmental outcomes depend on shared institutions, federal legislation and intergovernmental cooperation rather than one State acting independently.

6. For each required permission or prohibition: jurisdiction; Act/instrument; exact provision; regulator; trigger; documents/evidence; timing; decision criteria; conditions; review/appeal rights; enforcement consequences; dependencies on other approvals.

WEEK 2 TUTORIAL — QUESTIONS

Chapter 2 Tutorial Questions

Question 1 — Species and MNES

Is the koala a matter of national environmental significance? What about the Tasmanian devil, kangaroo and wombat?

Question 2 — Antarctic minke whale

Balaenoptera bonaerensis was described from a specimen found near Buenos Aires. On what basis is it a matter of national environmental significance under the EPBC Act?

Question 3 — Nuclear PPP in Queensland

A national law firm acts for NuEnergy Management Limited in a proposed $95 million public-private partnership with the Commonwealth. The Commonwealth proposes to construct in Queensland a nuclear reactor for nuclear energy and a radioactive-waste management facility for medical-purpose nuclear material. Advise whether the *Nuclear Facilities Prohibition Act 2007* (Qld) would effectively prohibit the Commonwealth construction.

Question 4 — Former High Court, 450 Little Bourke Street

JurisPrudent Pty Ltd proposes mixed-use redevelopment of the former High Court site at 450 Little Bourke Street, Melbourne. Will the EPBC Act potentially be relevant?

Question 5 — Murray–Darling Basin Plan

What is the current status of the Basin Plan?

Question 6 — Protected Matters Search Tool

Use the PMST for an Australian location, define the search area and generate a report. Explain what the report can and cannot tell a legal adviser.

WEEK 2 TUTORIAL — LECTURER-INTEGRATED MODEL ANSWERS

Chapter 2 Tutorial Model Answers

SOURCE INTEGRATION

These answers incorporate the lecturer's first-hour Week 3 discussion of the Week 2 tutorial. They preserve the tutorial methodology: identify the precise statutory question, use official databases as research tools, confirm the legal source, and turn the result into practical advice.

Question 1 — Koala, Tasmanian devil, kangaroo and wombat

Issue. Which of the named species is protected as a matter of national environmental significance under the EPBC Act, and how should a lawyer determine that status?

Method and law. Begin with the threatened-species controlling provisions in Part 3, Division 1, Subdivision C, including **s 18**, and the statutory threatened-species list referred to in **s 178**. The tutorial then uses the **SPRAT database** as the practical research interface. SPRAT is reliable and routinely used in practice, but the statutory listing instrument remains the primary legal source.

Application. The **koala** is listed as endangered, but the listing is limited to the relevant populations in **Queensland, New South Wales and the Australian Capital Territory**. That limitation matters: a lawyer must read the listing scope and cannot assume that every koala everywhere in Australia attracts the same MNES protection. The **Tasmanian devil** is listed as endangered. A search for **kangaroo** produces many hits, including species and place names, but the ordinary kangaroo is not simply listed as an MNES. The **common wombat** is not listed, while the **northern hairy-nosed wombat** is critically endangered and occurs in very limited Queensland locations. The tutorial also discussed the southern hairy-nosed wombat as a nominated species, illustrating that the list evolves through scientific assessment.

Conclusion. The correct answer is not “iconic species = MNES”. The legal question is whether the precise species, subspecies or population is currently

listed in a protected category and whether the client's project affects that legally protected population.

Exam / practice lesson. Search the database, open the species profile, read the category and geographic limitation, then confirm the primary legal listing before advising.

Question 2 — *Balaenoptera bonaerensis* and migratory-species protection

Issue. On what basis can a whale species first described from a specimen found outside Australia nevertheless be a matter of national environmental significance under Australian law?

Rule. The EPBC Act protects **listed migratory species**. The tutorial directs students to **s 209** and to the international agreements underlying migratory-species protection. A search of the scientific name identifies the species as a whale and SPRAT identifies it as migratory under the **Bonn Convention**.

Constitutional connection. The Commonwealth can rely on the **external affairs power in s 51(xxix) of the Constitution** to implement international environmental obligations. A protected migratory species therefore does not need to be native to Australia before Commonwealth legislation can validly protect it.

Conclusion. The whale is relevant as an MNES because it is a listed migratory species protected through the EPBC framework and the associated international convention.

Exam / practice lesson. Use the scientific name, identify the legal category, identify the treaty or agreement, and then connect that international source to the constitutional head of power.

Question 3 — Nuclear PPP in Queensland

Issue. Can the Queensland nuclear-facilities legislation prevent the Commonwealth's proposed nuclear reactor and medical radioactive-waste facility, and what legal pathways may allow the project to proceed?

Statutory method. Do not begin with the prohibition alone. First check the Act's **application provision** to identify whom it purports to bind. Then read **s 7(1)**, the definition of "nuclear facility", and the exceptions in s 7. The tutorial treats NML,

the private corporate partner, as a “person” capable of being caught by the prohibition.

Application to the two facilities. The **nuclear reactor** falls within the type of facility the State Act seeks to prohibit. The **radioactive-waste management facility** must be analysed separately because the tutorial identifies an express exception for relevant waste arising from medical or research uses. That means the medical-waste facility may not be prohibited on the same basis as the reactor.

Commonwealth-State interaction. The State Act purports to bind the Commonwealth only to the extent Queensland legislative power permits. A lawyer must therefore move to the Constitution. Possible Commonwealth pathways discussed in the tutorial include: (1) enact valid Commonwealth legislation that is inconsistent with the Queensland law, engaging **s 109**; (2) rely on a valid Commonwealth head of power such as external affairs or corporations where the facts support it; (3) use a **Commonwealth place**, engaging **s 52** and the principles of Commonwealth immunity; or (4) establish or use a Commonwealth agency where that structure is legally available.

Political dimension. The Queensland Act’s **s 21 plebiscite mechanism** is designed to obtain the views of Queensland voters where the Commonwealth proposes a prohibited nuclear facility. The tutorial emphasises that the plebiscite is not legally binding on the Commonwealth. Its force is political: it can influence voters, investors and Commonwealth decision-makers.

Conclusion. The medical-waste facility may fall within the statutory exception, while the reactor presents a direct State-law prohibition for ordinary actors. But the ultimate advice cannot stop at State legislation: Commonwealth constitutional power, immunity and any inconsistent federal legislation must be analysed before concluding that Queensland can legally prevent the Commonwealth project.

Question 4 — Former High Court, 450 Little Bourke Street

Issue. Does an urban redevelopment of the former High Court site potentially engage the EPBC Act, and what exactly must the lawyer investigate?

Method. Start with the site. Use the **Australian Heritage Database** and, where appropriate, the **Protected Matters Search Tool**. The tutorial identifies the property as a National Heritage place. The critical legal question is not merely whether the building is listed, but **which National Heritage values are protected**.

Rule. For National Heritage, the controlling analysis focuses on the protected **National Heritage values**, including the framework reflected in **s 15B**. The official listing and Statement of Values explain why the place is protected and therefore what characteristics a development must avoid significantly impacting.

Application. Retaining the ground-level façade is relevant but is not automatically sufficient. The eight-storey serviced-apartment addition must be tested against the listed architectural and historic values, including the visual form, setting and any protected internal or contextual features. A project can be redesigned or conditioned to reduce impact; listing does not mean that all development is automatically forbidden.

Conclusion. The EPBC Act is potentially relevant. JurisPrudent should obtain the formal listing material and Statement of Values, map the proposed works against those values, and assess whether design changes, mitigation, referral or later approval processes are required before committing to the redevelopment.

Question 5 — Murray–Darling Basin Plan

Issue. What does the current Basin Plan process illustrate about cooperative federalism?

Answer. The Basin spans Queensland, New South Wales, Victoria, South Australia and the ACT, so its management requires coordination across political boundaries. The tutorial uses it as an example of the difficulty of cooperative federalism: competing water demands, environmental objectives and State interests have made implementation contentious and expensive. The seminar discussion described the existing arrangements as having performed less effectively than intended and referred to the significant public cost of the reform program.

The class discussion also noted that a long-term monitoring and review process is continuing, that consultation on the review had concluded, and that a further draft Basin Plan was expected as the review process advanced. Because this is a changing policy and statutory implementation area, students should use the *Water Act 2007*, the current Basin Plan and current Commonwealth/Murray-Darling Basin Authority material rather than relying on an old tutorial statement of status.

Professional lesson. Distinguish the permanent legal architecture from changing implementation milestones. Cooperative federalism is a legal and institutional

structure, but its success depends on continuing intergovernmental cooperation, funding, water recovery and implementation.

Question 6 — Protected Matters Search Tool and ground-truthing

Issue. What does a PMST report tell a lawyer, and what must happen after the desktop search?

Rule / method. The **Protected Matters Search Tool** identifies potential MNES in or near a defined area and generates a desktop report. The search boundary should be chosen sensibly. Where impacts can move beyond the site—for example through a watercourse—the tutorial recommends using an appropriate buffer rather than drawing the search polygon too tightly.

Limitation. The report is based on existing government-held information about where protected matters have been recorded, modelled or are thought to occur. It does not prove that the matter is physically present on the project site and it does not itself determine whether an impact will be significant.

Next step. Where the desktop result identifies a material risk, the project team may need **ground-truthing**: appropriately qualified experts inspect the site and test whether the relevant habitat, species, ecological community, wetland, heritage value or other matter is actually present and how the proposed activity would affect it.

Conclusion. PMST is an essential first-pass due-diligence tool, not the end of the legal inquiry. The lawyer uses the report to identify what expert evidence is required and then applies the verified facts to the controlling EPBC provisions.

CHAPTER 2 IRAC PROBLEMS — QUESTIONS

Chapter 2 IRAC Problem Questions

IRAC 1 — Port expansion and overlapping governments

A Queensland corporation proposes a port expansion partly within State coastal waters and with dredging effects extending into the Commonwealth marine area. Migratory shorebird habitat is nearby. State development approval is likely. Advise the board what jurisdictional questions must be resolved before works commence.

IRAC 2 — State conservation law and interstate trade

A State prohibits possession of undersized shellfish regardless of whether the shellfish were caught locally or imported from another State. An interstate trader argues the law breaches s 92. Advise.

IRAC 3 — World Heritage project

A State-owned corporation proposes infrastructure within a World Heritage property. The State argues the project is entirely intrastate and therefore outside Commonwealth power. Advise on the constitutional and EPBC issues that should be investigated.

CHAPTER 2 IRAC PROBLEMS — MODEL ANSWERS

Chapter 2 Detailed IRAC Model Answers

IRAC 1 — Port expansion and overlapping governments

Issue. Whether State approval alone authorises the port works and what Commonwealth environmental triggers may apply.

Rule. State/local approvals can coexist with Commonwealth EPBC requirements. Potential Commonwealth triggers include listed migratory species and impacts on the Commonwealth marine area. The exact controlling provisions must be checked in the current EPBC Act. Marine jurisdiction also requires spatial identification of coastal waters and Commonwealth waters.

Application. The corporation should map the dredge footprint, plume and ecological effects; identify migratory species and habitat; obtain a PMST report and targeted ecology; determine whether impacts extend to the Commonwealth marine environment; and analyse significant impact under each relevant controlling provision. State approval should be tracked separately in an approvals matrix. Contract and construction programs should prevent physical works until all conditions precedent are satisfied.

Counterargument. The proponent may argue impacts are minor, temporary or adequately mitigated. That argument requires evidence; it cannot be assumed from the existence of State approval.

Conclusion. State approval is not enough to advise that works may begin. Commonwealth screening/referral advice and evidence should be completed first.

IRAC 2 — State conservation law and interstate trade

Issue. Whether the State shellfish law imposes a constitutionally prohibited burden on interstate trade.

Rule. Section 92 prohibits discriminatory burdens of a protectionist kind. *Cole v Whitfield* upheld a materially similar minimum-size conservation rule because it applied to local and imported crayfish and was not protectionist in character.

Application. The law applies the same size rule irrespective of origin. If the conservation objective cannot practically be achieved by regulating only locally caught stock, the burden on interstate traders does not by itself establish protectionist discrimination.

Counterargument. Evidence of practical discrimination or a disguised economic preference for local traders could alter the analysis.

Conclusion. On the stated facts, the law is likely consistent with the *Cole v Whitfield* approach and not invalid merely because it burdens interstate trade.

IRAC 3 — World Heritage project

Issue. Whether the Commonwealth can regulate an intrastate State-corporation project affecting World Heritage values.

Rule. Section 51(xxix) external affairs supports Commonwealth implementation of international obligations; *Commonwealth v Tasmania* is the central authority. The corporations power may also be relevant depending on the legal character of the State-owned corporation. The EPBC Act contains controlling provisions for significant impacts on World Heritage values.

Application. The fact that construction occurs wholly within one State does not resolve Commonwealth power. The lawyer should identify the World Heritage listing and protected values, the international obligation implemented by federal law, the status/activities of the State corporation, and the project's likely impacts. State authorisation does not displace a valid federal prohibition or approval requirement.

Counterargument. The State may contest whether the federal statutory provision is engaged on the facts or whether the impact is significant, but a bare "intrastate project" argument does not answer the constitutional authorities.

Conclusion. There is a substantial Commonwealth constitutional and EPBC pathway requiring investigation before the State-owned corporation proceeds.

CHAPTER 2 RESEARCH

Chapter 2 Resources

Commonwealth of Australia Constitution Act — Federal Register of Legislation

Environment Protection and Biodiversity Conservation Act 1999 (Cth) — current authorised compilation

Local Government Act 2009 (Qld) — current

Planning Act 2016 (Qld) — current

Nuclear Facilities Prohibition Act 2007 (Qld)

Water Act 2007 (Cth)

Murphyores Inc Pty Ltd v Commonwealth [1976] HCA 20

Cole v Whitfield [1988] HCA 18

Commonwealth v Tasmania [1983] HCA 21

Protected Matters Search Tool

Former High Court of Australia — National Heritage listing

Murray–Darling Basin Plan implementation dashboard

CHAPTER 2 RESEARCH RULE

Never advise from the name of a government agency or a general understanding of “federal versus State”. Identify the constitutional source of power, the current statute, the exact provision, the legal status of the site and actor, and the evidence connecting the proposed action to the statutory trigger.

End of Chapter 2.

ENVIRONMENTAL LAW

Semester 263

Weekly questions

Roles and responsibilities

To answer the following questions, you will need to refer to the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) and the search tools on the DCCEEW website that were covered in the Week 2 seminar. You do not need to consider the assessment and approval process under the EPBC Act (we will cover this in Weeks 4 and 5 seminars).

Question 1

The Koala is an iconic Australian species. Is it a matter of national environmental significance? What about:

(a) the Tasmanian Devil;

(b) the Kangaroo; and

(c) the Wombat?

Question 2

In 1867, a fisherman found a nearly 10-metre long male whale floating in the Rio de la Plata about 16km from Buenos Aires, Argentina. It was brought ashore and examined by a German Argentine zoologist, Hermann Burmeister, who described it as a new species, *Balaenoptera bonaerensis*.

On what basis is it a matter of national environmental significance under the EPBC Act?

Question 3

You work in the Energy, Resources and Environment group of a national law firm that acts for NuEnergy Management Limited (NML). Your firm is conducting the due diligence for a $95 million contract being negotiated between NML and the Commonwealth Government. The contract facilitates a public private partnership ('**PPP**') between NML and the Commonwealth. The Commonwealth Government has had an interest in securing the PPP since the release of the Commonwealth Government's *Uranium Mining, Processing and Nuclear Energy Review* report. The report outlines the environmental benefits associated with nuclear power and suggests that 25 nuclear power stations could be built by 2050 to produce one-third of Australia's electricity.

Under the PPP, NML would operate two facilities for the Commonwealth Government which the Commonwealth Government is proposing to construct in Queensland:

1. A nuclear reactor for the production of nuclear energy; and
2. A radioactive waste management facility for disposal of nuclear material used for medical purposes.

Advise whether the *Nuclear Facilities Prohibition Act 2007* (Qld) would effectively prohibit the Commonwealth Government's construction of the nuclear reactor and the radioactive waste management facility.

Question 4

An enterprising group of former judges has formed a consortium and through the consortium vehicle JurisPrudent Pty Ltd has purchased a former courthouse site at 450 Little Bourke Street, Melbourne (see photo below). It will be helpful for you to understand the site context using tools such as Google Maps.



The building is currently being used as an office space. JurisPrudent intends on redeveloping it as a mixed-use development, retaining the old façade at the ground and first levels for commercial and office uses, and building an 8-storey serviced apartment building at the rear.

Will the EPBC Act be of any potential relevance to JurisPrudent's proposal?

Question 5

What is the current status of the Murray-Darling Basin Plan that was the subject of the video in the Week 2 seminar?

Question 6

Use the Protected Matters Search Tool (http://www.environment.gov.au/epbc/pmst/index.html) to search an Australian location that you are familiar with (eg. in your hometown or of a development project) or that you are interested in and generate a report. Be prepared to share your findings with the class. Once you locate the address, you will need to 'draw' a rectangle or polygon shape to define the search area and then generate a report.

CHAPTER 2 — HIGH-DISTINCTION IRAC MODEL ANSWERS

Issue → Rule and case authority → fact-specific application → strongest counterargument → conclusion and advice.

MODEL ANSWER 1 — Q1 — Koala, Tasmanian devil, kangaroo and wombat as nationally protected matters

Issue

Does each animal described in the weekly question automatically constitute a matter of national environmental significance?

Rule

The EPBC Act does not create a protected matter merely because a species is well known. A species may be protected as a listed threatened species or migratory species under Part 3, with listings investigated using the official Species Profile and Threats Database (SPRAT), applicable listing instruments and scientific names. Sections 18 and 18A concern listed threatened species/ecological communities; the species and relevant population must be precisely identified.

Application

The koala’s combined Queensland, New South Wales and ACT population has been listed as endangered since 12 February 2022: this specified population is relevant. The Tasmanian devil is a listed threatened species. “Kangaroo” and “wombat” are broad common-name categories containing distinct taxa; some members may be protected while others are not. A professional must identify a scientific species and location, then read its current Commonwealth listing, recovery information and habitat information. A terrestrial State listing is important evidence and may trigger State laws, but cannot be substituted for a Commonwealth listing.

Strongest counterargument

A proponent may contend that an animal being present proves federal approval is required. Presence alone does not resolve the legal question: the identified action must reach the statutory significant-impact threshold or another relevant trigger. Conversely, a species not individually listed may support World Heritage values or other protected matters.

Conclusion, consequence and advice

Report the scientific taxon, protected status, relevant Part 3 provision, the project's impact pathway, and the remaining need for assessment. Do not answer "all kangaroos" or "all wombats" as though these were single listed species.

MODEL ANSWER 2 — Q2 — Antarctic minke whale (Balaenoptera bonaerensis)

Issue

On what statutory ground can the named whale be protected under the EPBC Act, and why must the lawyer distinguish different layers of protection?

Rule

The named taxon is the Antarctic minke whale. Cetaceans receive protections under the EPBC Act's whale and cetacean framework, including the Australian Whale Sanctuary provisions in Part 13, Division 3. Other protections may apply where the animal is on a statutory migratory or threatened list. For an MNES answer, identify a particular controlling provision, rather than treating Part 13 protection alone as interchangeable with one of the nine Part 3 matters. The statute's protected matters and the relevant location of an action are critical.

Application

The historical sighting near Buenos Aires illustrates species identification, not an Australian jurisdictional hook by itself. First verify the biological name; second query SPRAT and the current migratory listing; third distinguish a threatened/migratory species trigger from the broader cetacean-specific offences and whale sanctuary protections. For an action in Commonwealth marine areas, the marine-area controlling provisions may also arise. The lecture's discussion of Humane Society International v Kyodo Senpaku Kaisha demonstrates that sanctions for whaling can concern different jurisdictional and statutory questions from an ordinary development referral.

Strongest counterargument

It would be inaccurate to assume every species of whale is listed as threatened, or to claim an international whaling convention automatically

makes every species a Part 3 MNES. A national database result and the precise legislation must support the classification.

Conclusion, consequence and advice

The sound answer identifies the Antarctic minke whale by scientific name and separates the cetacean regime from Part 3 MNES listing and place-specific triggers. Check the current listing before writing a categorical designation.

MODEL ANSWER 3 — Q3 — Queensland nuclear prohibition: power reactor and medical waste facility

Issue

Does the Nuclear Facilities Prohibition Act 2007 (Qld) effectively prevent construction of two facilities by the Commonwealth under the proposed public-private partnership?

Rule

Section 7(1) of the Queensland Act prohibits construction or operation of a "nuclear facility", subject to the statutory exceptions. Section 7(2)(a) expressly excepts a facility for storage or disposal of radioactive waste resulting from use of nuclear material for research or medical purposes. Section 4 purports to bind the Commonwealth only to the extent constitutionally permitted. Section 8 prevents a State development approval by itself authorising a prohibited facility. The definition in the Schedule, the identity of the legal builder/operator and the constitutional limits on State laws affecting Commonwealth government are essential. Commonwealth law inconsistency is addressed under Australian Constitution s 109 when a valid Commonwealth law actually conflicts with a State law.

Application

The electricity-producing nuclear reactor appears to be the kind of facility targeted by s 7(1), provided the Schedule definition is met. The medical radioactive-waste facility falls prima facie within the express s 7(2)(a) exception on the stated facts; its character and source of waste must still be verified. NML, a private operator, is not automatically constitutionally immune because its client is the Commonwealth. Nor does the $95 million

contract itself enact a conflicting Commonwealth statutory permission. Check land ownership, Commonwealth authority, any applicable Commonwealth nuclear/prohibition legislation, and whether a State enforcement proceeding would impair Commonwealth executive capacities. Work through who constructs and who operates each facility rather than merging the participants.

Strongest counterargument

The most forceful Commonwealth response invokes federal supremacy and constitutional immunity from inappropriate State interference. That does not erase ordinary State regulation of all Commonwealth contractors. Conversely, a blanket assertion that the State Act binds every Commonwealth project ignores s 4’s constitutional qualifier and s 109.

Conclusion, consequence and advice

The State reactor prohibition is a serious obstacle to NML; the medical-waste facility is expressly excepted if its function fits s 7(2)(a). The PPP cannot be signed on the assumption that Commonwealth involvement alone disposes of State law: obtain tailored constitutional, statutory and regulatory advice before the parties commit.

MODEL ANSWER 4 — Q4 — Former High Court building and an eight-storey rear development

Issue

Can JurisPrudent Pty Ltd’s proposed mixed-use redevelopment of 450 Little Bourke Street engage Commonwealth environmental law although it concerns an existing urban building?

Rule

The High Court of Australia (former) at the stated address was inscribed on the National Heritage List on 11 July 2007. EPBC Act ss 15B and 15C protect the National Heritage values of a listed place against a significant impact by a relevant action. The question is not whether planning permission is possible under Victorian law, but whether the proposed alteration is likely to significantly affect the values for which the building is listed. The Australian Heritage Database is the factual starting point.

Application

The façade-retention proposal may reduce some physical impacts, yet an eight-storey apartment block at the rear may affect historic fabric, spatial relationships, views, context and setting. Obtain the National Heritage listing record, mapped boundaries, conservation management plan and a heritage impact assessment identifying those particular protected values. Understand the rear curtilage and original spatial arrangement before treating façade retention as sufficient. Then apply the action/referral pathway and check separate Victorian heritage controls and local planning requirements.

Strongest counterargument

The developer may say the site is already office use and all important public-facing features will survive. The contrary case is that partial façade retention can still impair nationally significant qualities of the complex. Neither answer is resolved by the bare height in isolation.

Conclusion, consequence and advice

Yes: Commonwealth relevance is real because this exact site is National Heritage-listed. Whether a referral or approval is legally required depends on the likely significant impact on the listed heritage values, supported by specialist evidence, not merely the project’s urban location.

MODEL ANSWER 5 — Q5 — Status and implementation of the Murray–Darling Basin Plan

Issue

What is the operative scheme, and what does “current status” require the student to distinguish?

Rule

The Basin Plan 2012 is an instrument under the Water Act 2007 (Cth). It structures sustainable diversion limits, water resource planning and environmental water recovery across an interjurisdictional basin. Commonwealth and State responsibilities operate in a coordinated regulatory setting. Amendments made through the Water Amendment (Restoring Our Rivers) Act 2023 altered parts of implementation. The MDBA has been conducting the 2026 statutory Basin Plan Review; review is not the same as repeal or legal cessation.

Application

In a problem, identify whether the question concerns the Plan's legal force, State water-resource-plan implementation, water-recovery progress or the forward-looking review. As at October 2026 the Plan remains in operation while the 2026 review is underway, with the review's final recommendations expected in late 2026. The evidence and implementation metrics must be dated. Analyse how environmental outcomes depend not only on allocating water volume but also on connected habitats, climate adaptation and governance across State lines.

Strongest counterargument

A State may object that water extraction and local land use remain significant State competences. Cooperative federalism does not remove the operation of the valid federal Water Act; nor does the Plan alone answer every local licensing question.

Conclusion, consequence and advice

The safe answer is that the Basin Plan continues as a binding federal instrument, with implementation and recovery continuing and a major 2026 review underway. Check the MDBA's latest published review and water-recovery figures before reproducing a precise percentage or date.

MODEL ANSWER 6 — Q6 — Protected Matters Search Tool: conduct and interpret a site search

Issue

How should a student generate and present a legally useful Protected Matters Search Tool (PMST) result for a selected Australian location?

Rule

The PMST is a Commonwealth desktop screening tool, not a legal permit and not proof that a species is present or absent on site. The controlling legal inquiry arises under the EPBC Act's protected matters and the actual action, with referral under s 68 where appropriate and the s 75 controlled-action decision. A meaningful report documents a defined search polygon, date, coordinates, search buffer, relevant protected matters and the statutory/listing source supporting each.

Application

Choose a genuinely known site, plot the rectangle or polygon using the official tool, export a dated report and summarise the World Heritage, National Heritage, Ramsar, listed threatened species/ecological communities and migratory results. Classify each result by confirmed, likely or potential habitat in the database—not a finding of physical presence. Obtain ground-truthed ecological surveys, seasonal migration data and a preliminary impact assessment. If a nearby creek connects to downstream protected values, consider those indirect pathways under EPBC Act s 527E. Document who would undertake the action and any adjacent or linked works.

Strongest counterargument

A proponent might argue that a blank desktop result eliminates every Commonwealth obligation. That is unsound: PMST limitations, database currency and field ecology all matter. Equally, a long species list does not prove a significant impact.

Conclusion, consequence and advice

The source exercise allows students to select their own location. No specific polygon or exported PMST report was supplied for this edition, so this is the full High Distinction method rather than a fabricated site result. Insert a real dated export to convert it into a completed location-specific answer.

AUTHORITATIVE RESEARCH LINKS

The links below use official sources. Section references in model answers identify the exact rule; the user should consult the authorised compilation and current decision notice for that rule.

EPBC Act (24 August 2026)

Nuclear Facilities Prohibition Act 2007 (Qld)

National Heritage—former High Court

EPBC Public Portal

Basin Plan review (MDBA)

Reform implementation status

Significant Impact Guidelines 1.1

Brisbane Stadium decision 2026/10472

Sydney Opera House approvals

Central Queensland Coal EIS

CHAPTER 3

INTERNATIONAL ENVIRONMENTAL LAW AND ECOLOGICALLY SUSTAINABLE DEVELOPMENT

How international rules become Australian law; sovereignty and transboundary harm; ESD; climate change; marine pollution; biodiversity; and the whaling litigation.

CURRENT TEACHING EDITION · WEEKS 1·5

This chapter develops the Week 3 international-law seminar and related tutorials. Chapters 4 and 5 continue the learning through EPBC referral, assessment, approval, conditions and enforcement. For current client matters, verify commencement and transitional provisions under the 2026 reforms.

THE CHAPTER 3 LEGAL METHOD

FACTS → ENVIRONMENTAL ISSUE → INTERNATIONAL OR DOMESTIC SOURCE → LEGAL STATUS OF THAT SOURCE → CONSTITUTIONAL HOOK → IMPLEMENTING LEGISLATION → EXACT SECTION / ARTICLE → AUTHORITY → EVIDENCE → APPLICATION → COUNTERARGUMENT → CONSEQUENCE / REMEDY → CLIENT ADVICE.

International environmental law can look remote from ordinary Australian legal practice. It is not. Many of the rules that govern threatened species, World Heritage, migratory wildlife, ozone-depleting substances, climate obligations, marine pollution and biodiversity exist in Australian legislation because Australia has undertaken international commitments and the Commonwealth Parliament has legislated to give those commitments domestic effect. Chapter 3 therefore teaches a lawyer to move across legal levels rather than treating international and domestic law as separate subjects.

The central question is always practical: **what is the environmental problem, what legal rule answers it, why does that rule bind the relevant actor, and what must the client do next?**

CHAPTER 3 — THE LECTURER'S COMPLETE TEACHING NARRATIVE

3A. Begin with the physical fact: nature crosses political borders

The Week 3 seminar begins by asking students to notice a contradiction. States claim sovereignty within legal borders; rivers, migrating species, ocean currents, air pollution and greenhouse gases do not obey those borders. A chemical spill in one country can destroy fisheries in another. Whales may move between international waters and maritime zones. A country's fuel and energy policy affects atmospheric concentrations far beyond its coastline. The existence of an environmental problem does not itself tell us which State has jurisdiction, what law applies or who can enforce it. Those are separate legal questions.

In **private international law**, the dispute may involve companies, individuals and harm across borders. The lawyer asks which court has jurisdiction, which substantive law governs, how documents and witnesses can be obtained and whether a judgment can be recognised or enforced elsewhere. The lecturer's **Baia Mare cyanide spill** example makes those issues real. A Romanian mining enterprise used cyanide in gold processing, with Australian-linked corporate participation. A tailings-system failure caused pollution crossing into Hungary's waterways. Even if everyone agrees that serious damage occurred, litigation can still be complicated by competing courts, different national rules and causal evidence. Avoid assuming that an international environmental catastrophe automatically gives victims a straightforward international-court claim.

Public international environmental law, in contrast, regulates the relationships, obligations and conduct of States and international organisations. Relevant norms arise from treaties, customary international law and general principles, assisted by decisions and scholarship as evidence or subsidiary means. Article 38(1) of the **Statute of the International Court of Justice** is a useful organising reference, but it is not a domestic environmental approvals code. When advising an Australian developer, identify whether an international instrument has actually been implemented in Australian legislation. A treaty obligation addressed to Australia and a direct statutory prohibition on a company are different things.

3B. Sovereignty, due diligence and the no-harm principle

State sovereignty gives a country significant control over resources and activities within its territory. It does not supply an unlimited licence to cause serious transboundary environmental damage. The **Trail Smelter arbitration** between the United States and Canada (decisions in 1938 and 1941) is traditionally used to teach the no-harm principle: pollution from a Canadian smelter injured interests across the US border, raising responsibility for transboundary damage supported by the necessary evidence. The more exact contemporary argument is that States have due-diligence obligations to prevent significant transboundary environmental harm, and these may involve risk assessment, notification, cooperation and reasonable regulatory measures. The threshold and remedial consequence depend on the applicable source of law and the facts.

The **Rio Declaration on Environment and Development (1992), Principle 2**, combines sovereign rights to exploit natural resources under environmental and development policies with responsibility to ensure activities within jurisdiction or control do not cause environmental damage to other States or areas beyond national jurisdiction. It is important to distinguish a declaration from a treaty: a declaration may record or influence legal principles, but one should not claim every sentence is independently binding treaty law. Likewise, statements of customary international law require evidence of sufficiently general State practice accompanied by a sense of legal obligation (**opinio juris**).

The International Court of Justice's decision in **Pulp Mills on the River Uruguay (Argentina v Uruguay)**, Judgment, [2010] ICJ Rep 14, is a useful illustration of transboundary environmental cooperation and due diligence. The Court treated environmental impact assessment as an important requirement when there is a risk that proposed industrial activity may have a significant adverse transboundary effect, while also examining the specific treaty duties in issue. It did not decree one universal EIA form for every country and every project. Use it to connect the source of the duty, threshold of environmental risk, procedural cooperation and evidence—not simply as a slogan that an EIS is always obligatory internationally.

3C. How to tell whether a treaty is legally operative in Australia

The lawyer must distinguish **adoption**, **signature**, **ratification or accession**, **entry into force** and **domestic implementation**. A country can support an international document politically without the document imposing the same enforceable domestic rule as legislation. In Australia the Executive may enter treaties, but their provisions

do not generally become self-executing rights and obligations for Australian persons merely upon ratification. Parliament ordinarily needs to create or amend domestic legislation. The Commonwealth may rely on **Constitution s 51(xxix)**, the external affairs power, to implement relevant treaty obligations, as illustrated by **Commonwealth v Tasmania** (1983) 158 CLR 1.

The administrative-law caution comes from **Minister for Immigration and Ethnic Affairs v Teoh** (1995) 183 CLR 273, which examined the relationship between ratification of a treaty and legitimate expectations in administrative decision-making. It is not accurate to state that *Teoh* makes every unincorporated treaty automatically enforceable as substantive domestic law. Subsequent decisions, government statements and statutory developments require care in applying the principle. The exam-safe method is to identify the treaty, whether the particular obligation has been implemented through an Act, and any legally relevant procedural or interpretive role of international commitments. Distinguish treaty interpretation from a free-standing right to demand that an Australian Minister follow an international policy statement.

An example is **World Heritage protection**. Australia's international obligations under the **1972 World Heritage Convention** explain an important constitutional foundation and policy purpose for Commonwealth legislation. But a proponent's immediate question—'Can we start clearing near this listed property?'—is answered by the **EPBC Act's operative World Heritage provisions, referral duties and approval rules**. The Convention does not replace those rules. The same discipline applies to wetlands, migratory animals and biological diversity.

3D. Hard law, soft law and why the Rio process matters

The lecturer traces sustainable development from the **World Commission on Environment and Development**, *Our Common Future* (the **Brundtland Report**, 1987), through the **1992 Rio Earth Summit**. Sustainable development is commonly described as development meeting the needs of the present without compromising future generations' ability to meet their needs. That definition is a foundation, not an answer to a specific permit question. Rio produced different forms of international instrument: the **Rio Declaration** (a declaration articulating principles), **Agenda 21** (an action framework), and treaties opened for signature including the **Convention on Biological Diversity (CBD)** and the **United Nations Framework Convention on Climate Change (UNFCCC)**. Students should be able to distinguish them without treating all as statutes.

In Australian law, **ecologically sustainable development (ESD)** integrates ecological considerations into development decisions. The EPBC Act's **s 3** sets

objects; **s 3A** articulates principles including decision-making processes that integrate long-term and short-term economic, environmental, social and equitable considerations; the precautionary principle; intergenerational equity; biodiversity and ecological integrity; and improved valuation, pricing and incentive mechanisms. Later, **s 136** identifies factors the Minister must take into account at an approval decision, while **s 391** connects particular decisions to the precautionary principle. The critical distinction is between a broad principle and the statutory step at which Parliament requires it to be considered.

Students sometimes say 'ESD means the Minister must choose the environmentally best project.' That is too simple. ESD involves integration of different legally recognised considerations within the particular statute. Some statutory provisions impose hard restrictions; others require an exercise of judgment. A court reviewing an approval will examine compliance with the actual legal requirements, not substitute a free-ranging personal preference for the Minister's lawful discretion.

3E. Precaution: uncertainty is a reason to investigate, not an excuse to guess

The **precautionary principle** in EPBC Act **s 3A(b)** concerns threats of serious or irreversible environmental damage and the role of lack of full scientific certainty. A similar principle appears in the **Rio Declaration, Principle 15**. The Australian judicial explanation frequently taught through **Leatch v National Parks and Wildlife Service** (1993) 81 LGERA 270; [1993] NSWLEC 191, involving a proposed road and habitat of the giant burrowing frog, shows that precaution can be practically important when information is incomplete and consequences may be grave. The case must be used within its own legal and evidentiary setting rather than treated as a universal ban on any project involving an endangered species.

Teach the reasoning in stages. **First**, identify the environmental value and the feared damage: extinction risk, irreversible habitat loss, contamination or disruption to breeding. **Secondly**, explain what evidence exists and what remains uncertain: surveys, expert opinion, modelling or studies from a different species. **Thirdly**, evaluate the seriousness and possible irreversibility of the harm. **Fourthly**, identify the statutory decision and whether precaution is mandatory or discretionary in that context. **Fifthly**, examine practical responses: additional surveys, project redesign, buffers, staging, monitoring, adaptive conditions or refusal where legally justified. The principle neither proves that damage will happen nor permits the decision-maker to ignore serious plausible risks because absolute certainty is unavailable.

The Week 5 **Oxleyan Pygmy Perch** hypothetical illustrates the point beautifully. The Council proposes relocating fish before damming a shallow creek that supports breeding. A European relocation of a different pygmy-perch species is mentioned, but the long-term outcome is unknown. That evidence does not establish that relocating the particular Australian population will succeed. The lawyer should identify whether the actual species is nationally listed, whether the predicted impact is significant, what scientific uncertainty remains, and why the Minister must take the applicable precautionary provision into account. Do not confuse a duty to *consider* precaution with an automatic duty to refuse approval; the adequacy of the reasoning and evidence is central.

3F. Intergenerational equity and cumulative environmental effects

Intergenerational equity requires lawyers to think beyond immediate construction and revenue. A project may operate for decades; habitat or groundwater recovery may take longer still. A mine assessment limited to the first year of site operations may fail to communicate its true environmental consequences. The Week 4 slides introduce **Gray v Minister for Planning** [2006] NSWLEC 720. The proposed Anvil Hill coal mine was assessed in a setting where the environmental assessment had considered direct greenhouse-gas emissions but not downstream emissions from burning the exported coal. The NSW Land and Environment Court connected the statutory objects, ESD and the requirement for an adequate assessment, including cumulative impacts. The decision's legal operation was specific to NSW planning law; its broader teaching value is that the environmental information relevant to a decision may extend beyond the obvious on-site activity.

Notice the method shared by **Gray**, **Mon Repos**, **Nathan Dam** and modern EIA: identify the causal pathway and the statutory rule that makes it legally relevant. For a dam, water extraction may enable downstream irrigation and diffuse pollution. For a mine, coal may be burnt elsewhere. For a resort, supporting roads and waterworks may be undertaken by other proponents. These are not identical statutory questions, and direct and indirect impacts must still satisfy the applicable statutory definition. The connecting discipline is to avoid selecting an arbitrary narrow boundary around the project simply because it makes the assessment easier.

Taralga Landscape Guardians Inc v Minister for Planning [2007] NSWLEC 59 provides a balancing illustration from wind-energy development. Environmental, social, landscape and energy benefits can point in different directions. A responsible ESD analysis evaluates their actual legal relevance and the evidence; it does not reduce every renewable-energy proposal to an automatic approval or every

ecological concern to an automatic refusal. This matters because sustainable development is an evaluative process, not a predetermined slogan.

3G. Biodiversity treaties: identify the exact species, place and legal mechanism

The **Convention on Biological Diversity (1992)** sets an international framework for conservation of biological diversity, sustainable use of its components, and fair and equitable sharing of benefits arising from genetic resources. **Article 8** deals with *in-situ* conservation, including protected areas and conservation of ecosystems and natural habitats. That helps explain Australian conservation design, but the direct domestic question is usually answered through an EPBC listing and the relevant Part 3 trigger. The **Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)** concerns international trade in specified species and specimens; it should not be confused with a general domestic ban on all development affecting any species.

The **Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar, 1971)** is foundational to the international wetlands protection regime. Wetlands such as **Moreton Bay** may support migratory shorebirds, so a project may engage overlapping Ramsar and listed-migratory-species provisions. The **Bonn Convention**, together with the bilateral migratory bird agreements with Japan, China and the Republic of Korea (commonly **JAMBA, CAMBA and ROKAMBA**), illustrates why wildlife migration raises international obligations. Do not assume one site's protection depends exclusively on the presence of an endangered species; the *ecological character* of a Ramsar wetland is its own protected matter.

In tutorial answers, construct a table in your mind: **protected matter → underlying treaty (if any) → domestic controlling provision → required factual impact**. National Heritage is not underpinned by a matching international convention in the same direct way as World Heritage; its inclusion relies on different constitutional structures. Likewise, nuclear actions and the water-resource trigger cannot simply be attributed to a single international environmental treaty. The Week 4 tutorial focuses on exactly this distinction.

3H. Ozone, climate and transboundary pollution: three different problems

The **Vienna Convention for the Protection of the Ozone Layer (1985)** and the **Montreal Protocol on Substances that Deplete the Ozone Layer (1987)** form the

background to Australia's ozone protection regime, implemented through legislation including the **Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 (Cth)**. Their regulatory design is comparatively concrete: controls on specified substances, importation, manufacture and related reporting or licensing. If a problem mentions a regulated substance, the lawyer should identify the current schedule, authorisation and prohibition; do not assume a broad international duty itself supplies an offence for a private importer.

Climate agreements pursue a related but distinct global problem. The **UNFCCC (1992)** established a framework for international climate cooperation; the **Paris Agreement (2015)** uses nationally determined contributions and processes for transparency and progression. In Australia the **Climate Change Act 2022 (Cth)** provides statutory targets and reporting-related architecture, while other enactments deal with emissions reporting and safeguards. A legally accurate answer separates international commitments from domestic targets, sector-specific controls and a particular project's approval requirements. It should also distinguish *mitigation* (reducing emissions and enhancing sinks) from *adaptation* (responding to unavoidable climate effects).

Marine pollution provides another example of treaty-to-statute implementation. Shipping operations and sea dumping may be governed by particular Commonwealth Acts and regulations rather than the general EPBC development referral alone. Start by identifying whether the problem concerns a vessel discharge, deliberate disposal at sea, protected marine-area impact or a pollution incident; these invoke different regimes. The Week 3 teaching is not that one international convention governs every ocean problem, but that lawyers must find the correct layer of international obligation, domestic enactment and enforcement body.

3I. Whaling: distinguish the Australian litigation from the international case

The course's whale litigation is a powerful demonstration of two legal systems addressing a related controversy. In **Humane Society International Inc v Kyodo Senpaku Kaisha Ltd**, the Federal Court dealt with Japanese whaling activities in the **Australian Whale Sanctuary** and the operation of Australian domestic legislation. The applicable statutory setting includes the EPBC Act's cetacean provisions and the sanctuary established under **s 225**. The proceedings also illustrate standing, jurisdiction, remedies and the practical difficulty of enforcing a judgment against a foreign operator. Students should identify precisely which of the related reported decisions they rely upon; the preliminary and final judgments are not interchangeable.

At the international level, **Whaling in the Antarctic (Australia v Japan: New Zealand intervening)**, Judgment, [2014] ICJ Rep 226, examined Japan's programme under the **International Convention for the Regulation of Whaling**. The International Court of Justice assessed whether the special-permit programme was within the treaty's research exception, considering the design and implementation of the programme. The Court's judgment concerned treaty compliance between States. The Federal Court proceedings concerned enforceable Australian domestic statutory duties. The common controversy should not obscure the different jurisdiction, parties, tests and remedies.

When asked for advice about cetacean protection, identify species and location, whether the Australian Whale Sanctuary is involved, the conduct at issue, the EPBC provisions and available remedies. Do not begin with the ICJ judgment merely because it is the best-known whaling case if the real question is domestic approval or enforcement.

3J. The environmental lawyer's international-to-domestic decision tree

A useful worked example is a foreign-backed company proposing development near a coastal wetland visited by internationally migratory birds. The company says the wetland is 'only of international concern', so Australian law cannot interfere; an opponent says a convention forbids any disturbance. Both propositions are incomplete. Ask whether the wetland is **Ramsar-listed** and whether the affected birds are **listed migratory species**. Confirm the entries in official sources. Find the appropriate EPBC controlling provisions, assess likely significant impacts, identify the proponent, and determine whether Commonwealth referral or approval is required. A separate Queensland approval may also be necessary.

If an international instrument explains the statute's purpose or Australia's obligations, cite it appropriately. Where the project produces transboundary harm, assess the additional international jurisdiction and due-diligence issues. If the project affects climate, distinguish a general national target from a project-specific legal obligation. That is the method the lecturer wants students to master: **identify the environmental system; locate the jurisdiction; classify the legal instrument; find the operative Australian rule; gather the evidence; analyse the factual elements; advise on lawful options and consequences**. It converts international environmental law from an intimidating list of conventions into a coherent way of thinking.

Primary research and course alignment

Course basis. Week 3 Seminar transcripts; Week 3 university slides; Tutorial 3 discussed in Week 4; treaties and identified judgments. This expanded teaching narrative is designed to be studied alongside the original university tutorial questions and the separate answers in this book.

Important: Current legislation controls where slide material predates the 2026 amendments. The present narrative explains the course approach; transitional application must be checked for actual projects.

- EPBC Act
- Commonwealth v Tasmania
- Leatch
- Gray

3.1 Why environmental problems cross legal borders

Political borders are human constructs. Air pollution does not stop at a customs checkpoint. Rivers flow through several jurisdictions. Migratory animals move across national boundaries. Greenhouse gases mix in a global atmosphere. Marine pollution can travel enormous distances. A decision made within one country can therefore create environmental consequences in another country or in areas beyond national jurisdiction.

This creates a structural problem. States are sovereign, but environmental systems are interconnected. International environmental law develops rules for managing that tension. It does not abolish sovereignty. Rather, it supplies rules through which States accept duties, coordinate conduct, exchange information, prevent or reduce harm and resolve disputes.

> **Issue spotting.** Whenever an environmental fact pattern crosses a border, ask: *What crosses the border?* Pollution? Water? Wildlife? Trade? Greenhouse emissions? Waste? Then ask whether the problem is principally between private parties or between States. That classification directs the lawyer toward private international law, public international law, or both.

3.2 Private international environmental disputes: jurisdiction, governing law and enforcement

Private international law, often called conflict of laws, deals with disputes involving private actors and a cross-border element. The environmental dimension does not change the core conflict-of-laws questions. The lawyer must ask which court can hear the dispute, which jurisdiction's substantive law applies, how evidence and parties can be brought before the court, and whether any judgment can be recognised and enforced where the defendant or its assets are located.

The Week 3 seminar uses the **Baia Mare cyanide spill** in Romania as the teaching example. A mining operation used cyanide in gold processing. A containment failure during severe weather released contaminated water into a river system and the pollution moved across national borders. The legal lesson is more important than any disputed numerical estimate of the spill: an environmental event can originate in one State, cause damage in another, involve corporations connected with a third country and leave a successful claimant with a further enforcement problem if the responsible corporate structure or assets are elsewhere.

PRIVATE TRANSBOUNDARY PROBLEM → identify the defendant → identify where the harmful conduct occurred → identify where damage occurred → identify available forums → determine governing law → obtain evidence → obtain judgment → ask where assets are → test recognition and enforcement.

A student should therefore resist writing, “Pollution crossed the border, so international law applies.” That is incomplete. A private claim may still be brought under domestic tort, statutory or compensation law, while conflict-of-laws principles determine the forum and applicable law.

3.3 Public international environmental law: rules between States

Public international law regulates legal relations between States and, in appropriate contexts, international organisations. Environmental disputes at this level can involve treaty obligations, customary international law, State responsibility, diplomatic processes, arbitration or adjudication before an international tribunal such as the International Court of Justice.

This distinction matters because an Australian domestic court does not become the International Court of Justice merely because facts have an international dimension. A domestic court applies Australian law within its jurisdiction. A public international law dispute between States proceeds through the international mechanisms available to them.

3.4 The three principal sources students must distinguish

Source	What it is	Why the distinction matters
Treaty / convention / protocol	A written international agreement governed by international law. Treaties create binding obligations for parties according to their terms once the relevant consent-to-be-bound requirements are satisfied.	Do not assume the treaty itself is directly enforceable by an Australian citizen. Ask whether and how Australia implemented it domestically.
Declaration / soft law	A political or normative instrument that may articulate principles without itself having treaty status.	Soft law can influence legislation, policy and interpretation, but its legal force must not be overstated.
	A rule developed through sufficiently widespread and consistent State practice	Both elements must be identified. Repeated conduct alone is not

Source	What it is	Why the distinction matters
Customary international law	accompanied by acceptance that the practice is legally required (*opinio juris*).	enough if States do not treat it as legally obligatory.

> **Exam trap.** “International rule” is not a complete legal classification. State whether the proposition comes from a treaty, soft-law declaration, customary international law, a judicial decision interpreting international law, or domestic legislation implementing an international commitment.

3.5 Customary international law: State practice plus *opinio juris*

Customary international law requires two related elements: **general State practice** and **acceptance as law**, commonly expressed by the Latin term *opinio juris*. The second element is what distinguishes a legal custom from habit, convenience or diplomatic courtesy.

The Week 3 seminar connects this idea with *Pulp Mills on the River Uruguay (Argentina v Uruguay)*. The International Court of Justice stated that where there is a risk that proposed industrial activity may have a significant adverse transboundary impact, the requirement to undertake an environmental impact assessment can be regarded as a requirement under general international law. The teaching significance is substantial: environmental impact assessment is not merely an Australian planning technique. In an appropriate transboundary context, assessment is part of the international legal architecture for prevention and due diligence.

> *Pulp Mills on the River Uruguay (Argentina v Uruguay)* (Judgment, 20 April 2010)
>
> **Facts.** Argentina challenged Uruguay's authorisation of pulp mills on a boundary river and alleged breaches of a bilateral river regime and environmental obligations.
>
> **Issue.** What procedural and substantive environmental obligations applied to a project capable of transboundary effects?
>
> **Principle.** The Court treated environmental assessment as part of the due-diligence framework where significant transboundary adverse impact is risked. It also distinguished procedural cooperation obligations from substantive environmental obligations.

Why it matters. It teaches students that environmental assessment, notification, cooperation and scientific evidence can have international legal significance before damage occurs.

3.6 Sovereignty is the starting point - not the end of the analysis

The seminar describes **permanent sovereignty** as a foundational idea. A State exercises legal authority over its territory, subject to international law. Sovereignty explains why each State ordinarily controls activities within its jurisdiction. It does not mean that the State may use its territory without regard to the rights of other States or shared environmental systems.

In the marine context, the United Nations Convention on the Law of the Sea (UNCLOS) provides the legal framework students should recognise. The territorial sea may extend up to **12 nautical miles** from the applicable baselines. The exclusive economic zone (EEZ) may extend up to **200 nautical miles**. The rights in an EEZ are not identical to full territorial sovereignty; they are sovereign rights and jurisdiction for purposes recognised by UNCLOS. Beyond national maritime zones, different high-seas and international regimes apply.

Professional precision. Do not write “a country owns the ocean to 200 nautical miles.” Identify the legal zone and the rights that attach to it. Territorial sea, contiguous zone, EEZ, continental shelf and high seas are different legal concepts.

3.7 The no-harm principle and *Trail Smelter*

Sovereignty is qualified by responsibility. The classic environmental expression is the **no-harm principle**: a State should not allow activities within its jurisdiction or control to cause serious environmental injury to another State. The Week 3 seminar explains the idea by analogy with the common-law intuition that a landowner cannot use property in a way that unlawfully harms a neighbour.

Trail Smelter Arbitration (United States v Canada) (1938 and 1941), 3 RIAA 1905

Facts. Emissions from a lead and zinc smelter in Trail, British Columbia crossed into Washington State and caused damage.

Issue. Could Canada permit activities in its territory that produced proven cross-border injury in the United States?

Outcome and principle. The arbitral tribunal imposed responsibility in the circumstances and required control of the transboundary pollution. The case became a foundational authority for the proposition that territorial sovereignty is accompanied by obligations regarding serious transboundary harm.

Use it when. A problem involves pollution moving from one State into another, prevention of transboundary harm, State responsibility or the historical development of international environmental law.

3.8 Treaties: signature, ratification and domestic implementation are different steps

A treaty can be negotiated and signed at the international level, but students must distinguish **signature** from **ratification** and both from **domestic implementation**. The Vienna Convention on the Law of Treaties supplies the general treaty framework, but the central Australian constitutional point for this chapter is simpler: Australian treaties are ordinarily **not self-executing**. Ratification does not, by itself, rewrite domestic law or create every treaty rule as a directly enforceable cause of action for individuals.

Where domestic legal rights, prohibitions, licences or penalties are required, Parliament generally legislates. For Commonwealth environmental legislation, the constitutional source frequently includes **s 51(xxix) of the Constitution - the external affairs power**.

INTERNATIONAL PROBLEM → TREATY / CONVENTION → AUSTRALIA CONSENTS TO BE BOUND → COMMONWEALTH IDENTIFIES CONSTITUTIONAL POWER → DOMESTIC ACT IMPLEMENTS OBLIGATIONS → REGULATOR / MINISTER APPLIES THE ACT → COURT REVIEWS OR ENFORCES THE DOMESTIC LAW.

3.9 External affairs power: why *Commonwealth v Tasmania* matters

Section 51(xxix) gives the Commonwealth Parliament power to make laws with respect to **external affairs**. In environmental law its importance is illustrated by the Tasmanian Dam Case.

Commonwealth v Tasmania [1983] HCA 21; (1983) 158 CLR 1

Facts. Tasmania sought to proceed with the Gordon-below-Franklin hydro-electric project in an area associated with Australia's World Heritage obligations.

Commonwealth legislation sought to prevent conduct affecting the protected property.

Issue. Could the Commonwealth validly legislate to implement Australia's international obligations even though land and resource development were occurring inside a State?

Outcome. The High Court upheld important parts of the Commonwealth scheme. The external affairs power was central to the Commonwealth's capacity to implement Australia's World Heritage Convention obligations.

Why it matters in Chapter 3. It supplies the constitutional bridge between an international environmental commitment and binding Commonwealth domestic legislation.

3.10 Treaties and administrative decision-making: the *Teoh* caution

The seminar refers to the doctrine associated with *Minister for Immigration and Ethnic Affairs v Teoh* [1995] HCA 20; (1995) 183 CLR 273. Historically, the High Court held that ratification of a treaty could contribute to a legitimate expectation in administrative decision-making even where the treaty had not been incorporated into domestic law.

Students must not turn that proposition into “ratified treaties are Australian law.” They are not. Nor should *Teoh* be taught without its later context. In *Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte Lam* [2003] HCA 6; (2003) 214 CLR 1, the High Court's treatment of legitimate expectation substantially limited the utility of that terminology. For environmental advice, the safe method is to identify the domestic statute and the legally mandatory considerations rather than assume an unincorporated treaty is directly enforceable.

3.11 Ozone protection: the international-to-domestic chain in one example

Ozone protection provides a clean illustration of the chapter's method. International concern about ozone depletion produced the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer. Australia then enacted domestic controls.

The current *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth) makes the connection explicit. Section 3 states objectives that include giving effect to Australia's obligations under the Vienna Convention and Montreal Protocol,

while s 69B identifies the external affairs power and relevant international agreements as part of the Act's constitutional basis.

WHY THIS EXAMPLE IS SO USEFUL

The international instrument is not decorative background. It explains **why** the Commonwealth legislates, **where** constitutional power comes from, and **how** a global environmental problem becomes a domestic licensing and control regime.

3.12 From sustainable development to ESD: the Brundtland-Rio-Australia pathway

The conceptual origin of modern sustainable-development language is commonly associated with the 1987 World Commission on Environment and Development report, *Our Common Future*, known as the **Brundtland Report**. Its enduring idea is development that meets present needs without compromising the ability of future generations to meet their own needs.

The 1992 United Nations Conference on Environment and Development - the Rio Earth Summit - then produced several influential instruments, including the Rio Declaration on Environment and Development, Agenda 21 and the Forest Principles, as well as major treaty developments in climate change and biological diversity.

The Rio Declaration is **soft law**, not a treaty. Its importance lies in articulating principles that have influenced treaties, domestic legislation, environmental policy and judicial reasoning. Australia developed the domestic expression **ecologically sustainable development (ESD)**, reflected in the 1992 Intergovernmental Agreement on the Environment and subsequently embedded in legislation.

3.13 EPBC Act ss 3, 3A and 136: turning ESD into operative legal reasoning

The current *Environment Protection and Biodiversity Conservation Act 1999* (Cth) does more than mention sustainability. Section **3** includes promotion of ecologically sustainable development among the Act's objects. Section **3A** identifies five ESD principles:

1. integration of long-term and short-term economic, environmental, social and equitable considerations;
2. the precautionary principle;
3. intergenerational equity;

4. conservation of biological diversity and ecological integrity as a fundamental consideration; and
5. improved valuation, pricing and incentive mechanisms.

The distinction between an **object** and an **operative decision rule** matters. Section **136(1)** sets mandatory considerations for approval decisions, including matters relevant to controlling provisions and economic and social matters. Under **s 136(2)(a)**, the Minister must take into account the principles of ESD when considering those matters.

> **How to write this in an exam.** Do not say merely, "The EPBC Act supports sustainability." Identify **s 3** (objects), **s 3A** (the principles), and the relevant substantive decision provision such as **s 136**. Explain what legal work each provision performs.

3.14 The precautionary principle: uncertainty is part of the legal problem

Section 3A(b) expresses the precautionary principle: where there are threats of **serious or irreversible environmental damage**, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

The principle is often misunderstood. It does not mean "ban anything uncertain." Nor does it mean "science is irrelevant." It means that serious environmental risk cannot be ignored merely because the evidence is incomplete. The legal decision-maker should identify the threat, assess the uncertainty, evaluate the consequences of being wrong and adopt proportionate preventative measures where the legal framework requires it.

> *Leatch v National Parks and Wildlife Service* [1993] NSWLEC 191; (1993) 81 LGERA 270
>
> **Facts.** Shoalhaven City Council proposed a link road. A licence had been granted under State fauna-protection legislation. The evidence concerning the giant burrowing frog was incomplete: the area was not treated as prime habitat and the species had not been directly observed on the project site, but evidence indicated a male call had been heard and the species could travel significant distances.
>
> **Issue.** How should a decision-maker respond when the possible impact on a threatened species is serious but the scientific evidence is uncertain?

Reasoning. Stein J treated precaution as a common-sense decision principle suited to uncertainty about species population, habitat and behaviour. Lack of complete knowledge did not justify assuming the risk away.

Outcome. The licence was not granted on the material then available, while leaving open the possibility that better scientific knowledge could support a different decision later.

Why it matters. *Leatch* teaches the difference between **prevention**, where harm is sufficiently known, and **precaution**, where uncertainty itself is legally relevant because the possible harm is serious or irreversible.

3.15 How to apply precaution step by step

Step 1 - Identify the environmental harm. What exactly could be damaged: a species, ecological community, wetland, water resource, heritage value, coastal system or human environment?

Step 2 - Characterise seriousness and reversibility. Extinction, irreversible habitat loss and permanent contamination are qualitatively different from temporary and readily reversible disturbance.

Step 3 - Identify scientific uncertainty. What is unknown? Presence? Population size? Pathway? Toxicity? Cumulative impact? Future sea-level response?

Step 4 - Do not convert uncertainty into “no risk”. Ask whether surveys, conditions, redesign, buffers, monitoring, adaptive management or refusal are required.

Step 5 - Explain proportionality. Precaution changes how risk is managed; it does not automatically dictate the most restrictive outcome in every case.

3.16 Intergenerational equity: decisions are not confined to today's impacts

Section 3A(c) describes intergenerational equity: the present generation should ensure that the health, diversity and productivity of the environment are maintained or

enhanced for future generations. This principle expands the decision horizon. A project may produce immediate benefits while transferring environmental costs to people who cannot participate in today's decision.

> *Gray v Minister for Planning* [2006] NSWLEC 720; (2006) 152 LGERA 258
>
> **Facts.** Peter Gray challenged aspects of the environmental assessment process for the proposed Anvil Hill open-cut coal mine in New South Wales. The greenhouse analysis addressed direct mine emissions but did not adequately account for downstream emissions from burning the coal.
>
> **Issue.** Could assessment stop at emissions physically produced at the mine gate?
>
> **Reasoning.** The Court treated ESD, including intergenerational equity, as relevant to the statutory assessment process and required a broader understanding of environmental consequences.
>
> **Why it matters.** Students learn to ask about **indirect, downstream and cumulative impacts**, not merely immediate site disturbance. A complete environmental assessment can require attention to consequences occurring later or elsewhere.

3.17 ESD does not always operate against development: *Taralga*

Environmental principles do not mechanically select one side. A renewable-energy project may itself advance long-term environmental objectives while causing local amenity, landscape or ecological impacts. The lawyer must therefore identify the statutory criteria and weigh the evidence rather than label one party “pro-environment”.

> *Taralga Landscape Guardians Inc v Minister for Planning* [2007] NSWLEC 59; (2007) 161 LGERA 1
>
> **Teaching point.** The Land and Environment Court considered objections to a wind farm and the broader environmental benefits of renewable energy. The case demonstrates that ESD principles can support a project where its long-term environmental benefits form part of the statutory balance.
>
> **Exam use.** Use *Taralga* to resist the simplistic proposition that ESD always means refusing development. ESD is a disciplined framework for integrated decision-making.

3.18 Climate change: from framework convention to domestic law

Climate change illustrates layered international regulation. The United Nations Framework Convention on Climate Change (UNFCCC) establishes the foundational framework and recognises differentiated responsibilities and capabilities. The Kyoto Protocol developed quantified and market-based mechanisms for participating developed-country parties, while the Paris Agreement establishes a global framework based on nationally determined contributions, progression and review.

Students should distinguish a **framework convention** from later protocols or agreements. The convention establishes the institutional and legal architecture; later instruments can add or refine commitments.

3.19 Australian climate legislation: targets are not the same thing as reporting

The *Climate Change Act 2022* (Cth) sets national emissions-reduction targets. Section **10(1)** identifies a target of reducing net greenhouse gas emissions to **43% below 2005 levels by 2030** and to **net zero by 2050**.

That legislation must be distinguished from the *National Greenhouse and Energy Reporting Act 2007* (Cth), which establishes a reporting framework for greenhouse gas emissions, energy production and energy consumption and supports administration of related regulatory mechanisms. One statute contains national targets; the other creates reporting and data obligations. Conflating them produces bad legal advice.

> **Correction from automated transcript summary.** The Commonwealth statute is the **Climate Change Act 2022 (Cth)**, not a “Climate Change Act 2017”. The seminar audio truncated the year during transcription.

3.20 Climate adaptation in planning: today's approval can create tomorrow's hazard

Climate law is not only about reducing emissions. Planning and development law also deals with **adaptation**: flooding, sea-level rise, coastal erosion, heat, bushfire and infrastructure resilience. The seminar's coastal subdivision example asks whether land should be approved for development where modelling indicates serious future inundation and loss of access.

The legal technique is familiar: identify the planning statute and scheme, identify the relevant hazard policy or assessment requirement, obtain technically competent

evidence, and determine whether the proposal is acceptable over the planning horizon. Precaution and intergenerational equity can explain why a decision-maker should not ignore a foreseeable future hazard merely because it may occur beyond the present owner's lifetime.

> **Client advice.** A property developer wants a yes/no answer. The environmental lawyer should instead provide a risk pathway: what modelling is required, which climate horizon applies, what design response is possible, whether safe access remains available, what conditions may be imposed, and whether residual risk makes approval legally or commercially unrealistic.

3.21 Marine pollution: international liability translated into domestic statutes

Marine oil pollution requires rapid response. International conventions allocate liability and support compensation mechanisms so that clean-up need not wait for final resolution of every fault dispute. Australian law gives effect to that architecture through several statutes rather than one generic “oil pollution Act”.

Two central Commonwealth statutes students should recognise are the *Protection of the Sea (Civil Liability) Act 1981* (Cth) and the *Protection of the Sea (Oil Pollution Compensation Funds) Act 1993* (Cth). Sea dumping is separately addressed through the *Environment Protection (Sea Dumping) Act 1981* (Cth).

The teaching lesson is structural: identify the source of marine pollution, identify the relevant international convention, then identify the Australian implementing statute. Liability for oil carried by tankers, pollution from ships, dumping of waste at sea and emergency response do not necessarily sit in the same Act.

3.22 Biological diversity: more than counting species

The Convention on Biological Diversity (CBD) defines biological diversity broadly to include variability among living organisms and diversity **within species, between species and of ecosystems**. Article 1 identifies three objectives: conservation of biological diversity, sustainable use of its components, and fair and equitable sharing of benefits arising from genetic resources.

This breadth matters because environmental law is not simply a list of charismatic animals. Habitat, ecological processes, genetic variation and ecosystem relationships can be legally and scientifically important. A species may appear locally abundant yet depend on a threatened habitat, breeding area, food source or migration route.

The seminar identifies recurring causes of biodiversity loss including habitat destruction, over-exploitation, invasive species and climate change. It also emphasises two reasons biodiversity regulation is difficult: extinction and habitat loss can be irreversible, and human knowledge of ecological relationships is incomplete.

3.23 Biosphere 2 as a teaching analogy: why ecological humility matters

The seminar uses the Biosphere 2 experiment as an analogy for ecological uncertainty. The deeper lesson is not the precise number of species or engineering details; it is that humans can misjudge which ecological interactions are necessary to maintain a functioning system. Environmental decision-making therefore requires humility about incomplete knowledge.

This links directly back to precaution. If a development would remove the only known breeding habitat of a threatened species, the absence of complete knowledge about the species' ecological role does not logically prove that its loss is harmless. The legal task is to apply the governing statute and evidence without pretending that uncertainty equals safety.

3.24 International biodiversity instruments become specific domestic hooks

The CBD is broad, but biodiversity law also includes instruments directed to particular sites, habitats, species and forms of trade. Students should recognise the architecture:

International instrument	Environmental focus	Australian legal connection to investigate
World Heritage Convention	Cultural and natural heritage of outstanding universal value	EPBC Act World Heritage provisions and constitutional external-affairs basis.
Ramsar Convention	Wetlands of international importance	EPBC Act protection of declared Ramsar wetlands.
Convention on Migratory Species (Bonn Convention) and relevant bilateral migratory-bird agreements	Migratory wildlife crossing national boundaries	EPBC Act listed migratory species provisions.
CITES	International trade in endangered species	EPBC Act wildlife-trade controls and permits.
International Convention for the Regulation of Whaling 1946	Conservation and regulation of whaling	

International instrument	Environmental focus	Australian legal connection to investigate
		International Whaling Commission regime; Australian cetacean protection under the EPBC Act.

3.25 Whaling: one problem, two legal pathways

The whaling material is a powerful synthesis because it shows the same environmental conduct being examined through both **Australian domestic law** and **public international law**.

Under the International Convention for the Regulation of Whaling (ICRW), the International Whaling Commission adopted a commercial whaling moratorium. Article VIII permits a contracting government to issue special permits authorising its nationals to kill, take and treat whales for purposes of scientific research. Japan relied on the special-permit mechanism for its Antarctic research programmes, including JARPA II.

The legal issue was not simply whether a permit had the word “scientific” on it. It was whether the programme was genuinely within the treaty exception when assessed against its design and implementation.

3.26 Antarctica: sovereignty claims are legally sensitive

Australia claims sovereignty over the Australian Antarctic Territory, but Antarctic sovereignty is internationally complex and is not universally recognised. The Antarctic Treaty preserves the positions of claimant and non-claimant States through Article IV while enabling peaceful use, scientific cooperation and a stable legal framework without requiring final resolution of territorial claims.

> **Do not write:** “Antarctica belongs to Australia.” Australia claims a defined Australian Antarctic Territory; other States' recognition differs. In legal analysis, identify the claim, the treaty framework and the specific jurisdictional provision being relied upon.

3.27 The Australian Whale Sanctuary: start with EPBC Act s 225

Part 13 of the EPBC Act contains Commonwealth cetacean protections. Section **225** establishes the **Australian Whale Sanctuary**. The statutory definition and application must be read carefully rather than reduced to the shorthand “3 nautical miles to 200 nautical miles”. Sections **229 and 230** form part of the offence/civil-penalty regime

concerning killing or injuring cetaceans in the Sanctuary, subject to statutory exceptions and permits.

Inside Queensland coastal waters, separate State wildlife rules may also apply. The current *Nature Conservation (Animals) Regulation 2020* (Qld) contains whale and dolphin approach rules, including no-approach and caution zones. Again, the professional lesson is layered regulation rather than a single universal rule.

3.28 *Humane Society International v Kyodo Senpaku Kaisha*: domestic enforcement

Humane Society International (HSI), an environmental organisation, sought to use Australian domestic law against a Japanese whaling company operating in waters Australia treated as part of the Australian Whale Sanctuary adjacent to the Australian Antarctic Territory. The litigation raised difficult questions of extraterritorial service, international relations, enforceability and the proper role of a domestic court.

> *Humane Society International Inc v Kyodo Senpaku Kaisha Ltd* [2005] FCA 664
>
> **First instance.** Allsop J refused leave to serve the proceeding outside Australia. The international and diplomatic setting, including the practical enforceability of any injunction, formed part of the context.

> *Humane Society International Inc v Kyodo Senpaku Kaisha Ltd* [2006] FCAFC 116
>
> **Appeal.** The Full Federal Court allowed HSI's appeal. The judicial task of applying Australian law could not simply be displaced by executive concerns about diplomatic consequences. The case returned for further steps, including substituted service.

> *Humane Society International Inc v Kyodo Senpaku Kaisha Ltd* [2008] FCA 3
>
> **Injunction.** The Federal Court ultimately granted declaratory and injunctive relief restraining the company from conduct contrary to the EPBC Act in the Sanctuary. Enforcement remained practically difficult while the company and vessels remained outside ordinary Australian enforcement reach.
>
> **Teaching significance.** A legal right and a practical remedy are not the same thing. Jurisdiction, service, enforcement assets and diplomatic context all matter after the substantive environmental prohibition has been identified.

3.29 The same controversy at international law: *Whaling in the Antarctic*

> *Whaling in the Antarctic (Australia v Japan: New Zealand intervening)* (Judgment, 31 March 2014)
>
> **Issue.** Was Japan's JARPA II programme genuinely "for purposes of scientific research" within Article VIII of the ICRW?
>
> **Outcome.** The International Court of Justice concluded that the special permits granted in connection with JARPA II did not fall within Article VIII in the relevant respects and required Japan to revoke existing permits and refrain from granting further permits under that programme.
>
> **Why it matters.** Compare this with the HSI litigation. The Federal Court proceedings concerned enforcement of Australian domestic legislation against a company. The ICJ proceeding was a State-to-State international law case brought by Australia against Japan, with New Zealand intervening. Same environmental controversy; different parties, sources of law, forums and remedies.

3.30 Bringing the whole chapter together: the international-to-domestic map

ONE CONNECTED LEGAL SYSTEM

ENVIRONMENTAL PROBLEM → INTERNATIONAL COOPERATION → TREATY / CUSTOM / SOFT LAW → AUSTRALIAN CONSTITUTIONAL POWER → COMMONWEALTH / STATE LEGISLATION → ADMINISTRATIVE DECISION → EVIDENCE → COURT / TRIBUNAL → REMEDY / ENFORCEMENT.

A student who remembers only a list of treaties has missed the chapter. The objective is to understand **legal transmission**: how an environmental problem becomes an international commitment, how that commitment can support Australian legislation, how the legislation creates concrete prohibitions or decision criteria, and how a lawyer applies those rules to a project or dispute.

3.31 Practitioner issue-spotting checklist

1. **Define the environmental harm.** Pollution, habitat loss, greenhouse emissions, marine spill, species impact or cumulative harm?

2. **Locate the geography.** One State, multiple States, another country, territorial sea, EEZ, Antarctic waters or global commons?
3. **Identify the actors.** Private company, individual, Commonwealth, State, foreign State, regulator or NGO?
4. **Classify the source.** Treaty, soft law, custom, Constitution, Commonwealth Act, State Act, regulation or case?
5. **Explain legal force.** Is the treaty implemented domestically? What constitutional power supports the Act?
6. **Find the exact operative law.** Section, subsection, paragraph, article, definition, exception and permit power.
7. **Match the authority.** What case explains the provision or principle and what does it actually establish?
8. **Test evidence and uncertainty.** What is known? What is modelled? What is missing? What expert work is required?
9. **Apply counterarguments.** Is the impact serious, indirect, reversible, mitigable, uncertain, socially necessary or outweighed by another statutory objective?
10. **Advise the next lawful step.** Assess, refer, obtain permit, redesign, condition, monitor, challenge, seek injunction or negotiate.

ENVIRONMENTAL LAW — CHAPTER 3

International obligations, ESD and precaution

CHAPTER 3 — EXTENDED CLASSROOM TEACHING AND CONNECTED AUTHORITIES

In-depth explanation of what the law requires, why each authority matters and how to move from facts to effective client advice.

Classroom method: Identify the actor and concrete action. Break the legal issue into elements. Read the exact statute and its defined terms. Use the case for the proposition it actually decides. Apply each element to evidence and plausible counterarguments. Finish with a proportionate conclusion and the remedy that this particular cause of action supports.

3K. WHEN A RIVER CROSSES A BORDER, WHOSE LAW APPLIES?

The Week 3 cyanide-spill case study is a particularly effective way to understand international environmental law because the pollution followed the water rather than political borders. The Aurul/Esmeralda joint venture in Romania used cyanide in gold recovery and stored waste in a tailings system. Following the escape of contaminated water, downstream communities and ecosystems in Hungary were affected. The classroom question is not simply whether the event was harmful. It is which court could hear a claim, which law would apply, what duty would be pleaded, how causation and damage would be proved, and whether a judgment obtained in one country could be enforced against assets in another.

There are two branches of analysis. **Private international law** deals with cross-border private claims and conflicts of laws. An affected landowner or business might attempt a civil action for a recognised tort, depending on jurisdictional and choice-of-law rules. That claim requires actionable damage, a legal duty or cause of action, proof of factual and legal causation and enforceable relief; the global importance of clean rivers does not remove those elements. **Public international law** concerns duties between States, treaty obligations and customary principles. The classic **Trail Smelter arbitration** concerned industrial fumes from Canada damaging interests in the United States. It is often cited for the principle that one State must not permit activities under its jurisdiction

to cause serious transboundary harm to another, but students should read its factual and legal setting and not pretend that every allegation of cross-border pollution automatically generates a private damages remedy.

Pulp Mills on the River Uruguay (Argentina v Uruguay) illustrates the procedural/substantive distinction. The International Court of Justice examined a bilateral river regime and found procedural breaches relating to notification and cooperation, while the evidence did not establish every asserted substantive environmental injury. This distinction is crucial. A State may breach an obligation to notify, consult or assess without it being proved that the entire project caused the pollution claimed by the opposing State. Conversely, compliance with procedure does not necessarily excuse substantive environmental harm.

For a hypothetical pollution claim, give structured advice. Identify the legal persons (State and private operator), the pollution route, the relevant treaty or domestic statute, the decision process that should have preceded the activity, expert sampling and source apportionment evidence, and the available forum. Then consider prospective prevention, injunction or interim measures, monitoring and potential compensation according to the actual jurisdiction. Only after those checks can a lawyer responsibly state prospects of success. The essential lesson is that **an international environmental principle supplies a standard of conduct, but it does not automatically determine private standing, jurisdiction or a particular remedy**.

3L. TREATY, DOMESTIC STATUTE AND ADMINISTRATIVE DECISION ARE THREE DIFFERENT STEPS

The Week 3 seminar asks students to trace connections between the nine EPBC protected matters and treaties Australia has ratified. That is an exercise in legal architecture. A **treaty** can create obligations between States under international law. Australia's **Constitution s 51(xxix)** may provide power to enact domestic implementing legislation. The **EPBC Act**, once enacted, imposes the domestic tests on proponents and decision-makers. The fact that a document is called a convention does not, by itself, give a private citizen a directly enforceable domestic cause of action. The adviser must identify the domestic provision that applies.

World Heritage protection provides a particularly clear chain. The **World Heritage Convention** recognises natural and cultural heritage of outstanding universal value; the **Tasmanian Dam Case** confirms the potential constitutional foundation for Commonwealth implementation; **EPBC Act ss 12–15A** give domestic force to relevant protections. But World Heritage and **National Heritage** are not interchangeable. The latter has its own statutory framework in **ss 15B–15C**, reflecting differently drafted constitutional reach. The **Ramsar Convention** concerns wetlands of international

importance; the EPBC Act's Ramsar provisions regulate significant effects on those wetlands. The **Convention on Biological Diversity** supplies international conservation obligations, including in-situ conservation (art 8), while domestic protection of a listed species depends upon its national legal status and the applicable EPBC trigger. **The Bonn Convention (CMS)** and bilateral migratory-bird agreements connect to listed migratory species. These links matter because students must understand why Parliament protected the matter and how the relevant provision is drafted.

Do not treat **soft-law declarations** as if they were treaties creating identical obligations. The **Rio Declaration** expresses influential principles, including no-harm and precautionary thinking, but its status differs from a ratified treaty and from a binding Australian statute. The **1987 Brundtland Report** developed the language of sustainable development; the **1992 Rio Earth Summit** advanced global environmental cooperation and produced the Rio Declaration and major conventions. These sources explain policy and interpretation, but the operative legal consequence in an EPBC approval still arises under the Act, including **ss 3A, 136 and 391**, as applicable.

The administrative-law connection also matters. In **Minister for Immigration and Ethnic Affairs v Teoh**, a ratified treaty informed a legitimate-expectation debate; **Ex parte Lam** later emphasised practical injustice in procedural fairness analysis. Neither case authorises the simple claim that a treaty guarantees an environmental approval outcome. If advising a community group, identify what procedural obligation was imposed, how the decision-maker allegedly failed to comply, whether the plaintiff has standing, and whether the defect could justify reconsideration. That is more sophisticated than reciting a treaty title in an answer.

3M. HOW ESD AND PRECAUTION WORK IN A REAL DEVELOPMENT ASSESSMENT

Ecologically sustainable development (ESD) is often reduced to a slogan. In practice it involves integrating environmental, social and economic considerations, attending to long-term effects and future generations, protecting biodiversity and taking environmental costs seriously. Different statutes incorporate those ideas in different ways. In **Leatch v National Parks and Wildlife Service**, the NSW Land and Environment Court examined a proposed road through habitat associated with the giant burrowing frog and applied the precautionary principle in the statutory setting. The principle is not an automatic veto whenever science is uncertain. It becomes especially important where there is a threat of serious or irreversible environmental harm combined with scientific uncertainty, requiring a careful evidentiary and risk-

management response. The lawyer should identify what is uncertain, how serious the harm may be, and whether alternatives, mitigation or refusal are justified within the applicable power.

Gray v Minister for Planning is a powerful case because it exposes what an apparently detailed environmental assessment may still overlook. The proposed Anvil Hill coal mine would generate direct emissions at the mine and downstream emissions when exported or supplied coal was burnt elsewhere. The NSW assessment failed to address that consequential component as required in the legal context. The Court treated ESD and intergenerational equity as relevant to the assessment exercise and found a legal flaw. It did not announce that all coal projects are forbidden. The reasoning teaches students to distinguish the completeness and legality of an **assessment process** from the substantive merit of the final approval. An environmental assessment may need to include indirect or cumulative effects without predetermining how the eventual decision-maker will weigh them.

Take a hypothetical wind farm affecting birds and generating low-emissions electricity. One side emphasises collision risk, habitat loss and visual effects; the other emphasises climate benefits and community demand. **Taralga Landscape Guardians** provides a useful illustration of how ESD does not eliminate the need to balance different statutory objectives and evidence. The important question is what the relevant statute directs the decision-maker to consider. The lawyer should obtain an avifauna study, assess alternatives and cumulative effects, examine net emissions assumptions, and propose measurable conditions where the statute allows them. A legally persuasive conclusion does not say simply 'green energy wins' or 'birds win'; it identifies relevant findings and the consequences of choosing one course over another.

For exam writing I use a disciplined sentence structure: 'The risk is [specific harm]. The legal source is [statute/provision]. The authority [case] explains [the interpretive point]. On these facts, [scientific evidence] tends to establish [element], whereas [counterevidence] supports [counterargument]. The decision-maker must therefore [legally required next step]. If the requirement is ignored, [appropriate review or enforcement consequence] may follow.' This makes environmental principles operational rather than decorative.

JUDGMENTS, LEGISLATION AND RESEARCH — FULL TEACHING EXPLANATIONS

For each resource below I explain its factual or legislative setting, legal point, significance and role in practice. Blue underlined source titles open the research material. A legal authority must never be treated as a substitute for identifying and applying the controlling provision.

Trail Smelter Arbitration (United States v Canada), 3 RIAA 1905

THE FACTS. Industrial emissions from a Canadian smelter caused damage across the border in the United States. The dispute was handled through an international arbitral mechanism. THE PRINCIPLE. The award is a classic statement of State responsibility for serious transboundary harm where the necessary evidence and standard are met. It is not a modern private tort judgment giving every affected individual a direct claim against any foreign company. APPLICATION. An Australian-law answer should separate the international State-to-State obligation from questions of which domestic court has jurisdiction, what domestic substantive law applies, and whether any damages judgment can be enforced. In the Week 3 Baia Mare cyanide spill example, evidence of cause, location of conduct, location of harm and the parties' status are as important as the broad no-harm principle.

Pulp Mills on the River Uruguay (Argentina v Uruguay), ICJ Reports 2010

THE DISPUTE. Uruguay authorised pulp-mill development along a shared river. Argentina objected, alleging breach of procedural and environmental duties under the parties' governing river arrangements. THE ICJ'S TEACHING. The Court treated environmental impact assessment as an important requirement in the setting of potentially significant transboundary harm and considered the treaty's information and notification framework. It distinguished procedural breaches from proof of substantive environmental harm: establishing an inadequate notification process does not itself prove all damage alleged. APPLICATION. Identify the applicable treaty, the possibility of significant transboundary effects, the duty to cooperate/notify, the scientific assessment and the remedy sought. Do not assert that an ICJ ruling automatically creates a private cause of action under the EPBC Act.

Minister for Immigration and Ethnic Affairs v Teoh (1995) 183 CLR 273

THE FACTS AND DOCTRINE. A migration decision engaged questions about Australia's ratification of the Convention on the Rights of the Child and the treatment of affected children. The High Court considered how ratification might influence administrative-law expectations in the circumstances of the case. WHY IT IS TAUGHT IN ENVIRONMENTAL LAW. Australia entering a treaty is not identical to Parliament giving it full domestic operation. Teoh is a teaching point about the relationship between international commitments, executive administration and Australian law; the doctrine subsequently developed and must not be recited as an automatic remedy. APPLICATION. When discussing the CBD, Ramsar or climate commitments, find the actual implementing statute and relevant statutory provision before attributing legal obligations to a project proponent.

Re Minister for Immigration and Multicultural Affairs; Ex parte Lam (2003) 214 CLR 1

THE LEGAL CONNECTION. Lam emphasises the need to examine practical procedural unfairness rather than treating an abstract 'legitimate expectation' as automatic invalidity. It is often read alongside Teoh to show how Australian administrative law evaluates the real fairness of a decision-making process. APPLICATION. For environmental consultation or ministerial approvals, ask what process was promised or legally required, what actually happened, whether the complainant lost a fair opportunity to address an adverse issue, and what material consequences follow. A disputed public consultation does not guarantee relief without identifying the legal rule and material prejudice.

Leatch v National Parks and Wildlife Service [1993] NSWLEC 191

THE FACTS. A road proposal raised concern about the giant burrowing frog and sensitive habitat. Scientific uncertainty surrounded serious possible harm and the adequacy of the proposal's investigation. THE DECISION AND TEACHING. The Court's treatment of precaution demonstrates that uncertainty can strengthen the case for careful investigation and protective decision-making where serious or irreversible harm is plausible. Precaution is not the same thing as proof that development must always be refused. LEGISLATION AND LIMITS. The case arose under its own NSW statutory context. For a present Commonwealth EPBC decision, use s 391 (the precautionary principle where applicable) and the mandatory considerations in s 136, rather than relying on Leatch as a free-standing veto. APPLICATION. Identify the particular threatened population, specialist evidence, uncertainties, alternative route or design, monitoring possibility, and who bears the legal obligation to address those matters.

Gray v Minister for Planning [2006] NSWLEC 720

THE FACTS. The Anvil Hill coal-mine environmental assessment assessed emissions from mine operations but omitted greenhouse gas emissions arising when purchasers burned the extracted coal at power stations. THE HOLDING. The NSW Land and Environment Court found that the decision-maker had not lawfully addressed the assessment's scope and relevant ESD principles, including cumulative and intergenerational consequences, in the statutory setting. The adequacy decision was declared void. The case turns on the actual NSW assessment requirements and their purpose. WHY IT MATTERS. An assessment should not be artificially narrowed simply because an important environmental effect arises after a product leaves the site. But the case is not a universal holding that every future indirect effect is legally attributable under every Act. APPLICATION. In an exam, name the coal, its foreseeable use, the

greenhouse consequence and the governing NSW planning provisions; then distinguish those provisions from EPBC Act s 527E and *Nathan Dam* when dealing with Commonwealth indirect impacts.

Taralga Landscape Guardians Inc v Minister for Planning [2007] NSWLEC 59

THE CONTEXT. A proposed wind farm raised complex arguments about landscape, amenity, energy policy and the public interest. The NSW Court had to reason through competing environmental and community values within the governing planning law. THE TEACHING POINT. Environmental adjudication often involves more than comparing 'development versus trees'. Renewable-energy benefits and local environmental or amenity impacts may both be legitimate considerations; the legal issue is how the applicable statute directs them to be weighed. APPLICATION. Identify the particular decision-maker and statutory factors, distinguish mandatory from discretionary considerations, and show why both proponents' and opponents' evidence deserves attention. Taralga does not establish that climate goals automatically override local impacts, or vice versa.

Humane Society International Inc v Kyodo Senpaku Kaisha Ltd — three Federal Court judgments

THE FACTS. An Australian conservation organisation pursued proceedings concerning Japanese whaling within the Australian Whale Sanctuary in waters claimed as Australia's Antarctic exclusive economic zone. The litigation involved standing, jurisdiction, service and enforceability in addition to substantive wildlife protection. WHY THERE ARE THREE CITATIONS. The 2005 Federal Court decision, the 2006 Full Court appeal and the 2008 further judgment represent distinct procedural and substantive stages. Students should not cite all three as though each decided the same question. Read the separate decisions: [2005] FCA 664, [2006] FCAFC 116, and [2008] FCA 3. THE DOMESTIC LEGAL LINK. The EPBC Act supplies the statutory whaling and cetacean framework. The litigation demonstrates the possibility and difficulty of domestic public-interest enforcement in an international setting, particularly when orders may need practical enforcement against overseas operators.

Whaling in the Antarctic (Australia v Japan; New Zealand intervening), ICJ 2014

THE INTERNATIONAL CASE. Australia challenged Japan's Antarctic whaling programme under the International Convention for the Regulation of Whaling. The ICJ examined whether the programme qualified for the scientific-research exception in the Convention as properly interpreted and applied. THE DECISION. The Court held that the programme at issue did not meet the treaty requirements for scientific research as claimed. Its reasoning examined the programme's design, methodology and

implementation, not merely the label Japan placed on it. HOW IT CONNECTS. This is **different litigation** from HSI v Kyodo in the Australian Federal Court. The ICJ dispute enforces treaty duties between States. The domestic cases enforce Australian legislation through domestic courts. An exam answer should identify both legal systems, the remedy each forum can give, and why enforcement may differ.

World Heritage, Ramsar, CBD, Bonn/CMS and CITES treaties

TEACHING THESE SOURCES AS DIFFERENT INSTRUMENTS. The 1972 World Heritage Convention concerns identified sites of outstanding universal value; the Ramsar Convention concerns wetlands of international importance and wise use; the Convention on Biological Diversity addresses conservation, sustainable use and equitable benefit-sharing; the Bonn Convention/CMS concerns migratory animals requiring international cooperation; CITES regulates international trade in listed wildlife specimens. THE DOMESTIC BRIDGE. These treaties inform Commonwealth legislative capacity under Constitution s 51(xxix), but the EPBC Act supplies the actual prohibitions and approval pathway in most of the Week 1–5 problems. A treaty title is not an adequate IRAC rule. Identify the exact MNES, EPBC Part 3 provisions and the listed property/species facts. Click the titles and read each instrument's objects and operative articles separately.

THE COMPLETE PROFESSIONAL APPLICATION — AN EXAM-READY METHOD

When I advise a client, I do not begin with an attractive remedy and work backwards. First I identify the particular conduct, actor and decision-maker; then I identify the statute and its relevant time of operation. Secondly, I specify each element of the legal test. Thirdly, I connect the strongest case authority to the proposition being applied, explaining its facts and why the reasoning is comparable or distinguishable. Fourthly, I test the evidence supporting each element and take the opposing argument seriously. Fifthly, I advise on the practical course: further studies, a referral, a revised project, a lawful condition, judicial review, an injunction or enforcement, depending on the statute. This is the transition from knowing rules to practising environmental law.

Legislative date: The course discusses the EPBC Act framework in force for its 2026 seminars. The Environment Protection Reform Act 2025 has staged commencement. The August 2026 transitional rules may affect some cases. For any past project, check the version operative at the relevant decision date; do not apply a future reform retrospectively without legal authority.

CHAPTER 3 FAQ QUESTIONS

Chapter 3 FAQs - Questions

1. Why is international environmental law relevant to an Australian environmental lawyer?

2. What is the difference between private and public international environmental law?

3. What two elements create customary international law?

4. Does ratifying a treaty automatically make every treaty rule enforceable in an Australian court?

5. Why is Constitution s 51(xxix) important?

6. What legal work do EPBC Act ss 3, 3A and 136 perform?

7. Does the precautionary principle require refusal whenever science is uncertain?

8. How does intergenerational equity change environmental assessment?

9. What is the difference between the Climate Change Act 2022 and the NGER Act 2007?

10. Why are the HSI/Kyodo Federal Court cases different from *Whaling in the Antarctic* in the ICJ?

CHAPTER 3 FAQ ANSWERS

Chapter 3 FAQs - Answers

1. Because Australian environmental statutes often implement or respond to international obligations. International law can explain constitutional power, statutory purpose, protected categories and the policy architecture behind domestic regulation.

2. Private international law handles cross-border disputes involving private parties and asks forum, governing-law and enforcement questions. Public international law governs legal relations between States and international organisations.

3. Widespread and sufficiently consistent State practice plus *opinio juris* - acceptance that the practice is legally required.

4. No. Australian treaties are ordinarily not self-executing. Domestic legislation is generally required before treaty obligations operate as domestic rights, duties, offences or approval rules.

5. The external affairs power can support Commonwealth legislation implementing Australia's international treaty obligations, as illustrated by *Commonwealth v Tasmania*.

6. Section 3 states objects, s 3A defines ESD principles, and s 136 connects those principles to approval decision-making by requiring them to be taken into account in the relevant statutory process.

7. No. Precaution requires serious or irreversible environmental threat plus relevant uncertainty to be confronted rather than ignored. The appropriate response may be further studies, conditions, redesign, monitoring or refusal depending on the statute and evidence.

8. It requires the decision-maker to look beyond immediate benefits and impacts and consider whether environmental health, diversity and productivity are being maintained for future generations, including downstream and cumulative effects where legally relevant.

9. The Climate Change Act 2022 sets national emissions-reduction targets. The NGER Act 2007 establishes reporting obligations and the national greenhouse and energy data framework.

10. HSI/Kyodo applied Australian domestic EPBC legislation in the Federal Court against a company. *Whaling in the Antarctic* was a public international law dispute in the ICJ between Australia and Japan, with New Zealand intervening.

CHAPTER 3 MULTIPLE CHOICE - QUESTIONS

Chapter 3 Multiple Choice Questions

1. Which is required for customary international law?
A. A UN General Assembly vote only
B. State practice plus *opinio juris*
C. An Australian regulation
D. A private contract

2. Which constitutional provision is especially important to implementation of environmental treaties?
A. s 51(xxix)
B. s 92 only
C. s 128 only
D. s 116

3. Which statement about treaties in Australia is most accurate?
A. Ratification automatically amends every State Act
B. Treaties are always directly enforceable by individuals
C. Domestic legislation is generally required to give treaty obligations domestic legal effect
D. A treaty is merely political soft law

4. EPBC Act s 3A(b) expresses which principle?
A. Polluter immunity
B. Precautionary principle
C. Separation of powers
D. Common law nuisance

5. Which case is the giant burrowing frog authority discussed in the seminar?
A. *Gray*
B. *Leatch*
C. *Teoh*
D. *Kyodo*

6. What was central in *Gray v Minister for Planning*?
A. Nuclear waste storage
B. Whale sanctuary boundaries
C. Downstream greenhouse consequences of coal
D. Ozone-depleting substances

7. Which Commonwealth Act sets the national 2030 and 2050 emissions targets?
A. Climate Change Act 2022
B. EPBC Regulations 2000 only
C. Water Act 2007
D. Sea Dumping Act 1981

8. Which international instrument defines the framework for law of the sea zones?
A. CITES
B. UNCLOS
C. Ramsar Convention
D. Paris Agreement

9. Which case is associated with transboundary smelter pollution?
A. *Trail Smelter*
B. *Taralga*
C. *Cole v Whitfield*
D. *Teoh*

10. What is the correct relationship between HSI/Kyodo and the ICJ whaling case?

A. They are the same proceeding

B. Both were High Court cases

C. One is Australian domestic litigation and the other is State-to-State international litigation

D. Neither concerned whaling

11. Which CBD objective is NOT one of the three core objectives?

A. Conservation of biodiversity

B. Sustainable use

C. Fair sharing of benefits from genetic resources

D. Automatic prohibition of all development

12. What is the best first response to an uncertain but potentially irreversible species impact?

A. Treat uncertainty as proof there is no risk

B. Identify the seriousness of harm, the uncertainty and proportionate preventative measures

C. Ignore expert evidence

D. Approve automatically

CHAPTER 3 MULTIPLE CHOICE - ANSWERS

Chapter 3 Multiple Choice Answers

1. B. Custom requires State practice plus *opinio juris*.

2. A. Section 51(xxix) is the external affairs power.

3. C. Treaties are ordinarily not self-executing domestically.

4. B. Section 3A(b) states the precautionary principle.

5. B. *Leatch* is the giant burrowing frog case.

6. C. *Gray* concerned assessment of downstream greenhouse emissions.

7. A. Climate Change Act 2022, s 10.

8. B. UNCLOS.

9. A. *Trail Smelter*.

10. C. They used different legal systems, parties and forums.

11. D. The CBD does not create an automatic ban on development.

12. B. That is the disciplined precautionary analysis.

CHAPTER 3 SHORT ANSWER - QUESTIONS

Chapter 3 Short Answer Questions

1. Explain why sovereignty and the no-harm principle must be read together.

2. Explain the difference between a treaty and a declaration such as the Rio Declaration.

3. Explain why *Pulp Mills* matters to environmental impact assessment.

4. Trace the ozone-protection pathway from international law to Australian legislation.

5. Explain the exact relationship between EPBC Act ss 3A(b) and 3A(c).

6. Explain what *Leatch* teaches about scientific uncertainty.

7. Explain why *Taralga* is important when advising on renewable-energy projects.

8. Explain why enforcement was a practical difficulty in the HSI/Kyodo litigation.

CHAPTER 3 SHORT ANSWER - MODEL ANSWERS

Chapter 3 Short Answer Model Answers

1. Sovereignty gives a State authority within its territory, but international law does not treat that authority as a licence to export serious environmental harm. The no-harm principle expresses the accompanying responsibility to control activities within jurisdiction so they do not unlawfully injure other States.

2. A treaty is a binding international agreement for its parties according to its terms and the law of treaties. A declaration such as Rio is soft law: politically and normatively influential, but not a treaty merely because States endorsed it.

3. *Pulp Mills* connects assessment to international due diligence. Where an activity risks significant adverse transboundary impact, environmental impact assessment can be required under general international law before the activity proceeds.

4. Scientific concern led to the Vienna Convention, followed by the Montreal Protocol. Australia then implemented international commitments through the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989, supported expressly by the external affairs power and treaty obligations.

5. Section 3A(b) addresses serious or irreversible harm under scientific uncertainty; s 3A(c) addresses fairness across generations. They often overlap where uncertain present decisions could impose irreversible future environmental costs.

6. *Leatch* teaches that uncertainty about a threatened species cannot simply be treated as absence of risk. Where the potential harm is serious, precaution may justify more evidence, conditions or refusal until uncertainty is responsibly addressed.

7. *Taralga* shows ESD can support development as well as constrain it. Renewable-energy benefits can form part of the statutory environmental balance even where a project also causes local impacts.

8. The defendant was a Japanese company operating far from mainland Australian enforcement. Obtaining an injunction did not itself place assets or vessels within reach of Australian enforcement processes. The case therefore separates legal entitlement from practical enforceability.

TUTORIAL QUESTIONS — INTERNATIONAL ENVIRONMENTAL LAW AND EIA INTRODUCTION

Tutorial Questions

Question 1

For each of the matters of national environmental significance under the EPBC Act, identify whether its inclusion in the EPBC Act is underpinned by an international treaty/convention that Australia has ratified.

Question 2

This question will require you to do some learning in advance of the Weeks 4 and 5 seminars, as to answer them you will need to deal with concepts that we will cover in those seminars, but doing this a week ahead will assist you in being ready for the mid-semester exam in Week 6. Use the EPBC Act database — All EPBC Projects · EPBC Act Public Portal to answer the following questions for each of the referrals listed in the table below.

1. Who is the proponent?
2. Is it a controlled action?
3. If it is not a controlled action because of the particular manner in which it is to be undertaken, summarise what that particular manner involves.
4. If it is a controlled action:
    1. what matters of national environmental significance are involved?
    2. what assessment approach is/was used?
    3. if the controlled action has been approved — what was the date it was approved and how long was this after the referral date?

#	Referral	EPBC No.
1	Brisbane Stadium, National Aquatic Centre and associated precinct infrastructure, QLD	2026/10472
2	Sydney Opera House building renewal, NSW	2016/7825
3	Construction of a secondary school at Hammond Park, WA	2016/7741
4	National Radioactive Waste Management Facility, SA	2021/9128
5	Work on Mawsons Huts, Antarctica	2005/2359
6	Offshore powerboat race, Townsville, QLD	2013/6758
7	New hospital at the University of Canberra, ACT	2013/6987
8	Neighbourhood shopping centre and mixed business centre at Dawesville, WA	2006/3155
9	Yass Valley wind farm at Yass, NSW	2013/7002
10	Upgrade of the Pacific Highway from Tintenbar to Ewingsdale, NSW	2009/5103
11	Tourist resort and associated facilities at Wolgan Valley, NSW	2006/2567

#	Referral	EPBC No.
12	Open cut and underground coal mine, rail link and associated infrastructure on Moray Downs cattle station near Clermont, QLD	2010/5736
13	Cruise ship terminal on the Gold Coast, QLD	2017/7899
14	Central Queensland Coal Project, QLD	2016/7851
15	Asian Renewable Energy Hub, WA	2021/8891
16	Child Street Residential Development, QLD	2024/10003

TUTORIAL MODEL ANSWERS

Tutorial Model Answers

Question 1 — treaty foundations of the nine MNES

Method. Do not answer this by merely naming a treaty beside every MNES. Ask whether the Commonwealth trigger is directly implementing an international obligation, is strongly connected to an international environmental regime, or is principally a domestic trigger supported by other constitutional powers.

MNES	Treaty / international foundation	Precise exam point
World Heritage properties	World Heritage Convention 1972	**Yes — direct.** This is the clearest external-affairs example; *Commonwealth v Tasmania* explains the constitutional bridge.
National Heritage places	No single treaty creates the National Heritage List.	**Primarily domestic.** The Act uses carefully drafted constitutional hooks rather than treating National Heritage as if it were simply World Heritage.
Ramsar wetlands	Convention on Wetlands (Ramsar Convention)	**Yes — direct.** Protection is tied to wetlands of international importance.
Listed threatened species and ecological communities	Convention on Biological Diversity is a central biodiversity foundation.	**Yes — international biodiversity obligations materially underpin the regime**, but do not confuse CBD habitat conservation with CITES, which principally regulates international trade in listed species.
Listed migratory species	Bonn Convention/CMS, JAMBA, CAMBA and ROKAMBA.	**Yes — direct and specific.** Migratory species protection is the classic bilateral/ multilateral migratory-bird example.
Commonwealth marine area	UNCLOS forms part of the international marine-law setting.	**Internationally connected, but not reducible to one treaty.** Commonwealth territorial and constitutional jurisdiction also matter.
Great Barrier Reef Marine Park	World Heritage Convention is highly relevant because the Reef is World Heritage listed; the Park also has a distinct domestic statutory regime.	**International + domestic.** Do not collapse the separate GBRMP trigger into the World Heritage trigger.
Nuclear actions		**No single treaty should be presented as the sole foundation of the MNES**

MNES	Treaty / international foundation	Precise exam point
	Australia is party to several international nuclear-safety/ non-proliferation instruments.	**trigger.** Treat it as a specific domestic national trigger within a wider international nuclear framework.
Water resources in relation to CSG or large coal mining	No specific treaty is the legal source of the water trigger.	**Domestic trigger.** It was added to address nationally significant water-resource impacts from specified resource development.

High-Distinction conclusion. The EPBC Act is constitutionally and conceptually shaped by international environmental law, but the nine MNES do not all rest on the same constitutional or treaty foundation. A strong answer identifies the treaty where it genuinely supplies the international hook and expressly distinguishes domestic MNES where it does not.

Question 2 — how to interrogate the EPBC Public Portal

The purpose of this exercise is not to memorise sixteen projects. It is to learn the **screening architecture**. For every file, build the same legal map: **proponent → referral date → s 75 outcome → controlling provisions → s 87 assessment approach (if controlled) → approval/refusal → elapsed time → conditions/ particular manner**.

EPBC No.	Model-answer status / learning point
2026/10472	**GIICA; not a controlled action.** Referral commenced 20 March 2026 and the s 75 decision was made 5 May 2026. It is an excellent example of screening ending the Commonwealth assessment pathway at the referral stage.
2016/7825	**Sydney Opera House building renewal; controlled action; post-approval.** The project engages heritage values and illustrates that works to an iconic existing building can still trigger federal assessment.
2016/7741	**Hammond Park Secondary School; controlled action; post-approval.** A useful reminder that ordinary social infrastructure can become a federal environmental matter when protected biodiversity is affected.
2021/9128	**National Radioactive Waste Management Facility; controlled action.** The referral engages the nuclear-action framework and other applicable controlling provisions; the assessment approach is an environmental impact statement.
2005/2359	**Mawsons Huts, Antarctica.** Use the portal to distinguish the Commonwealth/ Antarctic dimension from an ordinary State development file; identify the controlling provision and decision from the published referral record rather than assuming that heritage significance alone answers the s 75 question.
2013/6758	**Offshore powerboat race, Townsville; not a controlled action if undertaken in a particular manner.** This is the seminar's practical example of s 77A: mitigation commitments operate as legally significant constraints on how the action may be carried out.
2013/6987	**University of Canberra Public Hospital; controlled action; post-approval.** It demonstrates that a public hospital can still trigger EPBC assessment and that public-benefit arguments do not displace the statutory environmental trigger.
2006/3155	**Dawesville commercial development.** Trace the referral through decision and approval records and record both the federal biodiversity trigger and the elapsed time; do not infer the Commonwealth outcome from the fact that State/local development approval may also have been required.
2013/7002	

EPBC No.	Model-answer status / learning point
	Yass Valley Wind Farm; controlled action and approved. The project is especially useful for testing threatened-species/ecological-community impacts in a renewable-energy context.
2009/5103	**Pacific Highway, Tintenbar–Ewingsdale.** A major linear-infrastructure example: identify the designated proponent, controlling biodiversity provisions, assessment route and conditions; the file shows why road projects can generate substantial Commonwealth assessment work.
2006/2567	**Wolgan Valley tourist resort; approved with conditions.** This shows that tourism/ conservation branding does not remove the need for statutory assessment and conditions.
2010/5736	**Carmichael Coal Mine and Rail Project; controlled action and ultimately approved subject to conditions.** It is a major-resource example involving a long assessment history and subsequent compliance activity.
2017/7899	**Gold Coast Cruise Ship Terminal; not a controlled action if undertaken in a particular manner.** The published s 75/s 77A decision required measures addressing listed threatened species and communities and listed migratory species.
2016/7851	**Central Queensland Coal Project; controlled action.** Queensland records identify a coordinated/single EIS assessment process; the Commonwealth proposal was ultimately refused. This is a powerful contrast with projects that survive screening and obtain conditional approval.
2021/8891	**Asian Renewable Energy Hub; clearly unacceptable.** The seminar uses it to show that even a renewable-energy project can be stopped very early where unacceptable and irreversible impacts on a Ramsar wetland and protected migratory values are apparent.
2024/10003	**Child Street Residential Development; controlled action.** Quaystone Development Pty Ltd; listed threatened species and communities (ss 18, 18A); assessment by preliminary documentation; s 75/s 87 decision dated 29 May 2025.

Professional lesson. A portal result is not a substitute for reading the decision notice. The lawyer should open the referral, s 75 decision, assessment approach decision, approval/refusal and conditions, then record the exact statutory basis and dates. The portal is an evidence trail, not merely a search engine.

WEEK 3 SEMINAR APPLICATION / TUTORIAL-STYLE QUESTIONS

Chapter 3 Seminar Application Questions

Teaching note. These are original book questions constructed from the Week 3 seminar material. They are not represented as separate official Bond University tutorial questions. Attempt them before turning to the model answers on the following page.

Question 1 - Classifying a cross-border environmental dispute

A privately owned Australian mining company operates through a subsidiary in Country A. A containment failure contaminates a river that flows into Country B. Farmers in Country B suffer losses and the government of Country B also alleges a breach of international environmental obligations. Identify the different legal pathways that may arise and explain why private international law and public international law must not be collapsed into one analysis.

Question 2 - Treaty to Australian law

Australia ratifies a new multilateral treaty requiring protection of an internationally significant ecosystem. A developer argues that the treaty has no relevance because the project is entirely within Queensland. Explain the steps a lawyer must investigate before accepting or rejecting that argument, including the role of Constitution s 51(xxix).

Question 3 - Precaution and uncertain threatened-species evidence

A project survey records no threatened frog during two daytime inspections. A specialist later records a call consistent with the species after heavy rain and says the species may travel substantial distances from breeding habitat. The proponent says the species is “not proven to be present”. Explain how a decision-maker should reason through the precautionary principle and *Leatch*.

Question 4 - Intergenerational equity and downstream climate impacts

A proposed coal project quantifies operational emissions but excludes emissions from future combustion of the product. The governing statutory scheme requires ESD to be considered. Explain why *Gray v Minister for Planning* is relevant and what further information the decision-maker may need.

Question 5 - International instrument to domestic statutory hook

Choose one of the World Heritage Convention, Ramsar Convention, Bonn Convention/CMS, CITES or the International Convention for the Regulation of Whaling. Trace the pathway from the international instrument to the Australian legal provision or regulatory regime a practitioner would investigate.

Question 6 - Whaling: forum, remedy and enforcement

An overseas whaling company is alleged to have taken whales in waters Australia treats as part of the Australian Whale Sanctuary, but the company has no office or assets in Australia. Explain the difference between an Australian EPBC Act enforcement proceeding against the company and a State-to-State international dispute under the whaling convention.

WEEK 3 SEMINAR APPLICATION - MODEL ANSWERS

Chapter 3 Seminar Application Model Answers

Question 1 - Model answer

Issue. The same event can create private claims and public international law issues. The lawyer must classify each relationship before choosing a forum or rule.

Law and method. Private international law asks which domestic court has jurisdiction, which law governs, how process is served, and whether a judgment can be recognised and enforced. Public international law separately asks whether one State owes another State a treaty or customary-law obligation and whether there is a jurisdictional basis for arbitration or international adjudication.

Application. Farmers may have domestic tort, statutory or compensation claims against private corporate defendants. Country B may raise State responsibility, diplomatic or treaty issues against Country A. The existence of international environmental principles does not turn private farmers into parties before the ICJ, and the existence of domestic litigation does not exhaust any State-to-State issue.

Conclusion. Build two maps: a private cross-border claims map and a public international law map, then identify where they interact.

Question 2 - Model answer

Issue. Whether an international obligation can support Australian domestic regulation of a project located wholly within one State.

Law. A treaty is ordinarily not self-executing in Australian domestic law. The practitioner must identify whether Parliament has enacted implementing legislation and whether that law is supported by a constitutional head of power. Constitution s 51(xxix), the external affairs power, is a central source of Commonwealth legislative capacity to implement bona fide international obligations. *Commonwealth v Tasmania* demonstrates that the intrastate location

of the physical activity does not, by itself, prevent Commonwealth regulation supported by external affairs.

Application. Identify the treaty obligation, the implementing Commonwealth Act, the exact controlling provision, the protected value or matter, the statutory trigger and any required referral/approval pathway. State approvals must be mapped separately.

Conclusion. “The project is entirely in Queensland” is not a complete constitutional answer.

Question 3 - Model answer

Issue. Whether incomplete evidence can be treated as proof that the threatened species is absent.

Law. EPBC Act s 3A(b) states the precautionary principle in the federal ESD framework. *Leatch v National Parks and Wildlife Service* illustrates how serious potential biodiversity harm and material scientific uncertainty can require precautionary decision-making.

Application. The daytime surveys reduce but do not eliminate uncertainty. The acoustic record, weather conditions and species movement ecology create a credible risk requiring further targeted surveys, habitat assessment, route redesign, buffers, timing controls or other proportionate measures. Precaution does not automatically mean permanent refusal, but it prevents the decision-maker from converting uncertainty into assumed safety.

Conclusion. The correct legal response is to manage the uncertainty before irreversible harm occurs.

Question 4 - Model answer

Issue. Whether an assessment that excludes downstream combustion emissions may fail to give the decision-maker legally relevant information.

Law. Intergenerational equity requires attention to future environmental consequences. *Gray v Minister for Planning* is important because it demonstrates that downstream greenhouse emissions may be relevant to an adequate environmental assessment where ESD forms part of the statutory decision framework.

Application. The assessment should identify and, where reasonably possible, quantify downstream emissions, disclose methodology and uncertainty, and explain how those impacts relate to the statutory test. Questions of causation, control and weight can be argued after the information is before the decision-maker.

Conclusion. Excluding downstream emissions merely because combustion occurs elsewhere can create legal risk where the statute requires a broader ESD assessment.

Question 5 - Model answer

Method. Start with the international instrument and identify the obligation or protected subject matter. Then identify the Australian constitutional source supporting implementation, the implementing statute, the exact protected category and the operative provision. For example, the World Heritage Convention connects to the EPBC Act World Heritage controlling provisions; migratory-species treaties connect to the listed migratory species regime; CITES connects to wildlife-trade controls; and the whaling convention sits alongside Part 13 cetacean protections. Do not stop at the treaty name: the practitioner needs the domestic legal hook.

Question 6 - Model answer

Issue. Domestic statutory enforcement and international State responsibility are distinct.

Domestic pathway. The NGO must identify the Australian Whale Sanctuary and the precise EPBC prohibition, establish standing and jurisdiction, serve the foreign company and seek available relief. The HSI/Kyodo litigation shows that service outside Australia and practical enforcement can be difficult even where the court grants relief.

International pathway. A dispute that the foreign State has breached the ICRW is a public international law dispute requiring State parties and an international jurisdictional basis. *Whaling in the Antarctic* illustrates that separate pathway.

Conclusion. Always identify the party, source of law, forum and remedy before using the label “international whaling case”.

CHAPTER 3 IRAC PROBLEMS - QUESTIONS

Chapter 3 IRAC Problem Questions

IRAC 1 - Cross-border chemical discharge

An Australian-controlled mining company operates a processing facility in Country A, five kilometres from the border with Country B. Following unusually heavy rain, a waste pond overflows and contaminated water enters a river flowing into Country B. Farmers in Country B lose crops and drinking-water supplies are disrupted. There is no specific bilateral pollution treaty. Advise the company about the legal issues that must be investigated before it assumes either that only Country A law applies or that an international court will determine the dispute.

IRAC 2 - Uncertain threatened-species habitat

A road authority proposes a bypass through degraded woodland. No endangered frog has been visually recorded on the site for twenty years, but a qualified ecologist records a call consistent with the species and explains that adults may move kilometres from breeding habitat. The proponent argues that there is no “scientific proof” the frog is present. Advise the decision-maker on precautionary reasoning.

IRAC 3 - Coal project and downstream emissions

A company proposes a new Australian coal mine. Its environmental assessment calculates diesel, electricity and fugitive emissions from the mine but excludes emissions from combustion of exported coal because those emissions will occur overseas. The governing statute requires ESD principles to be considered. Advise whether the assessment methodology creates a legal risk.

IRAC 4 - Antarctic whaling and enforcement

An overseas company takes whales in waters Australia regards as part of the Australian Whale Sanctuary adjacent to the Australian Antarctic Territory. The company has no office or assets in Australia. An Australian environmental NGO wants an injunction. Advise on the domestic statutory pathway, procedural obstacles and the distinction between domestic litigation against the company and any international dispute with the company's State.

CHAPTER 3 IRAC PROBLEMS - MODEL ANSWERS

Chapter 3 Detailed IRAC Model Answers

IRAC 1 - Cross-border chemical discharge

Issue. The principal issues are whether the dispute is a private cross-border claim, a public international law dispute between States, or both; which courts have jurisdiction; which domestic law governs liability; whether customary international environmental principles are relevant; and whether a judgment can be enforced against the company or its assets.

Rule. Private international law addresses forum, governing law, service and recognition/enforcement where private parties and events span jurisdictions. Public international law separately regulates duties between States. The no-harm principle, historically illustrated by *Trail Smelter*, recognises that territorial sovereignty is accompanied by responsibility regarding serious transboundary environmental harm. *Pulp Mills* demonstrates the importance of due diligence, cooperation and environmental assessment where significant transboundary harm is risked.

Application. The company's facility and alleged failure occurred in Country A, while much of the damage occurred in Country B. A claimant may therefore explore proceedings in one or more domestic forums depending on their jurisdictional rules. The company must identify corporate entities, insurance, contractual arrangements, applicable environmental licences and tort/statutory causes of action. The absence of a bespoke bilateral pollution treaty does not prove there is no liability. Equally, affected farmers cannot simply commence an ICJ case: the ICJ adjudicates disputes between States that have a jurisdictional basis. Country B might pursue diplomatic or State-to-State avenues, while farmers pursue private claims. Evidence concerning design, rainfall foreseeability, containment capacity, warning, causation and damage will be essential.

Counterargument. The company may argue an extraordinary natural event broke causation or that it complied with domestic standards. Those arguments require factual and legal testing; compliance with one licence does not automatically answer negligence, statutory liability or transboundary responsibility.

Conclusion. The correct advice is a multi-jurisdictional investigation, not a categorical statement that one country's law or one international tribunal controls the entire dispute.

IRAC 2 - Uncertain threatened-species habitat

Issue. Whether the absence of direct visual confirmation permits the decision-maker to disregard potential serious harm to the endangered frog.

Rule. Under the precautionary principle, reflected in EPBC Act s 3A(b) and explained in authorities such as *Leatch*, lack of full scientific certainty should not be used to postpone preventative measures where threats of serious or irreversible environmental damage exist.

Application. The potential loss of habitat for an endangered species is capable of being serious and irreversible. Scientific uncertainty plainly exists: visual surveys have not confirmed presence, but qualified acoustic evidence and known movement behaviour support a plausible risk. The decision-maker should therefore ask what further surveys, seasonal work, habitat mapping, route redesign, buffers or conditions could reduce uncertainty and risk. The proponent's argument wrongly converts “not conclusively proven” into “not present”.

Counterargument. Precaution is not automatic refusal. If rigorous further surveys establish absence, or if redesign eliminates material risk, approval may become legally supportable.

Conclusion. The decision-maker should not approve on the assumption of no frog merely because the science is incomplete. Uncertainty must be managed through proportionate evidence and preventative measures.

IRAC 3 - Coal project and downstream emissions

Issue. Whether excluding combustion emissions creates a legally inadequate environmental assessment where ESD is mandatory.

Rule. Intergenerational equity under EPBC Act s 3A(c) and analogous State ESD provisions directs attention to future environmental consequences. *Gray v Minister for Planning* is a leading authority showing that environmental assessment may need to consider downstream greenhouse emissions rather than confining analysis to direct mine-site emissions.

Application. The exported coal is mined precisely so it can be combusted. Although combustion occurs overseas and separate legal questions arise about control and causation, excluding downstream emissions altogether may prevent the decision-maker from understanding the project's full climate consequences. Because the statute requires ESD to be considered, the safer legal course is to quantify or reasonably estimate relevant downstream emissions, explain methodological limitations, avoid double counting and state how the information bears on the statutory decision.

Counterargument. The company can argue overseas combustion is undertaken by independent actors and that the decision-maker's statutory jurisdiction is project-specific. That may affect the weight assigned to downstream emissions, but it does not necessarily justify withholding the information.

Conclusion. There is a material legal risk in an assessment that simply omits downstream emissions. *Gray* supports a broader assessment approach where ESD forms part of the statutory decision framework.

IRAC 4 - Antarctic whaling and enforcement

Issue. The issues are whether the conduct falls within the EPBC Act's Australian Whale Sanctuary provisions, whether the NGO can obtain and serve Australian proceedings on the foreign company, whether an injunction would be practically enforceable, and how this differs from an international dispute between Australia and the foreign State.

Rule. EPBC Act s 225 establishes the Australian Whale Sanctuary and ss 229-230 form part of the cetacean prohibition regime. The HSI/Kyodo litigation shows that extraterritorial service, judicial discretion and practical enforcement can become central where the respondent is foreign. The Full Federal Court held that diplomatic concerns did not simply displace the court's judicial task. Separately, a State-to-State treaty dispute proceeds under public international law, illustrated by *Whaling in the Antarctic*.

Application. The NGO should first establish the exact location, species, conduct and statutory prohibition. It must then address standing, originating process and service outside Australia. If ordinary service cannot be achieved, substituted service may be sought if the procedural rules permit. Even if an injunction is granted, the company may have no assets or vessels within Australian enforcement reach. That practical difficulty should be explained without confusing it with the court's power to declare and restrain unlawful conduct. Any contention

that the foreign State breached the ICRW is a different legal controversy involving States and an international jurisdictional basis.

Counterargument. The respondent may contest Australian jurisdiction, sanctuary coverage, treaty-sensitive territorial assumptions, service and enforceability. Those objections require precise statutory and procedural analysis.

Conclusion. Domestic EPBC enforcement against the company and international proceedings against a State are distinct pathways. A competent adviser must identify both and never collapse them into one “whaling case”.

CHAPTER 3 RESEARCH

Chapter 3 Resources

Commonwealth of Australia Constitution Act - Federal Register of Legislation

Environment Protection and Biodiversity Conservation Act 1999 (Cth) - current authorised compilation

Climate Change Act 2022 (Cth)

National Greenhouse and Energy Reporting Act 2007 (Cth)

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 (Cth)

Protection of the Sea (Civil Liability) Act 1981 (Cth)

Protection of the Sea (Oil Pollution Compensation Funds) Act 1993 (Cth)

Environment Protection (Sea Dumping) Act 1981 (Cth)

Nature Conservation (Animals) Regulation 2020 (Qld)

United Nations Convention on the Law of the Sea - UN

Trail Smelter Arbitration - UN Reports of International Arbitral Awards

Pulp Mills on the River Uruguay - International Court of Justice

Vienna Convention for the Protection of the Ozone Layer - UNEP

Montreal Protocol - UNEP

Rio Declaration on Environment and Development - United Nations

UNFCCC

Kyoto Protocol

Paris Agreement

Convention on Biological Diversity

Convention on Migratory Species (Bonn Convention)

CITES Convention text

Antarctic Treaty - official Secretariat

International Convention for the Regulation of Whaling - IWC

Whaling in the Antarctic (Australia v Japan: New Zealand intervening) - ICJ

Commonwealth v Tasmania [1983] HCA 21

Minister for Immigration and Ethnic Affairs v Teoh [1995] HCA 20

Ex parte Lam [2003] HCA 6

Leatch v National Parks and Wildlife Service [1993] NSWLEC 191

Gray v Minister for Planning [2006] NSWLEC 720

Taralga Landscape Guardians Inc v Minister for Planning [2007] NSWLEC 59

Humane Society International Inc v Kyodo Senpaku Kaisha Ltd [2005] FCA 664

Humane Society International Inc v Kyodo Senpaku Kaisha Ltd [2006] FCAFC 116

Humane Society International Inc v Kyodo Senpaku Kaisha Ltd [2008] FCA 3

RESEARCH RULE

Blue text is used as a research pathway, not decoration. Start with the authoritative source, confirm the current provision or judgment, and then return to the narrative to understand why it matters and how to use it.

End of Chapter 3 - complete through the Week 3 materials supplied as at 30 September 2026.

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CHAPTER 3 — ORIGINAL UNIVERSITY QUESTIONS

Week 3 questions — International environmental law and EIA (discussed in Week 4)

Live EPBC project decisions change and old notices can be difficult to retrieve. Three outcomes are supported by identified official sources; the other 13 still require notice-by-notice documentary checking. This limitation is explicit.

ENVIRONMENTAL LAW

Semester 263

Weekly questions

International environmental law and environmental impact assessment

Question 1 For each of the matters of national environmental significance under the EPBC Act, identify whether its inclusion in the EPBC Act is underpinned by an international treaty/convention that Australia has ratified.

Question 2 This question will require you to do some learning in advance of the Weeks 4 and 5 seminars, as to answer them you will need to deal with concepts that we will cover in those seminars, but doing this a week ahead will assist you in being ready for the mid-semester exam in Week 6. Use the EPBC Act database (All EPBC Projects Â· EPBC Act Public Portal) to answer the following questions for each of the referrals listed in the table below.

1. Who is the proponent?

2. Is it a controlled action?

3. If it is not a controlled action because of the particular manner in which it is to be undertaken, summarise what that particular manner involves.

4. If it is a controlled action:

a) what matters of national environmental significance are involved?

b) what assessment approach is/was used?

c) if the controlled action has been approved – what was the date it was approved and how long was this after the referral date?

|1 |Brisbane Stadium, National Aquatic Centre and associated | | |precinct infrastructure, QLD | | |EPBC Number 2026/10472 | |2 |Sydney Opera House building renewal, NSW | | |EPBC Number 2016/7825 | |3

|Construction of a secondary school at Hammond Park, WA | | |EPBC Number 2016/7741 | |4 |National Radioactive Waste Management Facility, SA | | |EPBC Number 2021/9128 | |5 |Work on Mawsons Huts, Antarctica | | |EPBC Number 2005/2359 | |6 |Offshore powerboat race, Townsville, QLD | | |EPBC Number 2013/6758 | |7 |New hospital at the University of Canberra, ACT | | |EPBC Number 2013/6987 | |8 |Neighbourhood shopping centre and a mixed business centre at | | |Dawesville, WA | | |EPBC Number 2006/3155 | |9 |Yass Valley wind farm at Yass, NSW | | |EPBC Number 2013/7002 | |10 |Upgrade of the Pacific Highway from Tintenbar to Ewingsdale, | | |NSW | | |EPBC Number 2009/5103 | |11 |Tourist resort and associated facilities at Wolgan Valley, NSW| | |EPBC Number 2006/2567 | |12 |Open cut and underground coal mine, rail link and associated | | |infrastructure on Moray Downs cattle station near Clermont, | | |QLD | | |EPBC Number 2010/5736 | |13 |Cruise ship terminal on the Gold Coast, QLD | | |EPBC Number 2017/7899 | |14 |Central Queensland Coal Project, QLD | | |EPBC Number 2016/7851 | |15 |Asian Renewable Energy Hub, WA | | |EPBC Number 2021/8891 | |116 |Child Street Residential Development, QLD | | |EPBC Number 2024/10003 |

Source: original Week 3 weekly questions handout (Microsoft Word); transcription preserves its 16 project numbers.

CHAPTER 3 — HIGH-DISTINCTION IRAC MODEL ANSWERS

Issue → Rule and case authority → fact-specific application → strongest counterargument → conclusion and advice.

MODEL ANSWER 1 — Q1 — Nine MNES and the underlying international treaties

Issue

Which of the nine matters of national environmental significance are underpinned by ratified international treaties, and which principally reflect Australian domestic policy choices?

Rule

The EPBC Act uses specified Part 3 controlling provisions. World Heritage properties link to the World Heritage Convention (ss 12–15A). Ramsar wetlands link to the Ramsar Convention (ss 16–17B). Migratory species link in part to the Bonn Convention and relevant bilateral migratory-bird agreements, including JAMBA, CAMBA and ROKAMBA (ss 20–20A). Listed threatened species/ecological communities express Australia's biodiversity commitments, including the Convention on Biological Diversity, but their listing machinery is domestic (ss 18–19). The Commonwealth marine environment is supported by marine-governance principles and international frameworks including UNCLOS, but the particular EPBC trigger is domestic (ss 23–24A). National Heritage places are a domestic listing (ss 15B–15C). The Great Barrier Reef Marine Park is a domestic statutory trigger despite the Reef's separate World Heritage status (s 24B). Nuclear actions have a domestic trigger (ss 21–22A), within a wider international nuclear safety framework. Water resources affected by coal seam gas or large coal mining are a domestic trigger (ss 24D–24E).

Application

Use a two-column method: for each matter name its EPBC controlling provision and then specify treaty relationship as direct, indirect/general or none directly underpinning that trigger. The clearest direct relationships are World Heritage, Ramsar and migratory agreements. Different classes overlap: the Great Barrier Reef can simultaneously be World Heritage, National Heritage, a Commonwealth marine matter and a Marine Park. The Tasmanian Dam Case, Commonwealth v Tasmania (1983) 158 CLR 1,

illustrates how the external affairs power supports federal legislation implementing treaty obligations.

Strongest counterargument

It would overstate matters to say all nine are each enacted to implement a separately named ratified convention. Equally, saying threatened species lack any treaty connection overlooks the Convention on Biological Diversity. A treaty may motivate legislation without directly creating enforceable Australian rights; the operative EPBC text remains controlling.

Conclusion, consequence and advice

A correct answer lists all nine, their Part 3 sections, and their different direct/indirect treaty foundations. Explain that this categorisation is about legal foundations, not whether a protected place is internationally important.

MODEL ANSWER 2 — Q2 — Sixteen real EPBC referrals: evidence-led decision analysis

Issue

For each of the 16 prescribed EPBC referral numbers, who is the proponent, what is the controlled-action status, what MNES and assessment path apply, and (if approved) on what date and after what interval?

Rule

The exercise asks for historical, project-specific administrative facts. The correct sources are the EPBC Public Portal's project/referral summary, the s 75 decision notice, any s 87 assessment-approach decision, and the final Part 9 approval instrument. A s 75 "not controlled action" finding is not an approval; a "not controlled action — particular manner" result depends on the enforceable manner described. A controlled-action finding is not itself an approval. Determine any approval interval using the dated referral and approval documents, without confusing referral decision date with approval date.

Application

Apply the same decision-document workflow to each of the sixteen exact project references printed with the university question. Official sources

support several specific entries: EPBC 2026/10472, Brisbane Stadium/NAC: Games Independent Infrastructure and Coordination Authority (GIICA), NOT a controlled action on 5 May 2026; no Commonwealth Part 9 approval arose from that finding. EPBC 2016/7825, Sydney Opera House renewal: the Opera House confirms EPBC approval dated 20 June 2017, but referral date and controlling provisions must be read from the approval file. EPBC 2021/9128, National Radioactive Waste Management Facility: the published s 75/s 87 notice identifies a controlled action (listed threatened species, nuclear action and Commonwealth action), EIS assessment and a 26 May 2022 decision; this is not itself a Part 9 approval. EPBC 2013/6987, University of Canberra Public Hospital: ACT Government compliance reports establish approval with offsets, but the original notice is needed to calculate its assessment period. EPBC 2013/7002, Yass Valley Wind Farm: a later official referral records an earlier controlled action and Commonwealth approval on 5 November 2014. EPBC 2006/2567, Wolgan Valley resort: the NSW major-projects record identifies a Commonwealth approval on 1 June 2007. EPBC 2006/3155, Dawesville centre: the Commonwealth Gazette of 10 January 2007 identifies Florida Partnership, a controlled action for listed threatened species (ss 18 and 18A), decided 15 December 2006. EPBC 2010/5736, Carmichael Coal Mine and Rail Project: the EPBC Public Portal shows an approval decision and identifies the proponent as Adani Mining Pty Ltd, but the precise latest approval record must be consulted for applicable conditions and approval date. EPBC 2017/7899, Gold Coast Cruise Ship Terminal: the public portal records NOT a controlled action when undertaken in a particular manner, decision 14 May 2017. EPBC 2016/7851, Central Queensland Coal: the Queensland Government confirms controlled action and an EIS under the Queensland/Commonwealth bilateral assessment, but that does not by itself tell us the ultimate Commonwealth decision. EPBC 2024/10003, Child Street Residential: a signed federal notice names Quaystone Development Pty Ltd, finds controlled action under ss 18 and 18A and preliminary-documentation assessment dated 29 May 2025. EPBC 2016/7741, Hammond Park Secondary School is shown as controlled action and post-approval in a PMST-related annex, but its formal decision instrument has not been reviewed. The remaining projects, including Mawsons Huts, Townsville powerboat race, Pacific Highway Tintenbar–Ewingsdale and Asian Renewable Energy Hub, still need their full official decision notices. Never fill the requested approval interval from

a screening date or an unauthenticated project summary.

Strongest counterargument

A search-index snippet or an environmental search result may say “post approval” without identifying the precise controlling provision, decision maker, published notice or decision dates. This is corroboration, not the statutory evidence needed for a legally exact answer. Equally, a current project marked “approved” may have undergone multiple amendments and later referrals; do not mix a revised action with its historic original. Where a public register temporarily withholds access to a document, say so and request the primary notice.

Conclusion, consequence and advice

A High Distinction answer must identify the proponent, s 75 outcome, any “particular manner”, controlling MNES, assessment approach and, if truly approved, the approval date and referral-to-approval interval for EACH project. This edition records evidence-backed facts for twelve project references, with varying levels of completeness; it does not claim sixteen completed project histories. Refer to the source-status register and official notices, including the 2026/10472, 2024/10003 and 2017/7899 determinations. Complete unsupported fields from the signed portal documents before quoting them as fact.

WEEK 3 Q2 — EVIDENCE STATUS FOR 16 EPBC PROJECTS

2026/10472 — Brisbane Stadium, National Aquatic Centre and associated infrastructure, QLD — VERIFIED: GIICA; 5 May 2026; not a controlled action.

2016/7825 — Sydney Opera House building renewal, NSW — VERIFIED: Commonwealth approval 20 June 2017; confirm full referral and assessment record.

2016/7741 — Secondary school at Hammond Park, WA — Official decision notice not independently verified.

2021/9128 — National Radioactive Waste Management Facility, SA — Official decision notice not independently verified.

2005/2359 — Mawsons Huts, Antarctica — Official decision notice not independently verified.

2013/6758 — Offshore powerboat race, Townsville, QLD — Official decision notice not independently verified.

2013/6987 — University of Canberra hospital, ACT — Official decision notice not independently verified.

2006/3155 — Dawesville shopping/mixed business centre, WA — Official decision notice not independently verified.

2013/7002 — Yass Valley wind farm, NSW — Official decision notice not independently verified.

2009/5103 — Pacific Highway, Tintenbar to Ewingsdale, NSW — Official decision notice not independently verified.

2006/2567 — Wolgan Valley tourist resort, NSW — Official decision notice not independently verified.

2010/5736 — Moray Downs coal mine/rail, QLD — Official decision notice not independently verified.

2017/7899 — Gold Coast cruise terminal, QLD — Official decision notice not independently verified.

2016/7851 — Central Queensland Coal, QLD — VERIFIED: controlled action; Queensland EIS under bilateral assessment; check Commonwealth approval instrument.

2021/8891 — Asian Renewable Energy Hub, WA — Official 2021 referral advice accessible; determination and final approval not independently verified.

2024/10003 — 116 Child Street residential development, QLD — Official decision notice not independently verified.

AUTHORITATIVE RESEARCH LINKS

The links below use official sources. Section references in model answers identify the exact rule; the user should consult the authorised compilation and current decision notice for that rule.

EPBC Act (24 August 2026)

Nuclear Facilities Prohibition Act 2007 (Qld)

National Heritage—former High Court

EPBC Public Portal

Basin Plan review (MDBA)

Reform implementation status

Significant Impact Guidelines 1.1

Brisbane Stadium decision 2026/10472

Sydney Opera House approvals

Central Queensland Coal EIS

CHAPTER 4

ENVIRONMENTAL IMPACT ASSESSMENT UNDER THE EPBC ACT: REFERRAL, SCREENING, CONTROLLED ACTIONS AND THE ROAD TO APPROVAL

From identifying the legal action and federal trigger to building the evidence, screening the proposal, managing Commonwealth-State overlap and advising a real project team.

THE LEARNING JOURNEY

ENVIRONMENTAL PROBLEM → ACTOR / PROPONENT → ACTION → JURISDICTION → MNES / OTHER PROTECTED MATTER → CONTROLLING PROVISION → SIGNIFICANT IMPACT → REFERRAL → SCREENING → ASSESSMENT → APPROVAL / CONDITIONS / REFUSAL → COMPLIANCE → PROFESSIONAL ADVICE

Environmental impact assessment (EIA) is one of the most important practical mechanisms in environmental law because it forces environmental consequences to be identified *before* a project becomes legally and commercially irreversible. It is not simply a scientific report and it is not simply a permit application. It is a structured legal decision-making process: identify the potentially significant environmental consequences and risks of a proposal; obtain reliable information; test alternatives and mitigation; expose the proposal to scrutiny; and provide the statutory decision-maker with enough material to decide whether the action should proceed, proceed in a modified form or with conditions, or be refused.[1]

The immediate aim is therefore informational: identify consequences and risks so that the decision is informed. The ultimate aim is more ambitious: improve environmental outcomes by embedding ecologically sustainable development (ESD), avoidance and mitigation in project design, and by making the proponent take primary responsibility for understanding and minimising the environmental effects of its proposal. The Week 4 teaching materials emphasise an important professional lesson: EIA costs money and time, but early EIA can prevent far greater redesign, delay, enforcement and

1. Gerry Bates, *Environmental Law in Australia* (LexisNexis Butterworths, 11th ed, 2023); *Gray v Minister for Planning* [2006] NSWLEC 720, [116].

CHAPTER 4 — THE LECTURER'S COMPLETE TEACHING NARRATIVE

4A. Why environmental impact assessment exists

Environmental impact assessment (**EIA**) is not merely a lengthy technical report that a developer must buy. It is a **decision-making process** designed to identify consequences before a commitment becomes effectively irreversible. The lecturer identifies two purposes: the immediate task is to inform the decision-maker about likely significant environmental consequences and risks; the wider objective is to advance ecologically sustainable development by encouraging avoidance, minimisation, mitigation and, where lawfully available, offsets. An assessment can reveal a reason to refuse the project, but it can also identify a better route, design or operating condition. Students must distinguish the *information-generating process* from the final *substantive decision*.

A standard EIA framework contains **screening**, **scoping**, **information gathering and analysis**, **public participation**, **decision**, and **follow-up or enforcement**. Screening determines whether assessment is required and at what level; scoping determines which environmental questions must be answered; scientific work establishes likely effects and uncertainty; public participation brings knowledge and concerns to the decision-maker; the legally authorised decision-maker then decides whether the project may proceed and on what conditions. Different Australian jurisdictions use different legislation and terminology, so this sequence is a conceptual guide, not a substitute for current statutory procedures.

Consider a new highway across a floodplain. A superficial report might count trees within the road reserve. A legally useful assessment asks about threatened habitat, downstream sediment movement, aquatic ecology, flood levels, induced development, ecological connectivity, construction noise, cultural values, cumulative impacts and practicable alternatives. The work must be proportionate to the governing statutory test. A lawyer helps the scientific team understand what the Minister must decide; a scientist helps the lawyer establish what the evidence actually shows. Neither can perform the other's task responsibly.

4B. ESD and the adequacy of assessment: *Gray* and *Prineas*

In **Gray v Minister for Planning** [2006] NSWLEC 720, the EIA for a proposed coal mine included direct greenhouse-gas emissions but omitted emissions likely to arise

from burning the coal at power stations. The Land and Environment Court addressed the NSW legislative requirement to evaluate relevant consequences and the importance of ESD in the statutory decision. Its lesson is to consider causally connected downstream and cumulative effects where the law requires their assessment. Be precise: the case did not mean that the NSW court had assumed the federal Minister's EPBC powers or imposed a single rule for every mining approval. It interpreted the particular NSW framework and the assessment decision before it.

Prineas v Forestry Commission of New South Wales (1983) 49 LGRA 402, discussed at Week 5, addresses whether an environmental assessment meets an adequate standard. The lecturer explains that the standard is **not absolute perfection**. A legally sufficient assessment should substantially and reasonably address the required subject matter, give an objective picture and alert decision-makers and the public to significant consequences; an empty or misleadingly superficial exercise is not acceptable. Apply the test to the terms of reference and evidence rather than simply counting the report's pages. A 2,000-page EIS can be deficient if it fails to deal with a critical breeding area; a shorter document can be sufficient where impacts are well understood and the statute permits that process.

The EPBC assessment scheme later gives concrete statutory safeguards—for example, provisions dealing with guidelines for a public environment report or EIS and adequacy before publication. Those mechanisms should be analysed by reference to their **current** version, taking account of the 2025 reform programme and staged commencements. Historical slides are invaluable for understanding what the lecturer emphasises, but a legal manual must avoid presenting an uncommenced replacement procedure as already in force.

4C. The EPBC framework: the legal trigger is an action with a significant protected impact

The central Commonwealth law is the **Environment Protection and Biodiversity Conservation Act 1999 (Cth)**. A problem under the Act begins not with the project's advertising description but with the legal concept of an **action**. **Section 523** deals with what constitutes an action, generally including projects, developments, undertakings, activities and series of activities. **Section 524** excludes certain government decisions from the definition; **s 524A** must also be considered where relevant. The developer's resort, its access road, a State-built connector road and a council dam can involve separate physical actions. A government announcement or grant of funding is not simply the same 'action' as constructing those works. Identify the entity actually proposing or taking each activity.

The next step is to connect each proposed action with a relevant protected matter and assess whether the impact meets the statutory threshold. **Section 67** and the Part 3 controlling provisions inform the meaning of a controlled action; **s 67A** prohibits taking a controlled action without the necessary approval, subject to the legislation's exceptions. The test commonly expressed in the course is whether the action **has, will have or is likely to have a significant impact** on a protected matter. That phrase contains separate elements: the relevant action, the legally protected matter, a causal impact, likelihood and significance. A student who stops after stating 'there is a protected species' has not completed the controlled-action analysis.

The nine MNES were introduced in Chapter 2. In Chapter 4, students must use them **operatively**, not merely memorise the list. For threatened species, look at **ss 18–18A** and the relevant listing; for World Heritage, **ss 12–15A** and the property's values; for Ramsar wetlands, **ss 16–17B** and ecological character. Other protected matters have different wording and geographic or action-specific limits. The legal threshold is not a single generic 'bad environmental impact' test irrespective of controlling provision. The current authorised Act and any applicable instruments must guide the particular answer.

4D. Significance and likelihood require legal judgement informed by science

The course's 'significant impact' discussion teaches students to distinguish **possibility** from **likelihood** and **importance**. An impact need not be certain before the statutory threshold can arise. Nor does every theoretical or trivial environmental change qualify. The Federal Court and Full Court authorities discussed in the seminars address whether an impact is important, notable or consequential in its context. The **Significant Impact Guidelines** offer indicators for different protected matters; they assist specialists and proponents but do not replace the enacted statutory standard. Whether an impact is significant may depend on the value protected, the severity, duration and reversibility of harm, habitat rarity and cumulative consequences.

Take the resort and Pristine Creek. Evidence that a bird occasionally passes over the property is different from evidence that downstream waters provide a critical breeding area and will be degraded by sediment, pesticides or changed flows. Evidence that a bat lives nearby differs from evidence that its habitat is integral to the evolutionary values of a World Heritage property. The lawyer identifies these distinctions and seeks expert ecological or hydrological reports. The legal opinion should set out why the available evidence does—or does not—support a likely significant effect. Do not

turn the guidelines into a mathematical checklist that automatically approves or disallows a proposal.

Leatch v National Parks and Wildlife Service [1993] NSWLEC 191 concerns precaution and the giant burrowing frog. It helps explain why a decision-maker may need to respond carefully where significant harm is plausible but scientific knowledge is incomplete. Its role is supportive of a lawful analysis, not a substitute for the text of the EPBC Act. The scientific uncertainty about a breeding population can be very different from an expert's confident conclusion that the habitat lies well away from the action.

4E. Indirect and downstream impacts: the *Nathan Dam* case

The decisive indirect-impact teaching authority is **Minister for the Environment and Heritage v Queensland Conservation Council Inc** [2004] FCAFC 190, generally called the **Nathan Dam case**. A proposed large dam on the Dawson River in Queensland would store water for irrigation and other uses. The issue was whether, in assessing possible impact on protected matters, the Minister could confine attention to the dam structure itself and fail to consider foreseeable consequences of downstream or associated irrigated agricultural activities. The Full Federal Court rejected an artificially narrow view of the impacts relevant to the statutory decision.

The Act subsequently added **s 527E**, giving legislative form to the treatment of direct and indirect impacts, subject to its detailed conditions. A consequence of an action may be a relevant impact even where another person undertakes intervening conduct, but there are statutory questions about causation, reasonable foreseeability and whether the primary proponent's action substantially facilitates the subsequent event. Do not claim every remote event is automatically attributable to the original proponent. The lawyer must explain the causal chain and apply the section's actual terms.

Worked example: a hotel developer commits to buying only produce grown locally. The council proposes to dam a nearby creek to increase irrigation. Farmers may then apply pesticides that wash downstream to a habitat used by migratory birds. Analyse each link: who proposes the dam; whether the hotel procurement policy foreseeably facilitates expansion; whether irrigation and pesticide use are likely responses; which protected matters may be affected; and what evidence shows causal significance. *Nathan Dam* teaches students to investigate that chain, not to assume a client is personally the proponent of every subsequent third-party action.

4F. Referral: truthful disclosure, no artificial project splitting

Section 68 establishes the referral framework for persons proposing an action, and the surrounding provisions govern notice, public comment and controlled-action determination. One should analyse the current text of **ss 68–74AA**, the Minister's **s 75** decision and relevant procedural requirements. Referral is not simply a public-relations exercise. The proponent must present sufficient and accurate information about the proposed action and its likely impacts. A project team should document connected works, design options, known environmental features, information gaps and dependencies on separately proposed infrastructure.

Mees v Roads Corporation [2003] FCA 306 concerned information supplied about a Victorian major-road project and associated transport infrastructure. The lecturer uses it to explain that a statement may be misleading through omission or the way it presents a connected proposal, even where individual words are not literally false. The **EPBC Act s 489** deals with false or misleading information in the statutory scheme, and **s 74A** concerns the treatment of a proposal forming part of a larger action in relevant circumstances. The connection must be supported by the facts. A lawyer should not advise a client that leaving out a related State road is harmless simply because the company will not construct that road itself.

A prudent referral describes the entire context accurately while carefully distinguishing what the client is legally proposing from what other persons propose. For the resort, RUD refers the resort and its own access road; the State and council must separately evaluate their proposals under the EPBC Act as appropriate. But RUD's referral should disclose the State connector road and council dam where they are related and material to the assessment of impacts. This is the intersection of truthful disclosure, large-action rules and indirect-impact reasoning.

4G. From referral to Ministerial screening decision

Once a referral has been made, the legally relevant question is whether the action is a **controlled action** and which provisions control it. **Section 75** is the central decision provision. The screening process may involve public comment, consultation and requests for information. The Minister's possible outcomes include a determination that the action is not controlled, not controlled if taken in a specified particular manner, controlled and requiring the relevant approval process, or a finding of clear unacceptability in the circumstances provided by law. Each outcome has different consequences. A 'not controlled' decision is not a universal declaration that all State or local environmental permissions can be ignored.

The lecturer stresses that the Minister must determine relevant protected impacts at this **screening** stage. Promotional benefits—jobs, tourist dollars or political support—must not be substituted for the statutory controlled-action test. Such social and economic considerations become relevant at a later approval stage when the legislation directs that they be considered. A student should explicitly separate **the question 'does the law require federal approval?'** from **'should federal approval be granted?'**. The first asks whether the threshold is met; the second weighs the permitted statutory criteria after assessment.

A referral may be prudent even where consultants think the action is unlikely to be controlled, but the proponent must understand potential project delay, procedural steps and the consequences of starting works prematurely. The client needs advice about sequencing and the risk of unlawful clearing, not merely a statement that a referral can be made. If the proponent proposes early site activities, determine whether those activities are part of the action, whether an exemption or approval lawfully applies and whether any permitted minor or preparatory works provisions are relevant under the **current 2026 legislation**.

4H. World Heritage is about values, not merely map boundaries

The **Gondwana Rainforests of Australia** form a World Heritage property recognised for outstanding environmental values, including important evolutionary processes. A resort may be situated near but not inside a mapped property. That does not end the EPBC inquiry. A creek may connect the construction site to the property downstream; a species dependent on affected habitat outside the boundary may play a role in maintaining the protected property's values. The legal question is whether the proposed action is likely to have a **significant impact on the World Heritage values** of the declared property, not simply whether a bulldozer physically crosses a line on a map.

The Week 5 facts mention **Murina florium**, the tube-nosed insect bat, and its asserted role in maintaining rainforest evolutionary processes. Even if the specific population is not independently listed as a threatened species, its ecological relationship to a protected World Heritage value may make it relevant to the World Heritage impact analysis. Be precise about which *separate* listing propositions have actually been confirmed from official databases. Likewise, if clearing threatens a listed Durobby tree or the actions affect the Oxleyan Pygmy Perch, identify the exact scientific taxon, national listing status, action and impact. A species may be protected under Queensland law without automatically being an EPBC MNES on that basis alone.

4I. The final Chapter 4 method: write a lawyer's advice, not an ecology essay

For every complex problem, create five columns: **actor**, **proposed action**, **possible protected matter**, **evidence of direct or indirect impact**, and **procedural consequence**. Take each proposed activity separately, then return to the whole connected undertaking. Under each protected matter, record its Act section, relevant listing and the significance evidence required. Identify scientific uncertainty and the people who can address it. Then make a concrete recommendation: refer; seek further surveys; disclose associated works; avoid early works; consider redesign; or document why the threshold does not appear to be met.

Illustrative conclusion: 'On the information available, RUD should obtain ecological and hydrological advice and prepare a referral of the resort and access road because of plausible impacts on listed migratory species and the Gondwana Rainforests' protected values. The State connector road and council dam must be separately assessed by their proponents, but their foreseeable connections should be disclosed. Whether the impacts are significant remains a matter for evidence and the statutory Ministerial decision.' This is more defensible than either 'the project definitely cannot proceed' or 'it is safe because the resort is outside the World Heritage boundary'. Chapter 5 takes the analysis forward to assessment, approval conditions and remedies.

Primary research and course alignment

Course basis. Week 4 Seminar transcript; Week 4 university slides; Tutorial 4 discussed in Week 5; current EPBC legislation. This expanded teaching narrative is designed to be studied alongside the original university tutorial questions and the separate answers in this book.

Important: Current legislation controls where slide material predates the 2026 amendments. The present narrative explains the course approach; transitional application must be checked for actual projects.

- EPBC Act
- Environment Protection Reform Act 2025
- EPBC Regulations 2025
- DCCEEW 2026 reform status

rehabilitation costs later. A sophisticated client does not ask, “How late can we do the environmental work?” It asks, “What environmental work must be done early enough to change the project intelligently?”

4.1 The generic EIA architecture — learn the sequence before the sections

SCREENING → SCOPING → IMPACT ANALYSIS → MITIGATION → REPORTING → REVIEW → DECISION-MAKING → FOLLOW-UP

Screening determines whether EIA is required and at what level. **Scoping** defines what must be investigated. **Impact analysis** predicts effects and evaluates their significance. **Mitigation** asks how effects can be avoided, reduced, repaired or otherwise managed. **Reporting** assembles the evidence. **Review** tests the adequacy of that material. **Decision-making** determines whether to approve, refuse or impose conditions. **Follow-up** monitors whether the proponent actually does what it promised and whether the impacts unfold as predicted.

This generic architecture is deliberately taught before the EPBC Act sections because it gives students a mental map. Once the map is understood, every statutory provision has a place. Section 68 is not an isolated number: it opens the Commonwealth referral gateway. Section 75 is not “the approval section”: it is the screening decision. Section 87 concerns the assessment approach once the action is controlled. Sections 133-134 belong to the later approval and conditions stage. This sequence prevents one of the most common examination errors — using the right statutory words at the wrong stage.

> **Professional translation.** A development lawyer should turn this sequence into a project programme. Ecology, heritage, hydrology, engineering and planning work must be commissioned early enough that the evidence can change design. Survey windows matter: a species cannot reliably be ruled out merely because it was not observed during the wrong season. Public participation also has practical value — it can reveal local knowledge and design problems before they mature into litigation or political conflict.

4.2 The Commonwealth question starts with jurisdiction, not with “environment” generally

The Commonwealth does not possess a free-standing general environmental head of power. The EPBC Act therefore works through constitutional and statutory “hooks”. The

Week 4 seminar revisited the external affairs, corporations and trade and commerce powers because the architecture of Part 3 reflects those constitutional foundations. This is why superficially similar provisions can be drafted differently. A student should not merely memorise the nine matters of national environmental significance (MNES); they should ask **why the Commonwealth can regulate this actor, this action and this environmental value**.

At project level the practical federal question is usually: **does the proposed action have, will it have, or is it likely to have a significant impact on a matter protected by Part 3?** If so, the statutory pathway can become a “controlled action” pathway. The EPBC Act also regulates certain actions on or affecting Commonwealth land and actions by Commonwealth agencies. The Commonwealth pathway does not automatically displace Queensland or local-government law: s 10 preserves concurrent State/Territory operation unless a contrary intention appears.[2]

4.3 The nine MNES — and why exact controlling provisions matter

Protected matter	Core Part 3 provisions to check	Teaching point
World Heritage properties	ss 12, 15A	World Heritage values; strong international/ external-affairs foundation.
National Heritage places	ss 15B, 15C	National Heritage values; statutory drafting uses constitutional hooks.
Ramsar wetlands	ss 16, 17B	Ecological character of a declared Ramsar wetland.
Listed threatened species and ecological communities	ss 18, 18A	Ask exactly which listed species/community and classification is protected.
Listed migratory species	ss 20, 20A	Often overlaps with Ramsar/wetland habitat questions.
Nuclear actions	ss 21, 22A	The protected matter is the environment in relation to the nuclear-action trigger.
Commonwealth marine area	ss 23, 24A	Can capture actions in the area and Australian-jurisdiction actions outside it that significantly affect its environment.
	ss 24B, 24C	

2. *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s 10.

Protected matter	Core Part 3 provisions to check	Teaching point
Great Barrier Reef Marine Park		Separate trigger from World Heritage status; analyse both where facts support both.
Water resources — unconventional gas / large coal mining	ss 24D, 24E	Specific water-resource trigger for specified resource development.

The examination habit is: **identify the environmental value → identify the exact controlling provision → identify the statutory words → identify the evidence required to connect the proposed action to the protected matter.** Do not write "the project affects biodiversity" and stop. State which EPBC-listed matter is engaged and why.

4.4 What is the "action"?

Section 523 defines "action" broadly to include a project, development, undertaking, activity or series of activities, and an alteration, enlargement, expansion or intensification of such matters. Sections 524 and 524A then exclude specified governmental decisions/authorisations and specified governmental funding decisions from the concept of "action".[3] This distinction is crucial in problem questions: a government may fund a project without the grant itself being the EPBC "action", while physical works enabled by the funding may still constitute an action requiring analysis.

> **Issue-spotting trap.** Separate contracts, separate land parcels or separate government departments do not automatically make environmental consequences legally separate. Ask whether the activity is part of a larger coherent action and whether indirect consequences fall within the statutory concept of impact.

4.5 Controlled action, prohibition and referral — ss 67, 67A and 68

Section 67 connects controlled-action status to the Part 3 controlling provisions. Section 67A supplies the core prohibition against taking a controlled action without the required statutory basis. Section 68 then addresses referral by the person proposing the action: if that person thinks the proposed action may be or is a controlled action, it must be referred; even if the person thinks it is not controlled, the person may refer it to obtain a formal decision.[4]

3. *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ss 523-524A.
4. *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ss 67, 67A, 68.

The lawyer's job is therefore not to wait until a client is certain there will be a significant impact. The statutory trigger is deliberately protective: if the action *may* be controlled, referral risk must be addressed. A prudent adviser maps all plausible protected matters, commissions fit-for-purpose evidence, tests avoidance and redesign, and documents why referral is or is not required.

4.6 Referral integrity: s 72, false or misleading information and project splitting

Referral is not a marketing brochure. The statutory form must describe the action and its environmental implications with enough candour and completeness for the statutory decision-maker to screen the proposal. Section 72 regulates form/content. Section 489 creates liability relating to false or misleading information. Section 74A allows the Minister to reject a component referral where the referred action is part of a larger action the same person proposes to take, and to request referral of the larger action.[5]

Mees v Roads Corporation [2003] FCA 306

Material facts. VicRoads referred the Scoresby Freeway project. The referral stated that earlier strategies had referred to investigating a link between the Eastern Freeway and Metropolitan Ring Road but that the current government had clearly stated there was no proposal for the new link. Dr Mees argued that this presentation omitted the practical consequence that building the Scoresby Freeway would generate pressure for the missing freeway connection.

Issue. Could information be legally misleading even if the words used were not literally false, because the referral omitted a closely connected consequence of the project?

Reasoning. The Court examined the practical relationship between the referred freeway and the future connection. The concern was not semantic accuracy in isolation; it was whether the referral gave the Minister a materially accurate understanding of the action and its consequences. The Court found the omission misleading in context. The decision also illustrates a structural limitation at screening: the Minister is not conducting a roaming factual investigation that repairs an inadequate referral for the proponent.

Outcome and principle. The case demonstrates that legal completeness requires more than avoiding literal falsehoods. Material connected development can make an apparently accurate statement misleading if omitted.

5. *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ss 72, 74A, 489.

Statutory connection. The later s 74A larger-action mechanism directly addresses the danger of piecemeal project presentation.

When to use it. Cite *Mees* where facts suggest staging, project splitting, induced infrastructure or an artificially narrow referral description.

Professional lesson. Before signing off a referral, ask: “What would an informed regulator say is missing if it saw the whole commercial project rather than the contract package placed in front of us?”

4.7 Public participation at screening — s 74 and the first legal opportunity to be heard

After an accepted referral is published, s 74(3) provides for public comment on whether the proposed action is a controlled action, ordinarily over 10 business days. The screening exercise is transparent because the referral and decision materials are made available through the EPBC public portal, subject to lawful confidentiality constraints. Public participation is not merely ceremonial: it can supply local knowledge, identify overlooked environmental values, expose weaknesses in the proponent’s evidence and improve accountability.

Section 75 requires the decision-maker to consider timely public comments when deciding whether the action is controlled. At screening, the focus is the adverse impact question. Beneficial project claims — jobs, tourism, revenue or renewable-energy branding — cannot be used to erase an otherwise significant adverse impact at the stage where the Act requires a raw assessment of protected-matter impacts.[6]

4.8 Section 75 — the screening decision

Section 75 asks two linked questions: **(1) is the action a controlled action? (2) which Part 3 provisions are controlling provisions?** If impacts are relevant, the decision-maker must consider all adverse impacts the action has, will have or is likely to have. This is a screening decision, not the final approval decision. If the action is controlled, the matter proceeds into assessment and ultimately the Part 9 decision. If it is not controlled, the Commonwealth controlled-action pathway ends on the referred facts, although State and local requirements remain.

ACTION → PROTECTED MATTER → IMPACT PATHWAY → LIKELIHOOD → SIGNIFICANCE → s 75 OUTCOME

6. *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ss 74(3), 75.

The Week 4 teaching also connects s 75 to s 391. Under the current Act, the Minister (and, for specified decisions, the National EPA CEO) must take account of the precautionary principle for decisions identified by s 391. The principle is statutory, not merely aspirational: lack of full scientific certainty is not a reason to postpone protective measures where there are threats of serious or irreversible environmental damage.[7]

4.9 "Likely" and "significant" — do not collapse two separate questions

A strong answer separately asks whether the impact is sufficiently possible and whether the impact, if it occurs, is important enough to be legally significant. The course materials use authorities such as *Jarasius v Forestry Commission of NSW* (1988) 77 LGRA 79 for the proposition that "likely" need not mean "more probable than not", and *Booth v Bosworth* (2001) 114 FCR 39 for the concept of significance as something important, notable or consequential. The current statutory text and any applicable Significant Impact Guidelines must then be applied to the particular protected matter.

Evidence matters. A conclusion of "not significant" is only as reliable as the evidence beneath it. Survey design, seasonal timing, habitat function, hydrological pathways, cumulative effects and the quality of mitigation commitments can all affect whether the decision-maker has a defensible factual basis.

4.10 Possible screening outcomes

Outcome	What it means	Client consequence
Not controlled action (NCA)	No Part 9 approval is required on the referred proposal.	Commonwealth screening ends, but State/local approvals remain.
NCA - particular manner	The action is not controlled provided it is carried out in the specified manner: s 77A.	The "manner" operates as a legally critical constraint; inconsistency can attract civil consequences.
Controlled action	One or more Part 3 controlling provisions apply.	Assessment under Part 8 and later Part 9 approval decision are required.
Clearly unacceptable	The Act's early refusal pathway in Division 1A applies where unacceptable Part 3 impacts are clear on the referral material.	Project cannot proceed in current form; withdrawal, redesign/new referral or reconsideration options must be assessed.

The 2021 Asian Renewable Energy Hub revised proposal is a powerful teaching example: a project can be environmentally beneficial in one dimension yet still be

7. *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s 391.

unacceptable because of serious impacts on Ramsar wetland and migratory-species values. “Renewable” is not a legal exemption.

4.11 No premature physical works — s 74AA

Once the statutory referral process is engaged, s 74AA can make it an offence to take the action while the referral decision-making process is still underway, subject to the statutory exceptions. This is a project-management provision as much as a criminal-law provision. A developer who treats the Commonwealth process as paperwork to be completed after mobilisation can destroy the very environmental values the Act is designed to assess. Legal advice must therefore be embedded in the construction programme, procurement sequence and contractor instructions.[8]

4.12 Indirect and downstream impacts — the Nathan Dam lesson

> *Minister for the Environment and Heritage v Queensland Conservation Council Inc* [2004] FCAFC 190; (2004) 139 FCR 24 (Nathan Dam)
>
> **Facts.** The proposed Nathan Dam in central Queensland was intended to supply water, including water for large-scale irrigation. Environmental groups argued that the Commonwealth screening decision unlawfully ignored downstream consequences of agricultural use of the supplied water. The evidentiary chain included likely pesticide use on irrigated crops, river-system transport and potential effects on protected Great Barrier Reef values hundreds of kilometres downstream.
>
> **Issue.** Is an “impact” of an action confined to the action’s immediate physical effects, or can indirect effects produced through later conduct by third parties form part of the impact analysis?
>
> **Reasoning.** The Full Federal Court rejected an artificially narrow, site-bound conception of impact. The question was whether the consequence was sufficiently connected to the action and within the relevant contemplation/foreseeability framework. The whole commercial purpose of the dam mattered: downstream irrigation was not an unrelated coincidence.
>
> **Outcome.** The challenge succeeded and the decision had to be reconsidered according to law; judicial review did not itself substitute the Court’s preferred environmental approval outcome.
>
> **Current statutory connection.** Parliament later enacted s 527E. The section now provides the statutory framework for when consequences facilitated by the

primary action are impacts, including the “major extent” and contemplation/ reasonable foreseeability concepts.[9]

When to use it. Use Nathan Dam whenever facts contain downstream pollution, induced land use, new traffic/shipping, associated infrastructure, water supply, secondary development or another impact chain extending beyond the project footprint.

Professional lesson. Draw the causal chain on paper. If the project enables another activity, ask whether it facilitates that activity to a major extent and whether the secondary consequences are within contemplation or reasonably foreseeable.

4.13 EIA and ESD — *Gray v Minister for Planning*

Gray v Minister for Planning [2006] NSWLEC 720

Facts. The Anvil Hill open-cut coal mine proposal was assessed under NSW legislation. The environmental assessment addressed direct greenhouse emissions from mining but did not assess downstream emissions from burning the coal, including coal intended for power stations in Australia and Japan.

Issue. Was the assessment legally adequate where the statutory decision-making framework required ESD considerations but a major cumulative/downstream consequence had been omitted?

Reasoning. Pain J linked EIA to ESD, including integration, intergenerational equity and a precautionary approach. The Court treated prior assessment as a mechanism by which environmental consequences are placed inside the decision rather than considered after commitment.

Outcome. The impugned decision was held void. The Court did not itself approve or reject the mine; the legal defect concerned the decision-making process and the adequacy of the environmental assessment.

Why it matters here. *Gray* is a NSW case, not a substitute for the EPBC Act. Its teaching value is conceptual and comparative: EIA cannot rationally inform decision-making if material cumulative consequences are excluded at the outset.

8. *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s 74AA.
9. *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s 527E; *Minister for the Environment and Heritage v Queensland Conservation Council Inc* [2004] FCAFC 190.

When to cite it. Use it to explain the relationship between EIA, ESD and cumulative/downstream consequences, while anchoring an EPBC answer in the EPBC statutory provisions.

4.14 Exemptions must be proved — the Wielangta forestry litigation

Brown v Forestry Tasmania (No 4) [2006] FCA 1729 **and** *Forestry Tasmania v Brown* [2007] FCAFC 186

Facts. The litigation concerned forestry operations in the Wielangta forest and potential impacts on the Tasmanian wedge-tailed eagle, broad-toothed stag beetle and swift parrot. Forestry Tasmania relied on the s 38 Regional Forest Agreement (RFA) forestry exemption.

First-instance issue and result. Marshall J examined whether the forestry operations were undertaken in accordance with the RFA and, on the first-instance construction of the agreement, held the exemption unavailable. The case materials highlight recovery/threat-abatement planning and whether promised species protection had actually been implemented.

Critical appellate qualification. The first-instance conclusion on the s 38 exemption was **reversed on appeal** in *Forestry Tasmania v Brown* [2007] FCAFC 186. The Full Court's interpretation of the RFA/s 38 framework meant Forestry Tasmania could rely on the exemption. Students must not cite the first-instance exemption holding as if it remained the final legal position.

Why the pair matters. The cases teach two separate skills: (1) identify the precise statutory exemption and prove its legal conditions; and (2) always check the appellate history before using a case proposition.

Professional lesson. "We are in an exempt industry" is never enough. Ask: which section? what agreement/authorisation? what does it legally require? has any appellate authority changed the meaning?

4.15 Commonwealth-State overlap and Queensland coordinated projects

An action can require both Queensland and Commonwealth processes. The EPBC Act does not generally erase State law. The Commonwealth-Queensland **assessment bilateral agreement** can reduce duplication by allowing an accredited Queensland

assessment — including an appropriate coordinated-project EIS process — to supply the assessment material used for the Commonwealth decision. That is not the same as saying Queensland "switches off" Commonwealth jurisdiction. The Commonwealth approval question under the EPBC Act remains unless a lawful approval-bilateral mechanism actually applies to the action.

> **Client advice sequence.** (1) map Queensland approvals and whether coordinated-project declaration/EIS is available; (2) separately map EPBC referral risk; (3) determine whether the bilateral assessment agreement can accredit the State process; (4) confirm who will make the final Commonwealth approval decision; (5) build both regimes into one programme rather than treating one as a substitute for the other.

4.16 From controlled action to assessment — s 87

If the action is controlled, the next legal question is how the impacts will be assessed. Section 87 determines the assessment approach under the statutory scheme. The assessment stage builds the evidentiary record for the later decision. Depending on the statutory pathway, this can involve accredited State assessment, preliminary documentation, a public environment report, an environmental impact statement, or another lawful assessment route. The key conceptual distinction is:

SCREENING asks: "Does Commonwealth approval need to be obtained?"
ASSESSMENT asks: "What evidence is required to understand the protected-matter impacts?"
APPROVAL asks: "Should the action be approved, refused, or approved subject to conditions?"

4.17 Approval, representations and conditions — ss 131AA, 133, 134 and 136

At the Part 9 stage, the Act provides procedural protection for the proponent. Before the Minister decides whether to approve the action and what conditions to impose, s 131AA requires the proponent/designated proponent to be informed of the proposed decision and proposed conditions and invited to provide written comments within 10 business days (measured in Canberra).[10]

Section 133 is the approval decision. Section 134 governs conditions. The condition power is broad but not unlimited: there must be the statutory nexus to protecting a

10. *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s 131AA.

matter protected by a Part 3 controlling provision or repairing/mitigating damage to such a matter caused by the action. The section contemplates mechanisms including securities/bonds and financial contributions where the statutory criteria are satisfied. Section 136 then governs matters to which the Minister must have regard in the approval/conditions decision, including relevant protected-matter impacts, economic and social matters, ESD and the assessment material prescribed by the section.[11]

This distinction is essential for conditions: a condition is not valid merely because it produces a generally desirable environmental outcome. Ask **what protected matter the condition protects, repairs or mitigates; how the condition connects to the action; and why the chosen mechanism is within the statutory purpose**.

4.18 Think like the environmental lawyer

Role	Question	Expected reasoning
Student	What section applies?	Find exact Part 3 trigger, referral provision, screening criteria and current statutory wording.
Lawyer	What facts and evidence activate the section?	Define action, proponent, impact pathway, protected matter, likelihood/significance, indirect impacts and any larger action.
Adviser	What should happen next?	Sequence surveys, redesign, referral, State process, public engagement, assessment, representations on conditions and project commitments.
Board / C-suite	What decision must management make?	Do not commit capital/works until critical approval risk, timing, conditions, finance/security exposure and alternatives are understood.

11. *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ss 133-136.

WEEK 4 TUTORIAL — ACTUAL QUESTIONS

ENVIRONMENTAL IMPACT ASSESSMENT TUTORIAL

Problem facts. In January this year, Resorts United Development Limited (RUD) released plans for a proposed ecotourism resort in South East Queensland, near but not within the Gondwana Rainforests of Australia (Main Range Group). The resort would accommodate up to 900 guests. Pristine Creek flows through the site and drains into a larger waterway that is a critical breeding area for *Numenius phaeopus*. The Queensland Government supports the $90 million project and proposes a $10 million development grant. RUD must construct a 9 km resort access road. The State has indicated that Transport and Main Roads will build a connector road through the Gondwana Rainforests, requiring substantial clearing of Durobby. Local growers along tributaries use bendosultan, a pesticide harmful to aquatic ecology and waterbirds. Council proposes to dam part of Pristine Creek to improve irrigation. The creek supports the Oxleyan Pygmy Perch, which requires shallow breeding waters; Council proposes translocation despite uncertainty about long-term success. A government consultant has also identified habitat of *Murina florium* (tube-nosed insect bat) that may be affected by the RUD development, with the species said to contribute to Gondwana Rainforest evolutionary processes through seed dispersal.

Question 1

Which aspects (if any) of the proposed activities/commitments by RUD, the Queensland State Government and the Council discussed above should be referred under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)?

Question 2

What bearing, if any, would the declaration of the project as a 'coordinated project' for which an environmental impact statement is required pursuant to Part 4 of the *State Development and Public Works Organisation Act 1971* (Qld) have on assessment for the purposes of the EPBC Act? The project has not yet been declared, although some Queensland politicians supportive of the project have suggested that RUD should pursue such a declaration as it would enable the project to "avoid Commonwealth interference". Are the politicians correct?

Question 3

David Strong is a third-year environmental science student who works part-time as a policy officer with the Australian Conservation Foundation and attends a regional conservation forum. He is concerned about the Council's proposed dam disrupting Oxleyan Pygmy Perch breeding habitat. If Commonwealth approval is granted and David wishes to challenge the Minister's decision on the basis that the decision is not in accordance with the precautionary principle, does such an argument hold any merit? For this tutorial, do not consider standing.

Question 4

The EIS process under the EPBC Act has been completed. RUD hears that an approval is likely subject to stringent conditions, including: (a) a $10 million bond to secure rehabilitation costs if construction encroaches into a protected buffer; and (b) a financial contribution to Council's Mangrove Foreshore Rehabilitation Scheme. What opportunity, if any, will RUD have to make representations about these conditions and are such conditions within the Minister's power?

WEEK 4 TUTORIAL — HIGH-DISTINCTION MODEL ANSWERS

DETAILED TUTORIAL MODEL ANSWERS

Question 1 — What should be referred?

Issue map. The problem deliberately contains multiple actors and multiple activities. The correct method is not to ask “is the resort referable?” as a single question. Separate: **(1)** RUD resort + access road; **(2)** State funding grant; **(3)** State/TMR connector road through the Gondwana Rainforests; and **(4)** Council’s Pristine Creek dam/irrigation proposal. Then ask whether each is an “action”, whether it may significantly affect a Part 3 protected matter, and whether a larger-action or indirect-impact analysis connects apparently separate activities.

RUD resort and access road. RUD is a corporate proponent and the physical resort/access-road works plainly fit the broad s 523 concept of action. The facts raise at least World Heritage values (because the project is near the Gondwana Rainforests and the bat evidence connects the project to evolutionary values), listed migratory species (the Whimbrel, *Numenius phaeopus*, is listed migratory) and potentially listed threatened species/ecological communities identified by proper protected-matters searching. The 9 km access road should not be artificially severed if it is functionally part of the resort development: s 74A makes the larger-action question explicit. If the combined resort/access action may be controlled, s 68(1) points strongly to referral.

The bat evidence. The problem gives an ecological-function pathway: habitat loss → reduced *Murina florium* population → reduced seed dispersal → possible degradation of evolutionary processes contributing to World Heritage values. Do not assume the fictional/teaching species is itself EPBC-listed unless the statutory list confirms it. The important legal question is whether its ecological function creates a significant-impact pathway to the *World Heritage values* protected by ss 12/15A. That requires expert evidence about habitat, dependence, magnitude and significance.

State $10 million grant. Do not call the grant itself a referable “action” without checking s 524A. The EPBC scheme excludes specified government funding decisions from the concept of action. The grant may be commercially important,

but the physical development it facilitates remains separately subject to the Act. This is exactly why the actor/action distinction matters.

TMR connector road through the World Heritage property. Physical road construction and clearing are a distinct action capable of direct impacts on World Heritage values and possibly threatened/migratory species. A State may refer under s 69. The fact that a State agency is the proponent does not create immunity from the EPBC scheme. The road's relationship with the RUD resort should also be tested: if one action facilitates the other, the indirect-impact/larger-action analysis becomes important.

Council dam. The dam is a physical action. The Oxleyan Pygmy Perch (*Nannoperca oxleyana*) is EPBC-listed endangered, so ss 18/18A are directly relevant if significant impact is possible. The uncertainty surrounding relocation is not a reason to assume the species is safe; it raises an evidentiary/precautionary issue. The dam also facilitates increased irrigation. Under the Nathan Dam/s 527E framework, ask whether the dam facilitates secondary irrigation to a major extent and whether pesticide runoff consequences are within contemplation or reasonably foreseeable. The critical breeding area for the listed migratory Whimbrel raises ss 20/20A as well.

Conclusion. RUD should prepare one legally coherent referral for its resort/access-road action if the current evidence supports the "may be controlled" threshold. The State should separately address referral of the connector road; Council should address referral of the dam. The funding grant is not itself the physical action. Before any conclusion, the legal team should run current protected-matters searches, obtain species/World Heritage-value evidence, map the action boundaries and causal links, and prohibit premature works pending the statutory pathway.

Strong counterargument. RUD may argue that it does not construct the State connector road and cannot be responsible for every downstream activity. That is relevant, but not decisive. The lawyer must distinguish the identity of each action/proponent from the separate statutory concept of impact. Nathan Dam and s 527E are used to test whether consequences of another actor's conduct are sufficiently connected to the primary action.

Question 2 — Queensland coordinated project and the Commonwealth assessment

Issue. Does a Queensland declaration under Part 4 of the *State Development and Public Works Organisation Act 1971* (Qld), with an EIS, remove the need for EPBC assessment/approval?

Rule. No general "State approval defeats Commonwealth approval" rule exists. EPBC Act s 10 preserves concurrent State/Territory law. The Commonwealth and Queensland have an assessment bilateral agreement under Part 5 of the EPBC Act. Where its requirements are met, an accredited Queensland process can be used to assess the impacts for Commonwealth purposes, reducing duplication. The final Commonwealth approval decision under Part 9 is still a Commonwealth statutory decision unless a separate lawful approval-bilateral mechanism applies.

Application. A coordinated-project declaration can be strategically useful because the Coordinator-General's EIS process may be accredited for Commonwealth assessment. Instead of two full assessment documents/processes, the State EIS can develop the evidence needed for both regimes. But the Commonwealth controlling provisions do not vanish. The Commonwealth decision-maker must still decide the federal approval question under the EPBC Act on the accredited assessment material.

Are the politicians correct? No. Saying the State process would "avoid Commonwealth interference" confuses *assessment integration* with *jurisdictional displacement*. It may streamline assessment; it does not automatically extinguish Commonwealth protected-matter jurisdiction.

Professional advice. RUD should pursue coordinated scheduling if commercially useful, but the project programme should show both State and Commonwealth decision gates. The legal team should verify that the precise action and EIS pathway fall within the current bilateral agreement and that the EIS terms of reference capture every EPBC controlling provision.

Question 3 — Precautionary principle challenge

Issue. Could an approval be legally vulnerable if the decision-maker failed to take account of scientific uncertainty concerning serious/irreversible damage to Oxleyan Pygmy Perch habitat?

Exact law. Section 391(1) requires the Minister to take account of the precautionary principle for the decisions listed in s 391(3), including the s 75 controlled-action decision and s 133 approval decision. Section 391(2) states the statutory principle: lack of full scientific certainty should not be used to postpone a measure to prevent environmental degradation where there are threats of serious or irreversible environmental damage. Section 136 also embeds ESD considerations in the approval/conditions stage.

Application. The facts give both components that make precaution legally important: potentially serious/irreversible consequences for an endangered species with a very restricted distribution, and material scientific uncertainty about whether translocation will work. The European example does not eliminate uncertainty; the facts expressly say the long-term outcome remains unknown. A decision that treated that uncertainty as a reason to do nothing, without genuinely considering precautionary protective measures, would present a plausible judicial-review argument.

But precaution is not an automatic veto. David cannot simply say "there is uncertainty, therefore approval is unlawful". The legal question is whether the statutory decision-maker *took account* of the principle and lawfully evaluated the threats and available measures. An approval supported by robust avoidance, habitat protection, conditions, adaptive management and evidence can still be consistent with the precautionary principle. Judicial review polices legality, not whether the Court would make a more environmentally protective merits decision.

Authority connection. *Leatch v National Parks and Wildlife Service* (1993) 81 LGERA 270 is a useful Australian teaching authority on precaution under scientific uncertainty. *Gray* reinforces the role of prior EIA and ESD. But for an EPBC problem, start with s 391 because it is the governing Commonwealth statutory command.

Conclusion. The argument can have real merit if the record shows the Minister failed to take account of the statutory precautionary principle or misunderstood its role. Its success depends on the reasons and evidentiary record, not merely on the existence of ecological uncertainty.

Question 4 — Proposed bond and rehabilitation contribution

Issue 1: procedural opportunity to respond. Section 131AA requires the Minister, before deciding approval and conditions, to inform the person proposing the action/designated proponent of the proposed decision and proposed

conditions and invite written comments within 10 business days. RUD therefore has a statutory opportunity to make targeted representations. It should not use the response merely to say the conditions are expensive; it should address statutory power, nexus, proportionality/practical operation, drafting clarity, duplication and alternative mechanisms.

Issue 2: $10 million rehabilitation bond. Section 134 authorises conditions with the required connection to protecting a matter protected by a controlling provision or repairing/mitigating damage to that matter. The statutory condition framework contemplates security/bond mechanisms. A rehabilitation bond linked to potential encroachment into a legally protected buffer is therefore capable of falling within power if the buffer protects the relevant Part 3 matter and the quantum/mechanism serves the statutory protective/repair purpose. RUD should test the evidence supporting the $10 million figure, trigger for calling the security, release mechanism and whether the condition is drafted with sufficient certainty.

Issue 3: contribution to the Mangrove Foreshore Rehabilitation Scheme. A financial contribution can be within s 134's condition framework, but the existence of a general Council environmental programme does not itself establish validity. The Minister must connect the contribution to the protected matter(s) and the action. If the scheme protects/repairs/mitigates the same Ramsar, migratory, threatened-species, World Heritage or other controlling values affected by the action, the nexus can be strong. If it is merely a useful unrelated local project, RUD has a stronger argument that the condition exceeds the statutory purpose.

Issue 4: decision-stage considerations. Section 136 is relevant to the approval/conditions reasoning, and s 391 remains important where the approval decision engages precaution. The assessment report and public material form part of the decision record.

Conclusion/advice. RUD should make s 131AA representations. It should accept conditions that are demonstrably tied to the protected matters while negotiating drafting, amount, triggers and delivery mechanics. It should challenge or seek redrafting of a contribution condition if the Commonwealth cannot demonstrate the statutory nexus to the impacts of RUD's action.

Environmental impact assessment: referrals and significant impacts

CHAPTER 4 — EXTENDED CLASSROOM TEACHING AND CONNECTED AUTHORITIES

In-depth explanation of what the law requires, why each authority matters and how to move from facts to effective client advice.

Classroom method: Identify the actor and concrete action. Break the legal issue into elements. Read the exact statute and its defined terms. Use the case for the proposition it actually decides. Apply each element to evidence and plausible counterarguments. Finish with a proportionate conclusion and the remedy that this particular cause of action supports.

4K. FROM A DEVELOPMENT IDEA TO A CONTROLLED-ACTION REFERRAL

The Week 4 and 5 seminar exercise is built around Resorts United Development Limited (RUD), an ecotourism resort and its access road, a Queensland State connector road, and a Council proposal to dam Pristine Creek. It is designed to show that environmental law is not applied to an abstract 'project' without first separating the legally relevant actions and actors. RUD proposes the resort and nine-kilometre access road. The Queensland department proposes a connector road traversing Gondwana Rainforest land. Council proposes an irrigation dam responding to projected agricultural demand. A State grant of $10 million may help finance the resort, but the lecturer emphasised the need to distinguish an administrative funding or approval decision from the activity being undertaken. **EPBC Act ss 523, 524 and 524A** are the starting definitions and exclusions, not an optional afterthought.

I would prepare a table with the following columns: proponent; physical activity; location; immediate impacts; other reasonably foreseeable impacts; potentially affected national protected matter; statutory trigger; missing evidence. For RUD, impacts may include clearing, habitat fragmentation, lighting, water usage and indirect economic activity. For the road, clearing of Durobby and impacts upon Gondwana World Heritage values must be examined. For Council, damming may alter downstream flows and the breeding ecology of the Oxleyan pygmy perch, with indirect effects on migratory

waterbirds. The lesson from **Minister for Environment and Heritage v Queensland Conservation Council (the Nathan Dam Case)** is that the environmental impact of an action cannot necessarily be confined to its immediate physical footprint. The downstream conduct of other persons can be legally relevant where it forms part of the probable consequences of the action within the statutory meaning of impact. But that does not mean everything anyone may someday do is included: causation, reasonable contemplation and the factual record must support the connection.

Having identified the actions, the next question is whether the proposed conduct has, will have or is likely to have a **significant impact on a matter of national environmental significance**. The relevant protected provisions include **EPBC Act ss 12–15A** (World Heritage), **ss 18–18A** (listed threatened species) and **ss 20–20A** (listed migratory species) according to verified status and values. Do not assume every local conservation concern is automatically an EPBC trigger. Use SPRAT and the Protected Matters Search Tool as investigative starting points; obtain species and site-specific expert surveys; compare impacts with the department's **Significant Impact Guidelines**. A species may also matter through its contribution to a protected World Heritage value even where the particular species is not independently listed. The first-hour Week 5 seminar makes exactly this connection with the tube-nosed bat and Gondwana ecological processes.

My advice to RUD is that its own resort and access-road works may require referral under **s 68** if the protected-matter threshold is met, and it should disclose closely connected works even where another entity is the proponent. The RUD referral is not identical to a referral for the State's or Council's action, but it must not misleadingly describe project effects. **Mees v Roads Corporation** is the teaching authority on the problem of presenting a larger action in disconnected pieces. The EPBC Act also contains machinery dealing with larger actions (**s 74A**) and false or misleading information (**s 489**) subject to their precise elements. The lawyer must explain the consequences before early works begin and not promise that a favourable economic rationale will displace the protected-matter screening question.

4L. THE DECISION IS NOT THE SAME AS THE ASSESSMENT: WHY THAT DISTINCTION SAVES MARKS

A student often jumps from 'environmental impact statement' to 'approved project'. That is a serious error. **Screening** asks whether the Commonwealth statutory scheme is engaged. **Scoping** asks which impacts and protected matters must be studied. **Assessment** assembles and tests the evidence. **Approval** weighs the mandatory legal

considerations and either permits or refuses the controlled action, potentially subject to conditions. The steps may be related, but they are not legally equivalent, and each has a different provision and decision-maker obligation.

At the referral stage, the proponent should accurately describe the complete action and its reasonably foreseeable impacts. Under **s 75**, the Commonwealth Minister determines whether the action is a controlled action and identifies relevant controlling provisions. The decision is directed to potential environmental impact and the operative federal triggers; the lecturer emphasises that the economic case for jobs and tourism is not a substitute for the environmental threshold at this screening stage. If the action is controlled, subsequent assessment follows, with the Minister ordinarily selecting an assessment approach under **s 87**, subject to the bilateral-agreement regime. **Section 82** is relevant to which impacts are assessed; it is not the section to cite alone for choosing an assessment method. This distinction should be written accurately in the exam.

The case **Gray v Minister for Planning** concerned the scope and legality of environmental assessment under NSW legislation. It demonstrates why the decision-maker cannot treat an EIA as a ritual of assembling documents. A lawful assessment must examine the consequences required by its governing scheme, including, in that case, relevant downstream greenhouse emissions. **Nathan Dam** is an EPBC-related federal authority about the reach of impact analysis. Both show that excluding a serious impact by drawing an artificial boundary around the construction footprint may invalidate the legal analysis. They do not establish identical statutory tests: one arose under NSW planning provisions, the other under federal EPBC legislation. The precise Act and question must always accompany the citation.

For a practical example, imagine a 30-kilometre road crossing cleared land but diverting a creek that feeds listed downstream habitat. A footprint-only study may say that no protected species occupies the road reserve. But hydrological evidence could show that altered flows will damage a Ramsar wetland. The relevant inquiry is not only whether the road enters the wetland; it is whether its action is likely to have a legally significant impact on the wetland. I would identify the watershed, seasonal flows, the wetland's protected ecological character and the causal chain. I would also distinguish what is known, what the expert evidence predicts and what remains scientifically uncertain. Then I would advise the proponent on referral, possible alternatives, mitigation, schedule risk and the separate State permissions required. A strong conclusion tells the client which decision is needed **before** site disturbance.

4M. UNDERSTANDING CAUSATION, SIGNIFICANCE AND UNCERTAINTY

Environmental lawyers frequently work with uncertainty rather than perfect proof. 'Likely to have a significant impact' does not mean that a court or Minister must already possess proof of completed physical damage. It requires application of the statutory formulation and available evidence. The **Significant Impact Guidelines** help translate broad language into relevant factors such as loss of habitat, disruption of breeding, population decline, fragmentation, degradation of protected ecological character and interference with recovery. The guidelines are guidance; the Act remains the binding source. Expert ecology, hydrology, engineering and heritage evidence supply the factual material needed to apply the legal standard.

Suppose RUD argues the whimbrel is not endangered, so the resort is safe to proceed. That overlooks the statutory distinction between a listed **migratory species** and a listed **threatened species**. If the protected migratory-bird listing applies, the relevant test is tied to the migratory-species provisions; a species need not also be endangered to qualify. Suppose the tube-nosed bat is not individually an MNES. That does not automatically remove the bat from the EIA because its ecological role may sustain a **World Heritage value**, such as Gondwana evolutionary processes. Suppose the threatened tree is listed but the road builder claims that habitat is already degraded. Degradation is part of the evidence, not a legal exemption from the trigger. Each assertion must be mapped to its own controlling provision.

This is also how I should approach a developer's competing evidence. One ecologist may say the disturbance is temporary, a second may predict long-term breeding failure, and an engineering consultant may propose a diversion structure. The student should not simply choose the friendlier opinion. Explain the assumptions underlying each view, the relevant spatial and time scales, and whether mitigation is credible and enforceable. **The precautionary principle**, discussed in **Leatch** and later reflected in the EPBC statutory decision-making framework including **s 391**, can matter where there is a threat of serious or irreversible damage and scientific uncertainty, but cannot substitute for establishing the statutory requirements of the particular decision. In a well-written IRAC answer, the counterargument acknowledges uncertainty and competing evidence; the conclusion states a reasoned risk and the investigations required before a legally defensible decision.

JUDGMENTS, LEGISLATION AND RESEARCH — FULL TEACHING EXPLANATIONS

For each resource below I explain its factual or legislative setting, legal point, significance and role in practice. Blue underlined source titles open the research material. A legal authority must never be treated as a substitute for identifying and applying the controlling provision.

Gray v Minister for Planning — assessment scope

ISSUE AND FACTS. A coal-mine proposal was assessed without adequate consideration of the likely downstream emissions from burning the exported coal. The relevant NSW planning requirements called for environmental assessment, and the adequacy decision did not properly address ESD concerns. THE RULE FOR THIS CHAPTER. Ask whether the EIA has studied all impacts the **governing assessment statute** requires. Gray teaches that scope cannot be reduced to the easiest emissions to measure. It is an NSW case; EPBC screening is governed instead by Part 3, Chapter 4 Part 7 and the definition of 'impact' in s 527E. WORKED APPLICATION. If the hypothetical includes a mine, power station, road and shipping, construct a causal chain, distinguish direct from indirect effects, and identify which are legally attributable under the current statute. Explain why the evidence supports the alleged chain instead of merely calling it 'cumulative'.

Minister for Environment and Heritage v Queensland Conservation Council Inc [2004] FCAFC 190 — Nathan Dam

THE FACTS. A proposal to build a dam on the Dawson River raised questions about its likely effects on downstream agricultural activity and associated environmental impacts. The proponent's own physical dam works were not the only conduct potentially relevant to the approval inquiry. THE HOLDING. The Full Federal Court rejected an approach that excluded indirect consequences merely because independent third parties would carry out some later activities. The current EPBC Act definition of impact in s 527E must also be applied on its own terms; it contains a causation and foreseeability framework for consequences of the action. WORKED APPLICATION. For the RUD resort, separate RUD's accommodation and 9 km access road, the State's connector road and the Council's dam. Ask which acts each proponent performs, how the later acts arise, whether the causal connection is reasonably foreseeable, and how water and habitat effects reach MNES. The decision does not automatically mean every third-party act becomes RUD's separate 'action'.

Mees v Roads Corporation [2003] FCA 306 — integrity of referrals

THE FACTS. A proposed freeway referral raised controversy about future connected road works and whether the materials adequately revealed the likelihood of other segments. The statutory referral regime required accurate information about related projects. WHY IT MATTERS. A technically true statement may mislead when its omissions create a materially false impression in context. Later associated works should not be hidden to avoid the EPBC screening process. Under the EPBC Act, referral requirements, related-action treatment (including s 74A where applicable) and false or misleading information provisions must be addressed precisely rather than by slogan. THE ADVICE. Describe foreseeable connected stages in the referral information, identify which proponent controls each action, seek specialist impact assessments and preserve the factual basis for asserting a stage is or is not independently planned. If a client wants to omit known associated works, explain the legal and reputational consequences.

Leatch v National Parks and Wildlife Service — precaution in assessment

THE ECOLOGICAL PROBLEM. Road construction threatened important habitat while uncertainty surrounded the consequences for a vulnerable frog. An uncertain future effect was not equivalent to proof of safety. CORRECT USE. Identify the threatened harm, its potential seriousness, the state of the science, assessment alternatives and mitigation. Tie the argument to the environmental and approval provisions actually applicable to the decision. For Commonwealth approvals, name EPBC s 391 and s 136 where applicable; Leatch remains persuasive explanation rather than an independent statutory requirement. COUNTERARGUMENT. A developer can commission better surveys and propose an effective alternative route. Precaution requires thoughtful, evidence-based decision-making; it does not require rejection of all projects with a residual ecological risk.

Brown v Forestry Tasmania (No 4) and Forestry Tasmania v Brown

THE DISPUTE. Litigation over Tasmanian forestry operations tested the boundaries of Commonwealth threatened-species protections, regional forest agreements and the special statutory framework for certain forestry activities. The trial and appellate stages must not be collapsed into a single proposition. THE PROFESSIONAL LESSON. An apparently obvious protected-species impact can still encounter a statutory exemption or special regime. Before advising that the EPBC Act applies, examine all relevant definitional provisions, exemptions, current statutory qualifications and the approved forest-operation framework. An appellate court's interpretation may change the

operative legal conclusion even though the underlying ecological concerns remain substantial. DO NOT OVERCITE. Specify whether relying on [2006] FCA 1729 or [2007] FCAFC 186 and verify the precise ratio for the particular forestry facts.

EPBC ss 523–524A, 527E and screening under ss 68–87

EXACT STATUTORY SEQUENCE. Section 523 identifies projects, developments and activities capable of being 'actions'. Sections 524 and 524A limit that definition in particular settings, including qualifying government decisions/funding. Section 527E determines when direct or indirect consequences may be impacts of an action. Part 3 identifies controlling protected matters; s 68 concerns referral; s 75 the controlled-action decision; s 82 identifies relevant impacts; s 87 deals with the assessment approach. A WORKED RUD EXAMPLE. The $10 million grant itself may be excluded from 'action' although the physical resort, State connector road and Council dam each require separate analysis. The World Heritage rainforest boundary does not alone settle the matter: downstream hydrology and values of the listed property can be affected from beyond its mapped extent. The question is significance of protected impacts, supported by ecology and the Commonwealth Significant Impact Guidelines.

THE COMPLETE PROFESSIONAL APPLICATION — AN EXAM-READY METHOD

When I advise a client, I do not begin with an attractive remedy and work backwards. First I identify the particular conduct, actor and decision-maker; then I identify the statute and its relevant time of operation. Secondly, I specify each element of the legal test. Thirdly, I connect the strongest case authority to the proposition being applied, explaining its facts and why the reasoning is comparable or distinguishable. Fourthly, I test the evidence supporting each element and take the opposing argument seriously. Fifthly, I advise on the practical course: further studies, a referral, a revised project, a lawful condition, judicial review, an injunction or enforcement, depending on the statute. This is the transition from knowing rules to practising environmental law.

Legislative date: The course discusses the EPBC Act framework in force for its 2026 seminars. The Environment Protection Reform Act 2025 has staged commencement. The August 2026 transitional rules may affect some cases. For any past project, check the version operative at the relevant decision date; do not apply a future reform retrospectively without legal authority.

CHAPTER 4 FAQ QUESTIONS

CHAPTER 4 FAQS — QUESTIONS

1. Is referral the same as Commonwealth approval?

2. Why must I define the “action” before identifying the environmental law?

3. What makes an action a “controlled action”?

4. Can jobs, tourism revenue or climate benefits prevent a controlled-action finding?

5. What is a particular-manner decision and why does it matter?

6. What is the difference between screening, assessment and approval?

7. Why are *Mees* and s 74A important for staged projects?

8. Why is Nathan Dam still important after s 527E?

9. Does a Queensland EIS replace the EPBC Act?

10. Does the precautionary principle require refusal whenever science is uncertain?

11. Can the Minister impose a bond or financial contribution as a condition?

12. Why must appellate history be checked before citing a case?

CHAPTER 4 FAQ ANSWERS

CHAPTER 4 FAQS — ANSWERS

1. No. Referral opens screening. If the action is controlled, assessment follows and the later Part 9 decision determines approval and conditions. Treating referral as approval confuses three different statutory stages.

2. Because the Act regulates an “action” and its impacts. You cannot correctly identify the referral duty, larger-action risk, impact chain or proponent until the legally relevant activity is defined.

3. Section 67 links controlled-action status to Part 3: the action is controlled where taking it without approval would be prohibited by a controlling provision. The analysis therefore requires the exact protected matter and significant-impact pathway.

4. Not at screening. Section 75 is directed to the protected-matter impact question. A socially valuable project can still be controlled or clearly unacceptable. Broader economic/social factors have their proper statutory place later.

5. Under s 77A, the action is not controlled because the decision-maker relies on the action being undertaken in a specified manner. That manner is not optional mitigation language; it is legally critical to the outcome.

6. Screening decides whether Commonwealth approval is required. Assessment builds the evidence about impacts. Approval decides whether the controlled action may proceed and on what conditions.

7. *Mees* demonstrates why a referral can be misleading through omission; s 74A gives the Minister a mechanism to require the larger action rather than accept an artificial component referral.

8. Nathan Dam teaches the legal problem of indirect consequences. Section 527E now supplies the enacted framework. Use the case to understand the issue and the section to state the current statutory test.

9. No. A Queensland EIS may be accredited through the assessment bilateral agreement and reduce duplication, but it does not automatically remove the Commonwealth approval function.

10. No. Precaution is a mandatory consideration where s 391 applies, but it does not mechanically command refusal. The decision-maker must genuinely address serious/irreversible threats and scientific uncertainty, and consider protective measures.

11. Potentially yes under s 134 if the condition has the necessary statutory nexus to protecting or repairing/mitigating damage to a Part 3 protected matter. A generally worthy environmental payment with no statutory connection is more vulnerable.

12. Because the proposition may have been reversed or qualified. The Wielangta litigation is the ideal reminder: the first-instance s 38 outcome in *Brown* was reversed by the Full Court.

CHAPTER 4 MULTIPLE CHOICE — QUESTIONS

CHAPTER 4 MULTIPLE CHOICE QUESTIONS

1. A developer believes an action probably will not have a significant impact but accepts there is a credible possibility. Which response best reflects s 68?
A. Referral is impossible unless the developer believes the action is definitely controlled.
B. If the developer thinks the action may be controlled, it must refer.
C. Only a State can refer the proposal.
D. Referral itself grants approval.

2. At the s 75 screening stage, which is the best statement?
A. The Minister decides the final conditions of approval.
B. The Minister decides whether the action is controlled and which Part 3 provisions control it.
C. State approvals cease to apply.
D. The proponent’s economic benefits automatically outweigh environmental harm.

3. RUD separates its access road from the resort referral even though both are functionally integrated. Which provision should immediately be checked?
A. s 74A.
B. s 391 only.
C. s 134 only.
D. s 10 only.

4. The strongest lesson from *Mees* is:
A. a referral is safe if no sentence is literally false.
B. material omission can make referral information misleading in context.
C. the Minister must independently reconstruct every missing fact.
D. project staging is always unlawful.

5. Nathan Dam is most useful where:
A. the only impact is immediate excavation.
B. a project facilitates downstream/secondary activity that may harm a protected matter.
C. there is no causal connection at all.
D. the student wants to avoid applying s 527E.

6. A renewable-energy project has serious Ramsar impacts. Which statement is strongest?
A. Renewable status exempts it.
B. Climate benefits guarantee approval.
C. It must still be tested under the EPBC Act and can be clearly unacceptable.
D. Ramsar only applies to fossil-fuel projects.

7. A Queensland coordinated-project EIS is accredited for Commonwealth assessment. What follows?
A. Commonwealth approval jurisdiction necessarily disappears.
B. The State assessment can be used for Commonwealth purposes, reducing duplication, but the Commonwealth approval decision remains unless another lawful mechanism applies.
C. EPBC Part 3 no longer applies.
D. The proponent may ignore Commonwealth conditions.

8. Under s 391, scientific uncertainty means:
A. approval must always be refused.
B. uncertainty is irrelevant.
C. lack of full certainty is not a reason to postpone protective measures where threats of serious/irreversible damage exist.
D. only State decision-makers consider precaution.

9. RUD receives proposed Commonwealth conditions. What is its clearest statutory opportunity to respond?
A. s 131AA written comments within 10 business days.
B. no opportunity exists.
C. only a post-approval appeal.
D. s 68 referral comments.

10. A $10m bond condition will be valid simply because rehabilitation is environmentally desirable.
A. True.
B. False — the condition must be within s 134 and have the necessary nexus to a protected matter/action.

CHAPTER 4 MULTIPLE CHOICE — ANSWERS & EXPLANATIONS

CHAPTER 4 MULTIPLE CHOICE ANSWERS

1. B. Section 68(1) deliberately uses “may be or is” controlled. A is wrong because certainty is not required. C is wrong because a proponent can/must refer under s 68. D is wrong because referral starts screening; it is not approval.

2. B. Section 75 is the controlled-action/controlling-provision decision. A belongs later in Part 9. C contradicts s 10. D confuses screening with later statutory consideration of broader matters.

3. A. Section 74A directly addresses a component of a larger action. B/C/D may be relevant elsewhere but do not answer the project-splitting issue.

4. B. *Mees* teaches contextual candour. A is too narrow. C wrongly transfers the proponent’s disclosure problem to the Minister. D overstates the law: genuine separate actions can exist.

5. B. Nathan Dam is the classic indirect/downstream-impact teaching case. A does not engage its distinctive lesson. C lacks the necessary connection. D is wrong because current analysis must use s 527E.

6. C. Statutory impact, not environmental branding, controls. A/B are categorical errors; D is legally nonsensical.

7. B. An assessment bilateral agreement can streamline assessment. It does not automatically extinguish Part 3 or the Commonwealth approval function.

8. C. That is the statutory precautionary formulation. A turns precaution into an automatic prohibition, which it is not. B and D contradict s 391.

9. A. Section 131AA is the direct pre-decision opportunity for the proponent to comment on proposed approval conditions.

10. B. Desirability is not enough. The condition must be authorised by s 134 and connected to the protected matter/action in the way the section requires.

CHAPTER 4 SHORT ANSWER — QUESTIONS

CHAPTER 4 SHORT ANSWER QUESTIONS

1. Explain the relationship between ss 67, 67A and 68.

2. Explain the difference between screening, assessment and approval under Chapter 4 of the EPBC Act.

3. Explain why s 74A matters to project definition.

4. Explain how *Mees* changes the way a lawyer should review a referral.

5. Explain how Nathan Dam and s 527E should be used together.

6. Explain the relationship between s 10 and a Queensland coordinated-project EIS.

7. Explain the statutory role of the precautionary principle in an EPBC approval decision.

8. Explain why a s 134 condition needs a statutory nexus.

CHAPTER 4 SHORT ANSWER MODEL ANSWERS

1. Section 67 identifies when an action is a controlled action by reference to Part 3; s 67A prohibits taking a controlled action without the statutory basis required by the Act; s 68 creates the proponent-referral gateway so the decision-maker can determine controlled-action status. In an exam, connect them rather than reciting them independently.

2. Screening asks whether approval is required (Part 7, especially s 75). Assessment develops the environmental evidence once the action is controlled (Part 8, including s 87 assessment approach). Approval decides whether the controlled action may proceed and on what conditions (Part 9, ss 133-136).

3. Section 74A protects against an artificially narrow component referral. The lawyer must identify the commercially and environmentally coherent action, including connected works, rather than assuming that contract packaging dictates statutory project boundaries.

4. *Mees* shows that literal truth is not enough if omission creates a misleading impression. The lawyer should test connected infrastructure, induced consequences and the larger commercial project before certifying the referral narrative.

5. Nathan Dam explains why indirect third-party consequences can matter. Section 527E now provides the statutory causation test. The best answer uses the case to explain the legal problem and s 527E to state the current law.

6. Section 10 preserves concurrent State law. A coordinated-project EIS may be accredited under the Commonwealth-Queensland assessment bilateral agreement, allowing one assessment process to inform both regimes, but that does not automatically remove the Commonwealth approval decision.

7. Section 391 requires the Minister to take account of the precautionary principle for specified decisions including s 133 approval. The principle is engaged by threats of serious/irreversible harm plus scientific uncertainty; it requires genuine consideration of protective measures, not automatic refusal.

8. Section 134 is a statutory condition power, not a general power to fund worthy environmental projects. The condition must connect to protecting a Part 3 matter or repairing/mitigating damage to such a matter caused by the action. That nexus is the legality question.

CHAPTER 4 IRAC / PROFESSIONAL PROBLEMS — QUESTIONS

CHAPTER 4 PROFESSIONAL PROBLEM QUESTIONS

IRAC 1 — Early clearing and seasonal survey

A listed threatened species may occur on land proposed for a 90-hectare residential project. The company has only a winter desktop assessment and wants to clear an access track while its federal referral is pending. Advise the board.

IRAC 2 — Split port referral

A proponent wants to refer only dredging while separately contracting later berths, roads and shipping infrastructure. All components are commercially dependent. Advise on project definition and referral risk.

IRAC 3 — Renewable hub and Ramsar wetland

A major renewable-energy hub delivers substantial emissions benefits but permanently disturbs habitat within and adjacent to a Ramsar wetland used by migratory birds. Management says the project’s climate benefits should guarantee approval. Advise.

IRAC 4 — Conditions and board strategy

A controlled action is likely to be approved subject to a large rehabilitation bond, a contribution to an off-site conservation scheme and seasonal no-work windows. The board asks whether it can refuse the conditions after approval and litigate later. Advise on the pre-decision strategy.

CHAPTER 4 DETAILED IRAC MODEL ANSWERS

IRAC 1 — Early clearing and seasonal survey

Issue. Whether referral is required, whether evidence is adequate and whether the access clearing can begin while referral screening is underway.

Law. Identify the threatened-species controlling provision (ss 18/18A as applicable), then ss 67, 67A and 68. If the action/larger action has been referred, s 74AA is critical. The definition of action in s 523 and project-splitting mechanism in s 74A must be considered.

Application. A winter desktop review is not a reliable ecological absence finding if the species is seasonal, cryptic or habitat-dependent. The access track may be part of the larger action rather than a harmless preliminary project. Clearing can also irreversibly destroy the evidence/habitat being assessed. The legal team should stop physical works, commission properly timed field surveys, map habitat and test avoidance/redesign before making the significance assessment.

Counterargument. Management may say the track is minor. That is factual, not dispositive. The question is whether the track is part of the action/larger action and whether it can affect the protected matter.

Conclusion/advice. Do not commence irreversible works merely to protect the construction timetable. Align ecology, referral and construction programming first; document the legal go/no-go gate for the board and contractors.

IRAC 2 — Split port referral

Issue. Whether dredging can be referred as a standalone action without creating s 74A / misleading-referral risk.

Law. Section 74A allows the Minister to reject a component referral where it is part of a larger action the same person proposes. *Mees* emphasises contextual

completeness. Section 527E is relevant to consequences facilitated by the primary action.

Application. Commercial dependence is strong evidence that the components form one project. Separate contracts are not decisive. Map whether dredging is useful only because the berth/road/shipping changes follow, and whether cumulative marine, traffic and habitat consequences arise from the combined development. A referral that describes dredging in isolation risks delay, loss of credibility and a request for the larger action.

Advice. Define and refer the legally coherent project. Explain staging honestly, distinguish genuine future alternatives from committed components, and assess combined impacts.

IRAC 3 — Renewable hub and Ramsar wetland

Issue. Whether broad climate benefit defeats the Ramsar/migratory-species screening and approval risks.

Law. Apply the Ramsar and migratory controlling provisions, ss 67-75 and, if controlled, the later Part 8/9 framework. At s 75, adverse protected-matter impacts are the focus. The clearly-unacceptable pathway can apply despite the project's positive purpose.

Application. Quantify wetland ecological character, migratory habitat use, footprint, alternatives and mitigation. The Asian Renewable Energy Hub revised proposal is a real demonstration that renewable branding cannot displace the statutory protected-matter test.

Conclusion/advice. Redesign should prioritise avoidance of the protected wetland values. Broader benefits may be relevant at later decision stages where the Act permits them, but cannot be used as a shortcut around the controlling provisions.

IRAC 4 — Conditions and board strategy

Issue. How should a proponent respond to proposed conditions and what makes those conditions lawful?

Law. Section 131AA gives the proponent 10 business days to comment on the proposed approval/conditions. Section 134 governs condition power and nexus; s 136 governs approval/condition considerations.

Application. Waiting until after approval wastes the best statutory opportunity to fix ambiguity, excessive security mechanics or a weak nexus. The board should instruct legal/technical teams to prepare evidence-based representations: identify which conditions are accepted, propose drafting alternatives, challenge conditions with no Part 3 nexus, and show how equivalent protection can be achieved more efficiently where appropriate.

Conclusion/advice. Treat s 131AA as a negotiation-and-record-building stage. Preserve legal rights, but use the statutory comment process to improve the decision before resorting to litigation.

CHAPTER 4 RESEARCH & MID-SEMESTER PREPARATION

CHAPTER 4 ATTACK SHEET

60-SECOND PROBLEM METHOD

1. Identify every actor/proponent. **2.** Define each “action” and larger-action possibility. **3.** Identify jurisdiction and Commonwealth constitutional/statutory hook. **4.** Identify exact MNES / Part 3 provision. **5.** Draw direct + indirect impact pathways. **6.** Ask whether the action may be controlled → s 68. **7.** Check disclosure, s 74A and no early works/s 74AA. **8.** At s 75 identify controlling provisions, adverse impacts, public comments and s 391 precaution. **9.** If controlled, identify s 87 assessment route. **10.** At approval map ss 131AA, 133, 134, 136 and conditions. **11.** Separately map Queensland/local approvals and any bilateral-assessment pathway. **12.** Give practical advice: evidence, timing, redesign, risk, next decision.

CASES — WHAT EACH ONE DOES

***Mees*:** referral candour / omission / larger project. **Nathan Dam:** indirect and downstream impact; now read with s 527E. ***Gray*:** EIA as an ESD mechanism and cumulative consequences (NSW comparative authority). ***Brown (No 4)* + *Forestry Tasmania v Brown*:** exemptions and the essential discipline of checking appellate history. ***Leatch*:** precautionary reasoning under scientific uncertainty; for EPBC problems start with s 391.

Mid-semester Weeks 1-4 consolidation

By the end of Week 4, the student should be able to move from the broad evolution and values of environmental law, through Commonwealth/State constitutional responsibility and international environmental law, into the actual statutory mechanics of a major-project referral. The exam skill is integration: do not write four disconnected mini-essays. Use the facts to move through **jurisdiction** → **exact law** → **authority** → **evidence** → **application** → **counterargument** → **conclusion**.

Open-book strategy. Index your notes by issues, not merely weeks. Your first tabs should be: Commonwealth power / EPBC architecture; MNES + controlling provisions; “action” ss 523-524A; ss 67-68; ss 74-75; s 74A; s 74AA; s 77A; s 87; s 391; Nathan

Dam/s 527E; Commonwealth-State/bilateral assessment; approval conditions ss 131AA, 133-136. That lets you reach the legal test quickly under exam time pressure.

Authoritative resources

Environment Protection and Biodiversity Conservation Act 1999 (Cth) — current authorised compilation

EPBC Act Public Portal — referrals, decisions and project documents

Commonwealth-Queensland EPBC assessment bilateral information

State Development and Public Works Organisation Act 1971 (Qld)

Mees v Roads Corporation [2003] FCA 306

Minister for the Environment and Heritage v Queensland Conservation Council Inc [2004] FCAFC 190

Gray v Minister for Planning [2006] NSWLEC 720

Brown v Forestry Tasmania (No 4) [2006] FCA 1729

Forestry Tasmania v Brown [2007] FCAFC 186

FINAL PROFESSIONAL CHECK

Before a client commits to works, you should be able to answer: **What is the action? Who is the proponent? What Part 3 matters can be affected? What evidence supports significance? What cannot lawfully happen yet? What assessment pathway follows? What State process runs alongside it? What conditions/security could affect project economics? What is the next legal decision gate?**

End of Week 4 integrated teaching. Week 5 material will extend the assessment/approval pathway when supplied.

ENVIRONMENTAL LAW

Semester 263

Weekly questions

Environmental impact assessment

These questions will require you to do some self-learning in advance about some aspects of the EPBC Act that we will discuss in the Week 5 seminar, but the early learning will assist you in your preparation for the Week 6 mid-semester exam.

In January this year, Resorts United Development Limited (**RUD**) released plans for a proposed ecotourism resort development in South East Queensland. The resort is proposed to be located on land near, but not within, the Gondwana Rainforests of Australia (Main Range Group).

The proposed resort, if and when completed, will accommodate a maximum of 900 guests, drawing primarily from international markets, but it will also be promoted to domestic tourists. Pristine Creek, a shallow creek, flows through the proposed resort site and drains into a larger waterway that is a critical breeding area for the *Numenius phaeopus*.

The Queensland Premier has, in the last fortnight, made some positive comments in the media in support of the project. Citing the $90 million cost of the resort and the significant economic contribution it will make to the region, the Premier says the State Government views the proposed resort development as a key catalyst for getting the regional tourism industry thriving after the COVID-19 pandemic and natural disaster events over the past few years. The Queensland State Government has committed to providing RUD with a development funding grant of $10 million to help facilitate the construction of the resort given its anticipated role in the Queensland tourism sector in the lead up to the 2032 Brisbane Olympics.

A resort access road of some 9km in length will need to be built by RUD to enable construction traffic to get from the main road to the currently isolated site of the proposed resort. The Queensland State Government has indicated that if the RUD development proceeds, the Queensland Department of Transport and Main Roads will build a connector road through the Gondwana Rainforests of Australia that will link the RUD resort access road to the highway. The construction of the connector road will require the clearing of a large extent of Durobby.

RUD has announced that locals, primarily, will be hired as the construction workforce and employed as the resort's operational staff. The local agricultural industry is also very excited about the project. RUD has also publicly committed to using only local

produce in the three restaurants planned for the resort. In response to RUD's public commitment to use only local produce at the resort, the Council of the City of Gold Coast (**Council**) (a local government under the *Local Government Act 2009* (Qld)) proposes to dam part of Pristine Creek to facilitate improved irrigation to local crops. Many of the local crop growers operate small farms/plantations along tributaries of Pristine Creek. Some of the growers are heavy users of bendosultan, a pesticide known for its harmful effects on aquatic ecology and waterbirds.

The Oxleyan Pygmy Perch is one of only six pygmy perch species in the world and is found naturally in only two Queensland creeks/river systems, Pristine Creek being one of them. The Oxleyan Pygmy Perch species requires shallow waters for breeding. The Council proposes to relocate the Oxleyan Pygmy Perch specimens (ie. individuals) from Pristine Creek to another river system on the Central Queensland coast before constructing the dam. Various published studies suggest that the Oxleyan Pygmy Perch is at least 150 million years old, thus giving scientists a rare insight into how life on earth moved from the sea to land. There is some precedent for relocation of pygmy perch. A different pygmy perch species has previously been relocated for a dam construction project in Europe. However environmental consultants who worked on mitigation measures for the European dam project say it is still too early to assess the full extent of that relocation on the European pygmy perch species.

The Coastal Environmental Protectors Organisation Inc. (**CEPO**) is an incorporated association that was formed in the late 1980s to campaign for the protection of Fraser Island. CEPO's constitution identifies as the organisation's object '*To seek to ensure the preservation of the values of coastal environments*'. CEPO has 20 members. CEPO holds an annual general meeting (AGM) of its members as required to maintain incorporation status under the *Associations Incorporation Act 1981* (Qld). A new president and secretary are elected at each annual general meeting, and the members take the annual general meetings as an opportunity to reminisce about their 'victory' in contributing to the World Heritage listing of Fraser Island. CEPO hasn't taken an active position in relation to any environmental issues since Fraser Island was added to the World Heritage list in 1992.

The current president of CEPO, Sally Yardley, last week became aware of a report by an environmental consultant engaged by the Queensland State Government to study the potential impacts of the proposed RUD development. The consultant's report identified areas of habitat of the *Murina florium* (tube-nosed insect bat) which could be adversely affected by the RUD development. The consultant's report identified the maintenance of the current population levels of the *Murina florium* as important to the maintenance of the values of the Gondwana Rainforests of Australia (Main Range Group). This is because *Murina florium*, as a seed disperser, contributes to the Gondwana Rainforests of Australia's evolutionary processes.

RUD seeks your advice regarding its proposed development—

Question 1

Which aspects (if any) of the proposed activities/commitments by RUD, the Queensland State Government and the Council discussed above should be referred under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)?

Question 2

What bearing, if any, would the declaration of the project as a 'coordinated project' for which an environmental impact statement is required pursuant to Part 4 of the *State Development and Public Works Organisation Act 1971* (Qld) have on assessment for the purposes of the EPBC Act?

The project has not yet been declared under the *State Development and Public Works Organisation Act 1971* (Qld), although some Queensland politicians supportive of the project have suggested that RUD should pursue such a declaration as it would enable the project to "avoid Commonwealth interference". Are the politicians correct?

Question 3

David Strong is a third-year university environmental science student. David works part-time as a policy officer with the Australian Conservation Foundation and in that capacity attends the Regional Conservation Forum established by the Queensland Government. The Forum meets on a quarterly basis with relevant Ministers and their advisers to consider regional conservation issues. David is concerned about the possible impacts of the Council's proposal to dam Pristine Creek in disrupting the breeding habitat of the Oxleyan Pygmy Perch.

If approval is granted by the Commonwealth Environment Minister and David Strong wishes to challenge the Minister's decision on the basis that the decision is not in accordance with the precautionary principle, does such an argument hold any merit?

For this tutorial, you do not need to consider whether David Strong has legal standing to bring a court challenge. We will cover whether a potential litigant has standing to bring an action in the Week 11 seminar on environmental litigation.

Question 4

The EIS process under the EPBC Act has been completed. It is now up to the Commonwealth Environment Minister to make the decision as to whether the project should be approved or refused. RUD's development manager has heard through his contacts in Canberra that an approval is likely, subject to quite stringent conditions. Apparently, among the conditions the Minister is considering imposing on the approval are:

(a) A requirement for RUD to lodge a $10 million bond to secure rehabilitation costs in the event that during the construction phase there is encroachment into a buffer area required to be protected by the conditions.

(b) A requirement for RUD to make a financial contribution to the Council's Mangrove Foreshore Rehabilitation Scheme, which applies to the Council's creeks and wetland areas.

RUD's development manager wants to know what opportunity, if any, RUD will have to make representations about these conditions and whether such conditions are within the power of the Minister.

CHAPTER 4 — HIGH-DISTINCTION IRAC MODEL ANSWERS

Issue → Rule and case authority → fact-specific application → strongest counterargument → conclusion and advice.

MODEL ANSWER 1 — Q1 — RUD resort, State connector road, Council dam: identify each referable action

Issue

Which of the different activities and commitments in the Week 4 RUD scenario are actions potentially requiring EPBC referral, and why?

Rule

EPBC Act s 523 defines “action” broadly to include a project, development, undertaking, activity or series of activities; ss 524 and 524A contain qualifications. Sections 12–24E set protected matters; ss 67–68 address controlled actions and referral, while s 75 is the screening decision. The impact concept includes certain indirect consequences under s 527E. The Full Federal Court in Minister for the Environment and Heritage v Queensland Conservation Council Inc [2004] FCAFC 190 (Nathan Dam) held that the legally relevant effects may extend beyond immediate works. Mees v Roads Corporation [2003] FCA 306 demonstrates the importance of candidly describing inevitably connected infrastructure in a referral. Misleading referral information may have statutory consequences; check s 489 and other offences.

Application

RUD proposes the resort and its 9 km access road. Those are physical activities and should be assessed against all relevant protected matters, including nearby World Heritage values and the breeding waterway connected to the migratory whimbrel (Numenius phaeopus). A World Heritage impact need not occur inside the mapped property. Impacts on the unlisted tube-nosed bat may nonetheless matter if its seed-dispersal role underpins listed World Heritage evolutionary values. Queensland, not RUD, proposes the connector road through protected rainforests and clearing of Durobby; identify whether that species is listed and whether direct World Heritage impacts arise. The Council separately proposes the Pristine Creek dam, with potential threatened-fish breeding impacts and downstream pesticide/ecosystem effects. The State’s $10 million grant

and political approval, without construction, are not automatically "actions" by themselves. Each proponent must consider referral of its own project and disclose important interdependencies so that the full impact picture is not misleading.

Strongest counterargument

RUD may argue that it is not the legal actor building the State road or Council dam and the referral should cover only its own works. That distinction does matter for identifying each action, but is not a licence to conceal reasonably foreseeable and causally connected development effects. Section 527E has a specific causal framework for acts undertaken independently by other persons; avoid assuming every economic consequence is automatically an impact.

Conclusion, consequence and advice

Advise separate and coordinated statutory assessments and truthful referrals for each physical proposal potentially meeting the significant-impact threshold. Obtain ecology and connectivity evidence, define each proponent's acts and liabilities, and defer irreversible works until the screening/approval obligations are resolved.

MODEL ANSWER 2 — Q2 — Coordinated-project EIS and bilateral agreement: does Queensland displace Commonwealth approval?

Issue

Does a declaration under Part 4 of the State Development and Public Works Organisation Act 1971 (Qld) prevent Commonwealth EPBC scrutiny?

Rule

The EPBC Act provides an assessment-bilateral mechanism (including ss 45, 47, 57, 65 and 83). The accreditation of a State environmental assessment process is not an automatic transfer of the Commonwealth Minister's Part 9 approval decision. Where the relevant Queensland assessment process is covered by the bilateral, it may substitute for a separate Commonwealth Part 8 assessment. EPBC Act s 10 preserves the general relevance of State/Territory laws. The Minister retains the Part 9 decision, including ss 130–136. The lecturer's Week 5 slides describe a

Queensland assessment bilateral agreement amended on 17 November 2025.

Application

A coordinated-project declaration requiring an EIS under the Queensland Act can bring the project within the accredited assessment framework, depending on the bilateral's scope and conditions. The Queensland process provides public participation, technical examination and a State assessment report; the Commonwealth may rely on this body of evidence to reach its own statutory decision. A project outside the bilateral scope may require an EPBC assessment method chosen under s 87. Counsel should check the actual agreement, the declaration, the controlling provisions and the latest standards, not assume every State EIS qualifies.

Strongest counterargument

The politicians' "avoid Commonwealth interference" claim confuses assessment duplication with approval jurisdiction. Even a good-quality State EIS cannot itself authorise significant impacts on federal protected matters if Commonwealth approval is required.

Conclusion, consequence and advice

A Queensland coordinated-project EIS may simplify assessment through cooperative federalism but does not eliminate federal screening or the Commonwealth approval decision. Prepare both State and Commonwealth consent pathways in the project timeline.

MODEL ANSWER 3 — Q3 — David Strong and the precautionary principle: potential review argument

Issue

If the Commonwealth approves the Council dam despite uncertainty over the Oxleyan Pygmy Perch, can David Strong make a legally substantial challenge based on precaution?

Rule

EPBC Act s 391(1) requires the Minister to take account of the precautionary principle, consistently with the Act, in a s 75 controlled-action decision and a s 133 approval decision. Section 391(2) defines the principle: lack of full scientific certainty must not be a reason

to postpone preventive measures where serious or irreversible environmental damage is threatened. Section 136 also requires the Minister to consider protected matters, economic and social matters, and specified other matters. Leatch v National Parks and Wildlife Service (1993) 81 LGERA 270 is a leading Australian environmental precaution discussion; it is not a substitute for s 391. Review targets a legally relevant error such as failure to take the mandatory matter into account, not merely disagreement with the policy merits.

Application

The problem supplies narrow shallow-water breeding habitat, an ancient species, a proposed relocation to a distant river, and uncertain overseas experience involving a different fish. These facts could reasonably reveal a risk of serious or irreversible ecological damage coupled with significant scientific uncertainty. David's best argument is that the Minister must demonstrate genuine consideration of precaution, rather than use the lack of definitive harm prediction to bypass safeguards. The record might support stricter baseline surveys, design changes, alternative dam sites, minimum flows, no-go habitats, monitoring and an adaptive response plan. The particular legal consequences of relocating a threatened species also depend on its listing and applicable State law.

Strongest counterargument

A Minister who expressly weighs reliable studies, expert opinions and alternatives may still lawfully approve with conditions; s 391 is not an absolute statutory veto and does not require an outcome dictated by David. A court reviewing the decision generally does not substitute its own environmental assessment. The weekly question expressly excludes standing, so do not devote the answer to s 475 standing.

Conclusion, consequence and advice

Yes, the argument has potential merit if the Minister failed lawfully to consider the s 391 principle on relevant evidence. Its success requires examining the reasons and administrative record; uncertainty and risk alone do not prove invalidity.

MODEL ANSWER 4 — Q4 — Proposed $10 million security and mangrove contribution; opportunity to respond

Issue

Can the Commonwealth Minister impose the contemplated bond and Council mangrove rehabilitation contribution, and when can RUD make representations?

Rule

Before approval, EPBC Act s 131AA requires the decision-maker to notify the proponent of proposed decisions/conditions and invite comment, subject to the statutory procedure. Section 134(1)–(2) sets the protective/repair nexus for conditions. Section 134(3)(a) specifically recognises financial security by bond, guarantee or cash deposit for compliance and specified liabilities. Section 134(3)(aa) recognises specified protective/repair activities, and s 134(3)(ab) expressly recognises financial contributions for activities of that kind. Critically, s 134(3A)(b) requires the approval-holder's consent to a condition within paragraph (3)(ab). Section 134(4) demands consideration of State conditions, proponent information and cost-effectiveness. Ministerial consideration of environmental, economic and social matters also engages s 136.

Application

The $10 million bond may be valid in principle because it secures compliance and remediation if construction encroaches into a protected buffer, subject to the bond's terms, purpose, proportionality to foreseeable risk, the protected matter and relevant statutory constraints. The sum cannot be asserted inherently lawful or unlawful from the numeral alone; inspect engineering/rehabilitation costs and conditions. The Council's Mangrove Foreshore Rehabilitation Scheme contribution potentially qualifies under s 134(3)(ab) if it supports activities within (3)(aa) protecting or repairing relevant Part 3 values. But the specific contribution condition cannot be imposed without the required holder consent under s 134(3A)(b). RUD should request detail on what the scheme funds, its geographic/ecological connection, how it mitigates relevant impacts, and alternatives such as on-site works. Make written representations within the s 131AA process.

Strongest counterargument

A simplistic answer saying "financial contributions are never allowed" ignores express paragraph (3)(ab). The opposite error is saying the Minister may compel any charitable contribution: protected-matter

purpose, evidential nexus, and the special consent provision matter. A broad spending purpose does not evade the Act’s limits.

Conclusion, consequence and advice

RUD has a statutory opportunity to comment. The bond is capable of lawful imposition after proper assessment; a financial-contribution condition requires consent under s 134(3A)(b) and must meet the protective framework. Negotiate precise, measurable, cost-effective and reviewable conditions.

AUTHORITATIVE RESEARCH LINKS

The links below use official sources. Section references in model answers identify the exact rule; the user should consult the authorised compilation and current decision notice for that rule.

EPBC Act (24 August 2026)

Nuclear Facilities Prohibition Act 2007 (Qld)

National Heritage—former High Court

EPBC Public Portal

Basin Plan review (MDBA)

Reform implementation status

Significant Impact Guidelines 1.1

Brisbane Stadium decision 2026/10472

Sydney Opera House approvals

Central Queensland Coal EIS

CHAPTER 4 | QUICK EXAM REVISION

THE EPBC ACT — AT A GLANCE

EPBC stands for **Environment Protection and Biodiversity Conservation**. The full legislation is the Environment Protection and Biodiversity Conservation Act 1999 (Cth), commonly called the **EPBC Act**. It is Australia's principal Commonwealth environmental protection legislation.

If a major project may significantly affect a nationally protected environmental matter, the proposed action may need assessment and Commonwealth approval. It is the statutory test, not the project label alone, that determines the obligation.

Nine matters of national environmental significance (MNES)

1. World Heritage properties
2. National Heritage places
3. Wetlands of international importance (Ramsar wetlands)
4. Listed threatened species and ecological communities
5. Listed migratory species
6. Commonwealth marine areas
7. The Great Barrier Reef Marine Park
8. Nuclear actions (including uranium mining)
9. Water resources affected by certain unconventional gas developments (including coal seam gas) and large coal mining developments

Exam insight: Identify the particular **action**, the relevant **protected matter** and controlling section, and the **likely significant impact**, including relevant indirect and downstream consequences.

Queensland and Commonwealth: Both systems can apply. Commonwealth EPBC approval does not automatically replace Queensland environmental or planning approvals. Assessment bilateral arrangements may avoid duplication, but do not themselves eliminate a necessary federal approval decision.

CHAPTER 4 | QUICK EXAM REVISION

SECTIONS AND EXAM SEQUENCE

Sections to identify accurately when applying the EPBC Act. This table supplements the full legislation and the detailed Chapter 4–5 analyses.

Section	What it does
s 18	Prohibits certain actions significantly affecting listed threatened species or ecological communities without approval (civil-penalty provisions).
s 18A	Creates criminal offences for specified actions with significant impacts on listed threatened species or ecological communities.
s 68	Referral of a proposed action to the Commonwealth Environment Minister.
s 75	Minister decides whether an action is a controlled action and identifies its controlling provisions.
s 82	Defines the relevant impacts of a controlled action for assessment.
s 87	Minister selects the approach for assessing those relevant impacts.
s 130	Governs timing of the Minister's approval decision.
s 133	Provides for the grant of Commonwealth approval.
s 134	Provides for conditions attached to approvals.
s 136	Identifies general mandatory considerations for approval and conditions, including relevant ESD considerations.

Remember: s 82 defines the relevant impacts of an action; s 87 determines the assessment approach. Section 18 contains civil penalty prohibitions; s 18A creates specified criminal offences.

EXAM FLOW

Significant impact → referral (s 68) → controlled-action decision (s 75) → assessment (ss 82, 87) → approval decision (ss 130, 133, 136) → conditions (s 134) → compliance.

Official text: Federal Register of Legislation — EPBC Act, current compilation (verified against 24 August 2026 compilation).

CHAPTER 5

ENVIRONMENTAL IMPACT ASSESSMENT — PART 2: APPLYING THE EPBC ACT, APPROVAL, CONDITIONS AND EXAM METHOD

Week 5 tutorial consolidation: turning the Week 4 referral framework into precise legal advice, statutory application and exam-ready problem solving.

THE WEEK 5 LEARNING OUTCOME

Week 5 is where the course becomes intensely practical. The student is expected to take a dense factual scenario, identify every actor and every proposed *action*, identify each potentially affected matter of national environmental significance (MNES), decide what must be referred, explain the consequences of referral, distinguish State and Commonwealth assessment, analyse the precautionary principle, and advise on proposed approval conditions. The lecturer's exam advice is equally important: if a person, place, species, government body or proposed activity is expressly named in a problem, assume it has a legal purpose and account for it before finishing the answer.

5.1 The exam and practice method — no fact left behind

The Week 5 tutorial expressly teaches a disciplined factual method. First identify the **entities**. Next identify what each entity proposes to do. Then identify the **environmental values, species, places and waterways** affected by each action. Only then move to the EPBC Act. This prevents the most common error in environmental-law problems: spotting a protected species and jumping immediately to "EPBC approval required" without first identifying who is acting, what the statutory action is, what the controlling provision is and why the relevant consequence is an impact of that action.

CHAPTER 5 — THE LECTURER'S COMPLETE TEACHING NARRATIVE

5A. What happens after a controlled-action decision?

Chapter 4 taught us to ask whether an action has, will have or is likely to have a significant impact on a protected matter and therefore requires federal environmental approval. Chapter 5 begins **after** the Minister has decided the action is controlled. The question now changes: **what assessment process must gather the information needed, and should the Minister ultimately approve the action, refuse it or approve it with conditions?** The lecturer is emphatic that the two decisions should not be mixed together. The screening decision identifies the regulatory trigger. The assessment process investigates the consequences. The approval decision applies statutory considerations to the evidence.

This separation helps explain how economic arguments operate. At screening, a $90 million resort and its potential benefits to employment do not negate a likely significant impact on a World Heritage property or migratory birds. At the subsequent approval stage, **EPBC Act s 136(1)** requires consideration of relevant protected matters and economic and social matters, with further mandated factors in s 136(2). It may therefore be legally possible for a project with an adverse impact to receive approval if the statute permits that balancing and other restrictions are complied with. That is not a licence for the Minister to ignore conservation law; the decision must remain within the legal framework Parliament enacted.

5B. Assessment pathways and the importance of scoping

After a controlled-action determination, the process must identify the matters and impacts to be investigated and the assessment pathway. The Week 5 slides discuss **EPBC Act s 87** and the established range of assessment approaches: assessment under an accredited State or Territory process, assessment on referral information, assessment on preliminary documentation, a **public environment report (PER)**, an **environmental impact statement (EIS)**, a **public inquiry**, and case-by-case accreditation mechanisms where lawfully available. The exact set of available pathways and applicable processes must be tested against the current amended Act and regulations; the **Environment Protection Reform Act 2025 (Cth)** has commenced in stages during 2026, with further commencement and transitional provisions. A teaching manual must present the lecturer's historical six-pathway framework as the course model while alerting students where current law has changed or is scheduled to change.

The **choice of pathway** reflects the seriousness, complexity, information needs and uncertainties of the proposed action. A modest, well-understood action may be adequately assessed using information already provided in its referral. A project involving uncertain impacts to nationally threatened species, water systems and heritage values may require detailed studies and extensive public consultation. A controversial, high-risk proposal might justify a public inquiry if the statutory criteria are satisfied. Importantly, a proponent does not simply choose whichever method is cheapest. The Minister and applicable law determine the assessment method; the proponent generally bears significant responsibility for commissioning the studies necessary to meet the defined requirements.

Scoping is the bridge between legal issues and field research. If an EIS must address impacts on migratory birds, scoping should identify species, seasonal occupation, feeding or breeding habitat, noise, light, wetlands and pathways for indirect harm. If World Heritage processes may be affected, scoping should examine hydrology, ecological connections and the property's values rather than limiting the analysis to the land actually cleared. If a project extends across several sites, the assessment should identify connected infrastructure, downstream dependencies and reasonably foreseeable consequences. Deficient scoping is dangerous because even sophisticated consultants cannot answer important questions they were never asked to investigate.

5C. Bilateral agreements: cooperation does not abolish Commonwealth jurisdiction

Bilateral assessment agreements are a practical expression of cooperative federalism. The EPBC Act's **s 45** provides for relevant agreements between the Commonwealth and a State or Territory, subject to statutory requirements including accreditation benchmarks and reporting arrangements. Under an applicable **assessment bilateral agreement**, an approved State process may be used to gather the information needed for the Commonwealth approval decision. The Commonwealth Environment Minister still makes the **Commonwealth decision** under the EPBC Act. This is fundamentally different from an arrangement transferring or replacing the federal decision itself. The Week 5 lecturer specifically warns students not to confuse **assessment bilateral** with **approval bilateral** arrangements.

The university's Queensland **coordinated project** hypothetical is designed to expose this error. A project declared for environmental impact statement assessment under **Part 4 of the State Development and Public Works Organisation Act 1971 (Qld)** may fall within an accredited Queensland EIA process. Another relevant State

scheme may operate under **Chapter 3 of the Environmental Protection Act 1994 (Qld)**. The Commonwealth may rely on information compiled through the authorised State process, avoiding unnecessary duplication. It does not follow that supportive Queensland politicians can exempt the project from federal requirements simply by obtaining a coordinated-project declaration. The Minister still evaluates the relevant federally protected impacts and decides whether federal approval should be granted.

Worked client advice: 'I would welcome an accredited Queensland EIS pathway if our project meets the relevant agreement, because it may reduce duplication of information gathering. However, I would not represent it as avoiding federal scrutiny. We should confirm the specific agreement, the accredited State assessment route, the relevant EPBC controlling provisions, and the timing of each decision. Commencing works because the Queensland EIS is underway may expose the proponent to substantial risk.' The difference between one assessment process and two independent substantive approvals is central to the answer.

5D. What does a sufficient PER or EIS actually look like?

The lecturer distinguishes **referral information** and **preliminary documentation** from the more demanding **PER** and **EIS** processes. In an EIS, the proponent ordinarily commissions specialist reports against Ministerial guidelines, produces a draft, makes it available for public comment, responds to those comments and submits a final document for assessment. The statutory requirements surrounding public notice, the guidelines, consultation periods and the Minister's decision should be read from the relevant version of the legislation and current regulations. The course discusses historically important safeguards in provisions such as **ss 97–98** for a PER and **ss 102–103** for an EIS; their currency and transitional application must be checked in view of the 2026 reforms.

Prineas v Forestry Commission of New South Wales (1983) 49 LGRA 402 explains the governing idea of substantial adequacy. An assessment need not predict the future with scientific perfection, but it must reasonably and comprehensively deal with the matters it was supposed to address and present the consequences in an intelligible, objective way. Imagine an EIS that claims 'no significant effect on birds' after a consultant visits a Ramsar wetland only on a day when migrating birds are absent. The formal presence of an ecology chapter cannot rescue an evidentiary omission about migration season. A good lawyer recognises that the assessment question is both procedural and substantive: were the right matters identified, and was the information sufficient to inform the lawfully required decision?

Public participation matters for the same reason. Communities and specialists may provide evidence of flooding, habitat use, historical site values or cumulative impacts missed by the proponent. Not every objection is decisive; the assessment must deal with submissions in the manner the statute requires. Legal advice should track notice periods, availability of documents, whether conditions or design changes answer material concerns, and whether any unaddressed issue creates vulnerability to challenge.

5E. The Tugun Bypass: read an actual assessment file as a lawyer

The lecturer provides the **Tugun Bypass EPBC Act EIS notices** as an authentic procedural example. The record identifies a proposed cross-border motorway bypass between the Queensland Gold Coast and northern New South Wales. The Commonwealth controlled-action decision dated **23 November 2004** identified relevant impacts under the EPBC Act, including **listed threatened species and communities** and an action by a **Commonwealth agency**, according to the supplied documentary extract. The assessment-approach decision dated **8 December 2004** required an **environmental impact statement**. The subsequent EIS guidelines specified the matters the proponent needed to investigate. Students should learn to locate these distinct documents instead of collapsing them into a vague statement that ‘the road had an EIA’.

The legal significance is sequential. First identify the proposed action and the legal controls triggered. Secondly identify the Ministerial decision that Commonwealth assessment is needed. Thirdly examine the selected EIS process and its guidelines, including ecological, construction, heritage, hydrological, transport and other relevant impacts. Fourthly assess how public participation, technical material and mitigation proposals inform a later decision. The Week 5 slides record a total project cost of approximately **$543 million**, with approximately **$27 million** spent on environmental assessment and management, as an illustration of how assessment costs may form a material part of a major project budget. Those are historical case-study figures, not amounts to update without source verification.

Think like a practitioner: if given only the first controlled-action notice, you cannot infer that the road was approved on that date. A controlled-action decision and choice of assessment pathway are procedural stages, not the final Part 9 approval. Conversely, a later approval does not prove that each environmental impact disappeared; it may reflect a lawful decision to permit the action subject to mitigation or conditions. That is the discipline behind reading a project file chronologically.

5F. The Minister's approval decision and mandatory considerations

After the applicable assessment, the Commonwealth Minister makes the substantive decision under **EPBC Act ss 130, 133 and 136**, subject to associated procedures and any transitional provisions. Under **s 136(1)**, relevant protected environmental matters and economic and social matters must be considered. **Section 136(2)** further addresses factors including ESD principles, relevant assessment information, reports, comments and other material specified by law. **Section 136(5)** prevents the Minister considering matters outside the permitted statutory framework. **Section 391** requires appropriate attention to the precautionary principle for specified decisions. The statute also contains protected-matter-specific restrictions and obligations, which the Week 5 lecture discusses in connection with provisions in **ss 137–140A**.

Students must distinguish a mandatory consideration from a predetermined outcome. The presence of evidence showing economic benefits does not automatically defeat a conservation concern. The presence of uncertainty does not automatically prevent any approval. The Minister must act according to the Act, consider what Parliament requires, and reach a decision open under the statutory powers. If the decision-maker ignores a mandatory consideration, relies on an impermissible factor, misconstrues the law or fails to follow required process, the decision may be susceptible to **judicial review**. Judicial review asks about the legality of the decision; it does not ordinarily permit the court simply to remake the Minister's policy balance as if it were the original approval body.

The seminar also discusses **pre-decision notification and the opportunity for the proponent to comment**, associated with **s 131AA** in the course materials. The basic principle is procedural fairness within a tightly defined legislative process: before a final refusal or other proposed decision to which the provision applies, the proponent can be informed and invited to respond within the statutory timeframe. A lawyer must read the exact currently applicable provision for the relevant action and any statutory changes; assuming that every possible document or comment can be submitted at any time is unsafe. One should also distinguish information requested under a statute from an informal lobbying effort.

5G. Approval conditions: purpose, connection, bond and compensation

An approval is not simply a yes-or-no document. **Section 133** prescribes matters specified in a grant of approval, while **s 134** governs the power to attach conditions. Conditions must be supported by the statutory requirements, including the necessary

relationship to protecting relevant matters or preventing, mitigating or repairing relevant harm. Typical conditions concern buffers, limits on clearing, management plans, monitoring, surveys, rehabilitation, reporting, audits, financial security, approved offsets or contribution mechanisms. The lawyer must ask *what harm the condition addresses*, *how it operates*, *whether its cost and enforceability are justified*, and *whether statutory preconditions are satisfied*.

The Week 5 RUD question proposes a **$10 million bond** to secure rehabilitation if construction encroaches on a protected buffer. The lecturer distinguishes that form of financial **security** from a required **financial contribution** to support activities. Under the course's applicable statutory structure, **s 134(3)(a)** addresses bonds or guarantees, while **s 134(3)(ab)** addresses particular financial contributions and **s 134(3A)** requires consent in the latter context. It would be legally wrong to announce that any money-related condition requires the same consent. A security bond to ensure compliance and a contribution to fund a project are not identical in legal purpose. Read the precise terms of the proposed condition, the current Act and the defined protected matter before advising the Minister or proponent.

Application. A bond linked to restoring harm caused by encroachment into a buffer may have a defensible protective or remedial rationale, subject to the statutory conditions. A separate demand that RUD give money to a broadly beneficial community project may raise different statutory questions, including the approval holder's consent where required and whether the expenditure genuinely connects to relevant protected impacts. A condition cannot be justified simply because environmental projects are worthwhile in the abstract. The analysis must identify the statutory hook, relationship and affected environmental values.

5H. Precaution and the Oxleyan Pygmy Perch: a complete model reasoning process

David Strong's proposed challenge to approval of the Pristine Creek dam brings several stages together. **First**, the Council proposes an action that may affect habitat for the Oxleyan Pygmy Perch; determine the actual protected listing and controlling provisions, not merely the fact that a fish lives in the creek. **Second**, identify the predicted environmental consequences, including interruption of shallow-water breeding conditions and related ecological impacts. **Third**, assess the relocation plan. The only comparable study concerns a *different* pygmy perch in Europe and has not yet established long-term success. That evidence raises uncertainty rather than eliminating it.

Fourth, identify where the precautionary principle legally operates in the Commonwealth decision, particularly the decision context under **s 391** and the approach to ESD. The relevant principle recognises that lack of full scientific certainty should not become a justification for postponing protective measures where threats of serious or irreversible damage exist. **Fifth**, distinguish a complaint that the Minister made an environmentally unwise decision from a claim that the Minister **failed to take account of a legally mandatory consideration** or misconstrued the obligation. The first may be a merits disagreement; the second can be a legal-review issue if properly established. The tutorial says to leave *standing* aside, so a focused answer should do exactly that rather than wandering into an unrelated Week 11 discussion.

A sound conclusion is cautious but definite: the concern has legal merit if the Minister did not genuinely consider the serious uncertainties and available protective options when the applicable statutory duty required consideration. It is not enough to say the relocation is inherently unlawful or that *Leatch* alone mandates refusal. The outcome depends on the legal test, scientific material before the Minister, reasoning and lawful response.

5I. How breaches are identified, prevented and remedied

Approvals usually operate for a specified period and are subject to binding conditions. The Week 5 slides discuss **s 142** for civil-penalty consequences of breaching conditions and **s 142A** for relevant criminal liability involving particular fault and impact elements. Exact penalties are subject to the legislative date and relevant penalty-unit changes; do not copy a historical dollar amount into a current textbook without checking it. Approval holders must ensure contractors and agents receive the applicable instructions. Where the statute imposes obligations on a person other than the approval holder, their actual knowledge and statutory defences must be examined rather than presumed.

The Act also contains mechanisms for dealing with unlawful actions and remediation. The Week 5 slides discuss the **National Environmental Protection Agency (National EPA)** and post-reform compliance provisions, including **s 480D** remediation determinations, **ss 480K–480M** related challenge/enforcement processes, and **ss 499–500** concerning remediation works and recovery of relevant costs, in the applicable legal setting. **Section 475** supports applications for injunctions by authorised or qualifying persons in defined circumstances. These powers are distinct: an injunction may stop unlawful activity; a remediation determination or order may require repair or mitigation; a civil penalty sanctions prohibited conduct; a criminal offence requires its particular elements; and regulatory action can include alteration of approval conditions where the Act allows.

A lawyer should not cite every enforcement section indiscriminately. Ask what happened: **unapproved action? breach of a specific condition? continued harm? false referral information?** Then identify the particular contravention, liable person, regulator or applicant, available order and evidentiary standard. If a contractor destroys a protected buffer in breach of a condition, review the approval instrument, contractor obligations, correspondence proving notification, environmental monitoring and the actual damage. The condition itself and the statutory enforcement section must both be identified.

5J. Why variations and offsets can become contentious

An existing approval may later need amendment because impacts are different from those predicted or because compliance problems arise. The lecturer discusses **s 143** and statutory constraints on varying conditions, using the **Tiwi Islands forestry** example to illustrate the practical consequences of buffer-zone breaches, monitoring and monetary security or restoration arrangements. The important teaching lesson is that conditions are legally controlled exercises of power, not blank cheques. A regulator must locate the power for revocation, variation or addition, comply with procedural requirements and maintain the statutory relationship to protected matters.

Offsets are sometimes described as achieving no net loss, but a student should not assume that any ecological value can be replaced somewhere else. Some impacts may be irreversible, species- or site-specific, or subject to a current standards framework. The **Environmental Offsets Policy** and applicable legislation can structure consideration, but policy cannot expand statutory power or replace a mandatory conservation safeguard. A proposed offset should be assessed for additionality, enforceability, ecological comparability, location, timing, monitoring and actual likelihood of achieving the protected outcome. If the project would destroy the only local breeding habitat of a species, a promise to plant unrelated vegetation elsewhere is not a legally sufficient answer simply because it is labelled an offset.

5K. The CSG-to-LNG project: divide large developments into real components

The Week 5 lecturer uses the **Australia Pacific LNG project** to explain how a large integrated project can have several distinct components and referral files. The case study involves gas fields in Queensland's Surat Basin, long-distance gas pipelines and a proposed LNG facility on Curtis Island. The slides identify separate referrals lodged on **6 July 2009** for the **CSG fields**, **447-kilometre high-pressure gas pipeline**, and **LNG plant**. The State-side framework included petroleum and environmental approval processes, while the Commonwealth EPBC issues required

project-specific consideration. A reader should not infer that all three components are interchangeable or that a single proponent necessarily takes all component actions.

Large-project analysis requires two passes. In the first pass, identify *each* physical action and its separate legal proponent and location. In the second, ask how the components interact: gas extracted from fields travels through pipelines for processing at a coastal facility, with possible impacts along the route and at the destination. Do not conceal connected effects by dividing a project into packages, but do not simply merge separate legal actors without a basis. This example connects the Week 4 teaching on **Mees**, **Nathan Dam**, **s 527E**, the referral process, and the Week 5 assessment and approval machinery.

5L. Complete exam method: turn a long hypothetical into a disciplined answer

The lecturer tells students that names, places and species supplied in a problem are generally there for a reason. Build a **fact map** before writing. For the RUD case, identify the resort and access road, the State connector road, the $10 million government funding decision, the council's proposed dam, Pristine Creek, the Gondwana Rainforests, migratory waterbirds, the tube-nosed bat, the Durobby trees and the Oxleyan Pygmy Perch. Then test each item: is it an action, protected matter, factual link, expert evidence question, stakeholder or decision-making consideration? A funding promise may matter commercially while still not constituting the physical action under s 523.

Stage one: screen. Apply the statutory action definition, protected matter and significant-impact test. Identify indirect consequences and whether referral should be made. **Stage two: assess.** If the Minister decides the action is controlled, identify the relevant assessment method, possible bilateral agreement, scoping and evidentiary requirements. **Stage three: decide.** Set out ss 130, 133, 136 and the legally mandatory considerations, including any specific convention constraints and the precautionary principle. **Stage four: conditions.** Identify the statutory connection for buffers, surveys, financial security or contributions, and any consent requirement. **Stage five: consequences.** Explain what occurs if works start before approval or conditions are breached. The sequence is as important as any individual section number.

Write the answer as legal advice. A strong response says: ‘RUD should refer the resort and access road because evidence suggests potential significant effects on protected values; the State and Council must assess their own physical works, and RUD should disclose foreseeable dependencies. A Queensland coordinated-project

EIS may provide an accredited assessment method but will not eliminate the Commonwealth decision. Any approval must reflect the permitted s 136 considerations and legally valid s 134 conditions. Uncertainty regarding the Pygmy Perch requires genuine precautionary analysis, not an unsupported assumption that relocation will succeed.' That conclusion gives both legal analysis and practical next steps.

5M. The current 2026 reforms must not be taught as an undated footnote

The **Environment Protection Reform Act 2025 (Cth) No 68** amended the environmental law framework with staged commencement. Official information confirms a first tranche commencing in February 2026, establishment of the **National Environmental Protection Agency on 1 July 2026**, a further tranche on **24 August 2026**, and additional reforms expected by or before **1 December 2026**. The **EPBC Act Compilation 70, dated 24 August 2026**, reflects commenced amendments as at that date, while the Register records uncommenced amendments separately. There are also specific **July and August 2026 transitional rules**, and the **Environment Protection and Biodiversity Conservation Regulations 2025** replace older regulatory materials subject to savings and transitional provisions.

This has real consequences for legal analysis. A project referral begun under a former procedure may be affected by a saving or transition rule; a project begun after a new provision commences may be subject to a different pathway. This book therefore treats the lecturer's descriptions as an authoritative record of the **examined teaching** and separately alerts readers to reforms in force at the book's date. **Never promise a client that the exact old assessment route or statutory timeframe necessarily applies today without checking commencement, transition and the current text.** To study for an exam, students should understand the lecturer's statutory sequence and be able to locate the currently effective provision and any transitional provision required by the question.

5N. Chapter synthesis: the lawyer's responsibility

The complete system can be described in one continuous line: **identify the action and proponent → identify protected matters and impacts → determine whether the significance threshold triggers referral → determine the Minister's controlled-action decision → undertake adequate assessment, including any accredited State process → apply the approval criteria and mandatory considerations → impose lawful, proportionate conditions where appropriate → monitor compliance and enforce obligations**. At every stage, ask which Act,

section, decision-maker and evidence actually control the answer. A professional answer distinguishes scientific possibility from a legal threshold, and political desirability from lawful power. That is how the subject becomes understandable—and how an environmental lawyer helps both clients and the environment by preventing avoidable mistakes.

Primary research and course alignment

Course basis. Week 5 Seminar transcripts (Parts 1 and 2); Week 5 university slides; Tugun Bypass source notices; current EPBC legislation and transitional rules. This expanded teaching narrative is designed to be studied alongside the original university tutorial questions and the separate answers in this book.

Important: Current legislation controls where slide material predates the 2026 amendments. The present narrative explains the course approach; transitional application must be checked for actual projects.

- EPBC Act
- Environment Protection Reform Act 2025
- EPBC Regulations 2025
- DCCEEW 2026 reform status

ACTOR → ACTION → MNES / PROTECTED MATTER → IMPACT → SIGNIFICANCE → REFERRAL → CONTROLLED-ACTION DECISION → ASSESSMENT → APPROVAL / REFUSAL → CONDITIONS → COMPLIANCE / REVIEW.

5.2 Start with the statutory definition of "action" — ss 523, 524 and 524A

Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act) s 523(1) defines an action to include a project, development, undertaking, activity or series of activities, and alterations of those things. The definition is deliberately broad because the referral system regulates real-world conduct rather than only formal development approvals.[1]

The definition has equally important exclusions. Section 524(2) provides that a government body's decision to grant a governmental authorisation for another person to take an action is not itself an "action". Section 524A separately excludes provision of grant funding by listed governments and government bodies. That is why the Queensland Government's $10 million grant to RUD is relevant commercial context but is not itself the EPBC "action". The physical resort, access road, connector road and dam works must be analysed separately.[2]

> **Exam trigger.** Whenever a problem mentions an approval, grant, permit, subsidy or government promise, ask whether it is a statutory "action" or merely enables somebody else's action. Do not collapse the two.

5.3 Controlled action — ss 67 and 67A

Section 67 is the gateway concept. An action is a controlled action if taking it without approval would be prohibited by one or more Part 3 controlling provisions. Section 67A then supplies the central prohibition: a controlled action must not be taken without the required approval or other statutory basis. The practical question is therefore not "is this environmentally harmful?" in the abstract. It is: **does this action have, will it have, or is it**

1. *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s 523(1).
2. *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ss 524(2), 524A.

likely to have a significant impact on a matter protected by a relevant Part 3 provision?[3]

5.4 Referral — ss 68–74AA

Provision	Function	Why it matters in a problem
s 68	Referral by person proposing to take action.	If the proponent thinks the action may be or is controlled, referral is required; referral may also be used to obtain certainty.
s 69	State or Territory referral.	A State may refer another person's proposal in the statutory circumstances; do not assume only the developer can trigger the process.
s 70	Minister may request referral.	Prevents a proponent avoiding scrutiny simply by declining to self-refer.
s 71	Commonwealth agency referral.	Relevant where Commonwealth agencies are proponents.
s 72	Form and content of referrals.	The referral must accurately describe the proposal and relevant environmental implications.
s 74	Information/public comment process.	Creates the public-information step before the controlled-action decision.
s 74A	Larger action.	Allows rejection of a piecemeal referral where it is only a component of a larger action proposed by the same person.
s 74AA	Pre-decision offence.	Project programming must allow for the statutory decision period; early works can create criminal exposure.

The Week 5 tutorial emphasises that referral must be truthful and complete. Section 489 separately criminalises specified false or misleading information supplied to obtain an environmental authority. *Mees v Roads Corporation* is taught because the legal problem is not limited to literal false statements. A referral can become misleading by omission where an inevitable or closely connected component is left out of the overall picture. The legislative response also includes s 74A's larger-action mechanism.[4]

3. *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ss 67, 67A.
4. *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ss 72, 74A, 489; *Mees v Roads Corporation* [2003] FCA 306.

5.5 “Impact” includes legally relevant indirect consequences — s 527E and Nathan Dam

Minister for the Environment and Heritage v Queensland Conservation Council Inc [2004] FCAFC 190 — Nathan Dam

Facts. A proposed dam would enable irrigation development. Environmental groups argued that the Commonwealth decision-maker failed to account for downstream consequences, including pesticide and agricultural impacts capable of affecting protected Great Barrier Reef values.

Issue. Are “impacts” confined to the direct footprint of the primary action?

Reasoning and result. No. Indirect consequences can be impacts where the connection to the primary action is sufficiently real. Parliament later enacted s 527E, which now expressly regulates direct and indirect consequences and, where another person undertakes a secondary action, asks whether the primary action facilitates that secondary action to a major extent and whether the relevant consequences are within contemplation or reasonably foreseeable.

Why it matters to RUD. RUD does not build the Council’s dam or the State connector road. But those works may be causally connected to the resort. The legal adviser must therefore analyse them both for disclosure/referral completeness and for whether their environmental consequences become impacts of RUD’s action under s 527E.

Exam use. Waterways, enabling infrastructure, induced agricultural activity, traffic, shipping, access roads and downstream pollution are classic prompts to draw a causal chain rather than limit analysis to the project boundary.

5.6 Significant impact is a legal threshold informed by expert evidence

The EPBC Act does not protect every possible environmental effect. The operative threshold is a **significant** impact on the relevant protected matter. Lawyers identify the legal test; ecologists, hydrologists, planners and other experts supply evidence capable of answering it. The Commonwealth

Significant Impact Guidelines are highly useful professional guidance because they identify indicators for particular MNES, but they are not a substitute for the Act or a binding judicial rule. The exam technique is to identify the protected matter first, then use the facts supplied in the question as the expert evidence from which significance is reasoned.

5.7 The RUD fact pattern — a complete actor/action/MNES map

Actor	Proposed conduct	EPBC character	Potential Commonwealth issues
RUD	900-guest ecotourism resort + 9 km access road	Actions under s 523	World Heritage values of Gondwana Rainforests; listed migratory species; threatened species/ecological communities; indirect/ downstream impacts.
Queensland State Government / TMR	Connector road through Gondwana Rainforests	Separate physical action; $10m grant itself excluded by s 524A	World Heritage controlling provisions; threatened flora; interaction with RUD referral and connected/larger-action analysis.
Gold Coast City Council	Damming Pristine Creek to facilitate irrigation	Separate action	Oxleyan Pygmy Perch habitat; aquatic ecology; listed migratory/waterbird impacts; indirect pesticide consequences.
Local growers	Expanded irrigation/ agricultural pesticide use	Potential secondary actions	Relevant to s 527E indirect-impact analysis if facilitated to a major extent and foreseeable/contemplated.
CEPO	Environmental advocacy	Not the development action	Stakeholder/public-comment role; standing expressly deferred by the tutorial until the litigation week.

5.8 World Heritage impacts do not stop at the boundary

The RUD site is near, but not within, the Gondwana Rainforests. That fact does not end the Commonwealth inquiry. The protected matter is the World

Heritage values, and an action outside the mapped boundary can still significantly affect those values. The tutorial deliberately supplies two connecting facts: Pristine Creek drains toward a larger system, and the tube-nosed insect bat contributes to the Rainforests' evolutionary processes. The bat need not itself be separately listed if harm to its ecological function is capable of significantly degrading a protected World Heritage value.

5.9 Controlled-action decision — s 75

Section 75 requires the decision-maker to decide whether the referred action is controlled and identify the controlling provisions. Public comments received under s 74(3) must be considered. Critically, at this screening stage s 75(2) requires consideration of adverse impacts and excludes beneficial impacts from the protected-matter impact analysis. Thus the resort's jobs, tourism expenditure and 2032 Olympics narrative cannot be used to neutralise an otherwise significant adverse impact at the screening stage.[5]

5.10 Queensland coordinated project — cooperation, not immunity

The suggestion that declaration as a Queensland "coordinated project" allows RUD to avoid Commonwealth interference is wrong. Under *State Development and Public Works Organisation Act 1971* (Qld) s 26, the Coordinator-General may declare a project a coordinated project for which an EIS or IAR is required. Part 4 then structures the State environmental coordination process. Section 34D concerns the Coordinator-General's report evaluating an EIS. Part 4A provides a framework for particular coordinated projects assessed/approved under a bilateral arrangement.

The legal point is federal, not political: State assessment does not extinguish the EPBC Act. A bilateral assessment arrangement may allow one accredited State assessment process to generate material usable for Commonwealth purposes, reducing duplication. The Commonwealth approval decision nevertheless remains governed by the EPBC Act unless a valid statutory approval mechanism says otherwise.

> **Client advice.** Run the Queensland and Commonwealth pathways on one approvals programme. Ask: (1) should coordinated-project declaration be pursued? (2) can the State EIS process be accredited for Commonwealth assessment? (3) which decision-maker retains final

5. *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s 75(1), (1A), (2).

approval authority? (4) what additional Commonwealth information or conditions may still arise?

5.11 Assessment after the controlled-action decision — s 87 and Part 8

If the action is controlled, the next question is not whether the project is approved; it is **how it will be assessed**. Section 87 requires the Minister to decide the assessment approach. Part 8 contains assessment pathways, including assessment on referral information, preliminary documentation, public environment report and environmental impact statement, subject to the Act's bilateral/agreement machinery. This is the doctrinal separation students must maintain:

REFERRAL / SCREENING = "Does Commonwealth approval need to be obtained?"
ASSESSMENT = "What evidence must be assembled to understand the protected-matter impacts?"
APPROVAL = "Should the action proceed, and if so on what lawful conditions?"

5.12 Precautionary principle — s 391, scientific uncertainty and the Oxleyan Pygmy Perch

Section 391 requires the Minister and, for relevant decisions, the National EPA CEO to take account of the precautionary principle when making specified decisions under the Act. The principle does not mean "uncertainty automatically defeats development". It means that where there is a threat of serious or irreversible environmental damage, lack of full scientific certainty must not be used as a reason to postpone measures to prevent environmental degradation.[6]

Leatch v National Parks and Wildlife Service (1993) 81 LGERA 270

Teaching point. The giant burrowing frog litigation is used to show what precaution looks like in application: serious potential ecological harm combined with material scientific uncertainty can justify restraint rather than treating uncertainty as a reason to proceed. The case is persuasive

6. *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s 391.

teaching authority for the principle; an EPBC answer must still anchor the statutory duty in s 391.

Gray v Minister for Planning [2006] NSWLEC 720

Teaching point. *Gray* connects EIA to ecologically sustainable development, cumulative impacts and intergenerational equity. It is not an EPBC Act decision, but it illustrates why an assessment process becomes legally deficient if it excludes material consequences that must inform the statutory decision.

Application to Pristine Creek. The proposed translocation of the Oxleyan Pygmy Perch carries obvious uncertainty: a different pygmy perch species has been relocated elsewhere, but long-term results remain uncertain. A strong answer asks two separate questions: (1) is there a threat of serious or irreversible damage to the relevant protected environmental value? and (2) how should scientific uncertainty influence protective measures? The counterargument is that relocation evidence, mitigation design and adaptive monitoring may reduce the threat. The conclusion turns on the supplied evidence, not on a slogan that “precaution always means no”.

5.13 Approval decision — ss 130–136

Part 9 governs the approval stage. Section 130 regulates timing of the decision. Section 131 requires consultation with other Ministers in specified circumstances. Section 131AA gives the person proposing the action and designated proponent an important procedural opportunity: before the final decision, they are invited to comment on the proposed decision and proposed conditions. Section 133 is the grant of approval; s 134 governs conditions; and s 136 identifies mandatory considerations for the approval decision, including protected-matter impacts, economic and social matters and ESD within the statutory framework.[7]

5.14 Conditions — legal nexus, security bonds and financial contributions

The Minister’s conditioning power under s 134 is broad but purposive. A condition must operate within the statutory authority conferred by the Act. A

7. *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ss 130, 131, 131AA, 133, 134, 136.

rehabilitation security may be capable of lawful use where it secures performance of obligations directed to protected matters or remediation of project-related damage. The correct method is not “$10 million sounds excessive”; it is to identify the statutory source of power, the protected matter, the nexus between the condition and the action, and whether the amount/mechanism is authorised and rationally connected to the statutory purpose.

The tutorial separately identifies a proposed contribution to the Council’s Mangrove Foreshore Rehabilitation Scheme. The lecturer emphasises the distinctive EPBC feature that certain financial-contribution style conditions may depend on proponent consent. The legal adviser must therefore distinguish a condition directly protecting/repairing an affected protected matter from a broader environmental contribution that is effectively collateral to the project.

CHAPTER 5 — WEEK 5 LIVE SEMINAR, PART 2

Assessment, approval, conditions, compliance and enforcement — fully integrated lecturer-guided continuation (15 October 2026).

> **Reading order:** This teaching continuation belongs to Chapter 5 immediately after section 5.14 and **before** the unchanged original Week 4 tutorial questions, model answers, FAQs, MCQs and IRAC. It is not a replacement for anything taught in Weeks 1–4. The lecturer's Week 5 Part 1 tutorial discussion and Part 2 substantive seminar are both preserved as full original transcripts in the Cloudflare ZIP source archive.

The lecturer teaches the EPBC Act as an integrated decision-making process: identify the action and protected matter, determine whether the proposal is a controlled action, assess its environmental consequences, decide whether approval should be given, impose lawful conditions, and respond if the approval holder breaches them. That sequence is what makes a strong examination answer coherent. It also reflects real legal practice: the lawyer is not merely memorising section numbers but managing statutory risks from the proposal's beginning through operation and eventual rehabilitation.

The governing primary law for this continuation has been checked against the **24 August 2026 compilation** of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (Compilation C70). Sections may be changed by uncommenced reforms; those are not assumed to be operative. EPBC Act, current 24 August 2026 compilation, Volume 1 (Part 7–Part 9).

5.14A.1 — Distinguish the three legal decisions

First comes **referral and screening** under Part 7. The proponent asks whether the proposed action is a controlled action. A referral is not an application for a development approval in the ordinary planning sense; it triggers the statutory threshold analysis under ss 67, 68, 74A, 75 and related provisions. The legal test is not whether the development is economically valuable, popular or already endorsed by Queensland. It is whether the proposed action has, will have or is

likely to have a significant impact on a protected matter under a controlling provision. At this stage, the lecturer emphasises that the Minister looks to **adverse** protected-matter impacts, rather than setting social and economic benefits off against the trigger.

Second comes **assessment** under Part 8. This is an evidence-gathering process. It asks what the relevant impacts are, how serious they may be, what alternative locations and designs may exist, whether mitigation is scientifically supported, what the public and experts have said, and which conditions might genuinely reduce or manage harm. Screening asks whether Commonwealth approval is required; assessment investigates what the decision-maker needs to know.

Third comes **approval or refusal** under Part 9. Section 136 controls the Minister's considerations for the final determination, with ss 130–134 dealing with procedure, notification and approval conditions. At this later stage economic and social matters can be considered under s 136(1)(b), but only within the statutory framework. An exam answer that imports economic benefits into the Part 7 screening question commits a stage-confusion error. EPBC Act, current 24 August 2026 compilation, Volume 1 (Part 7–Part 9).

> **Exam distinction: Part 7 = is it controlled? Part 8 = how will the impacts be assessed? Part 9 = approve, refuse, and on what conditions?** Always answer each question separately before drawing an overall conclusion.

5.14A.2 — Choosing the assessment method: cooperative federalism

The lecturer's major theme is **cooperative federalism without surrender of Commonwealth approval power**. An assessment bilateral agreement may allow Queensland's accredited EIA process to generate the report and evidence that the Commonwealth uses. That reduces duplicate assessment, but it does not automatically mean the Queensland Government determines the Commonwealth Part 9 approval. Part 5 of the EPBC Act sets the bilateral-agreement architecture, while Part 8, including ss 83–84 and s 87, regulates when and how particular assessment pathways apply.

In Queensland the lecturer identified prescribed State assessment processes under the *State Development and Public Works Organisation Act 1971* (Qld), Part 4, and the *Environmental Protection Act 1994* (Qld), Chapter 3. Whether a particular project falls within a bilateral agreement is a **scope and accreditation question**, not a mere label question. A Queensland "coordinated project" declaration, by itself, does not dispense with an EPBC referral, relevant assessment or Commonwealth approval. Always check the agreement actually in force for the assessment date, the project class it covers and any excluded subject matters.

There is also the distinct possibility of **accredited assessment on a case-by-case basis** for an otherwise relevant State or Territory process not within the applicable bilateral agreement. This is a different route from automatic coverage by a pre-existing bilateral agreement: the ministerial accreditation decision must be identified. In either route the key analytical distinction remains the same: *using a State assessment* is not the same as *substituting a State final approval for an EPBC Part 9 decision*.

> **Direct application to Week 4 Tutorial Question 2:** RUD cannot "avoid Commonwealth interference" merely because the Queensland Coordinator-General requires an EIS. At most, a properly accredited Queensland EIA process may streamline the evidence-gathering phase. RUD still must identify the EPBC controlled-action decision, protected matters, assessment pathway and final approval requirements.

5.14A.3 — The assessment options and what each teaches

At the seminar the lecturer worked from the familiar pathways in Part 8: assessment under an applicable bilateral agreement; accredited State/Territory assessment on a case-by-case basis; assessment on referral information; preliminary documentation; a public environment report; an environmental impact statement; and a public inquiry. These differ in the amount of new scientific information, scrutiny, public involvement and formal process required. They are not interchangeable labels. Section 87 is the starting point for identifying the assessment approach where the Minister must choose.

Referral information (ss 92–93). This is relatively lean because the information already provided can support assessment and a recommendation. Do not claim this is suitable where serious, complex or uncertain impacts remain inadequately evidenced.

Preliminary documentation (ss 94–95C). Further documents are gathered, scrutinised and, where required by the pathway, exposed to public consideration. It allows a more informed assessment without the entire formal EIS machinery. In the lecturer's illustration it was a common approach, but an actual decision on method depends on the statutory tests and the scale and uncertainty of the proposal.

Public environment report (ss 96–100). The decision-maker identifies issues to be covered; the proponent prepares draft and final material; public consultation and a recommendation report help inform the later approval decision. This is more structured and onerous than relying on existing referral information.

Environmental impact statement (ss 101–105). The assessment is more detailed, ordinarily involving formal scoping, specialist investigations, a draft EIS, public engagement, revised/final documentation and a recommendation report. It is not itself the approval. If the action is later approved, the conditions must still meet Part 9 requirements.

Public inquiry (Part 8, Division 7). This offers a highly formal investigatory mechanism for appropriate matters. The lecturer described it as exceptional rather than routine. In an exam, justify it by reference to disputed complex scientific impacts, public importance and the statutory context; do not assert a proponent can demand one as of right.

5.14A.4 — What a legally useful EIS actually does

A scientifically credible EIS connects each protected value to an evidence-based impact pathway. The question is not simply whether threatened flora or fauna occurs in a project area. The lawyer and ecological consultant must ask how clearing, construction, noise, sediment, water diversion, traffic, lighting, invasive species or downstream changes could adversely affect that value. Describe the baseline; identify direct, indirect and cumulative impacts;

test alternatives; evaluate mitigation and offsets; expose residual uncertainty; then explain monitoring, responsibility and enforceable commitments.

For the Pristine Creek tutorial, this means not treating RUD's resort, the State connector road and the Council dam as isolated fact boxes. Section 527E and the cases discussed in Week 4 make foreseeable consequences and causal connections important; ss 74A and 489 make accuracy and completeness of the referral description important. The proponent's duty to describe relevant connected consequences does not necessarily convert every other actor's separate physical works into its own proposed action. Keep those questions distinct.

> **Lecturer's practical method:** circle every actor, physical action, protected species, recognised protected place, decision-maker, date and proposed condition. Build a two-column schedule: "What is the legal trigger?" and "What scientific/other evidence proves or disproves it?" That method prevents fact-omission under exam pressure.

5.14A.5 — The approval decision: precisely applying s 136

Section 136(1)(a) requires consideration of matters relevant to the Part 3 protected matter identified as a controlling provision, while s 136(1)(b) requires consideration of economic and social matters. Under s 136(2)(a), principles of ecologically sustainable development are to be taken into account. The remaining applicable s 136(2) paragraphs identify the relevant assessment/recommendation reports, expert information, intergovernmental comments and other material. Section 136(4) permits scrutiny of the environmental history of the proposed approval holder and, for corporate applicants, its executive officers and applicable parent entity. Section 136(5) then provides an important boundary: the Minister must not consider matters that this Division neither requires nor permits.

This legal structure is central to administrative review. A Minister who refuses to consider a mandatory report, treats a forbidden consideration as decisive, misidentifies a protected value or proceeds without a required procedural step may commit a reviewable legal error. That does **not** mean the court substitutes

its preferred environmental policy balance for the Minister's choice. The court's task on judicial review is principally legal validity, not a fresh merits assessment. Be precise about who made the decision, the exact provision, the allegedly unlawful step and the remedy sought.

There are also protected-matter-specific restrictions in ss 137–140A. The lecturer connected these requirements with Australia's obligations under relevant international conventions, such as the World Heritage Convention and agreements concerning migratory species. An argument about ecological harm should therefore identify whether a particular controlling provision engages one of those specialised constraints. Section 391 separately requires attention to the precautionary principle for specified decisions: examine the statutory conditions and scientific evidence, rather than assuming all uncertainty makes approval unlawful. EPBC Act, current 24 August 2026 compilation, Volume 1 (Part 7–Part 9).

5.14A.6 — Procedural fairness and pre-decision submissions

Section 131AA is particularly valuable to a practising lawyer representing the proponent. The lecturer used it to show that there is a meaningful **pre-decision opportunity** to respond to the proposed approval/refusal and contemplated conditions. For a possible refusal, the assessment material and reasons for concern demand a carefully evidenced response, not a political speech. For proposed conditions, the response should identify each condition's legal source, relevant protected matter, proportionality/cost implications, practical feasibility and proposed wording. Pay attention to the exact statutory response period on the notice, rather than assuming that every kind of statutory consultation has the same duration.

The Minister's ability to invite wider public comment on a proposed decision should not be confused with the procedural entitlement of the proponent to respond under the applicable statutory provision. Distinguish "must" from "may" in the exact Act. When assisting RUD, prepare a conditions matrix that quotes the proposal, provides verified ecological evidence, identifies a defensible alternative and records whether the client consents to any contribution condition.

> **Week 4 Tutorial Question 4:** the strongest answer is not simply “a $10 million bond is too high”. The question is whether it falls within s 134(3)(a), whether the amount serves an authorised protective/security purpose, what evidence supports it, and whether a distinct funding contribution falls under s 134(3)(ab) and requires consent under s 134(3A)(b). The statutory issues differ.

5.14A.7 — Conditions: statutory scope, consent and protection

Section 134 is more specific than a general promise to “balance development with the environment”. Under ss 134(1)–(2), the Minister may attach a condition where satisfied of the statutory protective, repair or mitigation purpose. Section 134(3) lists examples without exhausting the power, including direct conservation action, prescribed financial contributions, bonds/guarantees/cash securities, insurance, State-law-linked conditions, independent audits and monitoring. Section 134(1A) automatically requires the approval holder who engages contractors or others to take reasonable steps to inform them of relevant conditions and ensure compliance. The physical work might be outsourced; the holder’s statutory responsibility is not thereby outsourced.

The consent distinction must be exact. Under s 134(3A)(a), certain conditions requiring protective activities not reasonably related to the action require the holder’s consent. Under s 134(3A)(b), the specified financial-contribution condition described in s 134(3)(ab) also needs the holder’s consent. Under s 134(3B), consent cannot later simply be withdrawn and follows a permitted transfer. In contrast, a security bond properly authorised by s 134(3)(a) is not automatically subject to the s 134(3A) consent rule. Section 134(4) also directs attention to overlapping State conditions and cost-effectiveness. EPBC Act, current 24 August 2026 compilation, Volume 1 (Part 7–Part 9).

The lecturer used environmental offsets as an applied example: if an unavoidable approved action destroys habitat, an offset condition may seek compensating conservation gains elsewhere. An offset is not an automatic licence to damage any protected area; it requires scientific equivalence, credible delivery, duration, enforceability and the statutory fit of the relevant condition. In the koala example, merely planting a juvenile tree is not necessarily a

like-for-like substitute for mature habitat. Ask whether the stated ecological objective can actually be achieved and measured.

5.14A.8 — Approvals are granted to holders, not automatically to land

An EPBC approval has an identified action, controlling provisions, holder, time period and any attached conditions; it is not simply an all-purpose permit for any later expansion of the development. The lecturer emphasised that its personal character matters in property and corporate transactions. If the project is sold, s 145B provides a statutory transfer mechanism. The parties should check whether ministerial consent is required and the proposed transferee's compliance capacity and environmental history, rather than assume title transfer alone carries Commonwealth approval. The Act also has procedures for changing conditions (s 143), suspending/revoking approval (ss 144–145) and extending an approval's effect (ss 145C–145E).

For due diligence, ask: what action was actually approved; what controlling provisions apply; which bonds, management plans and monitoring results are outstanding; which threatened-species surveys are seasonally valid; have contractors complied; has any regulator alleged a breach; and will transfer, variation or a fresh referral be required? This is the bridge between environmental law and practical commercial advice.

5.14A.9 — Timeframes, seasonal ecology and the exam trap

The lecturer warned that a statutory timetable is not a reliable forecast of how quickly a major project will be approved. Migratory species, threatened habitat, breeding patterns and Ramsar-related ecological functions may require observation across seasons. The EIS itself can be affected by public consultation, an altered project footprint or the need for additional studies. Do not assert automatic approval merely because the decision-maker has missed a benchmark: check whether the particular law actually supplies a deemed-decision consequence, and distinguish statutory deadlines from project-programming reality.

The commercially useful advice is to build contingency time into approvals, secure surveys early, record referral assumptions, retain all baseline and

seasonal data, and avoid vegetation clearing or enabling works that may breach s 74AA or the Part 3 prohibition while the decision is pending. In exam terms: **“approval delayed” is not a licence to commence**.

5.14A.10 — Tugun Bypass as the lecturer’s real project demonstration

The Week 5 second-half seminar walked through the **Tugun Bypass** as a concrete example of multi-jurisdiction environmental impact assessment. The road crossed the Queensland–New South Wales area, involved relevant transportation authorities and affected values subject to different statutory regimes. Its EPBC referral, controlled-action assessment, formal EIS and eventual conditioned Commonwealth approval show the stages working as an actual project, not as disconnected boxes in a lecture slide. A Productivity Commission supporting document identifies a referral in November 2004 and Commonwealth approval with conditions in February 2006. Tugun Bypass — Productivity Commission supporting project document.

The teaching significance is that public exhibition and project reports are evidentiary steps; a State EIA report can inform Commonwealth assessment; and the final Commonwealth decision must still be examined on its own legal terms. Do not confuse *Tugun Bypass as a project case study* with *a reported judicial authority establishing a general test*. It is a demonstration of how the mechanism works. The lecturer also contrasted other assessment examples, including the Traveston Crossing Dam and a Christmas Island phosphate proposal, to illustrate that public participation and a reasoned final decision can culminate in conditions or refusal.

5.14A.11 — Compliance: environmental history, sanctions and regulatory response

The final seminar segment moved beyond consent. Approval conditions are legally enforceable. Section 142 is concerned with compliance with approval conditions and s 142A addresses offences; allegations may also trigger monitoring, investigative powers and other regulatory steps. Serious non-compliance can affect the company’s wider business: disclosure obligations, financing, reputation and an application to transfer or renew approval. The lecturer’s Tiwi Islands forestry example illustrated how clearance

inconsistent with retained habitat buffers can produce tighter conditions, bonds, audits or further enforcement. Treat this as a course example; facts and any named company should be checked against the original published documents before being asserted as a reported case.

The new **National Environmental Protection Agency** is relevant to the current statutory architecture. The National Environmental Protection Agency Act 2025 (Cth) commenced in 2026, and the August 2026 EPBC compilation reflects reforms allocating regulatory roles to the CEO. The current provisions, not older editions which simply refer to the Minister, must be read for compliance and enforcement. This is particularly important in s 475 injunction standing and the remediation provisions discussed below. EPBC Act, current 24 August 2026 compilation, Volume 3 (enforcement).

5.14A.12 — Remediation determinations: why current ss 480D–480N matter

Section 480D(1) empowers the NEPA CEO, where the statutory requirements are satisfied, to make a written remediation determination requiring steps to repair or mitigate damage to a matter protected by a Part 3 provision. The rule applies to an action taken **after commencement of that section** that the CEO considers to have contravened a civil penalty provision of Part 3; subsection (2) imposes a six-year temporal limit on making the determination. Thus, in a problem, it is not enough to say “environmental damage occurred”: identify the underlying Part 3 provision, relevant action, protected value, statutory timing and what remediation can lawfully be required.

Section 480E specifies contents and permitted requirements, including locations, standards, deadlines, payment of a security amount and monitoring. Sections 480J and 480K provide mechanisms to seek reconsideration or a Federal Court setting-aside order, subject to their distinct requirements and time limits. Sections 480L–480N concern enforcement and administration of remediation determinations. This demonstrates an escalation ladder: regulatory direction, opportunity to challenge it, court-backed compliance and practical remediation. The precise text of the relevant provision controls who may act and how. EPBC Act, current 24 August 2026 compilation, Volume 3 (enforcement).

The lecturer described an Airlie Beach/Whitsunday clearing scenario involving loss of vegetation near a World Heritage coastal system and the risk of erosion, runoff and sedimentation. This is a useful illustration of **indirect impacts** and remediation: clearing outside a World Heritage boundary can still have consequences for the protected area. However, because some personal names and quantities in the auto-generated transcript are uncertain, the legal proposition should be taught without treating every transcript detail as a judicially verified fact.

5.14A.13 — Injunctions, standing and remedies

Section 475 is a distinct protective remedy. In the 24 August 2026 compilation, s 475(1) allows the NEPA CEO and specified other persons, including an "interested person", to seek a Federal Court injunction for actual, past or proposed conduct that constitutes an offence or other contravention. Section 475(2) authorises a restraining order; s 475(3) allows ancillary orders including action to repair or mitigate damage; s 475(4) concerns mandatory injunctions and s 475(5) interim protection. Sections 475(6)–(7) define interested individual and organisational standing with specific criteria. State the correct claimant and statutory facts; do not write "anyone can sue whenever they dislike development".

This is different from **judicial review** of an allegedly unlawful ministerial decision. Judicial review tests the decision's legal validity. An injunction under s 475 addresses prohibited conduct and may protect the environment from imminent harm. A statutory remediation determination directs repair or mitigation subject to its own procedures. Civil penalties and offences add punitive or deterrent consequences; approval variation/suspension/revocation addresses regulatory permission. In an exam, give the remedy matched to the wrong, rather than a generic claim for damages. EPBC Act, current 24 August 2026 compilation, Volume 3 (enforcement).

> **End-of-week lesson:** Do not treat obtaining approval as the end of environmental law. The compliance obligations follow the activity onto the site, into contractor arrangements and through corporate acquisitions. The full chain is **action** → **referral** → **controlled action** → **assessment** → **approval/conditions** → **lawful performance** → **compliance/enforcement/remedy.**

5.14A.14 — Connected law and authority: what to revise

Primary statute (verified current version): EPBC Act, current 24 August 2026 compilation, Volume 1 (Part 7–Part 9) and EPBC Act, current 24 August 2026 compilation, Volume 3 (enforcement). Start with Part 3 (ss 12, 15B, 16, 18, 20, 21, 23, 24B and 24D according to the protected matter); Part 7 (ss 67–79E); Part 8 (ss 81–105 and public inquiry provisions); Part 9 (ss 130–145E); s 391 (precaution); Part 17 (ss 475 and 480D onward), and s 527E (indirect impacts).

Queensland statutory layer: examine the actual Part 4 coordinated-project EIS pathway under the *State Development and Public Works Organisation Act 1971* and the Chapter 3 EIS process under the *Environmental Protection Act 1994*. Check the applicable bilateral agreement and date. Do not assume State approvals override federal controls.

Cases and documented examples already within the Week 1–5 course: *Minister for the Environment and Heritage v Queensland Conservation Council Inc* (the Nathan Dam case) for downstream/indirect-impact reasoning; *Mees v Roads Corporation* for connected works and transparent EIA disclosure; *Gray v Minister for Planning* for cumulative environmental assessment and ecologically sustainable development, while recognising it is a NSW planning decision; the reported whale litigation of *Humane Society International* for EPBC enforcement and injunction concepts; and the **Tugun Bypass, Traveston Crossing Dam, Christmas Island phosphate and Tiwi Islands forestry** examples as practical administrative case studies where the original decision documents should be consulted. Do not present the administrative examples as binding appellate judgments.

Current regulator: National Environmental Protection Agency Act 2025 (Cth). Learn the 2026 change in institutional responsibility, especially where older textbooks or lectures refer to the Minister or Department for steps now allocated to the CEO.

WEEK 5 PART 2 — EXAM REHEARSAL QUESTIONS

Answer these before reading the model answers on the following pages. These are supplementary teaching questions based on the lecturer's second-half seminar; the four original Week 4 tutorial questions and answers remain unchanged immediately after this inserted section.

1. Controlled-action versus approval

A company argues that a $400 million benefit to regional employment means a threatened-species impact should be ignored at referral. It submits an enthusiastic economic report without an ecological survey. Identify the legal error and the point at which social/economic evidence may become relevant.

2. Queensland EIS and the Commonwealth

A Queensland coordinated-project declaration requires a detailed EIS. The developer says that the Queensland Coordinator-General's favourable report is also the Commonwealth environmental approval. Give precise advice.

3. Conditions and finance

The Minister proposes a $10 million rehabilitation security and a $2 million payment to a Council conservation scheme. The developer disputes both. Distinguish the relevant EPBC condition powers and consent requirement.

4. Remediation and injunction

A construction contractor clears protected habitat contrary to an EPBC prohibition. Sediment may reach a downstream World Heritage property. Identify the possible statutory regulator and community enforcement responses, with the correct limits.

5. Corporate sale of an approved project

An approved wind or road project is to be bought by a new company. The sale contract assumes Commonwealth EPBC approvals automatically pass with land title. What should environmental due diligence reveal?

WEEK 5 PART 2 — HIGH-DISTINCTION MODEL ANSWERS

Model Answer 1 — The protected-matter trigger is not a cost–benefit vote

Issue. Whether a proposal potentially affecting a listed threatened species must be assessed as a controlled action despite evidence of significant projected economic benefit. **Law.** The existence of a relevant physical “action” and a likely significant impact on a Part 3 protected matter engages the Part 7 screening task under ss 67, 68 and 75. The decision is not a balancing of benefits against adverse impacts. If controlled, the assessment follows under Part 8 and the final approval decision is made under Part 9. Section 136(1) then requires consideration of protected-matter, economic and social matters; s 136(2) requires the listed relevant factors. **Application.** A jobs report cannot demonstrate that habitat destruction will not significantly affect the species. The missing survey is a central evidence gap; the regulator needs sufficiently reliable impact information to determine the trigger and assessment method. The project’s regional employment merits can be considered in the statutory Part 9 stage if it reaches that decision. **Counterargument.** Economic benefits are genuinely relevant to some ultimate environmental approval choices, but they cannot be used to evade the gateway. **Conclusion.** Obtain and disclose ecological evidence; refer as required; present economic material at the proper stage rather than as an antidote to a Part 7 impact.

Model Answer 2 — One assessment is not automatically one approval

Issue. Whether Queensland EIA approval removes federal obligations. **Law.** EPBC Part 5 and Part 8 permit an accredited assessment process under a bilateral agreement or case-specific accreditation, within applicable statutory limits. The Part 7 controlled-action decision remains separate from the Part 9 Commonwealth approval unless an express lawful exception applies. **Application.** A coordinated-project EIS may supply environmental studies and public responses for a Commonwealth decision if its process falls within the currently operative accredited pathway. The developer must verify the protected matters, referral, Minister’s assessment-approach decision, applicable bilateral agreement, conditions and any final EPBC approval. **Counterargument.**

Cooperation saves duplication and may mean only one large assessment dossier is required. That fact alone does not transfer approval authority to Queensland. **Conclusion.** No site works should commence on the assumption that Queensland's favourable report is the whole of Commonwealth compliance.

Model Answer 3 — Two monetary conditions, two legal questions

Issue. Whether rehabilitation security and a third-party financial contribution are lawfully imposed. **Law.** Section 134(1)–(2) establishes protective and mitigation purposes; s 134(3)(a) provides for security by bond, guarantee or deposit. A specified contribution supporting protective activities appears in s 134(3)(ab); under s 134(3A)(b), the holder's consent is required to attach that kind of contribution condition. Section 134(4) requires consideration of overlapping State conditions and cost-effectiveness. **Application.** A $10 million bond could be authorised in principle, but its purpose, cost model, protected-matter nexus, duration and discharge conditions need evidence-based testing. Its amount alone does not make it invalid. A Council conservation-scheme payment requires the correct statutory purpose and the holder's consent if within s 134(3)(ab). **Counterargument.** Even a voluntary contribution cannot dispense with the Act's statutory limits; conversely a properly supported direct security does not automatically require consent. **Conclusion.** Make targeted s 131AA submissions supported by expert costings, environmental impact evidence, and an alternative conditions matrix.

Model Answer 4 — Prevention, repair and review are separate remedies

Issue. Whether clearing and downstream sediment impacts give rise to EPBC protective or remedial powers. **Law.** Identify the exact relevant Part 3 prohibition and apply the direct/indirect impact framework as the facts permit. Under the 2026 EPBC compilation, s 475 allows the NEPA CEO and qualifying interested persons to seek a Federal Court injunction for an actual or threatened contravention. For an appropriately timed Part 3 civil-penalty contravention, s 480D permits the CEO to make a remediation determination subject to its conditions and later challenge mechanisms. **Application.** Determine whether the clearing involved a protected matter, whether the protected interest is likely to be significantly affected and how erosion may reach downstream environmental values. Investigate who performed and authorised the work and the applicable prohibitions. The CEO may consider remediation; an interested

community applicant must satisfy s 475 standing. **Counterargument.** Harmful activity alone does not bypass statutory elements or standing. **Conclusion.** Seek urgent protective action where a contravention is legally arguable, collect ecological evidence and choose the appropriate statutory or court route; do not confuse an injunction with an appeal against the substantive merits of the original approval.

Model Answer 5 — Approval-holder diligence is part of the acquisition

Issue. Whether an EPBC approval automatically transfers on sale of land. **Law.** An approval identifies the relevant action and holder. Section 145B provides a statutory approval-transfer process; ss 143–145 and 145C–145E govern other post-approval events. The approval holder remains subject to conditions, including contractor-related obligations under s 134(1A). **Application.** Verify the precise approval identifier, protected-matter scope, all conditions, environmental-management plans, security bonds, past breaches, audit results, any regulator direction and the identity/suitability of the purchaser. Include applicable transfer/consent steps and completion conditions in the sale agreement. **Counterargument.** Many planning permissions may run with land; that does not determine EPBC approval transfers. **Conclusion.** Do not complete relying only on title. Obtain the required EPBC transfer position, resolve or allocate compliance risks and confirm no new action requires separate referral.

WEEK 5 PART 2 — QUICK RECALL AND SOURCE NOTE

Six MCQs with reasons

1. When can economic/social benefits directly enter the s 136 analysis?

At the final approval/conditions stage, not as a substitute for identifying Part 7 significant adverse impacts.

2. Which section chooses the assessment approach where that decision is required?

Section 87, subject to applicable pathways and exclusions.

3. Does a Queensland EIS itself constitute a Commonwealth approval?

No. Check whether an accredited assessment path applies and whether the required Commonwealth Part 9 decision has been made.

4. Which monetary condition expressly requires the approval holder's consent?

A specified financial contribution within s 134(3)(ab) requires consent under s 134(3A)(b).

5. Can any member of the public automatically obtain a s 475 injunction?

No. The applicant must fit a statutory applicant category, including the "interested person" criteria.

6. What power permits the CEO to require repair of certain protected-matter damage?

Section 480D, if its specified Part 3 civil-penalty contravention, timing and other statutory prerequisites are satisfied.

Publication and source-integrity note

The Week 5 full transcripts are treated as the controlling record of what the lecturer explained. These pages convert them into clear educational prose, not

purported verbatim quotations. Speech-to-text artefacts and possibly misheard individual or corporate names are not used as independent proof of case facts. The four real Week 4 tutorial questions and their approved answers are preserved verbatim in the existing Chapter 5 pages immediately after this continuation.

The EPBC Act consolidated at 24 August 2026 is the authoritative legislative basis used for section references here. The lecturer also discussed prospective streamlining of assessment processes; uncommenced or future changes are not silently treated as operative as of 15 October 2026. Where a course examination provides its own statutory extract, students should apply the law required by the question and distinguish the date of the extract from the date of this book.

Verified legislation entry point: Federal Register — EPBC Act (latest). Regulatory institutional source: National Environmental Protection Agency Act 2025 (Cth). Historical case-study resource: Tugun Bypass — Productivity Commission supporting project document. External deep-links in this supplement point to actual authoritative documents; the precise section number and heading are given in running text, because a fabricated section fragment would be less reliable than a working official Act page.

> **EXAM READY — WEEKS 1–5:** articulate the values and sources of environmental law; the Australian constitutional/federal division; the meaning and reach of environmental protection and international obligations; all nine MNES in the lecturer's course framework; action and controlled action; referral and connected/indirect impacts; methods of assessment; ss 131AA, 134, 136 and 391; conditions and offsets; judicial review; s 475 injunctions and 2026 remediation mechanisms. Then apply each legal rule to actual species, works, proponents, regulators and evidence. **The facts matter at every stage.**

WEEK 5 TUTORIAL — ACTUAL WEEK 4 QUESTIONS

Question 1. Which aspects (if any) of the proposed activities/ commitments by RUD, the Queensland State Government and the Council should be referred under the EPBC Act?

Question 2. What bearing would declaration as a Queensland coordinated project requiring an EIS have on EPBC assessment? Would it allow RUD to “avoid Commonwealth interference”?

Question 3. If the Commonwealth Environment Minister approves the project, does a challenge based on failure to act consistently with the precautionary principle have merit in relation to the Oxleyan Pygmy Perch?

Question 4. What opportunity does RUD have to make representations about proposed conditions, and are a $10 million rehabilitation bond and a contribution to a Council mangrove rehabilitation scheme within power?

WEEK 5 TUTORIAL — HIGH-DISTINCTION MODEL ANSWERS

Q1 — Referral: RUD, State road and Council dam

Issue. Identify each statutory action, who proposes it, the potentially affected MNES and whether referral is required or prudent.

Rule. Apply ss 523–524A to identify actions; ss 67–68 and the relevant Part 3 controlling provisions to identify referral risk; s 527E for indirect impacts; ss 72, 74A and 489 for referral completeness; and s 74AA for the consequences of commencing after referral but before decision.

Application — RUD. The resort and 9 km access road are actions. The $10 million State grant is not an action under s 524A. RUD must analyse listed migratory species (including the whimbrel facts), World Heritage values of the Gondwana Rainforests, threatened species/ecological communities and indirect consequences associated with Pristine Creek and supporting infrastructure. The fact that the resort footprint is outside the World Heritage boundary does not remove the World Heritage issue: the question is impact on protected values.

Application — State connector road. Construction through the Gondwana Rainforests is a separate physical action and presents an obvious World Heritage issue together with threatened-flora impacts. The State's grant and media support are not substitutes for analysis of the physical road action.

Application — Council dam. Damming Pristine Creek is a separate action. Its ecological effects include changes to shallow-water breeding habitat and possible downstream consequences. The proposed crop-irrigation response and pesticide use must also be tested through s 527E's indirect-impact framework.

Connected actions/candour. RUD cannot simply omit the State road and Council dam from its referral narrative if they are inevitable, integral or environmentally relevant consequences of the resort. *Mees*, s 74A and s 489 make accurate description critical; Nathan Dam and s 527E make third-party consequences potentially relevant to "impact".

Counterargument. RUD may argue it does not direct the State or Council and therefore their works are separate actions. That matters, but

it does not automatically sever the impact analysis. Section 527E asks the statutory causation/foreseeability questions.

Conclusion/advice. RUD should prepare a complete referral identifying its own actions and all material connected environmental consequences, supported by specialist advice under the Significant Impact Guidelines. It should build the statutory referral period into the project programme and prohibit early works once referral restrictions apply.

Q2 — Queensland coordinated project and Commonwealth assessment

Issue. Does State coordinated-project declaration displace the EPBC Act?

Rule. Queensland's *State Development and Public Works Organisation Act 1971* (Qld) Pt 4 allows coordinated-project declaration and EIS/IAR assessment. Commonwealth and State environmental laws can operate concurrently. Bilateral/accredited assessment arrangements can reduce duplication but do not automatically remove Commonwealth jurisdiction.

Application. A Queensland EIS may be an efficient assessment vehicle and may, where properly accredited, satisfy Commonwealth assessment requirements. That is procedural coordination. It does not transform a controlled action into a non-controlled action and does not give Queensland politicians power to extinguish the Commonwealth Act.

Counterargument. The political statement has a kernel of practical truth only in the sense that accredited assessment can reduce duplicated studies and processes. It is legally wrong if it suggests Commonwealth approval is avoided merely because a State EIS occurs.

Conclusion/advice. Pursue State coordination if commercially advantageous, but maintain a separate EPBC approvals workstream and confirm the precise bilateral/accreditation pathway before relying on State material for Commonwealth purposes.

Q3 — Precautionary principle

Issue. Could approval be legally vulnerable because the precautionary principle was not properly taken into account?

Rule. Section 391 requires the statutory decision-maker to take account of the precautionary principle for relevant EPBC decisions. The principle is engaged by serious/irreversible environmental threat plus scientific uncertainty; uncertainty is not itself a veto.

Application. The perch is ancient, geographically restricted and dependent on shallow-water breeding habitat. The dam alters that habitat. Translocation evidence is uncertain because the comparator project involves a different species and long-term success is unknown. Those facts support precautionary analysis. Against that, the proponent may rely on expert evidence that translocation, staged works, habitat creation, monitoring or adaptive management reduce the risk.

Authorities. *Leatch* illustrates precaution in the face of serious ecological risk and uncertainty; *Gray* illustrates ESD/cumulative assessment. Neither replaces s 391.

Conclusion. The argument has legal merit if the decision-maker failed to genuinely account for the principle when required. Judicial review would ordinarily target the legality of the decision-making process, not ask the Court to substitute its own approval decision.

Q4 — Representations and approval conditions

Issue. Does RUD get to respond, and are the proposed conditions authorised?

Rule. Section 131AA provides the statutory opportunity to comment on the proposed decision/conditions. Sections 133–134 govern approval and conditions; s 136 governs the approval considerations.

Bond. A rehabilitation/security bond may be within power where the condition is genuinely tied to protecting or repairing a protected matter and the amount/mechanism bears the necessary statutory nexus. RUD should contest unsupported quantum, duplication with State securities, and any condition not directed to a Part 3 protected matter.

Mangrove contribution. A broad contribution to an unrelated Council programme is more vulnerable if it lacks nexus to the controlled action or protected matter. If the statutory mechanism depends on proponent consent, absence of consent is decisive. If the scheme directly repairs or

mitigates project-related protected-matter damage, the Commonwealth case is stronger.

Conclusion/advice. Use the s 131AA comment period strategically: provide technical costings, rehabilitation evidence, overlap analysis, alternative wording and a conditions matrix identifying statutory source, purpose, nexus, trigger, monitoring and discharge mechanism.

ENVIRONMENTAL LAW — CHAPTER 5

Assessment, approvals, conditions and remedies

CHAPTER 5 — EXTENDED CLASSROOM TEACHING AND CONNECTED AUTHORITIES

In-depth explanation of what the law requires, why each authority matters and how to move from facts to effective client advice.

Classroom method: Identify the actor and concrete action. Break the legal issue into elements. Read the exact statute and its defined terms. Use the case for the proposition it actually decides. Apply each element to evidence and plausible counterarguments. Finish with a proportionate conclusion and the remedy that this particular cause of action supports.

5K. BILATERAL AGREEMENTS: ONE ASSESSMENT DOES NOT MEAN ONE LEGAL APPROVAL

The Week 5 seminar introduces a practical arrangement many commercial clients welcome: an **assessment bilateral agreement** between the Commonwealth and a State. It is a product of cooperative federalism, intended to reduce duplication where a project must be examined by both governments. Its critical distinction is between the *process used to assess* environmental effects and the *legal decision to approve* an action under federal law. Under the **EPBC Act** **s 45**, the Commonwealth and a State may make a bilateral agreement; **ss 47 and 83** and associated regulations govern accredited assessment in the circumstances allowed by the Act. A Queensland coordinated-project EIS under **Part 4 of the State Development and Public Works Organisation Act 1971 (Qld)** may be relevant where the current bilateral agreement accredits that process. But the label 'coordinated project' must be checked against the agreement's scope and its legal status at the relevant date.

In practical terms, the Queensland process collects studies, examines alternatives, invites relevant public involvement and produces material that can inform the Commonwealth Minister. The federal Minister remains responsible for the **Part 9 EPBC approval decision**, applying the controlling provisions and mandatory considerations. The lecturer emphasised this point several times because a politician in the RUD hypothetical claims that designation as a coordinated project lets the resort avoid Commonwealth 'interference'. That is wrong in principle: accreditation of the State

assessment is not, without a distinct and legally applicable approval bilateral arrangement, the Commonwealth's decision to dispense with its own approval. A project may therefore receive State EIS coordination while still requiring Commonwealth environmental approval.

The professional consequence is that I would present the client with a two-column approvals matrix. One column records Queensland procedural and substantive requirements; the other records federal controlled-action and approval requirements. I would identify the precise agreement in force, what State process it accredits, who issues the EIS terms of reference, who publishes the assessment report, and when the federal Minister must make an independent decision. The final recommendation is not 'complete an EIS'; it is 'establish the statutory sequence and ensure both applicable legal decisions have been obtained before works commence'. This is a business-critical distinction because commencing on the mistaken assumption that an EIS equals an approval exposes the developer to delay, enforcement and potentially very serious liability.

5L. APPROVAL AND CONDITIONS: READ THE MINISTER’S POWER BEFORE DRAFTING CONDITIONS

Once an action is a controlled action and has been assessed, the Minister must decide whether it should be approved. **EPBC Act** **s 130** concerns the approval decision; **s 133** concerns the Minister's power to approve; **s 136(1)** requires consideration of matters relevant to the applicable controlling provisions and of economic and social matters. **Section 136(2)** identifies further factors, including principles of ecologically sustainable development and assessment information. **Section 391** is relevant to consideration of the precautionary principle for decisions to which that provision applies. The legal scope at this stage is different from screening: economic and social advantages may be considered in the final approval decision, but they cannot simply erase a relevant environmental statutory requirement or a treaty-linked constraint.

The developer may obtain an approval subject to conditions under **s 134**. In the RUD tutorial, officials propose a $10 million rehabilitation bond, a financial contribution towards habitat rehabilitation and monitoring duties. These conditions should not be collapsed into one undifferentiated concept. A **security bond or guarantee** to secure compliance or rehabilitation may be authorised by **s 134(3)(a)**, subject to the enabling provision and its legal requirements. A **condition requiring a specified payment** of the kind contemplated by **s 134(3)(ab)** engages the consent qualification in **s 134(3A)**. Conditions requiring specified conduct, monitoring or plans must be independently

justified by the Act and the relationship to protecting the controlled matter. The lesson is to read the subsection and paragraph, not just cite 's 134' and declare every desirable condition lawful.

For a client, I would go condition by condition: What protected matter does the condition address? What legal paragraph authorises it? What is the amount or obligation? What evidence supports its proportionality and necessity? Is approval-holder consent needed? Are commencement, monitoring, reporting and audit duties sufficiently clear? What happens if the condition is breached? Conditions written as vague aspirations may be hard to administer; conditions that exceed the statutory power may be challenged. A well-advised proponent seeks measurable conditions, workable deadlines, a monitoring plan and documentary compliance systems. A lawyer for an environmental organisation asks whether the conditions genuinely address the identified risk and whether their legal basis and enforcement mechanism are sound.

The answer to the tutorial is therefore not 'the Minister can impose anything to protect nature' or 'the developer can reject all expensive conditions'. The rule is constrained statutory discretion. The conclusion must distinguish which conditions are likely within power, which depend on consent, and which require further scrutiny. That is precisely how legislation, factual risk, administrative power and client advice connect.

5M. IF SOMETHING GOES WRONG: JUDICIAL REVIEW, INJUNCTION, CIVIL PENALTY AND CRIME

Suppose a contractor starts clearing habitat before the relevant federal process concludes. A student may rush to write 'damages' because there is environmental harm. A practising lawyer must identify the particular prohibition, who committed the conduct, the required mental elements (if any), the legal character of the wrong and the remedies authorised by Parliament. **Judicial review** ordinarily challenges the legality of administrative decision-making, not whether a court prefers another environmental policy outcome. A decision may be challenged because the Minister misunderstood a statutory test, failed to consider a mandatory matter, considered a prohibited matter, denied procedural fairness, or acted beyond jurisdiction. The outcome may be that the decision is set aside and remade according to law. It is not necessarily an order that the court itself approve or refuse the development.

An **injunction** is different. **EPBC Act s 475**, subject to statutory prerequisites, may permit a court to restrain certain threatened or actual breaches. Its principal role can be preventive: stop conduct until compliance is established. **Civil penalties** are statutory sanctions imposed after proof of a civil-penalty contravention, while **criminal offences** require proof of the offence's elements and criminal procedures; an action cannot be called criminal merely because a newspaper uses the language of environmental

wrongdoing. **False or misleading information** in EPBC processes may engage **s 489**, but its precise conditions and available defences must be checked before accusing a proponent of criminal conduct. **Remediation and compensation** depend on separate statutory or common-law authority, causation, damage and the procedural standing of the applicant. These forms of relief are not interchangeable.

The correct legal method is: first identify whether the relevant activity was a controlled action and what approval or conditions governed it; secondly establish the actor and physical conduct; thirdly examine photographs, site logs, witness statements, ecological reports and decision records; fourthly test each element of the alleged contravention; fifthly identify who may bring the proceeding, in which court, and within what time; sixthly choose a remedy tailored to the wrong. If the harm is ongoing, urgent injunctive relief may be more important than subsequent damages. If the complaint is that a Minister ignored mandatory evidence, judicial review may be more appropriate than a prosecution. If a project obtained approval lawfully but fails to comply with its conditions, compliance/enforcement mechanisms rather than general merits disagreement are central.

The final advice should be realistic. For the developer, I would recommend stopping disputed works, preserving documents, seeking legal and ecological assessment, notifying regulators where required, and correcting compliance systems. For a community organisation, I would identify the statutory cause, standing, evidence, cost exposure, and whether an interim injunction is obtainable. For a government client, I would recommend transparent reasons, an accurate administrative record and conditions that can actually be monitored and enforced. Strong legal advice is not a promise to 'win'; it is an evidence-based explanation of legal powers, risk, likely outcomes and proportionate remedies.

JUDGMENTS, LEGISLATION AND RESEARCH — FULL TEACHING EXPLANATIONS

For each resource below I explain its factual or legislative setting, legal point, significance and role in practice. Blue underlined source titles open the research material. A legal authority must never be treated as a substitute for identifying and applying the controlling provision.

Assessment bilateral agreements and Queensland coordinated projects

THE TWO DECISIONS. Section 45 of the EPBC Act permits bilateral agreements with States and Territories. A qualifying Queensland EIS under Part 4 of the State Development and Public Works Organisation Act 1971 may supply an accredited **assessment process**. An assessment bilateral does not transfer the Commonwealth

Minister's Part 9 power to approve or refuse a controlled action. WHY THIS MATTERS TO RUD. Politicians are wrong to suggest that coordinated-project status simply avoids federal control. The proponent must determine whether the exact Queensland pathway falls within the current agreement, provide the required State assessment record and still seek Commonwealth approval. The crucial distinction is *who assesses the facts* compared with *who decides under federal law*.

Tugun Bypass — actual EPBC controlled-action and EIS notices

READ THE PRIMARY DOCUMENTS. The uploaded Tugun Bypass notices show a controlled-action decision under the EPBC Act and a later decision to assess by an environmental impact statement. This was a cross-border major road proposal, raising effects on listed threatened species and on the environment where Commonwealth land was affected. WHAT A STUDENT SHOULD EXTRACT. Note each instrument's decision date, signatory, statutory provision, controlling matter and assessment approach. Identify which impacts required further studies, the content of EIS guidelines, consultation, alternatives and mitigation measures. Do not confuse the initial controlled-action decision with final approval. These notices are an unusually strong teaching resource because they show the statute operating through actual administrative documents, not just a textbook flowchart.

EPBC approval: ss 130, 133 and 136

THE LATER DECISION. Once the action has been assessed, s 130 concerns the decision whether to approve it and s 133 empowers a relevant approval. Under s 136(1), the Minister must consider matters relevant to the protected controlling provisions and social and economic matters. Section 136(2) includes specific assessment information and ESD matters among mandatory considerations. Sections 137–140A impose additional constraints for the relevant types of protected matter. WORKED CLIENT ADVICE. A resort may offer jobs and tourism benefits but those advantages do not cancel the separate initial 'controlled action' test. They may become relevant to the later approval decision within the statutory boundaries. A strong problem answer tells the client which benefits can lawfully be weighed **at which stage**, what the Minister cannot disregard, and what evidence would support conditions or refusal.

EPBC s 134: bond, habitat contribution and monitoring conditions

THREE DIFFERENT LEGAL THINGS. A security bond under s 134(3)(a) can secure compliance or rehabilitation liability; it is not simply an arbitrary tax or fine. Section 134(3)(ab) addresses specified financial contributions for protective activities, with relevant consent requirements under s 134(3A). Other s 134 powers can support conditions connected to protection of relevant matters, including implementation,

monitoring, audits and mitigation where the Act permits. APPLY TO RUD. For a $10 million buffer-rehabilitation bond, identify the threatened damage, why the amount relates to likely repair costs and the precise enabling limb. For a separate habitat contribution, identify the statutory limb, recipient, agreed amount and consent. For a monitoring condition, explain what is measured and how non-compliance would be proven. A legally defensible condition cannot be assessed merely by calling it 'strict'.

EPBC s 391 and the precautionary principle

WHAT THE PRINCIPLE REQUIRES. Section 391 requires consideration of precaution for specified EPBC decisions where threats of serious or irreversible environmental damage and scientific uncertainty arise. It does not say that uncertainty always compels refusal. APPLICATION TO THE PYGMy PERCH. The Council proposes moving the Oxleyan Pygmy Perch from Pristine Creek despite limited evidence about long-term outcomes for translocation of a different European species. The legal analysis must distinguish an ecological assumption from demonstrated species-specific mitigation. A reasoned ministerial decision should identify the actual protected matter, breeding habitat, scientific evidence, feasible alternatives and residual risk, and show how the statutory precaution requirement was considered.

Injunction, judicial review, remediation, penalties and offences

THE REMEDIES ARE NOT INTERCHANGEABLE. EPBC s 475 provides an injunction route for eligible persons concerning actual or threatened contravention, with statutory requirements about standing and subject matter. Section 480A concerns remediation orders in appropriate circumstances. Judicial review may result in a declaration, quashing and remittal where the decision-maker made a reviewable legal error; disagreement with the environmental merits is not by itself such an error. Civil penalties and criminal offences require proof of the exact contravention, penalty provision and relevant elements. APPLICATION. If an RUD contractor begins prohibited works before a controlled-action process ends, identify the applicable premature-action rule (including s 74AA where engaged) rather than alleging breach of a *proposed* approval condition not yet in force. Once a final approval is operative, test the actual condition, any statutory duty of the holder to control contractors, the map of restricted buffers, evidence of conduct and the correct civil/criminal pathway. Do not promise compensatory damages without an identified legal cause of action.

2025 reforms and the 24 August 2026 EPBC compilation

PUBLICATION AND EXAM DATE MATTER. The Environment Protection Reform Act 2025 introduced changes with staged commencements and transitional rules. A student should read the EPBC Act compilation applying on the relevant date and should not

assume every reform has already commenced. If a problem dates an approval or referral, check whether transitional provisions determine the governing process. YOUR EXAM METHOD. Use the consolidated text of the operative section first, then the amendment Act's commencement and application provisions where necessary. If a slide describes reforms as forthcoming, treat the statement as a snapshot of when the lecturer spoke, not as a permanent description of the law.

THE COMPLETE PROFESSIONAL APPLICATION — AN EXAM-READY METHOD

When I advise a client, I do not begin with an attractive remedy and work backwards. First I identify the particular conduct, actor and decision-maker; then I identify the statute and its relevant time of operation. Secondly, I specify each element of the legal test. Thirdly, I connect the strongest case authority to the proposition being applied, explaining its facts and why the reasoning is comparable or distinguishable. Fourthly, I test the evidence supporting each element and take the opposing argument seriously. Fifthly, I advise on the practical course: further studies, a referral, a revised project, a lawful condition, judicial review, an injunction or enforcement, depending on the statute. This is the transition from knowing rules to practising environmental law.

Legislative date: The course discusses the EPBC Act framework in force for its 2026 seminars. The Environment Protection Reform Act 2025 has staged commencement. The August 2026 transitional rules may affect some cases. For any past project, check the version operative at the relevant decision date; do not apply a future reform retrospectively without legal authority.

WEEK 5 FAQS

1. Does referring an action mean it will be refused?

No. Referral answers the threshold question whether Commonwealth approval is required. A controlled-action decision moves the proposal into assessment and later approval/refusal.

2. Can a project outside a World Heritage boundary affect World Heritage values?

Yes. Focus on the statutory protected value and the impact pathway, not merely the cadastral/project boundary.

3. Are jobs and economic benefits relevant at the s 75 screening stage?

Not as a credit against adverse protected-matter impacts. Section 75(2) directs the screening analysis to adverse impacts and excludes beneficial impacts at that stage.

4. Is government grant funding itself an EPBC action?

Not where s 524A applies. Distinguish funding from the physical activity the funding enables.

5. Does scientific uncertainty always stop a project?

No. It triggers disciplined precautionary reasoning where serious or irreversible harm is threatened; the response must be proportionate to the risk and evidence.

MULTIPLE-CHOICE QUESTIONS

1. Queensland gives RUD a $10 million construction grant. Which is most accurate?
A. The grant is automatically a controlled action.
B. The grant is excluded from “action” by s 524A, but the physical project must still be assessed.
C. The grant displaces the EPBC Act.
D. The grant makes the State the sole proponent.

2. RUD’s resort lies outside a World Heritage boundary. Which is most accurate?
A. World Heritage provisions cannot apply.
B. Only direct clearing inside the boundary matters.
C. Effects outside the boundary can matter if they significantly affect protected World Heritage values.
D. Only the State can regulate the project.

3. What is the best statement of Nathan Dam?
A. Indirect impacts never count.
B. Every third-party act automatically becomes the proponent’s impact.
C. Indirect consequences can be impacts where the statutory causation/foreseeability requirements are met.
D. It concerned only standing.

4. What is s 131AA primarily about?
A. Criminal penalties.
B. The proponent’s opportunity to comment on the proposed approval decision/conditions.
C. Species listing.
D. Referral by a State.

5. A Queensland coordinated-project EIS:
A. automatically removes Commonwealth approval requirements.
B. can be relevant to an accredited/bilateral assessment pathway but does not itself extinguish the EPBC Act.
C. prevents public participation.
D. is a Commonwealth approval.

MCQ ANSWERS & EXPLANATIONS

1 — B. Section 524A excludes qualifying government grant funding from “action”. A is wrong because funding is not automatically the controlled action; C is wrong because funding does not displace federal law; D is wrong because proponent status follows the physical proposal, not merely funding.

2 — C. The legal test concerns impact on protected World Heritage values. A and B confuse boundary with impact; D ignores concurrent Commonwealth jurisdiction.

3 — C. Nathan Dam rejects an artificially narrow footprint-only approach. B overstates the rule: s 527E imposes causal and foreseeability requirements.

4 — B. Section 131AA is procedural fairness built into the approval/conditions stage. It is not a species-listing, referral or penalty provision.

5 — B. State assessment can reduce duplication where lawfully accredited, but Commonwealth jurisdiction/approval remains a separate legal question.

SHORT-ANSWER QUESTIONS

1. Explain the difference between an “action” under s 523 and a government funding decision under s 524A.

2. State the legal significance of s 74A in one paragraph.

3. Why is s 527E essential when advising on a project involving associated infrastructure built by a third party?

4. What is the legal role of the precautionary principle under s 391?

5. Why does a State EIS not automatically remove EPBC approval requirements?

SHORT-ANSWER MODEL ANSWERS

1. Section 523 identifies projects/developments/activities as actions; s 524A expressly removes qualifying government grant funding from that concept. The legal adviser therefore assesses the physical project separately from the financing decision.

2. Section 74A prevents a proponent from obtaining screening of only a component of a larger action it proposes. If the Minister is satisfied the referral concerns a component of a larger action, the Minister may refuse to accept it and request referral of the larger action.

3. Section 527E supplies the statutory test for indirect impacts. Where another person carries out a secondary action, the primary project can still bear the environmental consequence if the statutory facilitation, contemplation/foreseeability and consequential requirements are met.

4. Section 391 requires the relevant decision-maker to take account of the precautionary principle for specified EPBC decisions. Serious/irreversible threat combined with uncertainty requires protective reasoning; it does not create an automatic refusal rule.

5. Federal and State approval regimes can operate concurrently. An accredited State EIS may supply assessment material under a bilateral arrangement, but only the applicable Commonwealth statutory machinery can remove or satisfy the Commonwealth approval requirement.

IRAC / PROFESSIONAL PROBLEM

Problem. RUD refers only the resort building footprint and states that the State connector road and Council dam are “unrelated government projects”. It begins vegetation clearing three days after referral. Ecological advice identifies a plausible downstream impact on a listed migratory species and uncertainty about whether translocation of the Oxleyan Pygmy Perch will succeed. Advise RUD.

DETAILED IRAC MODEL ANSWER

Issue

The issues are referral completeness, larger/connected action, indirect impact, early works, significant impact, precautionary principle and project-programming risk.

Rule

Apply EPBC Act ss 67–68, 72, 74A, 74AA, 75, 391, 489 and 527E, together with the relevant Part 3 controlling provisions. *Mees* is relevant to misleading/incomplete referral; Nathan Dam to indirect impacts.

Application

RUD's characterisation of State/Council works as "unrelated" is legally unsafe if they are in fact integral to the resort or their environmental consequences fall within s 527E. The connector road exists because the resort proceeds; the Council dam is prompted by RUD's commitment to local produce. Those facts demand candid disclosure and causal analysis. Commencing vegetation clearing after referral creates immediate s 74AA risk. The ecological evidence means significant-impact analysis cannot be done by assertion; it requires application of the supplied species/heritage facts and expert guidance. The perch translocation uncertainty engages precautionary reasoning if serious/irreversible harm is credibly threatened.

Counterarguments

RUD can argue the State and Council independently decide their own projects and are not directed by RUD. That may weaken the indirect-impact connection but does not end it; s 527E expressly contemplates secondary actions undertaken by another person without direction/request.

Conclusion and advice

Immediately halt early works; correct/supplement the referral; commission targeted ecological/hydrological analysis; prepare a causal map of associated infrastructure and downstream effects; assess the significance of each protected matter; and revise the project programme

to accommodate Commonwealth decision periods. Treat referral accuracy as a compliance issue, not public relations.

MID-SEMESTER EXAM ATTACK SHEET — WEEKS 1–5

1. Read the question twice. Identify what you are actually asked to advise or explain. The lecturer emphasises concise answers and direct engagement with the question.

2. Circle every actor, place, species, project and government body. The Week 5 instruction is that named facts are ordinarily there for a reason. Cross each fact off once you have explained its legal relevance.

3. Jurisdiction first. Commonwealth environmental power is not a free-standing constitutional head. Recall external affairs, trade and commerce, corporations and Commonwealth places/other applicable hooks; then consider s 109 inconsistency or cooperative/bilateral operation where relevant.

4. EPBC problem sequence. ACTION (ss 523–524A) → MNES/PART 3 → IMPACT (s 527E) → SIGNIFICANCE → REFERRAL (ss 68–74AA) → CONTROLLED ACTION (s 75) → ASSESSMENT (s 87/Pt 8) → APPROVAL/CONDITIONS (ss 130–136) → PRECAUTION (s 391 where applicable) → COMPLIANCE/REVIEW.

5. Cases by trigger. Tasmanian Dam Case = external affairs/treaty implementation; *Murphy* = trade/export/environmental conditions; *Cole v Whitfield* = interstate trade protection limits; *Leatch* = precaution under uncertainty; *Gray* = EIA/ESD/cumulative consequences; Nathan Dam = indirect/downstream impacts; *Mees* = complete referral/connected action; Wielangta litigation = RFA exemption and need to check appellate history; *Humane Society International v Kyodo* = Australian domestic environmental law, whales and transnational enforcement.

6. Answer style. RULE → EXACT PROVISION → WHY IT APPLIES → MATERIAL FACT → CASE/AUTHORITY → COUNTERARGUMENT → CONCLUSION → PRACTICAL ADVICE/REMEDY.

5.15 Remedies and consequences — what happens when the law is breached?

Environmental-law “remedy” is not always damages. The correct consequence depends on the wrong. A defective administrative decision may be set aside on judicial review and remitted for lawful reconsideration. Unauthorised controlled-action conduct can attract statutory enforcement, injunctions and civil/criminal consequences under the EPBC Act. Breach of approval conditions can attract compliance/enforcement consequences, and conditions may themselves require restoration, monitoring or financial security. A private damages claim is not the default remedy merely because environmental harm has occurred; always identify the legal cause of action and the remedy attached to it.

5.16 Week 5 conclusion

By the end of Week 5, the student should be able to take a long factual problem and convert it into a disciplined environmental-law advice. The central skill is connection: connect the **fact** to the **actor**, the actor to the statutory **action**, the action to the **protected matter**, the protected matter to the precise **Part 3/Part 7/Part 8/Part 9 provisions**, and the provisions to the **cases and evidence** that explain their operation. Then test the opposing argument, give a reasoned conclusion and identify what the client must do next.

Week 5 source note. This chapter integrates the supplied Week 5 tutorial/live transcript and the Week 4 tutorial fact problem. The supplied Week 5 recording contains the tutorial answer discussion and exam guidance, then begins the substantive second-half seminar (“complete the environmental impact assessment process” / Tugun Bypass) but cuts off at that point. The book therefore does not invent unrecorded lecturer propositions. The assessment/approval law above is verified against the current authorised legislation and is used to complete the legal teaching framework without falsely attributing unsupplied words to the lecturer.

ENVIRONMENTAL LAW

Semester 263

Weekly questions

Environmental impact assessment

These questions will require you to do some self-learning in advance about some aspects of the EPBC Act that we will discuss in the Week 5 seminar, but the early learning will assist you in your preparation for the Week 6 mid-semester exam.

In January this year, Resorts United Development Limited (**RUD**) released plans for a proposed ecotourism resort development in South East Queensland. The resort is proposed to be located on land near, but not within, the Gondwana Rainforests of Australia (Main Range Group).

The proposed resort, if and when completed, will accommodate a maximum of 900 guests, drawing primarily from international markets, but it will also be promoted to domestic tourists. Pristine Creek, a shallow creek, flows through the proposed resort site and drains into a larger waterway that is a critical breeding area for the *Numenius phaeopus*.

The Queensland Premier has, in the last fortnight, made some positive comments in the media in support of the project. Citing the $90 million cost of the resort and the significant economic contribution it will make to the region, the Premier says the State Government views the proposed resort development as a key catalyst for getting the regional tourism industry thriving after the COVID-19 pandemic and natural disaster events over the past few years. The Queensland State Government has committed to providing RUD with a development funding grant of $10 million to help facilitate the construction of the resort given its anticipated role in the Queensland tourism sector in the lead up to the 2032 Brisbane Olympics.

A resort access road of some 9km in length will need to be built by RUD to enable construction traffic to get from the main road to the currently isolated site of the proposed resort. The Queensland State Government has indicated that if the RUD development proceeds, the Queensland Department of Transport and Main Roads will build a connector road through the Gondwana Rainforests of Australia that will link the RUD resort access road to the highway. The construction of the connector road will require the clearing of a large extent of Durobby.

RUD has announced that locals, primarily, will be hired as the construction workforce and employed as the resort's operational staff. The local agricultural industry is also very excited about the project. RUD has also publicly committed to using only local

produce in the three restaurants planned for the resort. In response to RUD's public commitment to use only local produce at the resort, the Council of the City of Gold Coast (**Council**) (a local government under the *Local Government Act 2009* (Qld)) proposes to dam part of Pristine Creek to facilitate improved irrigation to local crops. Many of the local crop growers operate small farms/plantations along tributaries of Pristine Creek. Some of the growers are heavy users of bendosultan, a pesticide known for its harmful effects on aquatic ecology and waterbirds.

The Oxleyan Pygmy Perch is one of only six pygmy perch species in the world and is found naturally in only two Queensland creeks/river systems, Pristine Creek being one of them. The Oxleyan Pygmy Perch species requires shallow waters for breeding. The Council proposes to relocate the Oxleyan Pygmy Perch specimens (ie. individuals) from Pristine Creek to another river system on the Central Queensland coast before constructing the dam. Various published studies suggest that the Oxleyan Pygmy Perch is at least 150 million years old, thus giving scientists a rare insight into how life on earth moved from the sea to land. There is some precedent for relocation of pygmy perch. A different pygmy perch species has previously been relocated for a dam construction project in Europe. However environmental consultants who worked on mitigation measures for the European dam project say it is still too early to assess the full extent of that relocation on the European pygmy perch species.

The Coastal Environmental Protectors Organisation Inc. (**CEPO**) is an incorporated association that was formed in the late 1980s to campaign for the protection of Fraser Island. CEPO's constitution identifies as the organisation's object '*To seek to ensure the preservation of the values of coastal environments*'. CEPO has 20 members. CEPO holds an annual general meeting (AGM) of its members as required to maintain incorporation status under the *Associations Incorporation Act 1981* (Qld). A new president and secretary are elected at each annual general meeting, and the members take the annual general meetings as an opportunity to reminisce about their 'victory' in contributing to the World Heritage listing of Fraser Island. CEPO hasn't taken an active position in relation to any environmental issues since Fraser Island was added to the World Heritage list in 1992.

The current president of CEPO, Sally Yardley, last week became aware of a report by an environmental consultant engaged by the Queensland State Government to study the potential impacts of the proposed RUD development. The consultant's report identified areas of habitat of the *Murina florium* (tube-nosed insect bat) which could be adversely affected by the RUD development. The consultant's report identified the maintenance of the current population levels of the *Murina florium* as important to the maintenance of the values of the Gondwana Rainforests of Australia (Main Range Group). This is because *Murina florium*, as a seed disperser, contributes to the Gondwana Rainforests of Australia's evolutionary processes.

RUD seeks your advice regarding its proposed development—

Question 1

Which aspects (if any) of the proposed activities/commitments by RUD, the Queensland State Government and the Council discussed above should be referred under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)?

Question 2

What bearing, if any, would the declaration of the project as a 'coordinated project' for which an environmental impact statement is required pursuant to Part 4 of the *State Development and Public Works Organisation Act 1971* (Qld) have on assessment for the purposes of the EPBC Act?

The project has not yet been declared under the *State Development and Public Works Organisation Act 1971* (Qld), although some Queensland politicians supportive of the project have suggested that RUD should pursue such a declaration as it would enable the project to "avoid Commonwealth interference". Are the politicians correct?

Question 3

David Strong is a third-year university environmental science student. David works part-time as a policy officer with the Australian Conservation Foundation and in that capacity attends the Regional Conservation Forum established by the Queensland Government. The Forum meets on a quarterly basis with relevant Ministers and their advisers to consider regional conservation issues. David is concerned about the possible impacts of the Council's proposal to dam Pristine Creek in disrupting the breeding habitat of the Oxleyan Pygmy Perch.

If approval is granted by the Commonwealth Environment Minister and David Strong wishes to challenge the Minister's decision on the basis that the decision is not in accordance with the precautionary principle, does such an argument hold any merit?

For this tutorial, you do not need to consider whether David Strong has legal standing to bring a court challenge. We will cover whether a potential litigant has standing to bring an action in the Week 11 seminar on environmental litigation.

Question 4

The EIS process under the EPBC Act has been completed. It is now up to the Commonwealth Environment Minister to make the decision as to whether the project should be approved or refused. RUD's development manager has heard through his contacts in Canberra that an approval is likely, subject to quite stringent conditions. Apparently, among the conditions the Minister is considering imposing on the approval are:

(a) A requirement for RUD to lodge a $10 million bond to secure rehabilitation costs in the event that during the construction phase there is encroachment into a buffer area required to be protected by the conditions.

(b) A requirement for RUD to make a financial contribution to the Council's Mangrove Foreshore Rehabilitation Scheme, which applies to the Council's creeks and wetland areas.

RUD's development manager wants to know what opportunity, if any, RUD will have to make representations about these conditions and whether such conditions are within the power of the Minister.

WEEK 5 — FURTHER EXAM PROBLEMS

These four problems were authored for this book from Week 5 seminar cases; they are not a separate Bond University question sheet.

Exam problem 1 — Exam Problem 1 — Tugun Bypass: reconstruct the entire statutory assessment process

A cross-border road authority proposes the Tugun Bypass and argues that its State approvals should settle the Commonwealth environment decision. Advise from referral to approval using the actual course case study. Provide a complete legal IRAC answer including the strongest counterargument and outcome.

Exam problem 2 — Exam Problem 2 — CSG-to-LNG project: multiple referrals and indirect impacts

A natural-gas consortium proposes extraction fields, a long transmission pipeline and an LNG facility in separate documents. Can it assess each in isolation? Provide a complete legal IRAC answer including the strongest counterargument and outcome.

Exam problem 3 — Exam Problem 3 — Approval conditions, offsets and enforcement

A developer accepts a federal approval but later clears protected habitat outside an approved work envelope and fails to monitor a relocation program. What statutory responses arise? Provide a complete legal IRAC answer including the strongest counterargument and outcome.

Exam problem 4 — Exam Problem 4 — Ministerial refusal, economic benefit, precaution and judicial review

An EIS records uncertain long-term damage to an irreplaceable water-dependent threatened species, while the proponent predicts substantial jobs. The Commonwealth Minister proposes to approve subject to conditions. Advise the decision-maker and potential challenger. Provide a complete legal IRAC answer including the strongest counterargument and outcome.

CHAPTER 5 — HIGH-DISTINCTION IRAC MODEL ANSWERS

Issue → Rule and case authority → fact-specific application → strongest counterargument → conclusion and advice.

MODEL ANSWER 1 — Exam Problem 1 — Tugun Bypass: reconstruct the entire statutory assessment process

Issue

A cross-border road authority proposes the Tugun Bypass and argues that its State approvals should settle the Commonwealth environment decision. Advise from referral to approval using the actual course case study.

Rule

The uploaded Tugun Bypass EPBC notices record referral EPBC 2004/1861, a controlled-action decision dated 23 November 2004 identifying ss 18/18A and ss 26/27A as controlling provisions, and a subsequent decision on assessment approach dated 8 December 2004 requiring an environmental impact statement under s 87. Chapter 4, Part 8 governs EIS processes; Part 9 (ss 130–136) governs approval. The public EIS guidelines in the source material identify baseline ecological conditions, alternatives, cumulative/cross-border effects, consultation, mitigation and management.

Application

The proponent must specify the physical road project and its route, cross-border construction and potential effects on listed species and the Commonwealth environment, including impacts connected with Commonwealth land at Gold Coast Airport. The federal decision to select EIS demonstrates that an initial controlled-action ruling is the beginning rather than completion of scrutiny. A legally competent EIS should examine alternative alignments and ecological mitigation, submit the assessment to public comment and support a recommendation report. Relevant State and NSW processes may run in parallel or be coordinated, but Commonwealth approval is separately decided. The actual notices are decisive contemporaneous evidence rather than guesses based on what the finished road looks like.

Strongest counterargument

One might claim that the route's transport benefits and State support mean environmental effects are immaterial. They are material under the controlling provisions, while economic and social factors enter at the legally designated Part 9 decision stage. The precise federal approval outcome/date should be copied from the project's decision instrument, not inferred from its construction.

Conclusion, consequence and advice

The answer is a chronology anchored to documents: referral; 23 November 2004 controlled-action notice; 8 December 2004 EIS assessment approach; EIS analysis/public comment; separate Commonwealth approval decision and any conditions. Distinguish the evidential status of each notice.

MODEL ANSWER 2 — Exam Problem 2 — CSG-to-LNG project: multiple referrals and indirect impacts

Issue

A natural-gas consortium proposes extraction fields, a long transmission pipeline and an LNG facility in separate documents. Can it assess each in isolation?

Rule

Under EPBC Act s 523, an action can encompass a project or connected series of activities. Section 74A addresses components of larger actions, and s 527E defines when indirect events count as impacts, including special treatment of acts by other persons. Mees v Roads Corporation [2003] FCA 306 shows the dangers of misleading omissions in a referral; Nathan Dam [2004] FCAFC 190 explains why remote, sufficiently connected effects may count. Sections 68, 75, 87 and 133 structure referral, controlled-action, assessment-method and approval decisions.

Application

The Week 5 slides identify the Australia Pacific LNG project's three related 2009 referrals: CSG fields in the Surat Basin, a 447 km high-pressure gas transmission pipeline and an LNG processing facility. For each referral prepare an actor/project description and map common water, habitat, shipping, dredging, emissions and migratory-species issues. Multiple referrals are not automatically illegal, but the assessment cannot be

artificially narrow where activities are physically and commercially linked and legally relevant effects are causally attributable. Check whether each section falls within State assessment-bilateral processes and whether any water-resource controlling provision is engaged for unconventional gas development. Seek clear cumulative-impact assessment so that the Minister has the complete relevant picture.

Strongest counterargument

Proponents will stress genuine technical and geographic independence of the components. That may justify separate documents, but it does not justify concealing enabling works or downstream consequences. Avoid automatically attributing every customer activity to the proponent; section 527E conditions indirect attribution.

Conclusion, consequence and advice

Separate referrals may be possible, but connected activities require coherent disclosure, proper cumulative assessment and correct Part 3 jurisdiction. The practical advice is an integrated impact register and coordinated agency consultation before each referral is finalised.

MODEL ANSWER 3 — Exam Problem 3 — Approval conditions, offsets and enforcement

Issue

A developer accepts a federal approval but later clears protected habitat outside an approved work envelope and fails to monitor a relocation program. What statutory responses arise?

Rule

EPBC Act s 134 authorises specified protective conditions and relevant bonds, while ss 142, 142A and 142B address civil and criminal consequences for non-compliance with approval conditions. Section 143 provides for variation and other provisions permit suspension or revocation. Enforcement mechanisms may include appropriate injunctions under s 475 and remediation measures; the course slides also discuss remediation determinations and Commonwealth enforcement of restoring environmental harm. The appropriate factual threshold, officer powers and current amendments must be checked rather than assuming any sanction

is automatic.

Application

Obtain the actual approval and mapped no-go areas, identify the condition breached, preserve photographic/GPS and expert evidence, secure the site and assess any immediate further harm. Compare the clearing with the exact protected values and monitoring undertakings. Discuss whether restoration, secure protection, compensation or offset management can realistically repair damaged habitat; a monetary penalty cannot regrow mature ecological communities overnight. Determine whether the condition was effectively conveyed to contractors under s 134(1A). Investigate whether the Minister should consider condition variation, a stop-work mechanism, an injunction or a remediation instrument, depending on statutory powers and evidence.

Strongest counterargument

The developer may argue that contractor error should be treated as harmless because overall project approval remained valid. That overlooks conditions binding the approval and duties to communicate them. Conversely, an enforcement action must prove the legal elements of the particular contravention and accord with procedural fairness.

Conclusion, consequence and advice

Recommend stopping contravening work, immediate evidence preservation, legal notification advice, a verified compliance audit and remedial plan. Identify separately regulatory sanctions, judicial relief, threatened-matter protection and the proponent’s ongoing obligations.

MODEL ANSWER 4 — Exam Problem 4 — Ministerial refusal, economic benefit, precaution and judicial review

Issue

An EIS records uncertain long-term damage to an irreplaceable water-dependent threatened species, while the proponent predicts substantial jobs. The Commonwealth Minister proposes to approve subject to conditions. Advise the decision-maker and potential challenger.

Rule

Section 133 governs the Part 9 approval decision and s 136(1) mandates consideration of protected matters and economic/social matters. Other statutory factors and treaty-related constraints appear in ss 136–140. Section 391 requires genuine consideration of precaution for relevant screening and approval decisions. Section 131AA provides a proponent's procedural opportunity regarding proposed refusal and conditions. Judicial review tests legality rather than replacing the Minister's preference with a court's evaluation of jobs versus biodiversity. Gray v Minister for Planning [2006] NSWLEC 720 demonstrates the EIA/ESD function of taking cumulative impacts seriously; Leatch supports reasoned precaution where serious harm is scientifically uncertain.

Application

The Minister should identify the precise listing and protected values, quantify breeding loss and uncertainty, scrutinise the proposed relocation and alternatives, examine the mitigation hierarchy and whether proposed offsets can actually compensate for the particular ecological harm, and address social/employment benefits without treating them as statutory trump cards. Reasons should disclose meaningful engagement with contradictory expert reports, the relevant assessment report and protective conditions. A challenger should obtain the reasons and record and test whether mandatory considerations were addressed, whether irrelevant matters were determinative, whether a material legal misunderstanding occurred and whether procedural duties were observed.

Strongest counterargument

A strong proponent can argue that managed development advances social welfare and can reduce harm through conditions. A strong environmental challenger responds that unresolved extinction-level risk, poor baseline data and ineffective translocation may make approval irrational or legally vulnerable. Courts usually do not retry the science as an ordinary merits appeal; the distinction between a disagreeable decision and an unlawful one is decisive.

Conclusion, consequence and advice

Approve only if the evidential record and statutory criteria justify it, or refuse where protection cannot be achieved consistently with the Act. Record the s 391 reasoning explicitly, apply s 136 without treating economic benefits as automatically decisive, and distinguish merits

contest from judicial-review error.

AUTHORITATIVE RESEARCH LINKS

The links below use official sources. Section references in model answers identify the exact rule; the user should consult the authorised compilation and current decision notice for that rule.

EPBC Act (24 August 2026)

Nuclear Facilities Prohibition Act 2007 (Qld)

National Heritage—former High Court

EPBC Public Portal

Basin Plan review (MDBA)

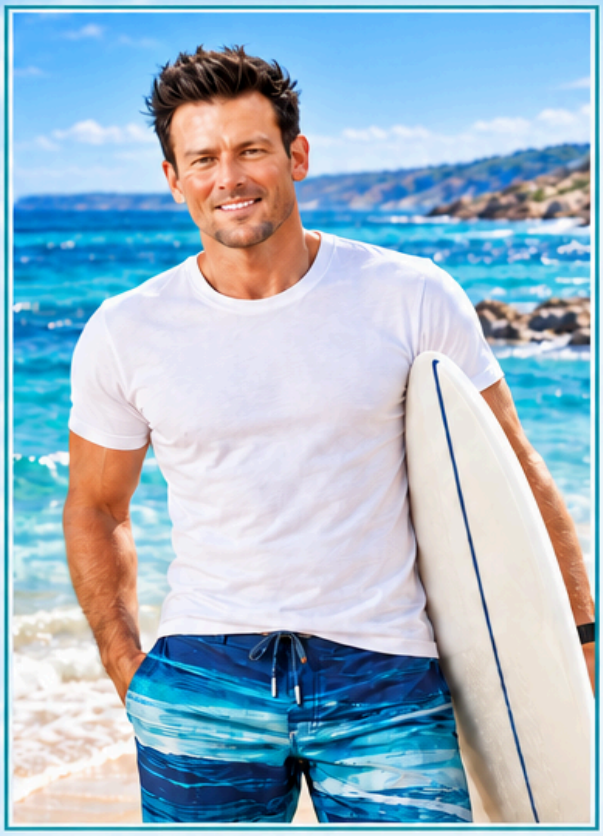
Reform implementation status

Significant Impact Guidelines 1.1

Brisbane Stadium decision 2026/10472

Sydney Opera House approvals

Central Queensland Coal EIS



ABOUT THE AUTHOR

Dr Adrian Adams has always had a deep passion for environmental conservation, environmental law and the protection of the natural world. He is a committed advocate for safeguarding oceans, coastlines, wildlife, ecosystems and biodiversity, with a heartfelt appreciation for climate awareness, sustainable thinking and the wellbeing of all living things.

A lifelong lover of the ocean, marine life and surfing culture, Adrian approaches environmental law with both professional purpose and personal care. He believes environmental protection should work in harmony with responsible property development, planning, urban culture and thoughtful business practice.

Through this unique blend of environmental consciousness, legal understanding and real-world commercial insight, Adrian is passionate about helping students, professionals and value-driven businesses pursue outcomes that are practical, progressive and genuinely beneficial for communities, industry and the environment alike.

ABOUT THE BOOK

Environmental Law is a study and teaching guide designed to help students understand Australian environmental law, navigate Commonwealth, State and local legislation and authorities, and analyse environmental evidence and protected values.

It brings together key legislation, leading cases, worked examples, practical applications, tutorial guidance, issue spotting and professional reasoning, revision tools and model answers in a clear and accessible format.

Whether you are studying Law, Environmental Science, Planning or a related discipline, this book is designed to help you understand how environmental law operates in practice, apply it with confidence and enjoy learning it.

KEY FEATURES

- Australian environmental law coverage
- Exact statutes, cases and practical application
- Tutorial guidance, issue spotting and IRAC method
- Approvals, compliance, enforcement and professional decision-making
- Revision tools, quizzes and model answers

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