

ENVIRONMENTAL LAW | OPEN-BOOK EXAM PACK

10 COMPLETE IRAC MODEL ANSWERS + 100 SHORT QUESTIONS AND ANSWERS

WEEKS 1–5 • 5 CHAPTERS • 2 FULL IRAC PROBLEMS AND 20 SHORT Q&As PER CHAPTER

This pack is written in a direct first-person exam voice: identify the facts, identify the actor and legal issue, locate the exact rule and relevant authority, apply it closely to the evidence, address the strongest counterargument, reach a reasoned conclusion, then advise the client about consequences and remedies.

Format: IRAC question pages are immediately followed by their complete model answers. Part B follows Part A and contains the 100 short questions and answers. Every chapter begins on a new page. Colours identify chapters; body text is Arial 12 pt, main headings Arial 16 pt bold and subheadings Arial 14 pt bold.

SCOPE AND LEGAL DATE: Course materials are for Weeks 1–5 (Semester 263). Statutory discussion is checked principally against the EPBC Act Compilation 70 (24 August 2026); the 2025 reforms have staged commencement and transitional rules. For an exam fact pattern set at an earlier date, apply the version of the legislation then operative. Exact outcome always depends on jurisdiction, statutory elements, proof and standing.

EXAM MAP | PART A – 10 FULL IRAC ANSWERS

1. ENVIRONMENTAL VALUES, DEFINITIONS AND ETHICS
2. CONSTITUTIONAL AND REGULATORY RESPONSIBILITIES
3. INTERNATIONAL ENVIRONMENTAL LAW AND ESD
4. ENVIRONMENTAL IMPACT ASSESSMENT AND REFERRAL
5. ASSESSMENT, APPROVAL, CONDITIONS AND ENFORCEMENT

PART B | 100 SHORT QUESTIONS AND ANSWERS

Chapters 1–5 each contain 20 individually numbered short questions. End of pack: rapid statutory locator and checked authority list.

PART A | TEN FULL IRAC MODEL ANSWERS

For every problem: read the separate fact pattern, then turn to the next page for the word-for-word model response. Statutory provisions and leading cases appear together under Rule and are used again within Application. The client advice identifies which remedy is legally realistic.

CHAPTER 1 | ENVIRONMENTAL VALUES, DEFINITIONS AND ETHICS

IRAC PROBLEMS • WEEK 1

IRAC PROBLEM 1 — Cobaki Lakes: wildlife corridors, threatened species and legal standing

Week 1 – environmental values, statutory interpretation and the newspaper article

EXAM QUESTION — FACTS

A developer proposes the next stage of a large residential estate at Cobaki Lakes on the New South Wales–Queensland border. Its ecological report identifies koala movement corridors, potoroo habitat and risks to neighbouring broadwaters. A councillor argues that the proposed 60–70 metre buffer is inadequate and seeks a 500 metre corridor; the developer says redesign would make housing unviable. An incorporated environmental association wants the development stopped. Advise the developer and association.

EXAM TASK: Advise all relevant parties. Identify each issue and sub-issue, statutory provision, case and authority; apply every significant fact; address the counterargument; explain remedies and give a strong client-specific conclusion.

IRAC 1 — FULL WORD-FOR-WORD MODEL ANSWER

ISSUE

The issues are (1) which government and legislative regime regulates this site; (2) whether a listed matter of national environmental significance (MNES) may be significantly affected; (3) whether a buffer may be imposed or a decision challenged; and (4) who may sue and what relief is realistically available. The first sub-issue is geographic: Cobaki Lakes is in NSW, notwithstanding its proximity to the Gold Coast.

RULE — EXACT LAW AND AUTHORITIES

State planning assessment arises under the *Environmental Planning and Assessment Act 1979* (NSW), read with the applicable planning instrument, consent conditions and biodiversity legislation, including the *Biodiversity Conservation Act 2016* (NSW) where applicable. Commonwealth protection is additional, not automatic. Under the [Environment Protection and Biodiversity Conservation Act 1999](#) (Cth) ([EPBC Act](#)), s 18 protects listed threatened species and ecological communities, s 18A addresses offences, s 20 concerns listed migratory species, and s 68 governs referral where an action may be controlled. Sections 75 and 82 concern the controlled-action decision and relevant impacts; s 87 concerns assessment method. Sections 523–524A define the proposed action and relevant exclusions. [Sierra Club v Morton](#) 405 US 727 (1972) demonstrates the historical difficulty of environmental standing; Justice Douglas's dissent and [Christopher Stone](#)'s 1972 article support representation of nature, but are not Australian statutory causes of action. The NSW statutory test and the actual EPBC listings, not a philosophical claim alone, determine legal obligations. Under EPBC s 475 an eligible interested person may seek an injunction for a threatened statutory contravention, subject to its requirements.

APPLICATION — FACTS, LAW AND JUDICIAL REASONING

I would begin by separating ecological evidence from legal status. The article's reference to koalas and potoroos establishes a serious ecological concern, but it does not itself establish that the *particular* taxon, habitat or development impact meets the EPBC listing and significant-impact threshold. I would check the SPRAT profile, Protected Matters Search Tool, site surveys, clearing footprint, corridors and cumulative impacts. The adjoining wetlands and waterways require hydrological evidence, not simply a line drawn around the development lot. The developer's claim that a 500 metre corridor is uneconomic is material to planning discretion and feasible design alternatives; it does not displace a statutory prohibition where a significant protected impact is established. Conversely, the councillor's preferred number is not legally binding without evidence, a planning condition or an applicable planning control. The developer should commission a corridor analysis comparing widths, road crossings, fencing, revegetation, water quality, setbacks and enforceable monitoring. A defensible condition must relate to the statutory planning or approval power and its purpose. The association should identify the precise

decision challenged, timing, statutory grounds and standing rather than assume that conservation concern alone confers a veto. Environmental features unable to litigate for themselves make Stone's argument powerful, but legal remedies still arise from enacted law.

CONNECTED AUTHORITIES — FACTS, HOLDING, SIGNIFICANCE AND APPLICATION

I use the following authorities to test the legal elements against the actual facts. The critical distinction is what a court decided, what the operative statute requires, and how the evidentiary record supports a conclusion. The blue source title opens the original judgment, statute or primary resource.

[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.

STRONGEST COUNTERARGUMENT

The developer can argue the housing need, prior planning approvals, mitigations and absence of a demonstrated *significant* impact. The association can answer that the corridor may be functionally severed despite being left physically visible, and that the threat to habitat is evidenced by the ecological material. Neither side should pretend that the available newspaper report proves the present listing or approval status.

CONCLUSION

I would not advise that the development is either lawful or prohibited on the newspaper facts alone. I would require a verified listing and impact assessment, then determine the State consent pathway and whether EPBC referral is required. A negotiated, evidenced buffer and conditions may resolve the issue; approval without material ecological assessment is legally vulnerable.

CLIENT OUTCOME, REMEDIES AND NEXT STEPS

For the developer: suspend irreversible clearing pending advice, document ecological studies, disclose impact pathways and negotiate enforceable conditions. For the association: make evidence-based submissions and consider State judicial review or a statutory appeal if available; an EPBC s 475 injunction only where a relevant contravention is threatened. Judicial review generally addresses legal error, not a court substituting its preferred corridor width. Criminal penalties, civil penalties and restoration

orders depend on actual statutory contraventions; compensation to neighbours is not an automatic environmental-law remedy.

AUTHORITIES / PINPOINT CHECKLIST: EPBC Act ss 18, 18A, 20, 68, 75, 82, 87, 475, 523–524A; Environmental Planning and Assessment Act 1979 (NSW); Biodiversity Conservation Act 2016 (NSW); *Sierra Club v Morton* 405 US 727 (1972); *Stone* (1972) 45 *Southern California Law Review* 450; Cobaki Lakes “Wildlife fight taken to top” course article.

CHAPTER 1 | ENVIRONMENTAL VALUES, DEFINITIONS AND ETHICS

IRAC PROBLEMS • WEEK 1

IRAC PROBLEM 2 — The legless lizard: supermarket, hospital and affordable housing

Week 1 – anthropocentrism, biocentrism, ecocentrism and professional reasoning

EXAM QUESTION — FACTS

A regional Queensland town has no supermarket or hospital within 180 kilometres. A proposed supermarket would permanently destroy the only Queensland breeding ground of an endangered legless lizard. No suitable alternative site or effective translocation is available. The same site is then proposed for a hospital, affordable housing and, in a final variant, habitat for koalas rather than lizards. The tutorial asks first for an *ethical* decision assuming there is no environmental law. State your approach and then explain how the analysis would change under real law.

EXAM TASK: Advise all relevant parties. Identify each issue and sub-issue, statutory provision, case and authority; apply every significant fact; address the counterargument; explain remedies and give a strong client-specific conclusion.

IRAC 2 — FULL WORD-FOR-WORD MODEL ANSWER

ISSUE

The primary issue in the tutorial is ethical: how should a decision-maker weigh essential human needs against irreversible biodiversity loss when no legal rule is assumed? The separate legal issue is what changes if a listed threatened species, environmental assessment, planning laws and Ministerial duties do apply.

RULE — EXACT LAW AND AUTHORITIES

Anthropocentrism values environmental protection partly through human wellbeing; biocentrism recognises the moral significance of individual living things; ecocentrism recognises ecosystems and biodiversity as valuable in themselves. Sustainable development integrates social, economic and ecological needs. The [EPBC Act](#) s 3 states objects, s 3A addresses principles of ecologically sustainable development, and ss 18–18A protect relevant listed threatened species. Sections 68 and 75 establish referral and controlled-action processes; ss 130, 133 and 136 concern approval, the power to approve and mandatory decision considerations, including s 136(1)(a) protected matters and s 136(1)(b) economic and social matters. Section 391(1)–(3) requires attention to the precautionary principle for prescribed decisions; s 391(2) defines it. [Leatch v National Parks and Wildlife Service](#) [1993] NSWLEC 191; (1993) 81 LGERA 270 illustrates attention to scientific uncertainty and threatened frog habitat under its applicable NSW law. [The Crown v Murphy](#) [1990] HCA 42; (1990) 64 ALJR 593 is relevant to the historically broader meaning of 'environment' in the Mon Repos context, not authority that ethics override legislation.

APPLICATION — FACTS, LAW AND JUDICIAL REASONING

On the expressly law-free ethical question, I would begin with the seriousness and irreversibility of extinguishing a unique breeding population. The community's grocery costs are real and severe, yet the evidence says the supermarket would wipe out the only Queensland breeding ground and that relocation would fail. My starting position is to refuse the supermarket as proposed. I would investigate other delivery options, distributed retail, transport subsidies and altered building footprints before choosing irreversible extinction for convenience. A hospital changes the proportionality: emergency treatment can prevent imminent loss of human life, so the human-interest case is substantially stronger. I might support a hospital only after requiring proof there is genuinely no reasonable alternative and openly explaining the moral cost; it is not an automatic approval. Affordable housing is also important, but its alternatives, timing and beneficiaries require scrutiny. The koala variant should not produce a legal or ethical result simply because koalas are more familiar: consistency requires attention to rarity, extinction risk and ecological function, not popularity. Under real law I would verify the species' actual Commonwealth listing and assess local State planning and nature-conservation requirements; it would be wrong to promise that a Minister can waive s 18

because the town needs groceries. At the later approval stage s 136 does permit socio-economic consideration within statutory boundaries.

CONNECTED AUTHORITIES — FACTS, HOLDING, SIGNIFICANCE AND APPLICATION

I use the following authorities to test the legal elements against the actual facts. The critical distinction is what a court decided, what the operative statute requires, and how the evidentiary record supports a conclusion. The blue source title opens the original judgment, statute or primary resource.

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.

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.

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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.

STRONGEST COUNTERARGUMENT

An anthropocentric perspective may reasonably give decisive weight to the town's access to food, housing or emergency medicine. A biocentric or ecocentric perspective places greater weight on irreversible biodiversity harm. My answer must disclose this choice, rather than dress an ethical preference as a universal legal rule.

CONCLUSION

Ethically I would reject the supermarket on the stated facts, examine a hospital as a genuinely exceptional competing need, and insist on alternatives for housing. I would not change principle merely because the species became a koala. Legally, the protected status, significant impacts and applicable statutory decision framework must be analysed separately from the ethical position.

CLIENT OUTCOME, REMEDIES AND NEXT STEPS

I would advise a developer to obtain independent ecological evidence, examine redesign and alternatives, and engage the community before committing capital. A public authority should give intelligible reasons. Under real legislation, an unapproved controlled action can invite injunctions under EPBC s 475, remediation and potentially civil or criminal consequences; damages for community inconvenience do not arise automatically. The best outcome is avoidance of serious loss before remedies are needed.

AUTHORITIES / PINPOINT CHECKLIST: EPBC Act ss 3, 3A, 18, 18A, 68, 75, 130, 133, 136(1)(a)–(b), 391(1)–(3), 475; Leatch [1993] NSWLEC 191; The Crown v Murphy [1990] HCA 42; Week 1 “Held to ransom” article and scenario questions.

CHAPTER 2 | CONSTITUTIONAL AND REGULATORY RESPONSIBILITIES

IRAC PROBLEMS • WEEK 2

IRAC PROBLEM 3 — A nuclear reactor and medical-waste facility proposed in Queensland

Week 2 – constitutional powers, Queensland prohibition and Commonwealth action

EXAM QUESTION — FACTS

NuEnergy Management Ltd negotiates a \$95 million public-private partnership with the Commonwealth. The Commonwealth proposes in Queensland (1) a nuclear reactor generating electricity and (2) a separate facility storing radioactive waste from medical uses. The Queensland Government says its [Nuclear Facilities Prohibition Act 2007](#) prohibits both. Advise the Commonwealth, the company and Queensland.

EXAM TASK: Advise all relevant parties. Identify each issue and sub-issue, statutory provision, case and authority; apply every significant fact; address the counterargument; explain remedies and give a strong client-specific conclusion.

IRAC 3 — FULL WORD-FOR-WORD MODEL ANSWER

ISSUE

The issues are the meaning of “nuclear facility”, the different statutory treatment of the reactor and medical-waste storage, the State Act's reach to the Commonwealth, [constitutional](#) inconsistency and any distinct federal environmental-approval obligation.

RULE — EXACT LAW AND AUTHORITIES

The [Nuclear Facilities Prohibition Act 2007](#) (Qld) s 3 states the protective purpose. Section 4(1) binds persons including the Commonwealth only so far as State legislative power permits. Section 7(1) prohibits construction or operation of a defined nuclear facility, subject to s 7(2)(a) for storage or disposal of radioactive waste arising from research or medical use, s 7(2)(b) for other purposes authorised under the *Radiation Safety Act 1999* (Qld), and s 7(2)(c) for nuclear-powered vessels. Section 8 prevents a development approval or mining tenement being treated as permission for a prohibited nuclear facility. The Dictionary in the Schedule includes a reactor in the relevant definition. Commonwealth legislative power must have a head of power, and [Constitution](#) s 109 resolves inconsistency where a valid federal law and valid State law cannot operate together; it does not make a Commonwealth policy announcement or private contract prevail over a State Act. [Constitution](#) ss 51(xx), 51(xxix), 52(i) and 109 may be relevant depending on the legislation and facts. Commonwealth action may engage EPBC s 28, while nuclear actions engage ss 21–22A; EPBC s 68 requires referral where the statutory trigger is met.

APPLICATION — FACTS, LAW AND JUDICIAL REASONING

The proposed electricity reactor falls squarely within the nuclear-facility definition. It does not fit the medical-waste exception merely because a related PPP also deals with hospital waste. On the State provisions alone, s 7(1) is a serious prohibition. The distinct storage facility is treated differently: if the actual use is storage or disposal of radioactive waste *resulting from medical purposes*, s 7(2)(a) disappplies the s 7(1) prohibition. I would verify design, waste source and licensing rather than assume every radioactive-waste operation is exempt. For the Commonwealth I would read s 4(1) literally: it expressly recognises limits of Queensland's [constitutional](#) power. But I would not conclude that s 109 eliminates s 7 merely because Canberra supports the project. I would identify an enacted, operative and inconsistent Commonwealth provision or other [constitutional](#) immunity; a funding agreement is not enough. Nor would approval under the [EPBC Act](#) itself necessarily override State laws, given the EPBC legislative scheme and express federal-State coexistence. A nuclear action raises independent federal obligations under ss 21 and 22, which can depend on its nature and environmental impacts. A reactor and waste facility should not be merged into one answer simply because the same company operates both.

CONNECTED AUTHORITIES — FACTS, HOLDING, SIGNIFICANCE AND APPLICATION

I use the following authorities to test the legal elements against the actual facts. The critical distinction is what a court decided, what the operative statute requires, and how the evidentiary record supports a conclusion. The blue source title opens the original judgment, statute or primary resource.

[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](#).

[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.

STRONGEST COUNTERARGUMENT

Queensland will say its health-and-safety law applies generally and no demonstrated federal inconsistency exists. The Commonwealth can argue that a specific valid federal authorisation or immunity limits its operation, but must identify the precise legal instrument and inconsistency. The company might rely on the medical-waste exception for the second facility only.

CONCLUSION

The reactor is presumptively prohibited by Queensland s 7(1), subject to a demonstrated superior Commonwealth legal position; the medical-waste storage facility may fall within s 7(2)(a), but remains subject to other applicable law and licensing. The two projects require separate analysis and federal environmental screening.

CLIENT OUTCOME, REMEDIES AND NEXT STEPS

I would not recommend committing the \$95 million or beginning construction until [constitutional](#) advice, Queensland licensing and federal EPBC pathways are mapped. Unlawful construction may attract Queensland penalties, restraining orders and restoration obligations where the relevant Act permits them; EPBC contraventions may trigger s 475 injunctions, civil penalties or prosecution depending on the provision breached. A court declaration about inconsistency is preferable to acting on political assumptions.

AUTHORITIES / PINPOINT CHECKLIST: Nuclear Facilities Prohibition Act 2007 (Qld) ss 3, 4(1), 7(1)–(2), 8, sch Dictionary; Radiation Safety Act 1999 (Qld); Constitution ss 51, 52(i), 109; EPBC Act ss 21, 22, 22A, 28, 68, 75, 475.

CHAPTER 2 | CONSTITUTIONAL AND REGULATORY RESPONSIBILITIES

IRAC PROBLEMS • WEEK 2

IRAC PROBLEM 4 — Former Melbourne courthouse: Commonwealth heritage and three levels of government

Week 2 – federal-State-local powers and heritage development

EXAM QUESTION — FACTS

JurisPrudent Pty Ltd purchases a former courthouse at 450 Little Bourke Street, Melbourne, proposing to retain the street façade and construct an eight-storey serviced-apartment building behind it. An objector claims the building's heritage status automatically blocks redevelopment under federal environmental law. Advise the company.

EXAM TASK: Advise all relevant parties. Identify each issue and sub-issue, statutory provision, case and authority; apply every significant fact; address the counterargument; explain remedies and give a strong client-specific conclusion.

IRAC 4 — FULL WORD-FOR-WORD MODEL ANSWER

ISSUE

The first issue is *which list* (if any) legally protects the building: a State heritage register, local planning overlay, National Heritage List, Commonwealth Heritage List, or World Heritage List. The second is whether the proposed works have a significant protected impact and whether the company itself or an agency is bound by the relevant EPBC controlling provision.

RULE — EXACT LAW AND AUTHORITIES

[Constitution](#) ss 107–108 preserve State law-making responsibilities subject to the [Constitution](#); s 51(xx) supports Commonwealth corporations legislation, s 51(xxix) external affairs, s 52(i) Commonwealth places and s 109 resolves genuine inconsistency. The *Planning and Environment Act 1987* (Vic) governs applicable planning schemes and permit requirements, alongside the *Heritage Act 2017* (Vic) where a State listing applies. The [EPBC Act](#) distinguishes World Heritage ss 12 and 15A; National Heritage ss 15B–15C; and Commonwealth Heritage overseas ss 27B–27C, plus Commonwealth land or action under ss 26–28 where relevant. Section 523 defines an action; ss 68 and 75 provide the referral and screening pathway; significance requires actual impacts on protected heritage values, not a label on a map. [Commonwealth v Tasmania](#) (1983) 158 CLR 1 explains Commonwealth use of external affairs for World Heritage protection; [Murphyores Inc Pty Ltd v Commonwealth](#) (1976) 136 CLR 1 demonstrates that valid Commonwealth legislative power need not be exercised solely for an overtly trade-related environmental purpose.

APPLICATION — FACTS, LAW AND JUDICIAL REASONING

My first instruction is to obtain the Victorian Heritage Register and local planning-scheme extracts, the relevant statutory maps, title, historical significance statement and any entry on a Commonwealth list. The tutorial's photograph and description do not conclusively establish National or World Heritage status. If it is only locally or State listed, that status does not by itself create a Commonwealth MNES. If National Heritage values are legally listed, I must identify exactly which façade, internal fabric, setting, streetscape or archaeological elements give the place its protected significance. Retaining the front two storeys may reduce an impact but an eight-storey addition can affect setting, views or structural integrity. I would commission a heritage impact statement and consider height reductions, a separated rear form and reversible interventions. There is no automatic federal veto: the threshold and the statutory actor nexus require analysis. Planning conditions may govern material, height, sightlines and conservation works. The fact a company is involved is relevant to a [constitutionally](#) supported provision, but being a corporation does not automatically make every heritage project a controlled action.

CONNECTED AUTHORITIES — FACTS, HOLDING, SIGNIFICANCE AND APPLICATION

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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.

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.

STRONGEST COUNTERARGUMENT

The objector may point to heritage values extending beyond original stonework into scale and context. The developer can argue adaptive reuse preserves heritage and offers substantial public benefit. Both arguments should be tested against the actual statutory listing criteria and expert conservation evidence.

CONCLUSION

I cannot advise that the [EPBC Act](#) applies simply because the building is old or once housed a court. The correct advice is to verify its listing, protected values, physical impacts and the actor-specific statutory trigger, then secure the State/local permits and any necessary EPBC decision.

CLIENT OUTCOME, REMEDIES AND NEXT STEPS

For JurisPrudent: obtain a written approvals matrix and conservation strategy before tendering; for the objector: use available State consultation and review procedures, and any EPBC route only if a Commonwealth trigger exists. Remedies may include refusal, enforceable conservation conditions, judicial review of legal error, injunctions for actual breaches and compliance orders; a general financial compensation entitlement is not created by heritage concern alone.

AUTHORITIES / PINPOINT CHECKLIST: Constitution ss 51(xx), 51(xxix), 52(i), 107–109; EPBC Act ss 12, 15A, 15B–15C, 26–28, 68, 75, 523; Planning and Environment Act 1987 (Vic); Heritage Act 2017 (Vic); Commonwealth v Tasmania (1983) 158 CLR 1; Murphyores (1976) 136 CLR 1.

CHAPTER 3 | INTERNATIONAL ENVIRONMENTAL LAW AND ESD

IRAC PROBLEMS • WEEK 3

IRAC PROBLEM 5 — Baia Mare cyanide spill: pollution crossing national borders

Week 3 – sovereignty, transboundary harm, international obligations and remedies

EXAM QUESTION — FACTS

A Romanian gold-processing joint venture, part-owned by an Australian company, operates a cyanide-tailings dam. Heavy rainfall overwhelms the system and contaminated water crosses into Hungary, harming fish, water supplies and businesses. The operator calls it an accident and says there is no bilateral compensation treaty. Advise affected Hungarian interests and the operator.

EXAM TASK: Advise all relevant parties. Identify each issue and sub-issue, statutory provision, case and authority; apply every significant fact; address the counterargument; explain remedies and give a strong client-specific conclusion.

IRAC 5 — FULL WORD-FOR-WORD MODEL ANSWER

ISSUE

The questions are which country and courts have jurisdiction, what domestic and international duties apply, whether the absence of a treaty defeats liability, how causation and environmental damage are proved, and what compensation or preventive orders could follow.

RULE — EXACT LAW AND AUTHORITIES

States exercise territorial sovereignty but must exercise due diligence to avoid significant transboundary environmental harm. [Trail Smelter Arbitration](#) (United States v Canada) (1938, 1941) is a classic articulation of preventing serious, evidenced cross-border harm; it is not itself a universal damages statute. The *Corfu Channel* case (UK v Albania) (Merits) [1949] ICJ Rep 4 is relevant to State knowledge and obligations concerning harm, subject to its facts. In [Pulp Mills on the River Uruguay](#) (Argentina v Uruguay) [2010] ICJ Rep 14 the ICJ recognised the need for environmental impact assessment when there is a risk of significant transboundary adverse impact, while applying the particular treaty and procedural setting. Stockholm Declaration principle 21 and [Rio Declaration](#) principle 2 express the no-harm principle; Rio principle 17 addresses EIA, and principle 15 addresses precaution. These declarations are not standalone private compensation legislation. Private claims must identify the forum, governing domestic law, jurisdiction, recognition/enforcement, causation and remedies. The [Convention on Biological Diversity](#) 1992 arts 3, 8 and 14 supplies international context; States' treaty commitments do not automatically confer a private tort against the company.

APPLICATION — FACTS, LAW AND JUDICIAL REASONING

The dam's claimed 'zero discharge' design is legally relevant because it lacked a safe overflow mechanism despite foreseeable heavy rain. I would request rainfall and operating records, design specifications, risk registers, warnings, contemporaneous contaminant samples, fish mortality data and downstream economic loss evidence. A proper EIA should have addressed a possible failure and transboundary pathway before production, especially where water bodies connect across the border. The Romanian location of the facility points strongly to Romanian regulatory and civil law, while damage and some affected parties are in Hungary. I would consider jurisdictional and conflict-of-laws rules, the residence and assets of each defendant and whether any EU legislation or bilateral instruments applied at the historical date. The Australian shareholding by itself does not make the Australian [EPBC Act](#) govern a Romanian discharge. There is a distinction between Romania's possible international responsibility for regulatory failures, the company's civil liability under applicable domestic law, and criminal liability if a specific penal offence and fault elements are proved. The lack of one compensation treaty does not logically extinguish all other causes of action.

CONNECTED AUTHORITIES — FACTS, HOLDING, SIGNIFICANCE AND APPLICATION

I use the following authorities to test the legal elements against the actual facts. The critical distinction is what a court decided, what the operative statute requires, and how the evidentiary record supports a conclusion. The blue source title opens the original judgment, statute or primary resource.

[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.

STRONGEST COUNTERARGUMENT

The operator may argue exceptional rainfall, no foreseeability, an intervening cause and disputed downstream causation. Claimants answer that an impoundment near a transboundary waterway must be designed for predictable extreme events and that 'accident' is not a defence if the standard of care was breached. The evidence will decide.

CONCLUSION

I would advise a credible transboundary claim is arguable, but the court and legal basis cannot be chosen by simply citing the [Rio Declaration](#). The case turns on forum, applicable domestic duties, proof of breach, causation and actual harm, informed by international due-diligence principles.

CLIENT OUTCOME, REMEDIES AND NEXT STEPS

For affected communities: secure evidence immediately, assess claims for cleanup costs, property loss and provable economic damage under the relevant law, seek urgent preventive relief where available and use inter-State diplomatic mechanisms where necessary. For the operator: stop discharge, notify authorities, fund emergency mitigation, preserve documents and commission an independent root-cause inquiry. International responsibility and domestic damages are separate remedies; penalties and criminal prosecutions need specific laws and elements.

AUTHORITIES / PINPOINT CHECKLIST: Trail Smelter (US v Canada) (1938/1941); Pulp Mills (Argentina v Uruguay) [2010] ICJ Rep 14; Rio Declaration principles 2, 15, 17; Stockholm Declaration principle 21; CBD arts 3, 8, 14; Week 3 Baia Mare / Aurul–Esmeralda case-study slides.

CHAPTER 3 | INTERNATIONAL ENVIRONMENTAL LAW AND ESD

IRAC PROBLEMS • WEEK 3

IRAC PROBLEM 6 — Whaling in the Australian Whale Sanctuary and the international court

Week 3 – treaties, EPBC enforcement, extraterritoriality and jurisdiction

EXAM QUESTION — FACTS

An environmental organisation identifies Japanese vessels taking whales in a declared Australian Whale Sanctuary in Antarctic waters. The operator claims scientific research authorisation from Japan. A second dispute concerns Australia's challenge to Japan's Antarctic whaling program before the International Court of Justice. Explain the different legal actions, governing law, likely results and enforcement limits.

EXAM TASK: Advise all relevant parties. Identify each issue and sub-issue, statutory provision, case and authority; apply every significant fact; address the counterargument; explain remedies and give a strong client-specific conclusion.

IRAC 6 — FULL WORD-FOR-WORD MODEL ANSWER

ISSUE

The issues are (1) the possible application of Australian legislation to foreign whaling in the declared sanctuary; (2) standing and federal injunctions; (3) whether an international whaling convention research permission meets its legal requirements; and (4) the distinction between a domestic court order against a company and an ICJ ruling between States.

RULE — EXACT LAW AND AUTHORITIES

Under the [EPBC Act](#), Part 13 contains provisions protecting cetaceans and regulating activities in the Australian Whale Sanctuary; the exact operative offence and permit provisions must be identified for the particular year and location of the action. [Humane Society International Inc v Kyodo Senpaku Kaisha Ltd](#) [2008] FCA 3 granted injunctive relief under Australia's EPBC regime for whaling in the sanctuary; its practical enforcement depended on access to the foreign defendant. The *International Convention for the Regulation of Whaling* 1946 and its art VIII scientific permits arose in [Whaling in the Antarctic](#) (*Australia v Japan: New Zealand intervening*) [2014] ICJ Rep 226. The ICJ assessed whether JAPRA II whaling was 'for purposes of scientific research' within the treaty, examining program design and implementation rather than accepting the word 'science' at face value. Treaties normally bind States internationally and are not necessarily self-executing domestic causes of action. [Constitution](#) s 51(xxix) can support implementing legislation, as [Commonwealth v Tasmania](#) (1983) 158 CLR 1 illustrates.

APPLICATION — FACTS, LAW AND JUDICIAL REASONING

I would first obtain GPS positions, whale species and numbers, vessel identity, sanctuary boundaries, permits and admissible imagery. Without the location and dates I cannot establish that the EPBC sanctuary regime applies. If a prohibited taking occurred in the relevant waters, the EPBC offence and injunctive framework must be considered, together with procedural standing. *Kyodo* shows that a domestic federal injunction can be legally available even where enforcement against a foreign company is practically difficult; it is not a declaration that Australia can board and enforce anywhere in the Southern Ocean. The international case is different: Australia proceeded against Japan as a State for compliance with the whaling convention. I would examine the stated scientific objectives, the lethal sampling scale, non-lethal alternatives, selection of sample sizes and published outputs. [Whaling in the Antarctic](#) confirms that the treaty exception requires substantive objective examination. If the company says a Japanese permit resolves every Australian issue, I would ask what treaty permission does under international law and whether it removes the specific Australian statutory prohibition. One cannot simply assume equivalence.

CONNECTED AUTHORITIES — FACTS, HOLDING, SIGNIFICANCE AND APPLICATION

I use the following authorities to test the legal elements against the actual facts. The critical distinction is what a court decided, what the operative statute requires, and how the evidentiary record supports a conclusion. The blue source title opens the original judgment, statute or primary resource.

[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.

STRONGEST COUNTERARGUMENT

The operator may argue international jurisdictional disputes, research purposes and difficulty enforcing Australian orders. Australia or the organisation can respond with the statutory sanctuary definition, the identified offence and the ICJ's objective approach to research claims. Legal merits and enforceability are distinct questions.

CONCLUSION

A domestic injunction and an ICJ declaration may both be relevant, but they operate against different defendants under different laws. I would not treat the ICJ ruling as direct compensation to an Australian environmental group or a domestic injunction as automatic international enforcement.

CLIENT OUTCOME, REMEDIES AND NEXT STEPS

For the organisation: collect reliable evidence, identify standing and seek prohibitory EPBC relief if an offence or contravention is established. For government: consider diplomatic and treaty enforcement measures consistent with international law. Potential criminal or civil consequences attach only to provable statutory offences or penalties, and damages are not the ordinary remedy simply because whales were harmed.

AUTHORITIES / PINPOINT CHECKLIST: EPBC Act Part 13 cetacean/Whale Sanctuary framework and s 475 (check operative offence at action date); Humane Society International v Kyodo [2008] FCA 3; International Convention for the Regulation of Whaling 1946 art VIII; Whaling in the Antarctic [2014] ICJ Rep 226; Constitution s 51(xxix); Commonwealth v Tasmania (1983) 158 CLR 1.

CHAPTER 4 | ENVIRONMENTAL IMPACT ASSESSMENT AND REFERRAL

IRAC PROBLEMS • WEEK 4

IRAC PROBLEM 7 — Anvil Hill coal mine: downstream emissions and an inadequate EIA

Week 4 – EIA purpose, ESD, indirect impacts and judicial review

EXAM QUESTION — FACTS

A mining company proposes an open-cut mine supplying coal to domestic and overseas power stations for 21 years. Its environmental assessment calculates diesel and on-site emissions but excludes greenhouse gases from later combustion of the coal. The Director-General accepts the assessment for public exhibition. A community member challenges the decision, arguing cumulative climate impacts and principles of ecologically sustainable development were ignored. Advise the parties.

EXAM TASK: Advise all relevant parties. Identify each issue and sub-issue, statutory provision, case and authority; apply every significant fact; address the counterargument; explain remedies and give a strong client-specific conclusion.

IRAC 7 — FULL WORD-FOR-WORD MODEL ANSWER

ISSUE

The issues are whether the assessment met the particular requirements set under the applicable NSW statutory scheme; whether the statutory objects and ESD principles are legally relevant; whether downstream emissions must be assessed where there is sufficient connection; and what a court may order on judicial review.

RULE — EXACT LAW AND AUTHORITIES

[Gray v Minister for Planning](#) [2006] NSWLEC 720; (2006) 152 LGERA 258 arose under the then applicable *Environmental Planning and Assessment Act 1979* (NSW), Part 3A and the Director-General's assessment requirements. Pain J held that the discretion to accept the assessment had to be exercised consistently with statutory objectives including ESD, and that the downstream greenhouse emissions from coal combustion could not simply be excluded when a detailed emissions assessment had been required and causation was sufficiently clear. *Minister for the Environment and Heritage v Queensland Conservation Council Inc* [2004] FCAFC 190 (the [Nathan Dam](#) case) likewise teaches under the [EPBC Act](#) that relevant impacts can extend to indirect consequences of third-party actions in reasonable contemplation. EPBC s 3A codifies ESD principles for the Commonwealth regime, while ss 75 and 82 concern relevant impacts and ss 87 and 130–136 the further Commonwealth pathway. These statutes are distinct: *Gray* is not a free-standing rule that every development in every jurisdiction automatically requires a complete global emissions inventory.

APPLICATION — FACTS, LAW AND JUDICIAL REASONING

The proposal's entire commercial logic is extraction and sale of coal for electricity generation. The power stations' emissions are not an unexpected, collateral possibility: combustion is the anticipated use of the product. The very long mine life makes the cumulative effects material, and the assessment request expressly called for detailed greenhouse analysis. The Director-General should therefore have asked whether omitting Scope 3 combustion emissions meant the assessment failed a material legal requirement. The company can quantify reasonably foreseeable emissions using production volumes, coal carbon content and indicative burn assumptions, stating uncertainties and avoiding false precision. The objector's case is stronger than a bare complaint that climate change is bad: it identifies the exact decision, the statutory decision framework, the omitted impact and the way the omission undermines informed assessment. The Minister's later ultimate approval discretion is not being decided by the reviewing court. A company that supplements the assessment and addresses public submissions may cure a process problem without the court dictating rejection of the mine.

CONNECTED AUTHORITIES — FACTS, HOLDING, SIGNIFICANCE AND APPLICATION

I use the following authorities to test the legal elements against the actual facts. The critical distinction is what a court decided, what the operative statute requires, and how the evidentiary record supports a conclusion. The blue source title opens the original judgment, statute or primary resource.

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'.

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.

STRONGEST COUNTERARGUMENT

The developer can argue emissions arise from future, independent third parties, often overseas, and mitigation policy properly belongs to governments regulating combustion. But where downstream use is the project purpose and the statutory assessment scope demands emissions analysis, separation of ownership does not necessarily break the relevant causal link. The objector still must prove legal error, not merely assert a better environmental policy.

CONCLUSION

On these facts the assessment acceptance is vulnerable because a central and sufficiently foreseeable environmental effect was excluded contrary to the assessment requirements and proper consideration of ESD. That is the *Gray* reasoning; it should be applied through the specific law governing the current application.

CLIENT OUTCOME, REMEDIES AND NEXT STEPS

For the company: amend assessment methodology and transparently assess direct and downstream impacts. For the objector: seek declaratory relief and, if appropriate, an order quashing the defective administrative decision with remittal for lawful consideration. Judicial review ordinarily does not award climate damages or require a court to approve/refuse the mine itself. Any statutory civil penalty or offence would need a separate pleaded contravention.

AUTHORITIES / PINPOINT CHECKLIST: *Gray v Minister for Planning* [2006] NSWLEC 720; EP&A Act 1979 (NSW) then Part 3A and assessment requirements; EPBC Act ss 3A, 75, 82, 87, 130–136; *Nathan Dam* [2004] FCAFC 190; Week 4 Anvil Hill EIA slides.

CHAPTER 4 | ENVIRONMENTAL IMPACT ASSESSMENT AND REFERRAL

IRAC PROBLEMS • WEEK 4

IRAC PROBLEM 8 — RUD resort, access road, connector road and Pristine Creek dam

Week 4 – referral, action, indirect impact, split actions and significant impacts

EXAM QUESTION — FACTS

Resorts United Development (RUD) plans a 900-guest resort near the Gondwana Rainforests World Heritage property and a nine-kilometre access road. Queensland proposes a connector road cutting through the World Heritage property, while Gold Coast City Council plans to dam Pristine Creek to irrigate farms supplying the resort. A migratory whimbrel uses connected waters; a threatened tree may be cleared; an unlisted tube-nosed bat supports rainforest ecological processes; and an Oxleyan pygmy perch population would lose shallow breeding habitat. Queensland offers RUD a \$10 million funding grant. Advise RUD on its EPBC referral.

EXAM TASK: Advise all relevant parties. Identify each issue and sub-issue, statutory provision, case and authority; apply every significant fact; address the counterargument; explain remedies and give a strong client-specific conclusion.

IRAC 8 — FULL WORD-FOR-WORD MODEL ANSWER

ISSUE

I must separate each *actor and action*; identify each protected matter and likely impact; decide how indirect and cumulative effects connect the works; address s 74A larger actions and false/misleading referrals; and distinguish a grant from physical works.

RULE — EXACT LAW AND AUTHORITIES

EPBC s 523 defines actions and distinguishes a project from some government decisions, while ss 524–524A provide exclusions/qualification. Sections 12 and 15A protect World Heritage property; ss 18–18A listed threatened species; ss 20–20A migratory species. Sections 68 and 75 govern referral and the controlled-action decision; s 82 concerns relevant impacts; s 74A concerns referrals of components of larger actions; s 74AA concerns certain premature works after referral. *Minister for Environment and Heritage v Queensland Conservation Council Inc* [2004] FCAFC 190 ([Nathan Dam](#)) requires attention to foreseeable indirect consequences, including third-party conduct, where reasonably within contemplation. *Mees v Roads Corporation* [2003] FCA 306 illustrates the importance of the identity and scope of the action and supporting information. The EPBC Significant Impact Guidelines 1.1 provide indicators, not a legal replacement for s 75. Section 489 addresses false or misleading information in specified circumstances; its precise offence elements must be proved before alleging a crime.

APPLICATION — FACTS, LAW AND JUDICIAL REASONING

RUD's construction of the resort and its nine-kilometre road are physical actions. The State's connector road and Council's dam are separately proposed actions by different proponents; RUD cannot simply file a referral as though it itself constructs them. Equally, it cannot omit their foreseeable consequences when describing its own development. The connector road exists to make the resort accessible and the dam follows a public commitment that the resort will purchase local crops. I would identify their timing, commercial dependence and causation to decide what indirect impacts may flow from the resort action under [Nathan Dam](#). The grant is a funding decision, not necessarily the physical action creating the impact. The proposed clearing within Gondwana plainly raises s 12, and possible downstream effects or loss of a bat performing a function integral to World Heritage values also require s 12 analysis even when the resort footprint sits outside the listing boundary. I would check the actual EPBC status of the tree, whimbrel and fish using SPRAT; a species' State listing alone does not prove it is federally listed. For the dam I would model water volume, flow velocity, pesticide concentration and breeding ecology. I would brief ecologists against the Significant Impact Guidelines and disclose uncertain links honestly. Section 74A is important if RUD tried to describe an integrated resort as a series of artificially small components. Under s 75 the issue is significant adverse protected impacts, not how much tourism income or

employment the project promises; those benefits become relevant later in approval under s 136.

CONNECTED AUTHORITIES — FACTS, HOLDING, SIGNIFICANCE AND APPLICATION

I use the following authorities to test the legal elements against the actual facts. The critical distinction is what a court decided, what the operative statute requires, and how the evidentiary record supports a conclusion. The blue source title opens the original judgment, statute or primary resource.

[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.

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.

STRONGEST COUNTERARGUMENT

RUD can argue independent public decision-makers, ecological safeguards and uncertain significance. The regulator can answer that reasonably foreseeable dependencies and downstream effects must be considered even where another actor does the work. A separate proponent may need its own referral and should not be forced falsely into RUD's applicant details.

CONCLUSION

I would advise RUD to refer its resort and access road on a complete factual basis, clearly disclose the State connector road and Council dam, identify each potential protected matter and obtain scientific evidence before irreversible work. The State and Council should separately address their own referral obligations.

CLIENT OUTCOME, REMEDIES AND NEXT STEPS

Prepare an actor/action/impact matrix, map World Heritage connections, obtain surveys and water modelling, and arrange coordinated factual disclosure. Do not start prohibited works during the referral period: check s 74AA and any operative exception. A statutory contravention may justify an EPBC s 475 injunction, remediation or civil/criminal consequences, while omissions can raise s 489 only on its precise elements. No automatic compensation follows from the prospect of a controlled-action decision.

AUTHORITIES / PINPOINT CHECKLIST: EPBC Act ss 12, 15A, 18–18A, 20–20A, 68, 74A, 74AA, 75, 82, 136, 475, 489, 523–524A; Nathan Dam [2004] FCAFC 190; Mees v Roads Corporation [2003] FCA 306; Significant Impact Guidelines 1.1; Week 4/5 RUD tutorial.

CHAPTER 5 | ASSESSMENT, APPROVAL, CONDITIONS AND ENFORCEMENT

IRAC PROBLEMS • WEEK 5

IRAC PROBLEM 9 — RUD coordinated project: bilateral assessment, precaution and the pygmy perch

Week 5 – Queensland bilateral agreement, assessment adequacy and Ministerial discretion

EXAM QUESTION — FACTS

RUD seeks declaration as a coordinated project under Part 4 of the [State Development and Public Works Organisation Act 1971](#) (Qld). Politicians tell it that a Queensland environmental impact statement will avoid Commonwealth interference. Council separately proposes a creek dam affecting Oxleyan pygmy perch, relying on relocation trials on another species overseas although the long-term outcomes are unknown. The Commonwealth Minister may grant approval. Advise on assessment, precaution and judicial challenge.

EXAM TASK: Advise all relevant parties. Identify each issue and sub-issue, statutory provision, case and authority; apply every significant fact; address the counterargument; explain remedies and give a strong client-specific conclusion.

IRAC 9 — FULL WORD-FOR-WORD MODEL ANSWER

ISSUE

The issues are whether Queensland assessment extinguishes Commonwealth control; what a bilateral *assessment* agreement does; the appropriate EIA and approval considerations; and whether scientific uncertainty about relocating the pygmy perch triggers the precautionary principle and a legally reviewable error.

RULE — EXACT LAW AND AUTHORITIES

EPBC s 45 authorises bilateral agreements and s 47 recognises accredited State assessment processes; s 83 addresses the effect of assessment bilateral coverage, while the Commonwealth's Part 9 approval decision remains its own. Sections 75, 82 and 87 govern the controlled-action decision, relevant impacts and assessment methods where relevant. Sections 130 and 133 require and empower the approval decision, and s 136(1) (a)–(b) makes protected matters and social/economic considerations relevant at that *later* stage; s 136(2)(a) requires regard to ESD principles and relevant assessment materials. Section 391(1)–(3) requires attention to precaution for prescribed decisions, with s 391(2) defining lack of full scientific certainty in the face of threats of serious or irreversible harm. The Queensland coordinated-project pathway is in the [State Development and Public Works Organisation Act 1971](#) (Qld) Part 4; the relevant Queensland–Commonwealth assessment bilateral agreement and its specific coverage must be checked. [Leatch v National Parks and Wildlife Service](#) [1993] NSWLEC 191 demonstrates the problem of potentially serious species impacts amid uncertain scientific evidence, but is not authority that all activities near wildlife must automatically be refused.

APPLICATION — FACTS, LAW AND JUDICIAL REASONING

The politicians confuse assessment with approval. If RUD qualifies for the accredited Queensland EIS pathway, the State process may supply the substantive assessment information, avoiding duplication of scientific reports and public consultation. It does not cause Commonwealth protected matters to disappear, and it does not take away the federal Minister's independent s 133 approval power. I would confirm the referral is a controlled action, which controlling provisions apply, whether the Queensland EIS is within the precise current bilateral agreement, and how the assessment report is transmitted for federal decision. The pygmy perch raises a separate analytical danger: the Council's proposal would destroy shallow breeding conditions, and its proposed mitigation relies on a different species overseas before long-term success is known. That is evidence of *uncertainty*, not established safety. Section 391 does not create a prohibition in every case; it requires the decision-maker to genuinely consider the precautionary principle within the statutory framework. I would require species-specific ecological advice on translocation survival, habitat availability, cumulative water changes and feasible alternatives, and recommend against assuming that moving fish is legally adequate mitigation. Whether the perch itself is a federally listed species should be

checked independently rather than inferred from the facts. For the final approval the Minister should address s 136's protected matters, economic/social considerations and mandatory assessment record. A legally defensible approval might involve conditions and measurable monitoring, but cannot rest on an unsupported conclusion that extinction risk is negligible.

CONNECTED AUTHORITIES — FACTS, HOLDING, SIGNIFICANCE AND APPLICATION

I use the following authorities to test the legal elements against the actual facts. The critical distinction is what a court decided, what the operative statute requires, and how the evidentiary record supports a conclusion. The blue source title opens the original judgment, statute or primary resource.

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*.

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.

STRONGEST COUNTERARGUMENT

RUD will point to the expense of duplicate assessment and the jobs/tourism benefits; those support using an accredited process and consideration of social/economic matters at approval, not abandonment of Commonwealth law. The Council can invoke mitigation precedents, but must confront why results for a different species are reliable. A challenger must show a reviewable legal error such as failure to consider s 391, not simply that they prefer conservation over development.

CONCLUSION

A coordinated-project EIS may streamline evidence gathering; it does not eliminate federal approval. The perch risks demand careful application of precaution and specific scientific evidence. Any final decision remains a Commonwealth statutory decision under the [EPBC Act](#) where the action is controlled.

CLIENT OUTCOME, REMEDIES AND NEXT STEPS

For the proponent: use the bilateral process properly, commission defensible assessment work and seek clear conditions. For affected conservation interests: make detailed submissions and preserve the evidence and decision reasons. Depending on standing and grounds, judicial review may lead to an order quashing and remitting an unlawful decision; it does not itself award damages. A threatened unapproved controlled action may warrant s 475 injunctive relief and statutory enforcement.

AUTHORITIES / PINPOINT CHECKLIST: EPBC Act ss 45, 47, 68, 75, 82–83, 87, 130, 133, 136(1)–(2), 391(1)–(3), 475; State Development and Public Works Organisation Act 1971 (Qld) Part 4; current Qld–Commonwealth assessment bilateral agreement; Leatch [1993] NSWLEC 191; Week 5 RUD tutorial.

CHAPTER 5 | ASSESSMENT, APPROVAL, CONDITIONS AND ENFORCEMENT

IRAC PROBLEMS • WEEK 5

IRAC PROBLEM 10 — Approval conditions, rehabilitation bond, offsets and enforcement

Week 5 – approval conditions, legal challenge, civil and criminal consequences

EXAM QUESTION — FACTS

Following EIS assessment of the RUD resort, the Commonwealth Minister proposes conditions requiring (a) a \$10 million security bond for rehabilitation if a protected buffer is damaged, (b) a specified contribution toward habitat protection and (c) monitoring and independent environmental audits. The developer says every condition is ultra vires. A contractor then begins work within the protected buffer before the approval process is complete. Advise the developer, conservation interests and regulator.

EXAM TASK: Advise all relevant parties. Identify each issue and sub-issue, statutory provision, case and authority; apply every significant fact; address the counterargument; explain remedies and give a strong client-specific conclusion.

IRAC 10 — FULL WORD-FOR-WORD MODEL ANSWER

ISSUE

The questions are the statutory basis and limits of each condition, when consent is required for a financial contribution, obligations where contractors do the physical work, and the respective preventive, civil, criminal and review remedies.

RULE — EXACT LAW AND AUTHORITIES

EPBC ss 130 and 133 govern the approval decision; s 134 authorises conditions, subject to its subject-matter requirements. Section 134(3)(a)(i)–(iii) expressly contemplates security by bond, guarantee or cash deposit to secure compliance, avoid contravention and meet specified liability to the Commonwealth for remediation under s 499. Section 134(3)(aa) concerns specified protection/repair/mitigation activities; s 134(3)(ab) contemplates specified financial contributions supporting those activities. The separate consent conditions in s 134(3A) must be examined closely for financial contribution and other categories; a financial demand should not be treated as the same legal thing as performance security. Section 134(1A) requires an approval holder authorising others to take parts of the action to take reasonable steps about communicating and complying with conditions. Sections 142 and following address obligations attached to approvals. Section 74AA addresses defined prohibited premature action after referral. Section 475 empowers injunction applications for contraventions by eligible persons; s 480A concerns remediation orders; relevant civil penalties and offences require proof under the applicable EPBC provision. Decisions may be judicially reviewable for jurisdictional/statutory error, subject to standing, time and available federal review legislation. [Nathan Dam](#) [2004] FCAFC 190 and [Leatch](#) [1993] NSWLEC 191 guide identification of impacts and risk, but do not independently create a bond power.

APPLICATION — FACTS, LAW AND JUDICIAL REASONING

The bond is not an unexplained cash penalty: on the stated facts it secures rehabilitation if works encroach into a protected buffer. I would test its quantum and connection to compliance and repair against s 134(3)(a), including why \$10 million is reasonably justified by the work and potential remedial liability. A separate habitat contribution is different. I would identify the recipient, conservation activities, enabling limb of s 134(3)(ab), any applicable s 134(3A) consent requirement and the actual drafting; a Minister cannot evade a consent requirement by renaming a fee a bond. Monitoring and independent audits may be supported by the condition powers when adequately connected to protected impacts and carefully specified. The consultant or contractor is not immune merely because RUD holds the approval. I would verify whether *any* approval was operative and, if not, whether the premature works satisfy each element of s 74AA and any exemption or transition; a proposed condition cannot yet be breached simply because the Minister is considering it. If a final approval is issued, s 134(1A) requires the holder to take reasonable steps to inform and control persons it authorises.

Evidence will include site photographs, GPS records, contract instructions, approved buffer maps, monitoring logs and knowledge of conditions. The conservation group must identify a prospective or actual legal contravention before seeking an injunction.

CONNECTED AUTHORITIES — FACTS, HOLDING, SIGNIFICANCE AND APPLICATION

I use the following authorities to test the legal elements against the actual facts. The critical distinction is what a court decided, what the operative statute requires, and how the evidentiary record supports a conclusion. The blue source title opens the original judgment, statute or primary resource.

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'.

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.

STRONGEST COUNTERARGUMENT

RUD can challenge disproportionate bond quantum, conditions unrelated to a controlling protected matter or an attempted financial contribution lacking required consent. The Minister can respond that restoration security and objective monitoring prevent or address the precise anticipated harm. The regulator cannot rely on a generic allegation of 'environmental crime' without identifying the actus reus, applicable offence and any statutory defences.

CONCLUSION

A properly framed rehabilitation bond and proportionate audit requirements may be lawful; a financial-contribution condition must comply separately with the precise s 134(3)–(3A) requirements. Premature physical works are a distinct enforcement question and could be unlawful even before an approval condition takes effect.

CLIENT OUTCOME, REMEDIES AND NEXT STEPS

For RUD: obtain the draft conditions, challenge only genuine excess of power, negotiate evidence-based amounts and direct contractors to stop prohibited works. For the regulator: investigate s 74AA, statutory civil penalties or offences, and consider injunctive relief, remediation and compliance action. For a public-interest litigant: s 475 injunction or judicial review may be available with standing and proper grounds. Damages or compensation are not routine automatic consequences of an EPBC administrative error; remediation, declaratory relief, injunctions, penalties and prosecution serve different legal purposes.

AUTHORITIES / PINPOINT CHECKLIST: EPBC Act ss 74AA, 130, 133, 134(1A), 134(3)(a), 134(3)(aa)–(ab), 134(3A), 142, 475, 480A, 499; Nathan Dam [2004] FCAFC 190; Leatch [1993] NSWLEC 191; Week 5 EIA approval conditions and Tugun Bypass case-study slides.

PART B | 100 SHORT QUESTIONS AND MODEL ANSWERS

Twenty questions per chapter. Each answer gives an examinable proposition, controlling legislation or authority where appropriate, and practical application. Use these as fast recall prompts, then refer to Part A for a full IRAC treatment.

CHAPTER 1 | ENVIRONMENTAL VALUES, DEFINITIONS AND ETHICS

20 SHORT EXAM QUESTIONS AND ANSWERS

1.01 What is environmental law?

It is the collection of statutory, common-law and administrative rules governing activities affecting the environment. I would not reduce it to wildlife protection: pollution, urban development, heritage, water, climate, land use, environmental approvals and compliance are all relevant. The first exam task is to find the applicable statute and decision-maker.

1.02 How do anthropocentrism, biocentrism and ecocentrism differ?

Anthropocentrism emphasises human interests and welfare; biocentrism values living organisms independently; ecocentrism values ecosystems and ecological relationships. They are ethical perspectives, not self-executing statutory tests. I use them to explain why lawmakers and decision-makers may balance a hospital against irreversible habitat loss differently.

1.03 What is the difference between instrumental and intrinsic value?

Instrumental value is usefulness to people or others—for example, a wetland that reduces floods. Intrinsic value is value in itself, even if no human benefit is proved. In an answer I distinguish the ethical lens from the actual statutory protection, because not every intrinsic value has an automatic legal remedy.

1.04 Why does the definition of “environment” matter?

It determines the objects covered by the particular Act. It may encompass air, land, water, living organisms, built heritage, amenity and social surroundings. I start with the definitions and objects clause, then identify the operative protection. The Mon Repos discussion in [The Crown v Murphy](#) [1990] HCA 42 illustrates why statutory language and context matter.

1.05 How does a lawyer interpret an environmental statute?

Identify the Act, version and commencement date; read its objects, definitions and provision in context; apply purposive interpretation; and check binding authority. At Commonwealth level use Acts Interpretation Act 1901 (Cth) s 15AA; in Queensland use Acts Interpretation Act 1954 (Qld) s 14A. Purpose does not authorise ignoring clear limits.

1.06 What are statutory objects and why do they matter?

An objects clause explains the Act's goals and helps resolve uncertain wording or guide discretions. [EPBC Act](#) s 3 states objects and s 3A specifies ESD principles. Objects do not automatically create a private damages claim; I still need to connect them to the particular power and decision under examination.

1.07 What is ecologically sustainable development (ESD)?

ESD seeks to integrate environmental protection with economic and social decisions while maintaining ecological processes for present and future generations. [EPBC Act](#) s 3A identifies principles including the integration principle, precaution and intergenerational equity. I would show *where* the decision-maker must apply them rather than repeat a slogan.

1.08 Explain the precautionary principle accurately.

[EPBC Act](#) s 391(2) says lack of full scientific certainty should not postpone preventive measures where there are threats of serious or irreversible environmental damage. Section 391(1) requires the Minister to consider it for listed decisions. It does not mean refusal is mandatory whenever science is uncertain; identify the threat, evidential uncertainty and lawful precautions.

1.09 What is intergenerational equity?

It is the recognition that current decision-making should preserve ecological health, diversity and productivity for future generations. I apply it by asking whether a short-term development destroys an irreplaceable breeding population, a wetland or a long-term climate function. EPBC s 3A and Gray [2006] NSWLEC 720 provide relevant frameworks.

1.10 What does *Sierra Club v Morton* establish?

[Sierra Club v Morton](#) 405 US 727 (1972) concerned standing in a proposed Mineral King development. The majority did not treat an organisation's concern alone as sufficient injury; Douglas J's dissent supported representing environmental objects. It is a comparative philosophical and procedural authority, not a direct test for Australian EPBC standing.

1.11 Why is Christopher Stone's article useful?

Stone, "Should Trees Have Standing?" (1972), asked why natural objects cannot hold enforceable legal rights represented by others. It helps explain the difference between human-centred protection and nature-centred legal rights. In an Australian problem I must still identify actual standing and legal causes of action, not presume an ecosystem can sue.

1.12 What lesson arises from the Cobaki Lakes newspaper case?

Separate the NSW developer, regional planning authority, adjoining councils, conservation groups, local residents and affected species. Verify protected species, corridor function and threatened impacts. A 60–70 metre versus 500 metre buffer is a question for ecological evidence and lawful conditions—not simply rhetoric. Apply NSW planning law and check whether a separate EPBC trigger exists.

1.13 Why does Mon Repos matter?

The Mon Repos turtle-rookery controversy illustrates that environmental values include ecological and scenic features and that statutory meaning should be analysed in context.

The relevant case is [The Crown v Murphy](#) [1990] HCA 42; (1990) 64 ALJR 593. Do not assert it supplies a general Commonwealth approval power over every coastal project.

1.14 What are issues and sub-issues in legal reasoning?

The issue is the legal question that determines the dispute; sub-issues are its constituent requirements. For a threatened species: identify the actor, action, species listing, likely impact, significance, exemptions, referral status and possible remedies. Listing provisions without matching each element to facts is not application.

1.15 When should scientific experts be retained?

When the legal test turns on ecology, habitat, hydrology, contamination, cumulative impact or uncertainty. Lawyers define the legal threshold and commission the facts needed to answer it; scientists supply opinions within their expertise. A PMST report or newspaper claim is a screening lead, not proof of site-specific significant impact.

1.16 Does a development need an EPBC referral simply because wildlife is nearby?

No. First verify a Commonwealth protected matter and whether the proposed action has, will have or is likely to have a significant protected impact. EPBC ss 18 and 20 identify relevant categories; ss 68 and 75 govern referral and the controlled-action decision. State wildlife protections may apply even if the Commonwealth threshold is not met.

1.17 How would I answer the legless-lizard supermarket question?

If the tutorial assumes no environmental law, it is primarily an ethical choice. I would recognise high grocery costs but place substantial weight on irreversible loss of the only Queensland breeding ground, and explore alternatives before approving. If real law applies, I must independently analyse listing, approval powers and conditions.

1.18 Why might a hospital change an ethical answer?

Because delayed emergency care may cause immediate deaths, a hospital presents a more compelling human necessity than retail convenience. That does not mean it automatically wins: I would demand proof of no feasible alternative and articulate the irreversible ecological cost. In a legal problem I then apply the governing Act rather than substitute ethics for law.

1.19 Does a rare lizard deserve less protection than a koala?

Not as a matter of principled ecological reasoning. Visibility, popularity and tourism value should not replace evidence of conservation status and ecological importance. A different legal listing could change the statutory analysis; species charisma alone should not change the ethical standard I claim to apply.

1.20 What should a strong environmental-law conclusion contain?

A clear answer about the legal trigger, the strongest factual basis, the principal uncertainty, who must act next and the actual remedy. For a developer that may mean

defer works and refer; for an objector seek submissions or judicial review; for government impose lawful conditions or investigate a breach. Avoid asserting automatic damages or crime without statutory elements.

CONNECTED CASES, STATUTES AND RESOURCES — WHY THEY MATTER

[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.

CHAPTER 2 | CONSTITUTIONAL AND REGULATORY RESPONSIBILITIES

20 SHORT EXAM QUESTIONS AND ANSWERS

2.01 Why is there no free-standing Commonwealth environment head of power?

The Commonwealth must support legislation by a head of Commonwealth legislative power. Common hooks include [Constitution](#) s 51(xxix) external affairs, s 51(xx) corporations, s 51(i) trade and commerce and s 52(i) Commonwealth places. The [EPBC Act](#) combines [constitutional](#) bases; I identify the particular hook used, rather than simply say the Commonwealth can regulate all nature.

2.02 What do Constitution ss 107 and 108 do?

They preserve the States' [constitutional](#) powers and laws subject to the [Constitution](#). Queensland retains extensive responsibility for planning, pollution, land use and many resources. That responsibility coexists with federal environmental requirements, rather than disappearing when a project affects an MNES.

2.03 Explain Constitution s 109.

Where a valid Commonwealth law and State law are inconsistent, the Commonwealth law prevails to the extent of the inconsistency. I first find two operative laws and the actual inconsistency. A Commonwealth Minister's preference, press release or contract does not itself invoke s 109. I distinguish legal inconsistency from mere policy disagreement.

2.04 Why is the Tasmanian Dam Case important?

[Commonwealth v Tasmania](#) (1983) 158 CLR 1 upheld relevant federal legislation protecting a World Heritage area through [constitutional](#) powers including the external affairs power, [Constitution](#) s 51(xxix). The case demonstrates why treaties can support federal environmental legislation despite no explicit environment head of power.

2.05 What is the lesson of *Murphyores*?

[Murphyores Inc Pty Ltd v Commonwealth](#) (1976) 136 CLR 1 recognised that a law validly supported by trade and commerce power does not become invalid merely because the government also has environmental objectives. I would identify the actual regulatory mechanism, such as export controls, rather than claim environmental purpose alone supplies [constitutional](#) validity.

2.06 What does *Cole v Whitfield* teach?

[Cole v Whitfield](#) (1988) 165 CLR 360 explains [Constitution](#) s 92 as prohibiting discriminatory burdens of a protectionist kind on interstate trade. A genuinely conservation-focused State law may be permissible if non-protectionist. Apply the

discrimination and purpose/effect analysis; a restriction touching trade is not automatically unconstitutional.

2.07 What is “cooperative federalism” in environmental regulation?

It is coordination between Commonwealth and State/territory governments to address overlapping responsibilities, often using bilateral assessments and shared data. Cooperation does not erase constitutional limits or automatically transfer final EPBC approval to a State. EPBC ss 45–47 create important agreement powers.

2.08 Why do local councils matter?

Local government derives powers from State legislation, not a free-standing constitutional sovereignty. In Queensland, see Local Government Act 2009 (Qld), Planning Act 2016 (Qld) and relevant local laws. Councils may regulate land use, drainage and approvals, but they cannot exempt a controlled action from Commonwealth EPBC law.

2.09 Name the nine MNES with their statutory anchors.

World Heritage (EPBC s 12); National Heritage (s 15B); Ramsar wetlands (s 16); listed threatened species/communities (s 18); migratory species (s 20); nuclear actions (s 21); Commonwealth marine environment (s 23); Great Barrier Reef Marine Park (s 24B); specified unconventional gas/large coal-mining effects on water resources (s 24D).

2.10 Is every koala nationally protected?

The relevant koala population must be identified against its actual EPBC listing. A species name alone is insufficient; identify geographic scope, listing status and the action's likely significant impact under s 18. State protections may also apply. Verify current SPRAT material rather than assume every koala in every location engages the same Commonwealth listing.

2.11 How does the Tasmanian devil fit the EPBC framework?

Check the Tasmanian devil's current nationally threatened status using the statutory list and SPRAT. If listed and a proposed action may have a significant impact, EPBC s 18 and referral under s 68 become relevant. The fact a species occurs predominantly in one State does not prevent national protection.

2.12 Are kangaroos and wombats automatically MNES?

No. Common names cover different species, populations and listings. Most familiar animals are not protected merely because they are Australian icons. Check the exact taxon, applicable EPBC listing, State protection and the threatened impact. The legal threshold is not "native animal present".

2.13 What is the Antarctic minke whale's national relevance?

Balaenoptera bonaerensis is a whale; the EPBC cetacean and whale-sanctuary regime can be relevant independently of threatened status, and migratory listing should be

checked on the statutory list. I would identify the actual Commonwealth protected-matter section and relevant Part 13 offence/permit before giving a legal answer.

2.14 Does Queensland s 7 prohibit every radioactive-waste facility?

No. [Nuclear Facilities Prohibition Act 2007](#) (Qld) s 7(1) creates the general prohibition but s 7(2)(a) excepts facilities for storage or disposal of radioactive waste resulting from medical or research uses. Verify the waste source, operational purpose and other authorisations; an exception to one prohibition is not a blanket licence.

2.15 Why is a proposed nuclear electricity reactor different?

A reactor falls within the Schedule definition of nuclear facility and ordinarily engages Queensland s 7(1). The fact that associated medical waste may be excepted by s 7(2)(a) does not exempt a power reactor. Consider s 4 Commonwealth application limits, [constitution](#)al conflicts and separate federal EPBC ss 21–22A.

2.16 Does Commonwealth participation defeat Queensland nuclear law?

No automatic answer. Queensland s 4(1) binds the Commonwealth only so far as State power extends. [Constitution](#) s 109 requires a genuinely inconsistent valid Commonwealth law; Commonwealth financing and enthusiasm are not enough. I would obtain the actual Commonwealth legal instrument before advising either party to disregard State law.

2.17 How do I screen a heritage building redevelopment?

Find the exact listing and significance statement: local overlay, State, National Heritage, World Heritage or relevant Commonwealth category. A former courthouse is not necessarily an MNES. Examine EPBC ss 12 and 15B if federally listed, the relevant actor and significant impact, and applicable State heritage/planning permits.

2.18 What is the Protected Matters Search Tool (PMST)?

A Commonwealth screening tool identifying listed matters potentially relevant to a mapped area. It is a starting point only and does not establish actual species presence, a lawful approval or a significant impact. Record the polygon, search date and limitations, then check SPRAT and commission targeted surveys.

2.19 What is the Murray–Darling Basin Plan’s legal foundation?

Water Act 2007 (Cth) Part 2 and Basin Plan 2012, with 2023 reforms affecting water recovery and implementation. The scheme illustrates shared rivers and cooperative federalism. Do not confuse a target for water recovery with proof that every target has been delivered; identify date and legal status of the relevant plan instrument.

2.20 What must a national project approvals matrix contain?

Columns for proponent, action, location, relevant Act and exact provision, decision-maker, permit/referral, controlling protected matter, evidence, timeframe and possible

challenge/remedy. For a cross-border infrastructure project list Commonwealth, relevant State and local pathways separately; one approval rarely substitutes for all others.

CONNECTED CASES, STATUTES AND RESOURCES — WHY THEY MATTER

[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.

CHAPTER 3 | INTERNATIONAL ENVIRONMENTAL LAW AND ESD

20 SHORT EXAM QUESTIONS AND ANSWERS

3.01 Why is environmental harm an international legal problem?

Air, rivers, migratory species, oceans and climate systems cross political borders, while law is traditionally organised by sovereign States. A sound answer separates domestic private claims from public international duties between States and identifies jurisdiction, applicable law and enforcement.

3.02 What is the no-harm principle?

States should not knowingly or negligently allow activities within their jurisdiction to cause significant harm to other States. Stockholm Declaration principle 21 and [Rio Declaration](#) principle 2 express the principle. They are important authorities, but a claimant must separately establish the binding obligation and remedy.

3.03 Why is Trail Smelter significant?

[Trail Smelter](#) (US v Canada) (1938, 1941) involved transboundary industrial fumes and the obligation to prevent serious evidenced harm to another State. It informs due diligence and transboundary injury; it does not automatically give every foreign neighbour a damages claim under Australian law.

3.04 What does Pulp Mills teach about EIA?

In [Pulp Mills](#) on the River Uruguay [2010] ICJ Rep 14 the ICJ recognised that EIA is required under general international law where an activity risks significant transboundary adverse impact. The case also concerned a specific bilateral treaty and notification duties. Identify the particular binding source and factual risk.

3.05 What is the difference between public and private international environmental law?

Public international law concerns duties of States and treaty bodies; private international law asks which court has jurisdiction, which law governs and how private judgments are enforced. An Australian shareholder in a foreign polluting company does not automatically make the [EPBC Act](#) apply overseas.

3.06 Why is the Baia Mare cyanide spill examinable?

It tests accident versus foreseeability, tailings-dam design, upstream and downstream causation, choice of forum, applicable domestic law and State due diligence. A claimed closed-loop system may still be negligent if foreseeable storm overflow was ignored. Seek contemporaneous contamination evidence, not broad treaty rhetoric.

3.07 What is hard law as distinct from soft law?

A binding treaty or enacted legislation may create legal duties in the relevant legal system. Declarations, conference statements and guidelines often guide interpretation and practice but are not automatically enforceable. The [Rio Declaration](#) is influential soft law; the [Convention on Biological Diversity](#) is a treaty whose domestic effect depends on implementation.

3.08 What happened at the Rio Earth Summit?

The 1992 UN Conference on Environment and Development advanced sustainable development, producing the [Rio Declaration](#) and opening treaties including the [Convention on Biological Diversity](#) and the UN Framework Convention on Climate Change for signature. Distinguish a conference output from later domestic statutory implementation.

3.09 What did the Brundtland Report contribute?

Our Common Future (1987) articulated sustainable development as meeting present needs without compromising future generations' ability to meet theirs. In advice, link that idea to concrete statutory provisions such as EPBC s 3A and the particular decision power; it is not an independent Australian cause of action.

3.10 What is the Convention on Biological Diversity?

CBD 1992 seeks conservation, sustainable use and fair/equitable sharing of benefits from genetic resources. Article 8 includes in-situ conservation; art 14 addresses impact assessment and minimising adverse impacts. It supports international policy but I must locate operative Australian provisions for a developer.

3.11 What is the Ramsar Convention?

Convention on Wetlands of International Importance Especially as Waterfowl Habitat (1971) concerns important wetlands. EPBC ss 16 and 17B provide Australian statutory protection for declared Ramsar wetlands. Check the declared site and its ecological character and whether an action will have a significant impact.

3.12 What are CAMBA, JAMBA and ROKAMBA?

They are Australia's bilateral migratory-bird agreements with China, Japan and the Republic of Korea. Together with the Bonn Convention (CMS), they support EPBC listed migratory-species protection. The legal trigger remains a listed species and significant impact under EPBC s 20.

3.13 Does National Heritage have a separate World Heritage treaty?

No. National Heritage is a domestic listing, controlled by EPBC s 15B and related provisions; World Heritage relates to the 1972 [World Heritage Convention](#) and EPBC s 12. A place may be both listed, but legal advice must treat the statutory grounds distinctly.

3.14 What are the Constitution external-affairs consequences of a treaty?

[Constitution](#) s 51(xxix) may support Commonwealth legislation implementing appropriate international obligations. [Commonwealth v Tasmania](#) (1983) 158 CLR 1 is the leading Australian example. Ratifying a treaty does not by itself rewrite State planning permits; implementation and the valid law must be identified.

3.15 How does the precautionary principle apply in international law?

Rio principle 15 is the international formulation. In Australian statutory administration, ask which binding domestic provision makes precaution relevant, such as EPBC s 391(1)–(3). The existence of uncertainty demands risk management where serious or irreversible harm is threatened, but does not dictate an identical response in every case.

3.16 What is the difference between mitigation and adaptation?

Mitigation reduces causes of environmental harm (for climate, reducing emissions); adaptation changes practices to cope with effects such as floods or sea-level rise. An EIA can require consideration of both depending on the enabling law. Neither term supplies a free-standing approval condition without statutory authority.

3.17 What are the Paris Agreement and UNFCCC?

UNFCCC 1992 establishes the climate treaty framework; the Paris Agreement 2015 develops national climate commitments and reporting architecture. For an Australian judicial review claim, I must show relevant domestic legal implementation and statutory considerations; an international target does not necessarily confer a private right to stop a mine.

3.18 Why is the Antarctic whaling litigation important?

[Humane Society International](#) v Kyodo [2008] FCA 3 shows Australian domestic EPBC injunctions for whaling in the declared sanctuary, with enforcement complications. [Whaling in the Antarctic](#) [2014] ICJ Rep 226 considered Japan's research program under art VIII of the Whaling Convention. One is domestic enforcement, the other an international State dispute.

3.19 How should I analyse a scientific-research exception?

Examine the treaty wording, the objective research aims, chosen methods, sample size, availability of non-lethal alternatives and implementation. In [Whaling in the Antarctic](#) [2014], the ICJ assessed whether the program was genuinely for scientific research, not merely whether officials used the label.

3.20 What are realistic international environmental remedies?

Depending on applicable law: inter-State declarations, cessation and assurances, domestic court injunctions, restoration and provable compensation. A private individual usually needs a domestic cause of action and jurisdiction; criminal prosecutions need enacted offences. Do not promise damages simply by citing Rio principle 2.

CONNECTED CASES, STATUTES AND RESOURCES — WHY THEY MATTER

[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.

CHAPTER 4 | ENVIRONMENTAL IMPACT ASSESSMENT AND REFERRAL

20 SHORT EXAM QUESTIONS AND ANSWERS

4.01 What does EIA mean and when should it occur?

Environmental impact assessment identifies likely ecological and social effects before major commitments, enabling informed approval, redesign, conditions or refusal. The exact legal trigger and steps depend on the jurisdiction. Our Week 4 focus is Commonwealth EPBC referral and assessment, with State EIS regimes also relevant.

4.02 What is an “action” under the EPBC Act?

Section 523 includes a project, development, undertaking, activity or series of activities; ss 524–524A deal with specified exclusions. Identify who physically proposes what. A State funding promise and the actual road construction have different legal characteristics even when related economically.

4.03 What is a controlled action?

A proposed action needing Commonwealth approval because of the protected-matter impact under the EPBC scheme. EPBC s 75 is the Ministerial decision; the controlling provisions identify protected matters under Part 3. It is not the same as Part 9 approval: after screening, assessment and the later approval decision may still be required.

4.04 What does “has, will have or is likely to have” mean?

The statute accommodates prospective and likely impacts; certainty is not required. Analyse a real pathway from action to harm, supported by field and scientific evidence. The impact must meet the protected-matter test, not simply be some imaginable ecological change. [Nathan Dam](#) [2004] FCAFC 190 is important for reasonably foreseeable indirect impacts.

4.05 What does “significant impact” require?

It is a legal threshold informed by ecology, extent, severity, duration, reversibility, habitat value and cumulative impacts. DCCEE Significant Impact Guidelines 1.1 provide useful indicators; they do not replace statutory wording or expert evidence. A small footprint may still cause substantial harm to critical breeding habitat.

4.06 What happens under EPBC s 68?

A proposal to take a potentially controlled action may need referral to the Commonwealth Minister. The referred description must accurately identify the action, proponent and impacts. Referral triggers process constraints, including s 74AA in relevant circumstances, so developers should plan financing and works carefully.

4.07 Why is s 74A important?

It permits the Minister in specified circumstances to decline a referral where the described action is only a component of a larger action proposed by the same person, and to request the larger referral. Identify the actual proponent and statutory conditions. It guards against artificial split referrals; it does not mean every linked action by another government automatically becomes the developer's action.

4.08 What is the danger of false referral information?

EPBC s 489 addresses false or misleading information in specified situations. I would give full, accurate explanations of foreseeable connected works and ecological uncertainties. However, do not allege a criminal offence unless each element of the provision and the required state of mind are proved.

4.09 What is the distinction between direct and indirect impacts?

Direct impacts are physically caused at the site, such as clearing; indirect impacts may occur through another actor or downstream process. [Nathan Dam](#) [2004] FCAFC 190 requires reasonably contemplated indirect impacts to be analysed. In RUD, the creek dam and connector road may be relevant to the resort's broader impact description.

4.10 Can works outside World Heritage boundaries trigger EPBC s 12?

Yes, depending on impact on the protected World Heritage values. A resort outside Gondwana Rainforests could affect ecological processes or water flows sustaining the World Heritage property. The inquiry is effects on protected values, not simply whether a project polygon crosses the mapped line.

4.11 Can an unlisted bat matter under the EPBC Act?

Yes, indirectly, if it performs an ecological function central to the values of a protected World Heritage property. The bat need not itself be listed under s 18 for impacts on protected World Heritage values under s 12 to matter. Establish the connection with reliable ecological evidence.

4.12 How would I analyse the whimbrel?

Confirm *Numenius phaeopus* is on the EPBC listed migratory-species list; use s 20 and relevant listing tools. Determine whether road works, creek hydrology, pesticide runoff or wetland loss significantly affect habitat, breeding or survival. A common name and approximate proximity are only the beginning.

4.13 What is the role of the Oxleyan pygmy perch in RUD?

It is potentially affected by the Council's dam, shallow-water changes and proposed relocation. Check its *actual* current Commonwealth and State listings independently. If federally protected, s 18 may apply; even otherwise, indirect effects on World Heritage or other listed matters can be relevant.

4.14 Why is **Gray** useful in an EIA problem?

[Gray v Minister for Planning](#) [2006] NSWLEC 720 concerned the adequacy of a NSW coal-mine environmental assessment that excluded downstream coal-combustion greenhouse emissions despite the applicable assessment requirements. It illustrates ESD, causation and legal completeness, but must be applied within the actual governing statutory scheme.

4.15 What is the role of s 82?

EPBC s 82 identifies relevant impacts to be considered in the assessment of a controlled action. It is not the Minister's main power to choose the assessment method: that is s 87 in the ordinary statutory pathway. Keep referral, impact scope and assessment method separate.

4.16 What is an "NCA – particular manner" decision?

A non-controlled-action determination dependent on the action being taken in a specified particular manner to avoid impacts. It is not an unconditional general approval. The proponent must follow the described manner; changed works may require new referral or reconsideration. Check the written s 75 decision.

4.17 How do I use SPRAT and PMST together?

PMST screens protected matters near the area; SPRAT gives species listing, threats, range and recovery information. Neither proves a specific field impact. I would combine them with maps, survey timing, site visits and the Significant Impact Guidelines to form a defensible legal assessment.

4.18 Can a funding grant be the "action"?

The monetary approval or funding decision is not necessarily the physical action that affects protected matters. EPBC s 523 and associated exclusions require close reading. Distinguish the Queensland government's \$10 million promise from the developer's resort and the government's actual connector-road construction.

4.19 Can RUD start building during referral?

Not assume so. EPBC s 74AA criminalises certain taking of action after referral and before the statutory process is resolved, subject to its elements and exceptions. Advise on any permitted preliminary works and do not begin potentially prohibited clearing pending a written lawful pathway.

4.20 What is the best structure for an EIA exam answer?

Write an actor/action matrix, identify each Part 3 protected matter, relevant impacts and significance, referral and s 74A issues, assessment pathway and evidence, counterarguments, conclusion and client instructions. Use the specific facts—creek, tree, bat, whimbrel, roads—not generic rhetoric.

CONNECTED CASES, STATUTES AND RESOURCES — WHY THEY MATTER

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.

CHAPTER 5 | ASSESSMENT, APPROVAL, CONDITIONS AND ENFORCEMENT

20 SHORT EXAM QUESTIONS AND ANSWERS

5.01 What happens after the Minister finds a controlled action?

The action needs assessment of its relevant protected impacts, followed by a separate approval/refusal decision. EPBC s 82 deals with impact scope, s 87 with assessment method, and ss 130 and 133 with the later decision and approval power. A controlled-action decision is not itself permission to build.

5.02 Name assessment methods discussed in Week 5.

Depending on the statutory regime, approaches discussed include assessment on referral information, preliminary documentation, public environment report, EIS, public inquiry and accredited State/territory processes. The course slides use EPBC s 87. Because the 2025 reforms commence in stages, verify the current section and applicable transition when writing as at a given date.

5.03 What is a bilateral *assessment* agreement?

An arrangement under EPBC ss 45 and 47 to accredit a State/territory assessment process for covered classes of actions. If it applies, the State EIS can inform the federal decision and reduce duplication. It does *not* automatically transfer the Commonwealth Part 9 approval decision to Queensland.

5.04 Does a Queensland coordinated project evade the EPBC Act?

No. Declaration under [State Development and Public Works Organisation Act 1971](#) (Qld) Part 4 may supply an accredited EIS process if the current bilateral agreement covers it. A controlled action still needs the Commonwealth's independent approval where required. The politicians in the RUD tutorial confuse assessment with approval.

5.05 Why does scoping matter in an EIS?

The Terms of Reference identify what the proponent must study: habitat, water, alternatives, downstream effects, mitigation, risks and residual impacts. A beautifully produced EIS that omits a critical listed species is inadequate for informed decision-making. The Minister's relevant assessment powers and applicable guideline control the legal task.

5.06 What is the difference between a PER and an EIS?

A public environment report ordinarily addresses a narrower or more defined scope of further environmental information, while an EIS is used for more extensive assessment. Both require compliance with their statutory process and relevant public participation. Labels do not decide legality; study the scope and adequacy of actual information.

5.07 What does the Tugun Bypass case study demonstrate?

The actual EPBC 2004/1861 notices identify controlled-action provisions, an EIS approach and a final approval pathway. The case shows how an administrative trail moves from referral to assessment to approval conditions. The written decision notices are primary evidence; a newspaper report or a later submission is not a substitute.

5.08 What must the Minister consider under s 136(1)?

Section 136(1)(a) requires protected matters relevant to the controlling provisions; s 136(1)(b) requires economic and social matters, within statutory limits. This is the approval stage. Do not improperly rely on promised jobs at the earlier s 75 controlled-action screening stage.

5.09 What does s 136(2)(a) add?

It requires consideration of ESD principles as part of the Minister's mandatory approval considerations. In the application I connect precaution, integration and intergenerational equity to specific evidence; I do not just recite "sustainable development". Other required reports and submissions depend on the assessment pathway.

5.10 What is the role of s 391 at approval?

EPBC s 391(1)–(3) requires attention to the precautionary principle when making decisions listed in that provision, including s 75 and s 133 decisions. The key factual triggers are a threat of serious or irreversible damage and scientific uncertainty. The principle does not preordain refusal in all cases.

5.11 Why is relocation of the pygmy perch problematic?

The proposal would alter shallow breeding habitat and rely on a prior relocation of a *different* European pygmy perch species with unresolved long-term results. I would assess habitat suitability, survival, population dynamics and alternatives. An unsupported analogy cannot establish a harmless outcome.

5.12 What does EPBC s 134(3)(a) permit?

Conditions concerning security by bond, guarantee or cash deposit, including to secure compliance and specified remediation liabilities within that statutory limb. The amount must be connected to the lawful purpose and properly justified. A \$10 million rehabilitation bond is not the same as an arbitrary \$10 million financial contribution.

5.13 What is special about s 134(3)(ab)?

It contemplates a specified financial contribution supporting eligible environmental protection or remediation activities under s 134(3)(aa). The consent machinery in s 134(3A) matters and must be checked for the proposed condition. Never collapse a contribution and a security bond into one undifferentiated legal power.

5.14 What does s 134(1A) mean for contractors?

An approval holder authorising another person to take part of the action must take reasonable steps to tell them applicable conditions and secure compliance. I would build condition maps into contractor inductions, work orders and audits. Contractor involvement does not itself erase the holder's responsibilities.

5.15 Can the Commonwealth Minister consider development benefits?

At the Part 9 approval stage s 136(1)(b) requires economic and social matters to be considered, alongside relevant protected matters. That differs from s 75 controlled-action screening. Benefits do not automatically outweigh international or statutory constraints or unaddressed serious impacts.

5.16 What happens if a decision-maker ignores a mandatory consideration?

There may be an arguable judicial review ground. Identify the decision, statutory requirement, standing, materiality and applicable review jurisdiction. A reviewing court may quash or declare the decision invalid and remit it, not generally substitute its own environmental policy or award damages automatically.

5.17 What is an EPBC injunction and who may seek one?

EPBC s 475 permits applications to the Federal Court in defined circumstances for actual, continuing or proposed contraventions, including by the Minister or eligible interested persons. Check standing, evidence and remedy sought. An injunction restrains or compels conduct; it is not a general damages award.

5.18 What is the difference between civil penalties and criminal offences?

Civil penalties enforce specifically defined statutory contraventions under a civil standard and applicable procedure; crimes require the offence elements and criminal proof. A developer making a mistaken prediction is not automatically a criminal. Find the relevant EPBC provision—such as s 74AA or s 489—before alleging an offence.

5.19 What are remediation orders and compensation?

Remediation aims to repair damage; EPBC s 480A supplies a federal court remediation-order pathway in defined cases. Compensation or damages generally need an independent legal cause and proof; they are not the automatic consequence of an EPBC approval dispute. Differentiate preventive injunction, repair order, penalty, prosecution and private damages.

5.20 What final checklist should I use for a client?

Identify proponent and every action; confirm MNES and precise controlling provisions; test significance and indirect effects; establish referral/assessment/approval status; scrutinise conditions and s 391; identify compliance risk, standing and remedy. End with

a strong answer and an immediately practical instruction for developer, regulator or community client.

CONNECTED CASES, STATUTES AND RESOURCES — WHY THEY MATTER

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.

RAPID STATUTE AND REMEDY LOCATOR

Work from the statutory power to the fact, not from the desired outcome to a provision. The following is an exam lookup guide, not an exhaustive statement of the law.

EPBC Act ss 3, 3A

Objects and principles of ecologically sustainable development.

EPBC Act ss 12, 15B, 16, 18, 20, 21, 23, 24B, 24D

Primary protected matters: World Heritage, National Heritage, Ramsar, threatened species, migrants, nuclear actions, marine environment, GBR and water resources.

EPBC Act ss 68, 74A, 74AA, 75, 82, 87

Referral, larger actions, some early-work offences, controlled-action screening, relevant impacts and choice of assessment approach.

EPBC Act ss 45, 47, 83

Bilateral agreement and use of accredited assessment; verify whether current project falls within agreed process.

EPBC Act ss 130, 133, 134, 136, 391

Final approval, conditions, protected/economic/social considerations and precaution.

EPBC Act ss 475, 480A, 489

Possible federal injunctive/remediation machinery; false or misleading information offence subject to statutory elements.

Constitution ss 51(i), 51(xx), 51(xxix), 52(i), 92, 107–109

Trade, corporations, external affairs, Commonwealth places, interstate trade, State powers and genuine inconsistency.

Nuclear Facilities Prohibition Act 2007 (Qld) ss 4, 7(1), 7(2)(a), 8

Commonwealth reach qualification, nuclear prohibition, medical/research waste exception and limits of ordinary development approvals.

State Development and Public Works Organisation Act 1971 (Qld) Part 4

Coordinated-project EIS pathway relevant to Queensland assessment bilateral agreement.

International treaties and declarations

[World Heritage Convention](#) 1972; Ramsar 1971; CBD 1992 arts 8 and 14; Rio principles 2, 15, 17; ICRW art VIII; UNFCCC 1992; Paris Agreement 2015.

AUTHORITIES AND RESEARCH SOURCE LINKS (SOME EXTERNAL DESTINATIONS REQUIRE RECHECKING)

EPBC Act — current Federal Register:

<https://www.legislation.gov.au/C2004A00485/latest/text>

EPBC Act — 24 August 2026 authorised version:

https://www.legislation.gov.au/C2004A00485/2026-08-24/2026-08-24/text/original/epub/OEBPS/document_1/document_1.html

Environment Protection Reform Act 2025 (Cth):

<https://www.legislation.gov.au/C2025A00068>

DCCEEW reforms and staged commencement:

<https://www.dcceew.gov.au/environment/epbc/epbc-act-reform/stronger-environmental-protection-restoration>

Nuclear Facilities Prohibition Act 2007 (Qld):

<https://www.legislation.qld.gov.au/view/whole/html/inforce/current/act-2007-004>

NSW Land and Environment Court — biodiversity cases, including Leatch:

<https://lec.nsw.gov.au/publications-and-resources/issues-in-focus/biodiversity/biodiversity-cases.html>

DCCEEW referral applications and s 74A:

<https://www.dcceew.gov.au/environment/epbc/advice/referral-applications-and-proposals>

Tugun Bypass historic EPBC notices: Use the provided 17-page Week 5 Tugun Bypass source PDF; verify the historic referral record 2004/1861.

Course source basis: Semester 263 Week 1–5 slide decks, Week 2–5 first-hour live tutorial transcripts, Week 1 newspaper attachments and Week 3/4 original question sheets.

AUTHORITY WARNING: Some illustrative fact patterns and historical case studies are course materials and do not reproduce current approvals. Where statutory powers have been amended or a scenario concerns earlier years, check the operative date, transitional provisions, exact species listing and decision instrument before asserting a final legal outcome. Judicial review, injunction, remediation, penalties, prosecution and damages must each be justified separately.