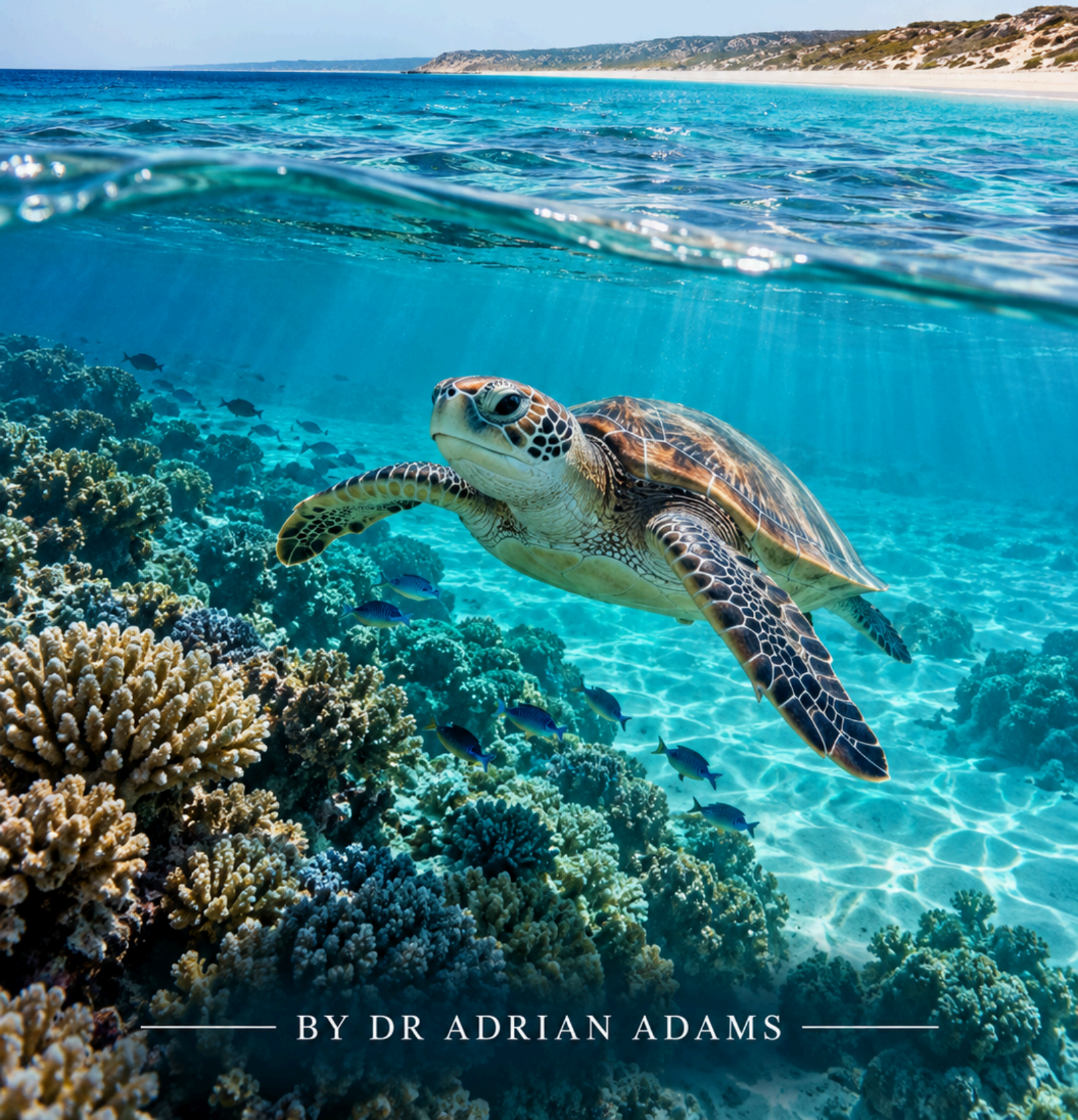


ENVIRONMENTAL LAW

— A STUDY AND TEACHING GUIDE —



— BY DR ADRIAN ADAMS —

PREFACE

Preface

BY DR ADRIAN ADAMS

This book is written for students and readers who want more than a collection of environmental rules. It is designed to explain why environmental law exists, how its legislation fits together, how courts and decision-makers reason with it, and how the law can be used responsibly in real-world advice and decision-making.

Environmental law is not abstract. It reaches into land development, planning, property transactions, biodiversity, pollution control, climate-related decision-making, environmental assessment, licensing, enforcement and litigation. Its operation is therefore closely connected to the choices made by governments, regulators, businesses, developers, professionals and communities.

Environmental law is also deeply personal to me. I have long held a profound passion for environmental conservation, the ocean, marine life, wildlife and the outdoors. Surfing and time spent in coastal environments continually reinforce how valuable — and how vulnerable — the natural world can be.

Working extensively in property and development gives me a distinctive real-world perspective on environmental law. I understand the commercial, planning and practical realities of creating homes, communities and urban environments while also recognising the responsibility to minimise ecological footprints and preserve environmental values.

That connection is one of the reasons I wanted this book to teach not only what environmental law says, but why environmental protection matters. The law becomes easier to understand when legal doctrine is connected to the places, ecosystems and communities it is trying to protect. A central theme throughout this guide is that development and conservation do not need to exist in automatic opposition: thoughtful planning, sound legal reasoning, environmental stewardship and informed commercial decision-making can work together.

My purpose is therefore practical as well as educational. I want this guide to help readers identify issues, locate the exact legislation, understand the governing authorities, and apply the law clearly and professionally. If it helps students and future decision-makers think more carefully about law, place, ecology, development and public responsibility, then it will have achieved its purpose.



PREFACE

Preface - continued

The practical dimension of environmental law is central to the way this guide is written. It is not enough to memorise isolated provisions, case names or administrative processes. The subject becomes far more coherent when readers can connect the environmental issue, the governing legislation, the regulatory framework, the relevant authorities and the real consequences that flow from a decision.

Throughout the book, I therefore try to explain not only what the law is, but why it matters. Each topic is designed to help readers move from identifying a legal problem, to locating the exact statutory source, to understanding how cases and administrative decision-making shape the operation of the law in practice. That method is particularly important because environmental law sits at the intersection of legal principle, science, planning, development, evidence and public responsibility.

My own perspective has been shaped by a strong environmental conscience together with substantial involvement in property and development. I have seen how commercial realities, planning pressures and environmental values can meet within the same project or decision. That is precisely why careful legal reasoning matters. Better legal understanding can support decisions that are commercially realistic while remaining environmentally responsible.

For that reason, this book places genuine emphasis on application. It aims to help readers work confidently with legislation, courts, regulators, approvals, compliance obligations and practical problem-solving. Environmental law should not be taught as a purely abstract subject divorced from the places, ecosystems, communities and developments it affects.

The same approach applies when interests compete. A developer may be concerned with feasibility, timing, approvals and construction. A regulator may focus on statutory duties, environmental impacts and compliance. A community may be concerned about biodiversity, waterways, amenity or long-term ecological damage. Good legal analysis requires the reader to understand those competing positions, identify the precise law governing them and explain how that law should be applied.

At its core, this book is built on a simple idea: environmental stewardship and human progress must be considered together. When legal education is anchored in that understanding, students are better equipped to read the law carefully, reason with it properly and contribute to decisions that respect both ecological integrity and the built environment.



PREFACE

Preface - continued

A further aim of this book is to make environmental law genuinely teachable. Many students find the subject difficult not because the ideas are beyond them, but because the material is often presented as if legislation, cases, planning systems, scientific concerns and regulatory structures operate in separate silos. In reality, they are interdependent. A reader learns far more effectively when those relationships are explained directly and carefully.

That is why this guide repeatedly works from issue to law, from law to authority, and from authority to application. Readers should be able to identify the environmental problem, locate the exact statutory provision, understand which case or authority explains it, and then apply that law to practical facts. This method is intended to build not only knowledge, but also confidence, clarity and professional discipline.

The book is also written with more than one audience in mind. It is designed to help law students, environmental and planning students, property and development professionals, and future decision-makers who need a working understanding of environmental obligations. Some readers will approach the subject from the classroom; others will approach it from commercial projects, development approvals, compliance work or environmental advocacy. The law must be understandable to all of them.

For that reason, the chapters bring together legislation, cases, principles, worked examples, tutorial guidance, revision support and model answers. My objective is to ensure that readers do not simply accumulate notes, but develop a structured way of thinking about environmental problems. The law becomes much more useful when it can be read, interpreted and applied in a reasoned way to real situations.

I also want readers to appreciate that environmental law is not only reactive. It does not merely resolve disputes after environmental harm has occurred. Properly understood, it also shapes better planning, better decision-making, better governance and better development from the outset. It has the capacity to influence the way projects are conceived, assessed, approved and managed before damage becomes entrenched or irreversible.

In that sense, environmental law is closely connected to responsibility. It asks decision-makers, advisers, students and professionals to think carefully about consequences, evidence, risk and stewardship. It requires people to balance immediate pressures with longer-term impacts and to recognise that legal compliance should operate alongside ethical and practical care for land, water, wildlife, communities and future generations.



PREFACE

Preface - continued

Environmental law also demands an appreciation of time. Some environmental harm can be repaired, but some cannot. Habitat loss, species decline, contamination, coastal degradation and damage to significant ecological systems may persist long after a particular project, approval or dispute has ended. That reality gives environmental decision-making a different weight: prevention, precaution and careful assessment matter because later remedies may never fully restore what has been lost.

This is one reason the book pays attention to the relationship between legal rules and practical judgment. The strongest environmental advice does not simply identify whether a proposal can technically proceed. It asks what approvals are required, what conditions may be imposed, what environmental values are at risk, what evidence is reliable, what alternatives exist and what consequences may follow if assumptions prove wrong.

The same reasoning applies to governments and regulators. Environmental decision-making must be lawful, transparent and supported by the statutory framework that confers power. Decision-makers must understand the limits of their authority, the matters they are required to consider and the consequences of failing to comply with procedural or substantive obligations. Students who understand those connections are better prepared to analyse both public and private environmental decisions.

For developers, companies and advisers, environmental law should be understood as part of responsible project planning rather than as an obstacle discovered at the end of a process. Early legal analysis can identify constraints, approval pathways, environmental risks and opportunities for better design. It can also reduce delay, avoid unnecessary conflict and improve the quality of decisions before significant resources are committed.

For communities and environmental organisations, the law can provide mechanisms for participation, accountability and review. Understanding those mechanisms requires the same disciplined approach used elsewhere in this book: identify the issue, find the source of legal authority, determine who holds the relevant power or right, examine the applicable procedure and then assess the available remedy or response.

The broader message is consistent throughout this guide. Environmental law is about more than rules on a page. It is about how societies choose to build, protect, preserve and progress. The quality of those choices depends on accurate law, careful reasoning, good evidence and a willingness to recognise that environmental values and human development must be considered together.



PREFACE

Preface - continued

Throughout the chapters that follow, I have tried to write in a way that is direct, structured and genuinely useful. Environmental law should not feel inaccessible. When readers are shown where an issue comes from, which legal source governs it, which authority explains it and how it applies in practice, the subject becomes far more manageable. That teaching method sits at the centre of this book and shapes the way every chapter has been developed.

I also wanted this guide to reflect the reality that environmental law frequently sits at the intersection of multiple disciplines. Questions about development, planning, biodiversity, pollution, climate, natural resources and regulatory enforcement rarely arise in isolation. They involve overlapping legal frameworks, technical material, competing interests and practical consequences. Readers therefore need more than bare rules; they need explanation, context and a way to reason through complexity.

This is why the book gives careful attention to issue spotting, statutory interpretation, case analysis and worked application. A good environmental lawyer, planner, adviser or decision-maker must be able to move from facts to legal questions, from legal questions to exact provisions and authorities, and from those authorities to a clear and reasoned conclusion. That discipline is what helps transform information into sound judgment.

I hope, too, that the book encourages readers to see environmental protection and responsible development in a more integrated way. The law should not be treated as a purely defensive mechanism or as a burden that appears only when things go wrong. Used properly, it can guide better planning, better approvals, better compliance and better long-term outcomes for communities, investors and the environment alike.

For students, that means learning to write, reason and problem-solve with precision. For professionals, it means approaching projects and advice with foresight and responsibility. For both groups, it means recognising that environmental law has practical consequences in the real world and that careful legal analysis can contribute to more sustainable and more intelligent decision-making.

Thank you for reading this book. I hope it helps you understand the law more clearly, think more confidently and engage more thoughtfully with the environmental questions that shape our future. If it assists readers to approach those questions with knowledge, professionalism and genuine respect for the natural world, then it will have achieved exactly what I hoped it would do.



PREFACE

Preface - continued

The pages that follow are therefore intended to be used actively. Read the legislation, follow the authorities, test the examples, work through the problems and return to the legal sources whenever a proposition needs to be checked. Environmental law changes through legislation, regulation, policy, judicial interpretation and administrative practice, so careful readers should always remain attentive to the current legal position and the precise jurisdiction in which a problem arises.

That habit of verification is especially important in a field where Commonwealth, State, Territory and local systems can interact. The same factual problem may engage several layers of law, different approval pathways and more than one decision-maker. Understanding jurisdiction, statutory power and the relationship between legal sources is therefore a core professional skill rather than a technical detail.

The book is designed to support that skill by consistently connecting issues with the legal framework that governs them. Where a statute creates a duty, prohibition, approval requirement, discretion or review mechanism, the reader should understand what the provision does, why it matters and how it operates in practice. Where a case interprets that law, the reader should understand the facts, reasoning, outcome and principle that make the authority useful.

I have also tried to ensure that the learning process remains connected to real advice. Environmental problems rarely arrive as neat examination questions. They arrive as projects, disputes, applications, conditions, investigations, risks and competing objectives. A capable adviser must identify the client, understand the client's objective, map the decision-making framework, identify the relevant evidence and then provide clear advice about options, consequences and risk.

This professional perspective does not diminish the environmental purpose of the subject. It strengthens it. Better advice can lead to better design, better compliance, better protection of ecological values and more informed decision-making. It can also help avoid unnecessary harm, delay, conflict and expense by identifying legal and environmental constraints early enough for them to be addressed intelligently.

The guiding idea remains the same throughout this book: build carefully, protect what matters, preserve what cannot be replaced and pursue progress responsibly. Environmental law is one of the principal legal frameworks through which those choices are made. I hope this guide gives readers the knowledge and confidence to participate in those choices with accuracy, judgment and genuine respect for the environment.



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EVERY SUBSTANTIVE CHAPTER WILL INCLUDE

- Connected teaching narrative explaining why the topic matters and how the legal framework operates.
- Exact legislation, Parts, Divisions, sections, subsections and paragraphs where relevant.
- Leading cases and authorities: facts, issue, reasoning, outcome, principle, significance and practical use.
- Tutorial / application questions integrated into the chapter, with detailed answers.
- FAQs with answers; multiple-choice questions with explanations; short-answer questions with model answers.
- Full word-for-word IRAC problem questions and High Distinction model answers.
- Professional client-advice method: issue -> exact law -> authority -> evidence -> application -> counterargument -> consequence / remedy -> conclusion.
- Verified blue hyperlinks to legislation, cases, regulators and authoritative resources in the electronic edition.

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PUBLICATION AND SOURCE NOTE

Publication and Source Note

ENVIRONMENTAL LAW - A STUDY AND TEACHING GUIDE is developed as an original teaching work for students, practitioners and other readers who need to understand how environmental law operates in real problems. It draws on the author's tertiary and professional education, environmental law study, practical experience, problem-based learning, tutorial and application exercises, and a broader programme of legal research.

The book is designed to teach method as well as doctrine. It does not treat environmental law as a list of disconnected Acts, cases or regulatory processes. Instead, each chapter is structured so that readers can identify the environmental issue, locate the governing legal source, understand the relevant authority, assess the evidence, apply the law to the facts and explain the practical consequence or next step.

The course materials supplied for this project - including seminar materials, tutorial and application questions, live seminar transcripts and JUNI summaries - are used as an important teaching-source layer. They help preserve the subject's terminology, sequencing, emphasis and practical framing. They do not displace the governing law. Where a course source and the current legal position differ, the distinction must be identified rather than silently blended or guessed.

Primary law remains controlling. Current legislation and regulations, binding and persuasive judicial decisions, and authoritative government or regulator materials take priority over explanatory commentary. Secondary sources, prescribed texts, seminar materials and teaching notes are used to explain and contextualise the law, not to replace it.

Because environmental law changes frequently, readers should verify the current authorised version of legislation, the identity and powers of the relevant regulator, and the current status of any standard, policy or administrative arrangement before relying on it in an assessment, memorandum, transaction, approval strategy, client meeting or litigation.

SOURCE HIERARCHY USED THROUGHOUT THIS BOOK

1. Current legislation and regulations.
2. Binding and persuasive judicial authority.
3. Official regulator and government materials.
4. Course materials, seminar transcripts, tutorials and professional teaching context.
5. Prescribed and respected secondary commentary.

HOW TO USE THIS BOOK

How to Use This Book

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

Do not begin with a conclusion. Begin by mapping the legal pathway. Ask whether the issue is Commonwealth, Queensland, local, international or common law. Then identify whether the problem involves an approval, prohibition, licence, referral, condition, offence, enforcement response, judicial review ground, civil dispute or some combination of those matters.

THE CORE METHOD

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

The chapters are designed to move from understanding to application and then to advice. Read the explanatory narrative first so that the legal problem makes sense. Then work through the exact legislation, defined terms, cases, authorities and evidence. Finally, use the tutorials, FAQs, multiple-choice questions, short-answer questions and IRAC problems to test whether you can apply the material without being led to the answer.

PASS 1 - UNDERSTAND

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

PASS 2 - MASTER THE LAW

Work through the exact statute, definitions, objects, interpretation provisions, cases, authorities and expert-evidence requirements.

PASS 3 - APPLY AND ADVISE

Use the tutorials and problem material, then convert the legal conclusion into advice: what should the client, developer, organisation, consultant, regulator or decision-maker do next?

When you reach an authority, do not memorise the case name alone. Ask what happened, what issue the court had to decide, what reasoning mattered, what principle came from the decision, and when that authority should be used. The same approach applies to legislation: identify the Act, Part, Division, section, subsection and paragraph where relevant, and explain what legal question that provision answers.

For electronic readers, blue hyperlinks are intended to take you back to authoritative legal sources wherever a verified direct destination is available. Use those links as a research tool, but always read the governing provision or judgment in context rather than relying only on a summary.

HOW TO USE THIS BOOK

How the End-of-Chapter Learning Suite Works

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

1

FAQs & Answers

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

2

Multiple Choice Questions

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

3

Short Answer Questions

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

4

IRAC Problems

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

5

Student -> Lawyer -> Adviser

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

FUN REVISION RESOURCE

Interactive Glossary of Terms

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

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

A

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

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

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

Anthropogenic change [\[Historical Development\]](#) Environmental change caused or accelerated by human activity.

B

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

C

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

⁷. Acts Interpretation Act 1901 (Cth) ss 15AA-15AB.

⁸. Acts Interpretation Act 1954 (Qld) ss 14A-14B.

⁹. Environment Protection and Biodiversity Conservation Act 1999 (Cth) ss 67-69.

E

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

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

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

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

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

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

I

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

Intrinsic value [\[Environmental Ethics and Values\]](#) Value possessed independently of usefulness to humans.

L

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

M

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

¹⁰. Aldo Leopold, *A Sand County Almanac, and Sketches Here and There* (Oxford University Press, 1949).

¹¹. *The Crown v Murphy* [1990] HCA 42; (1990) 64 ALJR 593.

N

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

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

O

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

P

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

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

R

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

S

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

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

^{12.} National Environmental Protection Agency, 'What is the National EPA?' (Web Page) <<https://www.nationalepa.gov.au/about/national-epa/what-is>>.

^{13.} [National Environmental Protection Agency Act 2025 \(Cth\)](#) ss 2-3.

^{14.} *Sierra Club v Morton*, 405 US 727 (1972).

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

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

T ---

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

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

LEGAL RESEARCH

Legal Research: Cases, Legislation and Authorities

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

Research platforms students should know

[Federal Register of Legislation](https://www.legislation.gov.au/).¹⁶ Use the official Commonwealth source for current legislation, commencement information, amendments, instruments and historical versions.

[Queensland Legislation](https://www.legislation.qld.gov.au/).¹⁷ Use the official Queensland source for current Acts, regulations, subordinate legislation and legislative history.

[AustLII](https://www.austlii.edu.au/).¹⁸ A major free Australian legal research database. Use it to locate judgments, legislation and related authorities. Where this book provides a verified direct judgment link, use that direct source.

[National Environmental Protection Agency](https://www.nationalepa.gov.au/about/national-epa/what-is/).¹⁹ Use the current federal regulator's official site for national environmental regulatory information and current institutional arrangements.

¹⁶ Federal Register of Legislation (Web Page) <<https://www.legislation.gov.au/>>.

¹⁷ Queensland Legislation (Web Page) <<https://www.legislation.qld.gov.au/>>.

¹⁸ Australasian Legal Information Institute, AustLII (Web Page) <<https://www.austlii.edu.au/>>.

¹⁹ National Environmental Protection Agency, 'What is the National EPA?' (Web Page) <<https://www.nationalepa.gov.au/about/national-epa/what-is/>>.

Primary law before commentary

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

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

Know what source of law you are using

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

RESEARCH DISCIPLINE

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

CHAPTER 1

ENVIRONMENTAL LAW: CONTEXT, VALUES, EVOLUTION AND MEANING

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

THE LEARNING JOURNEY

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

1.1 Why this chapter comes first

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

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

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

THE CORE METHOD FOR THIS BOOK

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

1.2 Environmental law is about relationships

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

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

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

1.3 Environmental ethics: why values matter to law

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

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

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

1.4 Anthropocentrism: nature valued through human welfare

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

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

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

1.5 Ecocentrism: nature has value in its own right

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

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

EASY WAY TO REMEMBER THE DIFFERENCE

Anthropocentric: protect nature **for people**.

Biocentric: protect **living things** because they have value.

Ecocentric: protect the **whole ecological system** because nature itself has value.

1.6 Biocentrism: the value of living things

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

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

1.7 The spectrum matters more than the label

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

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

HISTORICAL DEVELOPMENT

1.8 The evolution of environmental thought

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

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

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

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

^{20.} Aldo Leopold, *A Sand County Almanac, and Sketches Here and There* (Oxford University Press, 1949).

^{21.} Rachel Carson, *Silent Spring* (Houghton Mifflin, 1962).

^{22.} Dr Seuss, *The Lorax* (Random House, 1971).

^{23.} Christopher D Stone, 'Should Trees Have Standing? - Toward Legal Rights for Natural Objects' (1972) 45 *Southern California Law Review* 450.

^{24.} *Sierra Club v Morton*, 405 US 727 (1972).

^{25.} National Environmental Protection Agency, 'What is the National EPA?' (Web Page).

^{26.} *National Environmental Protection Agency Act 2025 (Cth)* ss 2-3.

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

1.10 Rachel Carson: environmental harm can travel through systems

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

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

1.11 Christopher Stone and the idea of legal rights for nature

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

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

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

[Sierra Club v Morton, 405 US 727 \(1972\)](#)³⁰

Facts. The Sierra Club challenged federal action connected with a major ski-development proposal in Mineral King Valley. It relied on the environmental and

²⁷ Aldo Leopold, *A Sand County Almanac, and Sketches Here and There* (Oxford University Press, 1949).

²⁸ Rachel Carson, *Silent Spring* (Houghton Mifflin, 1962).

²⁹ Christopher D Stone, 'Should Trees Have Standing? - Toward Legal Rights for Natural Objects' (1972) 45 *Southern California Law Review* 450.

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

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

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

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

THE LEGAL MEANING OF “ENVIRONMENT”

1.13 Why definitions matter

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

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

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

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

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

The Crown v Murphy [1990] HCA 42; (1990) 64 ALJR 593³¹

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

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

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

1.15 How statutes define the environment

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

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

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

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

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

^{31.} [The Crown v Murphy](#) [1990] HCA 42; (1990) 64 ALJR 593.

^{32.} [Environmental Protection Act 1994 \(Qld\) s 8.](#)

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

1.17 Commonwealth definition - EPBC Act s 528

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

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

³³. [Environment Protection and Biodiversity Conservation Act 1999 \(Cth\) s 528](#).

STATUTORY INTERPRETATION

1.18 Reading environmental legislation properly

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

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

1.19 What did Parliament intend?

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

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

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

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

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

³⁴. [Acts Interpretation Act 1954 \(Qld\)](#) ss 14A-14B.

HOW TO USE THIS IN A PROBLEM

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

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

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

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

1.22 Scientific meaning and legal meaning are not always identical

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

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

³⁵. [Acts Interpretation Act 1901 \(Cth\) ss 15AA-15AB](#).

³⁶. [Environment Protection and Biodiversity Conservation Act 1999 \(Cth\)](#).

FROM LAW STUDENT TO LAWYER

1.23 The professional method

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

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

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

1.24 Example: advising a developer before site acquisition

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

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

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

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

1.25 Current federal institutional context

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

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

1.26 The cost of getting environmental advice wrong

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

Gordon Plath ... v Fish; ... v Orogen Pty Ltd [2010] NSWLEC 144⁴¹

A consultant had accepted a role involving legislative compliance for vegetation-clearing works. The clearing affected koala habitat and movement corridors. The

³⁷. National Environmental Protection Agency, 'What is the National EPA?' (Web Page) <<https://www.nationalepa.gov.au/about/national-epa/what-is>>.

³⁸. [Environment Protection and Biodiversity Conservation Act 1999 \(Cth\)](#).

³⁹. [National Environmental Protection Agency Act 2025 \(Cth\)](#) ss 2-3.

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

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

1.27 From student answer to client advice

THE DIFFERENCE IN WRITING STYLE

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

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

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

1.28 How to write an Environmental Law problem in IRAC form

- | | |
|--------------------|---|
| Issue | Identify the proposed action, environmental harm or decision, the relevant jurisdiction, decision-maker and legal trigger. Break broad disputes into separate legal issues. |
| Rule / Law | Start with the exact Act and operative provision. Add definitions, objects, interpretation provisions, exceptions, regulations and the cases that explain the rule. |
| Application | Apply one fact to one legal element at a time. Use expert evidence where the statute requires factual or scientific judgment. Address the strongest alternative argument. |

Conclusion

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

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

State the likely legal consequence, then add the practical next step:

referral, further studies, approval application, condition negotiation, review, compliance action or other response.

1.29 Chapter synthesis

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

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

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

44. *Environmental Protection Act 1994 (Qld)* s 8.

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

46. *Acts Interpretation Act 1901 (Cth)* ss 15AA-15AB.

CHAPTER 1 LAWYER'S CHECKLIST

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

CHAPTER 1 FAQ QUESTIONS

Chapter 1 FAQs - Questions

1. Is anthropocentrism anti-environment?

2. Is ecocentrism the same as biocentrism?

3. Why do lawyers care about environmental philosophy?

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

5. Do I always use an ordinary dictionary first?

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

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

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

CHAPTER 1 FAQ ANSWERS

Chapter 1 FAQs - Answers

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

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

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

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

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

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

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

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

CHAPTER 1 MASTERY QUIZ - MULTIPLE CHOICE

Chapter 1 Mastery Quiz - Multiple Choice

1. Anthropocentric environmental value is best described as:

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

2. Ecocentric reasoning is most closely associated with:

- A. intrinsic value in ecological systems
- B. taxation of environmental harm
- C. private property rights only
- D. human convenience as the sole value

3. Christopher Stone's 1972 article is significant because it:

- A. enacted the EPBC Act
- B. abolished standing rules
- C. argued for legal rights for natural objects
- D. created Queensland's Planning and Environment Court^{50, 51}

4. In *Sierra Club v Morton*, the majority held that:

- A. natural objects automatically had standing
- B. Sierra Club lacked standing because it did not allege injury to itself or its members
- C. all environmental claims were non-justiciable
- D. Disney's project was approved by the Supreme Court⁵²

⁵⁰. Christopher D Stone, 'Should Trees Have Standing? - Toward Legal Rights for Natural Objects' (1972) 45 *Southern California Law Review* 450.

⁵¹. [Environment Protection and Biodiversity Conservation Act 1999 \(Cth\)](#).

⁵². *Sierra Club v Morton*, 405 US 727 (1972).

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

- A. every animal is legally the environment
- B. the High Court treated statutory meaning as context-dependent and linked turtle use of surrounding land to the relevant environment
- C. dictionaries can never be used
- D. environmental statutes must always be interpreted ecocentrically⁵³

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

- A. means only land and water
- B. excludes people and communities
- C. includes ecosystems, resources, places, physical surroundings of people and relevant social/economic/aesthetic/cultural conditions
- D. is undefined⁵⁴

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

- A. the narrowest possible interpretation
- B. an interpretation favouring development
- C. the interpretation that best achieves the purpose of the Act
- D. use of ministerial speeches in every case⁵⁵

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

- A. extrinsic material
- B. criminal sentencing
- C. standing
- D. environmental impact statements⁵⁶

⁵³. *The Crown v Murphy* [1990] HCA 42; (1990) 64 ALJR 593.

⁵⁴. *Environmental Protection Act 1994* (Qld) s 8.

⁵⁵. *Acts Interpretation Act 1954* (Qld) ss 14A-14B.

⁵⁶. *Acts Interpretation Act 1901* (Cth) ss 15AA-15AB.

9. A controlled action under the EPBC framework is relevant because:

- A. every State approval is automatically federalised
- B. an action may require federal approval where a relevant Part 3 prohibition would otherwise apply
- C. only Commonwealth agencies can refer actions
- D. local government approval replaces federal approval⁵⁷

10. The best professional response to an environmental-law problem is to:

- A. start with tertiary teaching material and stop there
- B. assume technical terms have ordinary meaning
- C. identify facts, jurisdiction, exact law, definitions, purpose, evidence, application and next step
- D. rely on one textbook regardless of amendments

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

ANSWERS AND EXPLANATIONS

Chapter 1 Mastery Quiz - Answers and Explanations

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

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

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

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

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

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

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

⁵⁸ Christopher D Stone, 'Should Trees Have Standing? - Toward Legal Rights for Natural Objects' (1972) 45 *Southern California Law Review* 450.

⁵⁹ *Sierra Club v Morton*, 405 US 727 (1972).

⁶⁰ *The Crown v Murphy* [1990] HCA 42; (1990) 64 ALJR 593.

⁶¹ *Environmental Protection Act 1994* (Qld) s 8.

⁶² *Acts Interpretation Act 1954* (Qld) ss 14A-14B.

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

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

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

^{63.} *Acts Interpretation Act 1901* (Cth) ss 15AA-15AB.

^{64.} *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ss 67-69.

SHORT ANSWER QUESTIONS

Chapter 1 Short Answer Questions

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

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

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

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

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

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

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

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

⁶⁵ Aldo Leopold, *A Sand County Almanac, and Sketches Here and There* (Oxford University Press, 1949).

⁶⁶ Christopher D Stone, 'Should Trees Have Standing? - Toward Legal Rights for Natural Objects' (1972) 45 *Southern California Law Review* 450.

⁶⁷ *The Crown v Murphy* [1990] HCA 42; (1990) 64 ALJR 593.

⁶⁸ *Environmental Protection Act 1994* (Qld) s 8.

⁶⁹ *Acts Interpretation Act 1954* (Qld) ss 14A-14B.

SHORT ANSWER MODEL ANSWERS

Chapter 1 Short Answer Model Answers

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

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

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

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

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

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

^{70.} Aldo Leopold, *A Sand County Almanac, and Sketches Here and There* (Oxford University Press, 1949).

^{71.} Christopher D Stone, 'Should Trees Have Standing? - Toward Legal Rights for Natural Objects' (1972) 45 *Southern California Law Review* 450.

^{72.} *The Crown v Murphy* [1990] HCA 42; (1990) 64 ALJR 593.

^{73.} *Environmental Protection Act 1994* (Qld) s 8.

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

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

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

IRAC PROBLEM QUESTIONS

Chapter 1 IRAC Problem Questions

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

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

IRAC Question 2 - Developer near threatened-species habitat

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

IRAC Question 3 - Professional advice and unlawful clearing

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

IRAC MODEL ANSWERS

Chapter 1 Detailed IRAC Model Answers

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

Issue

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

Rule

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

Application

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

Conclusion

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

IRAC Answer 2 - Developer near threatened-species habitat

Issue

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

Rule

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

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

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

Application

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

Conclusion

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

IRAC Answer 3 - Professional advice and unlawful clearing

Issue

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

Rule

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

Application

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

^{76.} *The Crown v Murphy* [1990] HCA 42; (1990) 64 ALJR 593.

^{77.} *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ss 67-69.

^{78.} *Gordon Plath of the Department of Environment and Climate Change v Fish; Gordon Plath of the Department of Environment and Climate Change v Orogen Pty Ltd* [2010] NSWLEC 144.

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

Conclusion

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

WEEK 1 APPLICATION / TUTORIAL QUESTIONS

Chapter 1 Tutorial Questions

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

Question 1 — Comparing statutory definitions of “environment”

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

Question 2 — Wildlife fight taken to the top

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

Question 3 — Environmental ethics and competing development needs

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

WEEK 1 APPLICATION / MODEL ANSWERS

Chapter 1 Tutorial Model Answers

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

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

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

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

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

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

CHAPTER 1 FINAL REVISION

From Student to Lawyer - One-Page Attack Sheet

IF YOU REMEMBER ONLY ONE METHOD

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

Core concepts

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

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

Authorities to know from Chapter 1

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

PROFESSIONAL ENDPOINT

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

^{79.} *Sierra Club v Morton*, 405 US 727 (1972).

^{80.} *The Crown v Murphy* [1990] HCA 42; (1990) 64 ALJR 593.

^{81.} *Environmental Protection Act 1994* (Qld) s 8.

^{82.} *Acts Interpretation Act 1954* (Qld) ss 14A-14B.

^{83.} *Acts Interpretation Act 1901* (Cth) ss 15AA-15AB.

^{84.} *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ss 67-69.

CHAPTER 1 SOURCES

Bibliography

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

A Articles / Books / Reports

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

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

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

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

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

B Cases

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

Sierra Club v Morton, 405 US 727 (1972)

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

C Legislation

Acts Interpretation Act 1901 (Cth)

Acts Interpretation Act 1954 (Qld)

Environment Protection and Biodiversity Conservation Act 1999 (Cth)

Environmental Protection Act 1994 (Qld)

National Environmental Protection Agency Act 2025 (Cth)

CHAPTER 1 RESEARCH

Resources

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

[Federal Register of Legislation](#) - current Commonwealth Acts, regulations, compilations, commencement and historical versions.

[Queensland Legislation](#) - current Queensland Acts, subordinate legislation and authorised historical versions.

[AustLII](#) - free Australian judgments and legislation.

[National Environmental Protection Agency](#) - current national regulatory information, EPBC assessment and approvals material.

[The Crown v Murphy \[1990\] HCA 42](#)

[Sierra Club v Morton, 405 US 727 \(1972\)](#)

[Christopher D Stone, 'Should Trees Have Standing? - Toward Legal Rights for Natural Objects'](#)

[Gordon Plath ... v Fish; ... v Orogen Pty Ltd \[2010\] NSWLEC 144](#)

RESEARCH RULE

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

End of Chapter 1.

CHAPTER 2

ROLES AND RESPONSIBILITIES FOR ENVIRONMENTAL REGULATION

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

THE PROFESSIONAL QUESTION

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

2.1 Why roles and responsibilities come before approval analysis

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

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

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

2.2 Australia's federal structure

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

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

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

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

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

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

2.4 Commonwealth places and Commonwealth immunity

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

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

2.5 Marine jurisdiction and the Offshore Constitutional Settlement

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

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

2.6 There is no express Commonwealth “environment” power

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

KEY HEADS OF POWER

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

2.7 Trade and commerce: *Murphyores*

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

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

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

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

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

2.8 Section 92 and conservation: *Cole v Whitfield*

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

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

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

2.9 External affairs and the Tasmanian Dam Case

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

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

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

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

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

2.10 Corporations power

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

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

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

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

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

2.12 Murray–Darling Basin: cooperative federalism under pressure

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

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

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

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

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

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

2.14 Matters of National Environmental Significance (MNES)

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

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

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

2.15 “Controlled action” thinking

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

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

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

2.16 Commonwealth law does not automatically replace State and local law

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

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

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

2.17 From issue spotting to advice: four recurring client perspectives

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

2.18 Chapter 2 synthesis

THE CHAPTER 2 DECISION TREE

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

TUTORIAL INTEGRATION — FROM DATABASE SEARCH TO LEGAL ADVICE

2.19 What the Week 3 tutorial adds to Chapter 2

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

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

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

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

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

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

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

2.21 Migratory species: connect the database result to constitutional power

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

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

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

STATUTORY METHOD

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

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

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

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

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

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

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

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

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

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

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

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

2.25 What Chapter 2 should now teach you to do

CHAPTER 2 PRACTITIONER CHECKLIST

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

CHAPTER 2 FAQ QUESTIONS

Chapter 2 FAQs — Questions

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

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

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

4. What does s 109 inconsistency do?

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

6. What is cooperative federalism?

7. What is an MNES?

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

CHAPTER 2 FAQ ANSWERS

Chapter 2 FAQs — Answers

1. The Commonwealth uses constitutionally recognised heads of power—especially trade and commerce, corporations and external affairs—to enact laws with environmental operation. Constitutional validity depends on legal characterisation, not on the word “environment” appearing in s 51.
2. Exclusive power is reserved to the Commonwealth; concurrent power can be exercised by both Commonwealth and States; residual/general State power remains with States subject to constitutional limits. The classification tells the lawyer who may legislate and whether overlap is possible.
3. Local government exercises functions conferred by State law, particularly planning and local regulation. For a developer, council may be operationally central even though its constitutional status is derivative.
4. Where a valid Commonwealth law and State law are inconsistent, s 109 makes the State law inoperative to the extent of the inconsistency while the inconsistency exists.
5. Australia is party to major environmental treaties. Section 51(xxix) allows Commonwealth legislation to implement international obligations within constitutional limits, as demonstrated by the Tasmanian Dam Case.
6. Cooperative federalism uses agreements, accreditation, shared institutions and coordinated programs to manage overlapping responsibilities without relying solely on constitutional conflict.

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

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

CHAPTER 2 MULTIPLE CHOICE — QUESTIONS

Chapter 2 Multiple Choice Questions

1. Which constitutional provision resolves inconsistency between valid Commonwealth and State laws?

A. s 51 B. s 52 C. s 92 D. s 109

2. Which power was central to the treaty-implementation reasoning in the Tasmanian Dam Case?

A. taxation B. external affairs C. defence D. acquisition

3. Local governments principally derive their law-making authority from:

A. s 51 Constitution B. State legislation C. international law D. the EPBC Act

4. The best statement of *Murphyores* is:

A. environmental purpose always invalidates trade legislation B. a trade-and-commerce law can operate with environmental objectives if constitutionally characterised as trade/commerce C. Queensland mining law always prevails D. export permits cannot consider environmental impacts

5. A PMST report is:

A. a Commonwealth approval B. an automatic referral decision C. an indicative screening tool D. a State planning permit

6. Which is an MNES?

A. every local park B. every State heritage place C. a declared Ramsar wetland D. every native species

7. Section 92 is relevant to:

- A. free interstate trade and protectionist discrimination B. judicial power C. local government creation D. treaty ratification

8. Federal approval under the EPBC Act ordinarily means:

- A. all State/local laws disappear B. separate State/local requirements may still apply C. the council loses all power D. the project cannot have conditions

CHAPTER 2 MULTIPLE CHOICE — ANSWERS

Chapter 2 Multiple Choice Answers

1. **D — s 109.** It is the constitutional inconsistency rule.
2. **B — external affairs.** Section 51(xxix) supported implementation of the World Heritage Convention.
3. **B — State legislation.** Local government is a statutory creation of the States.
4. **B.** The constitutional character of the law, rather than a pure environmental motive, is central.
5. **C.** PMST assists due diligence but is not an approval or legal determination.
6. **C.** Ramsar wetlands are one of the nationally protected categories.
7. **A.** *Cole v Whitfield* explains protectionist discrimination under s 92.
8. **B.** Multiple regimes commonly operate together.

CHAPTER 2 SHORT ANSWER — QUESTIONS

Chapter 2 Short Answer Questions

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

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

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

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

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

6. What should an approvals matrix contain?

CHAPTER 2 SHORT ANSWER — MODEL ANSWERS

Chapter 2 Short Answer Model Answers

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

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

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

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

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

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

WEEK 2 TUTORIAL — QUESTIONS

Chapter 2 Tutorial Questions

Question 1 — Species and MNES

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

Question 2 — Antarctic minke whale

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

Question 3 — Nuclear PPP in Queensland

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

Question 4 — Former High Court, 450 Little Bourke Street

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

Question 5 — Murray–Darling Basin Plan

What is the current status of the Basin Plan?

Question 6 — Protected Matters Search Tool

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

WEEK 2 TUTORIAL — LECTURER-INTEGRATED MODEL ANSWERS

Chapter 2 Tutorial Model Answers

SOURCE INTEGRATION

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

Question 1 — Koala, Tasmanian devil, kangaroo and wombat

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

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

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

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

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

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

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

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

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

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

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

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

Question 3 — Nuclear PPP in Queensland

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

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

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

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

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

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

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

Question 4 — Former High Court, 450 Little Bourke Street

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

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

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

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

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

Question 5 — Murray–Darling Basin Plan

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

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

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

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

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

Question 6 — Protected Matters Search Tool and ground-truthing

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

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

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

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

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

CHAPTER 2 IRAC PROBLEMS — QUESTIONS

Chapter 2 IRAC Problem Questions

IRAC 1 — Port expansion and overlapping governments

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

IRAC 2 — State conservation law and interstate trade

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

IRAC 3 — World Heritage project

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

CHAPTER 2 IRAC PROBLEMS — MODEL ANSWERS

Chapter 2 Detailed IRAC Model Answers

IRAC 1 — Port expansion and overlapping governments

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

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

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

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

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

IRAC 2 — State conservation law and interstate trade

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

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

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

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

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

IRAC 3 — World Heritage project

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

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

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

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

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

CHAPTER 2 RESEARCH

Chapter 2 Resources

[Commonwealth of Australia Constitution Act — Federal Register of Legislation](#)

[Environment Protection and Biodiversity Conservation Act 1999 \(Cth\) — current authorised compilation](#)

[Local Government Act 2009 \(Qld\) — current](#)

[Planning Act 2016 \(Qld\) — current](#)

[Nuclear Facilities Prohibition Act 2007 \(Qld\)](#)

[Water Act 2007 \(Cth\)](#)

[Murphyores Inc Pty Ltd v Commonwealth \[1976\] HCA 20](#)

[Cole v Whitfield \[1988\] HCA 18](#)

[Commonwealth v Tasmania \[1983\] HCA 21](#)

[Protected Matters Search Tool](#)

[Former High Court of Australia — National Heritage listing](#)

[Murray–Darling Basin Plan implementation dashboard](#)

CHAPTER 2 RESEARCH RULE

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

End of Chapter 2.

CHAPTER 3

INTERNATIONAL ENVIRONMENTAL LAW AND ECOLOGICALLY SUSTAINABLE DEVELOPMENT

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

CHAPTER 3 - COMPLETE THROUGH WEEK 3

This chapter incorporates the complete Week 3 seminar material presently supplied, together with the Week 2 tutorial learning carried forward from Chapter 2. The law, cases, treaties and statutory links have been checked against authoritative sources as at **30 September 2026**. Chapter 4 will build on this foundation when the next seminar/tutorial materials are supplied.

THE CHAPTER 3 LEGAL METHOD

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

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

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

3.1 Why environmental problems cross legal borders

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

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

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

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

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

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

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

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

3.3 Public international environmental law: rules between States

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

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

3.4 The three principal sources students must distinguish

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

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

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

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

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

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

[Pulp Mills on the River Uruguay \(Argentina v Uruguay\) \(Judgment, 20 April 2010\)](#)

Facts. Argentina challenged Uruguay's authorisation of pulp mills on a boundary river and alleged breaches of a bilateral river regime and environmental obligations.

Issue. What procedural and substantive environmental obligations applied to a project capable of transboundary effects?

Principle. The Court treated environmental assessment as part of the due-diligence framework where significant transboundary adverse impact is risked. It also distinguished procedural cooperation obligations from substantive environmental obligations.

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

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

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

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

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

3.7 The no-harm principle and *Trail Smelter*

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

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

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

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

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

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

3.8 Treaties: signature, ratification and domestic implementation are different steps

A treaty can be negotiated and signed at the international level, but students must distinguish **signature** from **ratification** and both from **domestic implementation**. The Vienna Convention on the Law of Treaties supplies the general treaty framework, but the central Australian constitutional point for this chapter is simpler: Australian treaties are ordinarily **not self-executing**. Ratification does not, by itself, rewrite domestic law or create every treaty rule as a directly enforceable cause of action for individuals.

Where domestic legal rights, prohibitions, licences or penalties are required, Parliament generally legislates. For Commonwealth environmental legislation, the constitutional source frequently includes [s 51\(xxix\) of the Constitution - the external affairs power](#).

INTERNATIONAL PROBLEM → TREATY / CONVENTION → AUSTRALIA
 CONSENTS TO BE BOUND → COMMONWEALTH IDENTIFIES
 CONSTITUTIONAL POWER → DOMESTIC ACT IMPLEMENTS OBLIGATIONS
 → REGULATOR / MINISTER APPLIES THE ACT → COURT REVIEWS OR
 ENFORCES THE DOMESTIC LAW.

3.9 External affairs power: why *Commonwealth v Tasmania* matters

Section 51(xxix) gives the Commonwealth Parliament power to make laws with respect to **external affairs**. In environmental law its importance is illustrated by the Tasmanian Dam Case.

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

Facts. Tasmania sought to proceed with the Gordon-below-Franklin hydro-electric project in an area associated with Australia's World Heritage obligations.

Commonwealth legislation sought to prevent conduct affecting the protected property.

Issue. Could the Commonwealth validly legislate to implement Australia's international obligations even though land and resource development were occurring inside a State?

Outcome. The High Court upheld important parts of the Commonwealth scheme. The external affairs power was central to the Commonwealth's capacity to implement Australia's World Heritage Convention obligations.

Why it matters in Chapter 3. It supplies the constitutional bridge between an international environmental commitment and binding Commonwealth domestic legislation.

3.10 Treaties and administrative decision-making: the *Teoh* caution

The seminar refers to the doctrine associated with [Minister for Immigration and Ethnic Affairs v Teoh \[1995\] HCA 20; \(1995\) 183 CLR 273](#). Historically, the High Court held that ratification of a treaty could contribute to a legitimate expectation in administrative decision-making even where the treaty had not been incorporated into domestic law.

Students must not turn that proposition into “ratified treaties are Australian law.” They are not. Nor should *Teoh* be taught without its later context. In [Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte Lam \[2003\] HCA 6; \(2003\) 214 CLR 1](#), the High Court's treatment of legitimate expectation substantially limited the utility of that terminology. For environmental advice, the safe method is to identify the domestic statute and the legally mandatory considerations rather than assume an unincorporated treaty is directly enforceable.

3.11 Ozone protection: the international-to-domestic chain in one example

Ozone protection provides a clean illustration of the chapter's method. International concern about ozone depletion produced the [Vienna Convention for the Protection of the Ozone Layer](#) and the [Montreal Protocol on Substances that Deplete the Ozone Layer](#). Australia then enacted domestic controls.

The current [Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 \(Cth\)](#) makes the connection explicit. Section 3 states objectives that include giving effect to Australia's obligations under the Vienna Convention and Montreal Protocol,

while s 69B identifies the external affairs power and relevant international agreements as part of the Act's constitutional basis.

WHY THIS EXAMPLE IS SO USEFUL

The international instrument is not decorative background. It explains **why** the Commonwealth legislates, **where** constitutional power comes from, and **how** a global environmental problem becomes a domestic licensing and control regime.

3.12 From sustainable development to ESD: the Brundtland-Rio-Australia pathway

The conceptual origin of modern sustainable-development language is commonly associated with the 1987 World Commission on Environment and Development report, *Our Common Future*, known as the **Brundtland Report**. Its enduring idea is development that meets present needs without compromising the ability of future generations to meet their own needs.

The 1992 United Nations Conference on Environment and Development - the Rio Earth Summit - then produced several influential instruments, including the [Rio Declaration on Environment and Development](#), Agenda 21 and the Forest Principles, as well as major treaty developments in climate change and biological diversity.

The Rio Declaration is **soft law**, not a treaty. Its importance lies in articulating principles that have influenced treaties, domestic legislation, environmental policy and judicial reasoning. Australia developed the domestic expression **ecologically sustainable development (ESD)**, reflected in the 1992 Intergovernmental Agreement on the Environment and subsequently embedded in legislation.

3.13 EPBC Act ss 3, 3A and 136: turning ESD into operative legal reasoning

The current [Environment Protection and Biodiversity Conservation Act 1999 \(Cth\)](#) does more than mention sustainability. Section 3 includes promotion of ecologically sustainable development among the Act's objects. Section 3A identifies five ESD principles:

1. integration of long-term and short-term economic, environmental, social and equitable considerations;
2. the precautionary principle;
3. intergenerational equity;

4. conservation of biological diversity and ecological integrity as a fundamental consideration; and
5. improved valuation, pricing and incentive mechanisms.

The distinction between an **object** and an **operative decision rule** matters. Section **136(1)** sets mandatory considerations for approval decisions, including matters relevant to controlling provisions and economic and social matters. Under **s 136(2)(a)**, the Minister must take into account the principles of ESD when considering those matters.

How to write this in an exam. Do not say merely, “The EPBC Act supports sustainability.” Identify **s 3** (objects), **s 3A** (the principles), and the relevant substantive decision provision such as **s 136**. Explain what legal work each provision performs.

3.14 The precautionary principle: uncertainty is part of the legal problem

Section 3A(b) expresses the precautionary principle: where there are threats of **serious or irreversible environmental damage**, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

The principle is often misunderstood. It does not mean “ban anything uncertain.” Nor does it mean “science is irrelevant.” It means that serious environmental risk cannot be ignored merely because the evidence is incomplete. The legal decision-maker should identify the threat, assess the uncertainty, evaluate the consequences of being wrong and adopt proportionate preventative measures where the legal framework requires it.

[*Leatch v National Parks and Wildlife Service* \[1993\] NSWLEC 191; \(1993\) 81 LGERA 270](#)

Facts. Shoalhaven City Council proposed a link road. A licence had been granted under State fauna-protection legislation. The evidence concerning the giant burrowing frog was incomplete: the area was not treated as prime habitat and the species had not been directly observed on the project site, but evidence indicated a male call had been heard and the species could travel significant distances.

Issue. How should a decision-maker respond when the possible impact on a threatened species is serious but the scientific evidence is uncertain?

Reasoning. Stein J treated precaution as a common-sense decision principle suited to uncertainty about species population, habitat and behaviour. Lack of complete knowledge did not justify assuming the risk away.

Outcome. The licence was not granted on the material then available, while leaving open the possibility that better scientific knowledge could support a different decision later.

Why it matters. *Leatch* teaches the difference between **prevention**, where harm is sufficiently known, and **precaution**, where uncertainty itself is legally relevant because the possible harm is serious or irreversible.

3.15 How to apply precaution step by step

Step 1 - Identify the environmental harm. What exactly could be damaged: a species, ecological community, wetland, water resource, heritage value, coastal system or human environment?

Step 2 - Characterise seriousness and reversibility. Extinction, irreversible habitat loss and permanent contamination are qualitatively different from temporary and readily reversible disturbance.

Step 3 - Identify scientific uncertainty. What is unknown? Presence? Population size? Pathway? Toxicity? Cumulative impact? Future sea-level response?

Step 4 - Do not convert uncertainty into “no risk”. Ask whether surveys, conditions, redesign, buffers, monitoring, adaptive management or refusal are required.

Step 5 - Explain proportionality. Precaution changes how risk is managed; it does not automatically dictate the most restrictive outcome in every case.

3.16 Intergenerational equity: decisions are not confined to today's impacts

Section 3A(c) describes intergenerational equity: the present generation should ensure that the health, diversity and productivity of the environment are maintained or

enhanced for future generations. This principle expands the decision horizon. A project may produce immediate benefits while transferring environmental costs to people who cannot participate in today's decision.

[Gray v Minister for Planning \[2006\] NSWLEC 720; \(2006\) 152 LGERA 258](#)

Facts. Peter Gray challenged aspects of the environmental assessment process for the proposed Anvil Hill open-cut coal mine in New South Wales. The greenhouse analysis addressed direct mine emissions but did not adequately account for downstream emissions from burning the coal.

Issue. Could assessment stop at emissions physically produced at the mine gate?

Reasoning. The Court treated ESD, including intergenerational equity, as relevant to the statutory assessment process and required a broader understanding of environmental consequences.

Why it matters. Students learn to ask about **indirect, downstream and cumulative impacts**, not merely immediate site disturbance. A complete environmental assessment can require attention to consequences occurring later or elsewhere.

3.17 ESD does not always operate against development: *Taralga*

Environmental principles do not mechanically select one side. A renewable-energy project may itself advance long-term environmental objectives while causing local amenity, landscape or ecological impacts. The lawyer must therefore identify the statutory criteria and weigh the evidence rather than label one party “pro-environment”.

[Taralga Landscape Guardians Inc v Minister for Planning \[2007\] NSWLEC 59; \(2007\) 161 LGERA 1](#)

Teaching point. The Land and Environment Court considered objections to a wind farm and the broader environmental benefits of renewable energy. The case demonstrates that ESD principles can support a project where its long-term environmental benefits form part of the statutory balance.

Exam use. Use *Taralga* to resist the simplistic proposition that ESD always means refusing development. ESD is a disciplined framework for integrated decision-making.

3.18 Climate change: from framework convention to domestic law

Climate change illustrates layered international regulation. The [United Nations Framework Convention on Climate Change \(UNFCCC\)](#) establishes the foundational framework and recognises differentiated responsibilities and capabilities. The [Kyoto Protocol](#) developed quantified and market-based mechanisms for participating developed-country parties, while the [Paris Agreement](#) establishes a global framework based on nationally determined contributions, progression and review.

Students should distinguish a **framework convention** from later protocols or agreements. The convention establishes the institutional and legal architecture; later instruments can add or refine commitments.

3.19 Australian climate legislation: targets are not the same thing as reporting

The [Climate Change Act 2022 \(Cth\)](#) sets national emissions-reduction targets. Section 10(1) identifies a target of reducing net greenhouse gas emissions to **43% below 2005 levels by 2030** and to **net zero by 2050**.

That legislation must be distinguished from the [National Greenhouse and Energy Reporting Act 2007 \(Cth\)](#), which establishes a reporting framework for greenhouse gas emissions, energy production and energy consumption and supports administration of related regulatory mechanisms. One statute contains national targets; the other creates reporting and data obligations. Conflating them produces bad legal advice.

Correction from automated transcript summary. The Commonwealth statute is the **Climate Change Act 2022 (Cth)**, not a “Climate Change Act 2017”. The seminar audio truncated the year during transcription.

3.20 Climate adaptation in planning: today's approval can create tomorrow's hazard

Climate law is not only about reducing emissions. Planning and development law also deals with **adaptation**: flooding, sea-level rise, coastal erosion, heat, bushfire and infrastructure resilience. The seminar's coastal subdivision example asks whether land should be approved for development where modelling indicates serious future inundation and loss of access.

The legal technique is familiar: identify the planning statute and scheme, identify the relevant hazard policy or assessment requirement, obtain technically competent

evidence, and determine whether the proposal is acceptable over the planning horizon. Precaution and intergenerational equity can explain why a decision-maker should not ignore a foreseeable future hazard merely because it may occur beyond the present owner's lifetime.

Client advice. A property developer wants a yes/no answer. The environmental lawyer should instead provide a risk pathway: what modelling is required, which climate horizon applies, what design response is possible, whether safe access remains available, what conditions may be imposed, and whether residual risk makes approval legally or commercially unrealistic.

3.21 Marine pollution: international liability translated into domestic statutes

Marine oil pollution requires rapid response. International conventions allocate liability and support compensation mechanisms so that clean-up need not wait for final resolution of every fault dispute. Australian law gives effect to that architecture through several statutes rather than one generic “oil pollution Act”.

Two central Commonwealth statutes students should recognise are the [Protection of the Sea \(Civil Liability\) Act 1981 \(Cth\)](#) and the [Protection of the Sea \(Oil Pollution Compensation Funds\) Act 1993 \(Cth\)](#). Sea dumping is separately addressed through the [Environment Protection \(Sea Dumping\) Act 1981 \(Cth\)](#).

The teaching lesson is structural: identify the source of marine pollution, identify the relevant international convention, then identify the Australian implementing statute. Liability for oil carried by tankers, pollution from ships, dumping of waste at sea and emergency response do not necessarily sit in the same Act.

3.22 Biological diversity: more than counting species

The [Convention on Biological Diversity \(CBD\)](#) defines biological diversity broadly to include variability among living organisms and diversity **within species, between species and of ecosystems**. Article 1 identifies three objectives: conservation of biological diversity, sustainable use of its components, and fair and equitable sharing of benefits arising from genetic resources.

This breadth matters because environmental law is not simply a list of charismatic animals. Habitat, ecological processes, genetic variation and ecosystem relationships can be legally and scientifically important. A species may appear locally abundant yet depend on a threatened habitat, breeding area, food source or migration route.

The seminar identifies recurring causes of biodiversity loss including habitat destruction, over-exploitation, invasive species and climate change. It also emphasises two reasons biodiversity regulation is difficult: extinction and habitat loss can be irreversible, and human knowledge of ecological relationships is incomplete.

3.23 Biosphere 2 as a teaching analogy: why ecological humility matters

The seminar uses the Biosphere 2 experiment as an analogy for ecological uncertainty. The deeper lesson is not the precise number of species or engineering details; it is that humans can misjudge which ecological interactions are necessary to maintain a functioning system. Environmental decision-making therefore requires humility about incomplete knowledge.

This links directly back to precaution. If a development would remove the only known breeding habitat of a threatened species, the absence of complete knowledge about the species' ecological role does not logically prove that its loss is harmless. The legal task is to apply the governing statute and evidence without pretending that uncertainty equals safety.

3.24 International biodiversity instruments become specific domestic hooks

The CBD is broad, but biodiversity law also includes instruments directed to particular sites, habitats, species and forms of trade. Students should recognise the architecture:

International instrument	Environmental focus	Australian legal connection to investigate
World Heritage Convention	Cultural and natural heritage of outstanding universal value	EPBC Act World Heritage provisions and constitutional external-affairs basis.
Ramsar Convention	Wetlands of international importance	EPBC Act protection of declared Ramsar wetlands.
Convention on Migratory Species (Bonn Convention) and relevant bilateral migratory-bird agreements	Migratory wildlife crossing national boundaries	EPBC Act listed migratory species provisions.
CITES	International trade in endangered species	EPBC Act wildlife-trade controls and permits.
International Convention for the Regulation of Whaling 1946	Conservation and regulation of whaling	

International instrument	Environmental focus	Australian legal connection to investigate
		International Whaling Commission regime; Australian cetacean protection under the EPBC Act.

3.25 Whaling: one problem, two legal pathways

The whaling material is a powerful synthesis because it shows the same environmental conduct being examined through both **Australian domestic law** and **public international law**.

Under the [International Convention for the Regulation of Whaling \(ICRW\)](#), the International Whaling Commission adopted a commercial whaling moratorium. Article VIII permits a contracting government to issue special permits authorising its nationals to kill, take and treat whales for purposes of scientific research. Japan relied on the special-permit mechanism for its Antarctic research programmes, including JARPA II.

The legal issue was not simply whether a permit had the word “scientific” on it. It was whether the programme was genuinely within the treaty exception when assessed against its design and implementation.

3.26 Antarctica: sovereignty claims are legally sensitive

Australia claims sovereignty over the Australian Antarctic Territory, but Antarctic sovereignty is internationally complex and is not universally recognised. The [Antarctic Treaty](#) preserves the positions of claimant and non-claimant States through Article IV while enabling peaceful use, scientific cooperation and a stable legal framework without requiring final resolution of territorial claims.

Do not write: “Antarctica belongs to Australia.” Australia claims a defined Australian Antarctic Territory; other States’ recognition differs. In legal analysis, identify the claim, the treaty framework and the specific jurisdictional provision being relied upon.

3.27 The Australian Whale Sanctuary: start with EPBC Act s 225

Part 13 of the EPBC Act contains Commonwealth cetacean protections. Section **225** establishes the **Australian Whale Sanctuary**. The statutory definition and application must be read carefully rather than reduced to the shorthand “3 nautical miles to 200 nautical miles”. Sections **229** and **230** form part of the offence/civil-penalty regime

concerning killing or injuring cetaceans in the Sanctuary, subject to statutory exceptions and permits.

Inside Queensland coastal waters, separate State wildlife rules may also apply. The current [Nature Conservation \(Animals\) Regulation 2020 \(Qld\)](#) contains whale and dolphin approach rules, including no-approach and caution zones. Again, the professional lesson is layered regulation rather than a single universal rule.

3.28 *Humane Society International v Kyodo Senpaku Kaisha*: domestic enforcement

Humane Society International (HSI), an environmental organisation, sought to use Australian domestic law against a Japanese whaling company operating in waters Australia treated as part of the Australian Whale Sanctuary adjacent to the Australian Antarctic Territory. The litigation raised difficult questions of extraterritorial service, international relations, enforceability and the proper role of a domestic court.

[Humane Society International Inc v Kyodo Senpaku Kaisha Ltd \[2005\] FCA 664](#)

First instance. Allsop J refused leave to serve the proceeding outside Australia. The international and diplomatic setting, including the practical enforceability of any injunction, formed part of the context.

[Humane Society International Inc v Kyodo Senpaku Kaisha Ltd \[2006\] FCAFC 116](#)

Appeal. The Full Federal Court allowed HSI's appeal. The judicial task of applying Australian law could not simply be displaced by executive concerns about diplomatic consequences. The case returned for further steps, including substituted service.

[Humane Society International Inc v Kyodo Senpaku Kaisha Ltd \[2008\] FCA 3](#)

Injunction. The Federal Court ultimately granted declaratory and injunctive relief restraining the company from conduct contrary to the EPBC Act in the Sanctuary. Enforcement remained practically difficult while the company and vessels remained outside ordinary Australian enforcement reach.

Teaching significance. A legal right and a practical remedy are not the same thing. Jurisdiction, service, enforcement assets and diplomatic context all matter after the substantive environmental prohibition has been identified.

3.29 The same controversy at international law: *Whaling in the Antarctic*

[*Whaling in the Antarctic \(Australia v Japan: New Zealand intervening\)* \(Judgment, 31 March 2014\)](#)

Issue. Was Japan's JARPA II programme genuinely “for purposes of scientific research” within Article VIII of the ICRW?

Outcome. The International Court of Justice concluded that the special permits granted in connection with JARPA II did not fall within Article VIII in the relevant respects and required Japan to revoke existing permits and refrain from granting further permits under that programme.

Why it matters. Compare this with the HSI litigation. The Federal Court proceedings concerned enforcement of Australian domestic legislation against a company. The ICJ proceeding was a State-to-State international law case brought by Australia against Japan, with New Zealand intervening. Same environmental controversy; different parties, sources of law, forums and remedies.

3.30 Bringing the whole chapter together: the international-to-domestic map

ONE CONNECTED LEGAL SYSTEM

ENVIRONMENTAL PROBLEM → INTERNATIONAL COOPERATION → TREATY / CUSTOM / SOFT LAW → AUSTRALIAN CONSTITUTIONAL POWER → COMMONWEALTH / STATE LEGISLATION → ADMINISTRATIVE DECISION → EVIDENCE → COURT / TRIBUNAL → REMEDY / ENFORCEMENT.

A student who remembers only a list of treaties has missed the chapter. The objective is to understand **legal transmission**: how an environmental problem becomes an international commitment, how that commitment can support Australian legislation, how the legislation creates concrete prohibitions or decision criteria, and how a lawyer applies those rules to a project or dispute.

3.31 Practitioner issue-spotting checklist

1. **Define the environmental harm.** Pollution, habitat loss, greenhouse emissions, marine spill, species impact or cumulative harm?

2. **Locate the geography.** One State, multiple States, another country, territorial sea, EEZ, Antarctic waters or global commons?
3. **Identify the actors.** Private company, individual, Commonwealth, State, foreign State, regulator or NGO?
4. **Classify the source.** Treaty, soft law, custom, Constitution, Commonwealth Act, State Act, regulation or case?
5. **Explain legal force.** Is the treaty implemented domestically? What constitutional power supports the Act?
6. **Find the exact operative law.** Section, subsection, paragraph, article, definition, exception and permit power.
7. **Match the authority.** What case explains the provision or principle and what does it actually establish?
8. **Test evidence and uncertainty.** What is known? What is modelled? What is missing? What expert work is required?
9. **Apply counterarguments.** Is the impact serious, indirect, reversible, mitigable, uncertain, socially necessary or outweighed by another statutory objective?
10. **Advise the next lawful step.** Assess, refer, obtain permit, redesign, condition, monitor, challenge, seek injunction or negotiate.

CHAPTER 3 FAQ QUESTIONS

Chapter 3 FAQs - Questions

1. Why is international environmental law relevant to an Australian environmental lawyer?

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

3. What two elements create customary international law?

4. Does ratifying a treaty automatically make every treaty rule enforceable in an Australian court?

5. Why is Constitution s 51(xxix) important?

6. What legal work do EPBC Act ss 3, 3A and 136 perform?

7. Does the precautionary principle require refusal whenever science is uncertain?

8. How does intergenerational equity change environmental assessment?

9. What is the difference between the Climate Change Act 2022 and the NGER Act 2007?

10. Why are the HSI/Kyodo Federal Court cases different from *Whaling in the Antarctic* in the ICJ?

CHAPTER 3 FAQ ANSWERS

Chapter 3 FAQs - Answers

1. Because Australian environmental statutes often implement or respond to international obligations. International law can explain constitutional power, statutory purpose, protected categories and the policy architecture behind domestic regulation.
2. Private international law handles cross-border disputes involving private parties and asks forum, governing-law and enforcement questions. Public international law governs legal relations between States and international organisations.
3. Widespread and sufficiently consistent State practice plus *opinio juris* - acceptance that the practice is legally required.
4. No. Australian treaties are ordinarily not self-executing. Domestic legislation is generally required before treaty obligations operate as domestic rights, duties, offences or approval rules.
5. The external affairs power can support Commonwealth legislation implementing Australia's international treaty obligations, as illustrated by *Commonwealth v Tasmania*.
6. Section 3 states objects, s 3A defines ESD principles, and s 136 connects those principles to approval decision-making by requiring them to be taken into account in the relevant statutory process.

7. No. Precaution requires serious or irreversible environmental threat plus relevant uncertainty to be confronted rather than ignored. The appropriate response may be further studies, conditions, redesign, monitoring or refusal depending on the statute and evidence.
8. It requires the decision-maker to look beyond immediate benefits and impacts and consider whether environmental health, diversity and productivity are being maintained for future generations, including downstream and cumulative effects where legally relevant.
9. The Climate Change Act 2022 sets national emissions-reduction targets. The NGER Act 2007 establishes reporting obligations and the national greenhouse and energy data framework.
10. HSI/Kyodo applied Australian domestic EPBC legislation in the Federal Court against a company. *Whaling in the Antarctic* was a public international law dispute in the ICJ between Australia and Japan, with New Zealand intervening.

CHAPTER 3 MULTIPLE CHOICE - QUESTIONS

Chapter 3 Multiple Choice Questions

1. Which is required for customary international law?

- A. A UN General Assembly vote only
- B. State practice plus *opinio juris*
- C. An Australian regulation
- D. A private contract

2. Which constitutional provision is especially important to implementation of environmental treaties?

- A. s 51(xxix)
- B. s 92 only
- C. s 128 only
- D. s 116

3. Which statement about treaties in Australia is most accurate?

- A. Ratification automatically amends every State Act
- B. Treaties are always directly enforceable by individuals
- C. Domestic legislation is generally required to give treaty obligations domestic legal effect
- D. A treaty is merely political soft law

4. EPBC Act s 3A(b) expresses which principle?

- A. Polluter immunity
- B. Precautionary principle
- C. Separation of powers
- D. Common law nuisance

5. Which case is the giant burrowing frog authority discussed in the seminar?

- A. *Gray*
- B. *Leatch*
- C. *Teoh*
- D. *Kyodo*

6. What was central in *Gray v Minister for Planning*?

- A. Nuclear waste storage
- B. Whale sanctuary boundaries
- C. Downstream greenhouse consequences of coal
- D. Ozone-depleting substances

7. Which Commonwealth Act sets the national 2030 and 2050 emissions targets?

- A. Climate Change Act 2022
- B. EPBC Regulations 2000 only
- C. Water Act 2007
- D. Sea Dumping Act 1981

8. Which international instrument defines the framework for law of the sea zones?

- A. CITES
- B. UNCLOS
- C. Ramsar Convention
- D. Paris Agreement

9. Which case is associated with transboundary smelter pollution?

- A. *Trail Smelter*
- B. *Taralga*
- C. *Cole v Whitfield*
- D. *Teoh*

10. What is the correct relationship between HSI/Kyodo and the ICJ whaling case?

- A. They are the same proceeding
- B. Both were High Court cases
- C. One is Australian domestic litigation and the other is State-to-State international litigation
- D. Neither concerned whaling

11. Which CBD objective is NOT one of the three core objectives?

- A. Conservation of biodiversity
- B. Sustainable use
- C. Fair sharing of benefits from genetic resources
- D. Automatic prohibition of all development

12. What is the best first response to an uncertain but potentially irreversible species impact?

- A. Treat uncertainty as proof there is no risk
- B. Identify the seriousness of harm, the uncertainty and proportionate preventative measures
- C. Ignore expert evidence
- D. Approve automatically

CHAPTER 3 MULTIPLE CHOICE - ANSWERS

Chapter 3 Multiple Choice Answers

1. **B.** Custom requires State practice plus *opinio juris*.

2. **A.** Section 51(xxix) is the external affairs power.

3. **C.** Treaties are ordinarily not self-executing domestically.

4. **B.** Section 3A(b) states the precautionary principle.

5. **B.** *Leatch* is the giant burrowing frog case.

6. **C.** *Gray* concerned assessment of downstream greenhouse emissions.

7. **A.** Climate Change Act 2022, s 10.

8. **B.** UNCLOS.

9. **A.** *Trail Smelter*.

10. **C.** They used different legal systems, parties and forums.

11. **D.** The CBD does not create an automatic ban on development.

12. B. That is the disciplined precautionary analysis.

CHAPTER 3 SHORT ANSWER - QUESTIONS

Chapter 3 Short Answer Questions

1. Explain why sovereignty and the no-harm principle must be read together.

2. Explain the difference between a treaty and a declaration such as the Rio Declaration.

3. Explain why *Pulp Mills* matters to environmental impact assessment.

4. Trace the ozone-protection pathway from international law to Australian legislation.

5. Explain the exact relationship between EPBC Act ss 3A(b) and 3A(c).

6. Explain what *Leatch* teaches about scientific uncertainty.

7. Explain why *Taralga* is important when advising on renewable-energy projects.

8. Explain why enforcement was a practical difficulty in the HSI/Kyodo litigation.

CHAPTER 3 SHORT ANSWER - MODEL ANSWERS

Chapter 3 Short Answer Model Answers

1. Sovereignty gives a State authority within its territory, but international law does not treat that authority as a licence to export serious environmental harm. The no-harm principle expresses the accompanying responsibility to control activities within jurisdiction so they do not unlawfully injure other States.

2. A treaty is a binding international agreement for its parties according to its terms and the law of treaties. A declaration such as Rio is soft law: politically and normatively influential, but not a treaty merely because States endorsed it.

3. *Pulp Mills* connects assessment to international due diligence. Where an activity risks significant adverse transboundary impact, environmental impact assessment can be required under general international law before the activity proceeds.

4. Scientific concern led to the Vienna Convention, followed by the Montreal Protocol. Australia then implemented international commitments through the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989, supported expressly by the external affairs power and treaty obligations.

5. Section 3A(b) addresses serious or irreversible harm under scientific uncertainty; s 3A(c) addresses fairness across generations. They often overlap where uncertain present decisions could impose irreversible future environmental costs.

6. *Leatch* teaches that uncertainty about a threatened species cannot simply be treated as absence of risk. Where the potential harm is serious, precaution may justify more evidence, conditions or refusal until uncertainty is responsibly addressed.

7. *Taralga* shows ESD can support development as well as constrain it. Renewable-energy benefits can form part of the statutory environmental balance even where a project also causes local impacts.

8. The defendant was a Japanese company operating far from mainland Australian enforcement. Obtaining an injunction did not itself place assets or vessels within reach of Australian enforcement processes. The case therefore separates legal entitlement from practical enforceability.

WEEK 3 SEMINAR APPLICATION / TUTORIAL-STYLE QUESTIONS

Chapter 3 Seminar Application Questions

Teaching note. These are original book questions constructed from the Week 3 seminar material. They are not represented as separate official Bond University tutorial questions. Attempt them before turning to the model answers on the following page.

Question 1 - Classifying a cross-border environmental dispute

A privately owned Australian mining company operates through a subsidiary in Country A. A containment failure contaminates a river that flows into Country B. Farmers in Country B suffer losses and the government of Country B also alleges a breach of international environmental obligations. Identify the different legal pathways that may arise and explain why private international law and public international law must not be collapsed into one analysis.

Question 2 - Treaty to Australian law

Australia ratifies a new multilateral treaty requiring protection of an internationally significant ecosystem. A developer argues that the treaty has no relevance because the project is entirely within Queensland. Explain the steps a lawyer must investigate before accepting or rejecting that argument, including the role of Constitution s 51(xxix).

Question 3 - Precaution and uncertain threatened-species evidence

A project survey records no threatened frog during two daytime inspections. A specialist later records a call consistent with the species after heavy rain and says the species may travel substantial distances from breeding habitat. The proponent says the species is “not proven to be present”. Explain how a decision-maker should reason through the precautionary principle and *Leatch*.

Question 4 - Intergenerational equity and downstream climate impacts

A proposed coal project quantifies operational emissions but excludes emissions from future combustion of the product. The governing statutory scheme requires ESD to be considered. Explain why *Gray v Minister for Planning* is relevant and what further information the decision-maker may need.

Question 5 - International instrument to domestic statutory hook

Choose one of the World Heritage Convention, Ramsar Convention, Bonn Convention/CMS, CITES or the International Convention for the Regulation of Whaling. Trace the pathway from the international instrument to the Australian legal provision or regulatory regime a practitioner would investigate.

Question 6 - Whaling: forum, remedy and enforcement

An overseas whaling company is alleged to have taken whales in waters Australia treats as part of the Australian Whale Sanctuary, but the company has no office or assets in Australia. Explain the difference between an Australian EPBC Act enforcement proceeding against the company and a State-to-State international dispute under the whaling convention.

WEEK 3 SEMINAR APPLICATION - MODEL ANSWERS

Chapter 3 Seminar Application Model Answers

Question 1 - Model answer

Issue. The same event can create private claims and public international law issues. The lawyer must classify each relationship before choosing a forum or rule.

Law and method. Private international law asks which domestic court has jurisdiction, which law governs, how process is served, and whether a judgment can be recognised and enforced. Public international law separately asks whether one State owes another State a treaty or customary-law obligation and whether there is a jurisdictional basis for arbitration or international adjudication.

Application. Farmers may have domestic tort, statutory or compensation claims against private corporate defendants. Country B may raise State responsibility, diplomatic or treaty issues against Country A. The existence of international environmental principles does not turn private farmers into parties before the ICJ, and the existence of domestic litigation does not exhaust any State-to-State issue.

Conclusion. Build two maps: a private cross-border claims map and a public international law map, then identify where they interact.

Question 2 - Model answer

Issue. Whether an international obligation can support Australian domestic regulation of a project located wholly within one State.

Law. A treaty is ordinarily not self-executing in Australian domestic law. The practitioner must identify whether Parliament has enacted implementing legislation and whether that law is supported by a constitutional head of power. Constitution s 51(xxix), the external affairs power, is a central source of Commonwealth legislative capacity to implement bona fide international obligations. *Commonwealth v Tasmania* demonstrates that the intrastate location

of the physical activity does not, by itself, prevent Commonwealth regulation supported by external affairs.

Application. Identify the treaty obligation, the implementing Commonwealth Act, the exact controlling provision, the protected value or matter, the statutory trigger and any required referral/approval pathway. State approvals must be mapped separately.

Conclusion. “The project is entirely in Queensland” is not a complete constitutional answer.

Question 3 - Model answer

Issue. Whether incomplete evidence can be treated as proof that the threatened species is absent.

Law. EPBC Act s 3A(b) states the precautionary principle in the federal ESD framework. *Leatch v National Parks and Wildlife Service* illustrates how serious potential biodiversity harm and material scientific uncertainty can require precautionary decision-making.

Application. The daytime surveys reduce but do not eliminate uncertainty. The acoustic record, weather conditions and species movement ecology create a credible risk requiring further targeted surveys, habitat assessment, route redesign, buffers, timing controls or other proportionate measures. Precaution does not automatically mean permanent refusal, but it prevents the decision-maker from converting uncertainty into assumed safety.

Conclusion. The correct legal response is to manage the uncertainty before irreversible harm occurs.

Question 4 - Model answer

Issue. Whether an assessment that excludes downstream combustion emissions may fail to give the decision-maker legally relevant information.

Law. Intergenerational equity requires attention to future environmental consequences. *Gray v Minister for Planning* is important because it demonstrates that downstream greenhouse emissions may be relevant to an adequate environmental assessment where ESD forms part of the statutory decision framework.

Application. The assessment should identify and, where reasonably possible, quantify downstream emissions, disclose methodology and uncertainty, and explain how those impacts relate to the statutory test. Questions of causation, control and weight can be argued after the information is before the decision-maker.

Conclusion. Excluding downstream emissions merely because combustion occurs elsewhere can create legal risk where the statute requires a broader ESD assessment.

Question 5 - Model answer

Method. Start with the international instrument and identify the obligation or protected subject matter. Then identify the Australian constitutional source supporting implementation, the implementing statute, the exact protected category and the operative provision. For example, the World Heritage Convention connects to the EPBC Act World Heritage controlling provisions; migratory-species treaties connect to the listed migratory species regime; CITES connects to wildlife-trade controls; and the whaling convention sits alongside Part 13 cetacean protections. Do not stop at the treaty name: the practitioner needs the domestic legal hook.

Question 6 - Model answer

Issue. Domestic statutory enforcement and international State responsibility are distinct.

Domestic pathway. The NGO must identify the Australian Whale Sanctuary and the precise EPBC prohibition, establish standing and jurisdiction, serve the foreign company and seek available relief. The HSI/Kyodo litigation shows that service outside Australia and practical enforcement can be difficult even where the court grants relief.

International pathway. A dispute that the foreign State has breached the ICRW is a public international law dispute requiring State parties and an international jurisdictional basis. *Whaling in the Antarctic* illustrates that separate pathway.

Conclusion. Always identify the party, source of law, forum and remedy before using the label “international whaling case”.

CHAPTER 3 IRAC PROBLEMS - QUESTIONS

Chapter 3 IRAC Problem Questions

IRAC 1 - Cross-border chemical discharge

An Australian-controlled mining company operates a processing facility in Country A, five kilometres from the border with Country B. Following unusually heavy rain, a waste pond overflows and contaminated water enters a river flowing into Country B. Farmers in Country B lose crops and drinking-water supplies are disrupted. There is no specific bilateral pollution treaty. Advise the company about the legal issues that must be investigated before it assumes either that only Country A law applies or that an international court will determine the dispute.

IRAC 2 - Uncertain threatened-species habitat

A road authority proposes a bypass through degraded woodland. No endangered frog has been visually recorded on the site for twenty years, but a qualified ecologist records a call consistent with the species and explains that adults may move kilometres from breeding habitat. The proponent argues that there is no “scientific proof” the frog is present. Advise the decision-maker on precautionary reasoning.

IRAC 3 - Coal project and downstream emissions

A company proposes a new Australian coal mine. Its environmental assessment calculates diesel, electricity and fugitive emissions from the mine but excludes emissions from combustion of exported coal because those emissions will occur overseas. The governing statute requires ESD principles to be considered. Advise whether the assessment methodology creates a legal risk.

IRAC 4 - Antarctic whaling and enforcement

An overseas company takes whales in waters Australia regards as part of the Australian Whale Sanctuary adjacent to the Australian Antarctic Territory. The company has no office or assets in Australia. An Australian environmental NGO wants an injunction. Advise on the domestic statutory pathway, procedural obstacles and the distinction between domestic litigation against the company and any international dispute with the company's State.

CHAPTER 3 IRAC PROBLEMS - MODEL ANSWERS

Chapter 3 Detailed IRAC Model Answers

IRAC 1 - Cross-border chemical discharge

Issue. The principal issues are whether the dispute is a private cross-border claim, a public international law dispute between States, or both; which courts have jurisdiction; which domestic law governs liability; whether customary international environmental principles are relevant; and whether a judgment can be enforced against the company or its assets.

Rule. Private international law addresses forum, governing law, service and recognition/enforcement where private parties and events span jurisdictions. Public international law separately regulates duties between States. The no-harm principle, historically illustrated by *Trail Smelter*, recognises that territorial sovereignty is accompanied by responsibility regarding serious transboundary environmental harm. *Pulp Mills* demonstrates the importance of due diligence, cooperation and environmental assessment where significant transboundary harm is risked.

Application. The company's facility and alleged failure occurred in Country A, while much of the damage occurred in Country B. A claimant may therefore explore proceedings in one or more domestic forums depending on their jurisdictional rules. The company must identify corporate entities, insurance, contractual arrangements, applicable environmental licences and tort/statutory causes of action. The absence of a bespoke bilateral pollution treaty does not prove there is no liability. Equally, affected farmers cannot simply commence an ICJ case: the ICJ adjudicates disputes between States that have a jurisdictional basis. Country B might pursue diplomatic or State-to-State avenues, while farmers pursue private claims. Evidence concerning design, rainfall foreseeability, containment capacity, warning, causation and damage will be essential.

Counterargument. The company may argue an extraordinary natural event broke causation or that it complied with domestic standards. Those arguments require factual and legal testing; compliance with one licence does not automatically answer negligence, statutory liability or transboundary responsibility.

Conclusion. The correct advice is a multi-jurisdictional investigation, not a categorical statement that one country's law or one international tribunal controls the entire dispute.

IRAC 2 - Uncertain threatened-species habitat

Issue. Whether the absence of direct visual confirmation permits the decision-maker to disregard potential serious harm to the endangered frog.

Rule. Under the precautionary principle, reflected in EPBC Act s 3A(b) and explained in authorities such as *Leatch*, lack of full scientific certainty should not be used to postpone preventative measures where threats of serious or irreversible environmental damage exist.

Application. The potential loss of habitat for an endangered species is capable of being serious and irreversible. Scientific uncertainty plainly exists: visual surveys have not confirmed presence, but qualified acoustic evidence and known movement behaviour support a plausible risk. The decision-maker should therefore ask what further surveys, seasonal work, habitat mapping, route redesign, buffers or conditions could reduce uncertainty and risk. The proponent's argument wrongly converts "not conclusively proven" into "not present".

Counterargument. Precaution is not automatic refusal. If rigorous further surveys establish absence, or if redesign eliminates material risk, approval may become legally supportable.

Conclusion. The decision-maker should not approve on the assumption of no frog merely because the science is incomplete. Uncertainty must be managed through proportionate evidence and preventative measures.

IRAC 3 - Coal project and downstream emissions

Issue. Whether excluding combustion emissions creates a legally inadequate environmental assessment where ESD is mandatory.

Rule. Intergenerational equity under EPBC Act s 3A(c) and analogous State ESD provisions directs attention to future environmental consequences. *Gray v Minister for Planning* is a leading authority showing that environmental assessment may need to consider downstream greenhouse emissions rather than confining analysis to direct mine-site emissions.

Application. The exported coal is mined precisely so it can be combusted. Although combustion occurs overseas and separate legal questions arise about control and causation, excluding downstream emissions altogether may prevent the decision-maker from understanding the project's full climate consequences. Because the statute requires ESD to be considered, the safer legal course is to quantify or reasonably estimate relevant downstream emissions, explain methodological limitations, avoid double counting and state how the information bears on the statutory decision.

Counterargument. The company can argue overseas combustion is undertaken by independent actors and that the decision-maker's statutory jurisdiction is project-specific. That may affect the weight assigned to downstream emissions, but it does not necessarily justify withholding the information.

Conclusion. There is a material legal risk in an assessment that simply omits downstream emissions. *Gray* supports a broader assessment approach where ESD forms part of the statutory decision framework.

IRAC 4 - Antarctic whaling and enforcement

Issue. The issues are whether the conduct falls within the EPBC Act's Australian Whale Sanctuary provisions, whether the NGO can obtain and serve Australian proceedings on the foreign company, whether an injunction would be practically enforceable, and how this differs from an international dispute between Australia and the foreign State.

Rule. EPBC Act s 225 establishes the Australian Whale Sanctuary and ss 229-230 form part of the cetacean prohibition regime. The HSI/Kyodo litigation shows that extraterritorial service, judicial discretion and practical enforcement can become central where the respondent is foreign. The Full Federal Court held that diplomatic concerns did not simply displace the court's judicial task. Separately, a State-to-State treaty dispute proceeds under public international law, illustrated by *Whaling in the Antarctic*.

Application. The NGO should first establish the exact location, species, conduct and statutory prohibition. It must then address standing, originating process and service outside Australia. If ordinary service cannot be achieved, substituted service may be sought if the procedural rules permit. Even if an injunction is granted, the company may have no assets or vessels within Australian enforcement reach. That practical difficulty should be explained without confusing it with the court's power to declare and restrain unlawful conduct. Any contention

that the foreign State breached the ICRW is a different legal controversy involving States and an international jurisdictional basis.

Counterargument. The respondent may contest Australian jurisdiction, sanctuary coverage, treaty-sensitive territorial assumptions, service and enforceability. Those objections require precise statutory and procedural analysis.

Conclusion. Domestic EPBC enforcement against the company and international proceedings against a State are distinct pathways. A competent adviser must identify both and never collapse them into one “whaling case”.

CHAPTER 3 RESEARCH

Chapter 3 Resources

[Commonwealth of Australia Constitution Act - Federal Register of Legislation](#)

[Environment Protection and Biodiversity Conservation Act 1999 \(Cth\) - current authorised compilation](#)

[Climate Change Act 2022 \(Cth\)](#)

[National Greenhouse and Energy Reporting Act 2007 \(Cth\)](#)

[Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 \(Cth\)](#)

[Protection of the Sea \(Civil Liability\) Act 1981 \(Cth\)](#)

[Protection of the Sea \(Oil Pollution Compensation Funds\) Act 1993 \(Cth\)](#)

[Environment Protection \(Sea Dumping\) Act 1981 \(Cth\)](#)

[Nature Conservation \(Animals\) Regulation 2020 \(Qld\)](#)

[United Nations Convention on the Law of the Sea - UN](#)

[Trail Smelter Arbitration - UN Reports of International Arbitral Awards](#)

[Pulp Mills on the River Uruguay - International Court of Justice](#)

[Vienna Convention for the Protection of the Ozone Layer - UNEP](#)

[Montreal Protocol - UNEP](#)

[Rio Declaration on Environment and Development - United Nations](#)

[UNFCCC](#)

[Kyoto Protocol](#)

[Paris Agreement](#)

[Convention on Biological Diversity](#)

[Convention on Migratory Species \(Bonn Convention\)](#)

[CITES Convention text](#)

[Antarctic Treaty - official Secretariat](#)

[International Convention for the Regulation of Whaling - IWC](#)

[Whaling in the Antarctic \(Australia v Japan: New Zealand intervening\) - ICJ](#)

[Commonwealth v Tasmania \[1983\] HCA 21](#)

[Minister for Immigration and Ethnic Affairs v Teoh \[1995\] HCA 20](#)

[Ex parte Lam \[2003\] HCA 6](#)

[Leatch v National Parks and Wildlife Service \[1993\] NSWLEC 191](#)

[Gray v Minister for Planning \[2006\] NSWLEC 720](#)

[Taralga Landscape Guardians Inc v Minister for Planning \[2007\] NSWLEC 59](#)

[Humane Society International Inc v Kyodo Senpaku Kaisha Ltd \[2005\] FCA 664](#)

[Humane Society International Inc v Kyodo Senpaku Kaisha Ltd \[2006\] FCAFC 116](#)

[Humane Society International Inc v Kyodo Senpaku Kaisha Ltd \[2008\] FCA 3](#)

RESEARCH RULE

Blue text is used as a research pathway, not decoration. Start with the authoritative source, confirm the current provision or judgment, and then return to the narrative to understand why it matters and how to use it.

End of Chapter 3 - complete through the Week 3 materials supplied as at 30 September 2026.

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ABOUT THE AUTHOR



Dr Adrian Adams has long held a profound and deeply personal passion for environmental conservation, the natural world and the protection of the places and ecosystems that sustain us. An avid surfer and lifelong lover of the ocean, marine life, wildlife and the outdoors, Adrian's environmental values extend far beyond academic interest - they form an important part of the way he sees the world and the future we leave behind.

Environmentally conscious, biophilic, conservation-minded and stewardship-focused, Adrian believes that progress should not require abandoning our responsibility to nature. His interests encompass the protection of oceans and coastlines, marine environments, biodiversity, wildlife, ecosystems, climate awareness and the responsible stewardship of land and natural resources.

Working extensively in property and development, Adrian brings a distinctive real-world perspective to environmental law. He understands the commercial, planning and practical realities of creating homes, communities and urban environments while also recognising the responsibility to minimise ecological footprints and preserve environmental values.

His philosophy is that development and conservation do not have to exist in opposition. Through responsible planning, thoughtful design, environmental law and informed commercial decision-making, Adrian advocates for a more symbiotic relationship between the built and natural environments.

His connection to the ocean remains central to that outlook. Surfing, coastal environments and marine life continually reinforce his appreciation of how valuable - and how vulnerable - the natural world can be.

ABOUT THE BOOK

Can progressive urban growth and meaningful ecological preservation successfully coexist?

In an era of expanding cities, increasing development pressures and significant environmental and climate challenges, the intersection of property development, planning, design and environmental law has never been more important.

Environmental Law: A Study and Teaching Guide moves beyond dry legal theory to transform complex Australian environmental law into a practical, accessible and real-world learning framework.

Drawing together Commonwealth, State and local legislation, leading cases, regulatory authorities, environmental principles, worked examples, tutorials, issue spotting and detailed model answers, the book teaches readers not simply what the law says, but why it matters, how it operates and how to apply it.

A central theme runs throughout the book: responsible property development and environmental stewardship need not automatically be competing objectives. Thoughtful planning, sound legal reasoning, sustainable design and environmental consciousness can help create outcomes that recognise both human needs and ecological responsibility.

Whether you are a law student, environmental science student, planner, property professional, developer or future decision-maker, this guide is designed to help you understand environmental law with confidence and apply it in the real world.

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