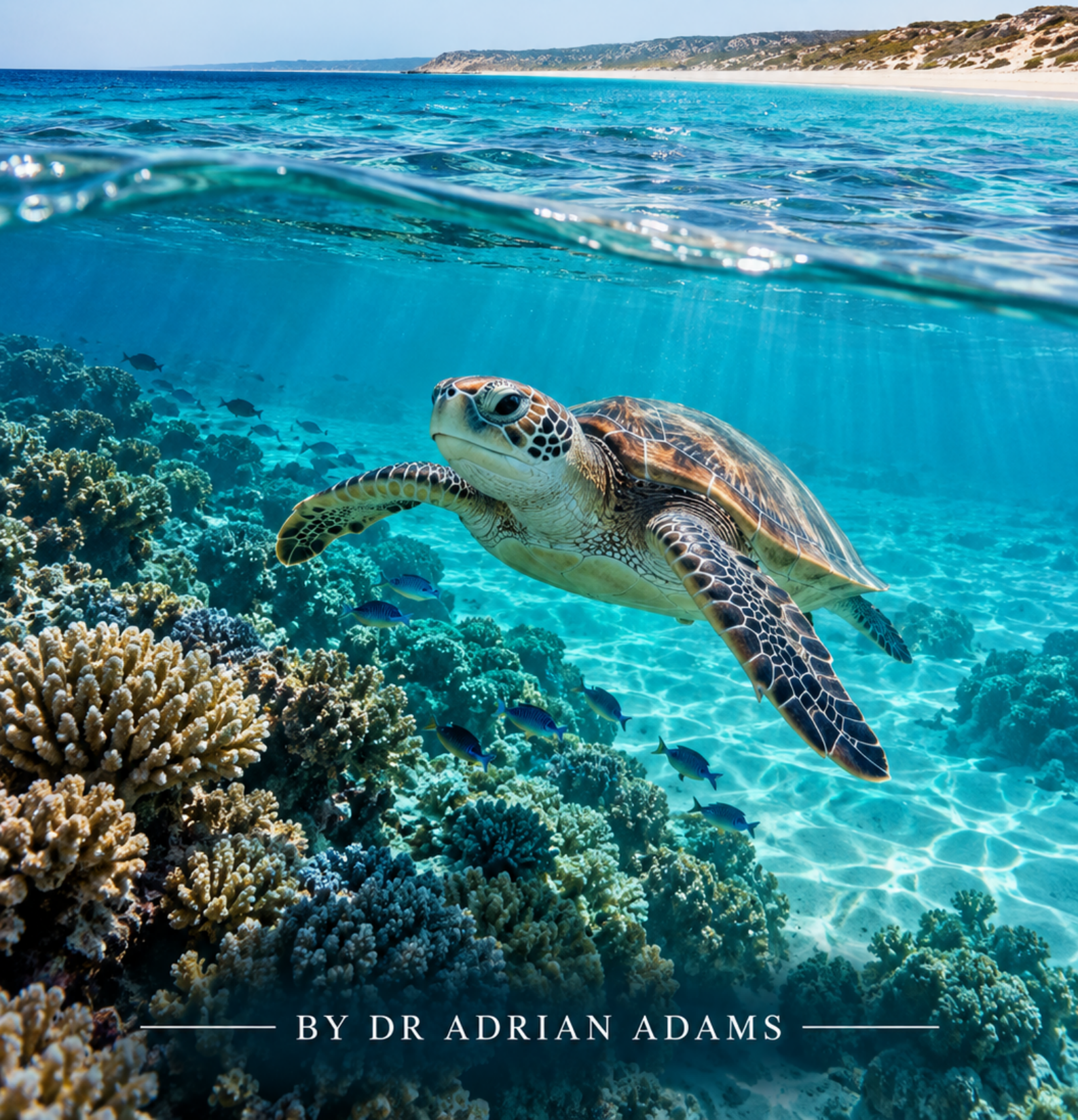


ENVIRONMENTAL LAW

— A STUDY AND TEACHING GUIDE —



— BY DR ADRIAN ADAMS —

PREFACE

Preface

BY DR ADRIAN ADAMS

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

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

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

THE LEARNING JOURNEY

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

¹ [Queensland Legislation](#) (Web Page).

Preface - continued

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

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

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

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

HOW TO USE AUTHORITY IN THIS BOOK

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

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

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

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

Preface - conclusion

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

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

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

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

PUBLICATION AND SOURCE NOTE

Publication and Source Note

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

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

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

SOURCE HIERARCHY USED IN THIS BOOK

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

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

Currency, accuracy and hyperlinks

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

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

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

PUBLICATION PRINCIPLE

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

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HOW TO USE THIS BOOK

How to Use This Book

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

The learning method

THE CORE METHOD

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

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

Read each chapter in three passes

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

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

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

Prescribed and recommended text

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

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

How the end-of-chapter learning suite works

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

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

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

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

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

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

FUN REVISION RESOURCE

Interactive Glossary of Terms

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

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

A

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

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

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

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

B

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

C

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

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

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

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

E

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

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

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

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

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

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

I

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

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

L

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

M

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

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

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

N

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

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

O

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

P

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

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

R

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

S

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

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

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

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

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

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

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

T ---

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

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

LEGAL RESEARCH

Legal Research: Cases, Legislation and Authorities

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

Research platforms students should know

[Federal Register of Legislation](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?

FREQUENTLY ASKED QUESTIONS & ANSWERS

Chapter 1 FAQs & Answers

FAQ 1. Is anthropocentrism anti-environment?

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.

FAQ 2. Is ecocentrism the same as biocentrism?

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

FAQ 3. Why do lawyers care about environmental philosophy?

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.

FAQ 4. What is the safest way to use *The Crown v Murphy*?⁴⁷

Use it 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.

⁴⁷. *The Crown v Murphy* [1990] HCA 42; (1990) 64 ALJR 593.

FAQ 5. Do I always use an ordinary dictionary first?

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.

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

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.

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

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.

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

Because statutes, agency structures, delegations, standards and regulatory processes change. The current Queensland s 8 and the commencement of the National EPA in 2026 are examples of why historical tertiary and professional educational material must be checked against current authorised sources.⁴⁸

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⁴⁸. National Environmental Protection Agency, [‘What is the National EPA?’](#) (Web Page).

⁴⁹. *Environmental Protection Act 1994* (Qld) s 8.

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, accessorial liability, due-diligence obligations and sentencing/remedial powers. The Taylors Beach / Orogen prosecution is a useful historical illustration of the consequences that can follow when a professional adviser accepts a compliance role and gets the approval position wrong.⁷⁸

Application

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

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

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

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

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

Conclusion

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

WEEK 1 APPLICATION / TUTORIAL QUESTIONS

Chapter 1 Tutorial Questions

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

Question 1 — Comparing statutory definitions of “environment”

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

Question 2 — Wildlife fight taken to the top

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

Question 3 — Environmental ethics and competing development needs

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

WEEK 1 APPLICATION / MODEL ANSWERS

Chapter 1 Tutorial Model Answers

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

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

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

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

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

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

CHAPTER 1 FINAL REVISION

From Student to Lawyer - One-Page Attack Sheet

IF YOU REMEMBER ONLY ONE METHOD

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

Core concepts

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

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

Authorities to know from Chapter 1

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

PROFESSIONAL ENDPOINT

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

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

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

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

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

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

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

CHAPTER 1 SOURCES

Bibliography

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

A Articles / Books / Reports

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

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

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

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

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

B Cases

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

Sierra Club v Morton, 405 US 727 (1972)

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

C Legislation

Acts Interpretation Act 1901 (Cth)

Acts Interpretation Act 1954 (Qld)

Environment Protection and Biodiversity Conservation Act 1999 (Cth)

Environmental Protection Act 1994 (Qld)

National Environmental Protection Agency Act 2025 (Cth)

CHAPTER 1 RESEARCH

Resources

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

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

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

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

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

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

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

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

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

RESEARCH RULE

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

End of Chapter 1.

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.