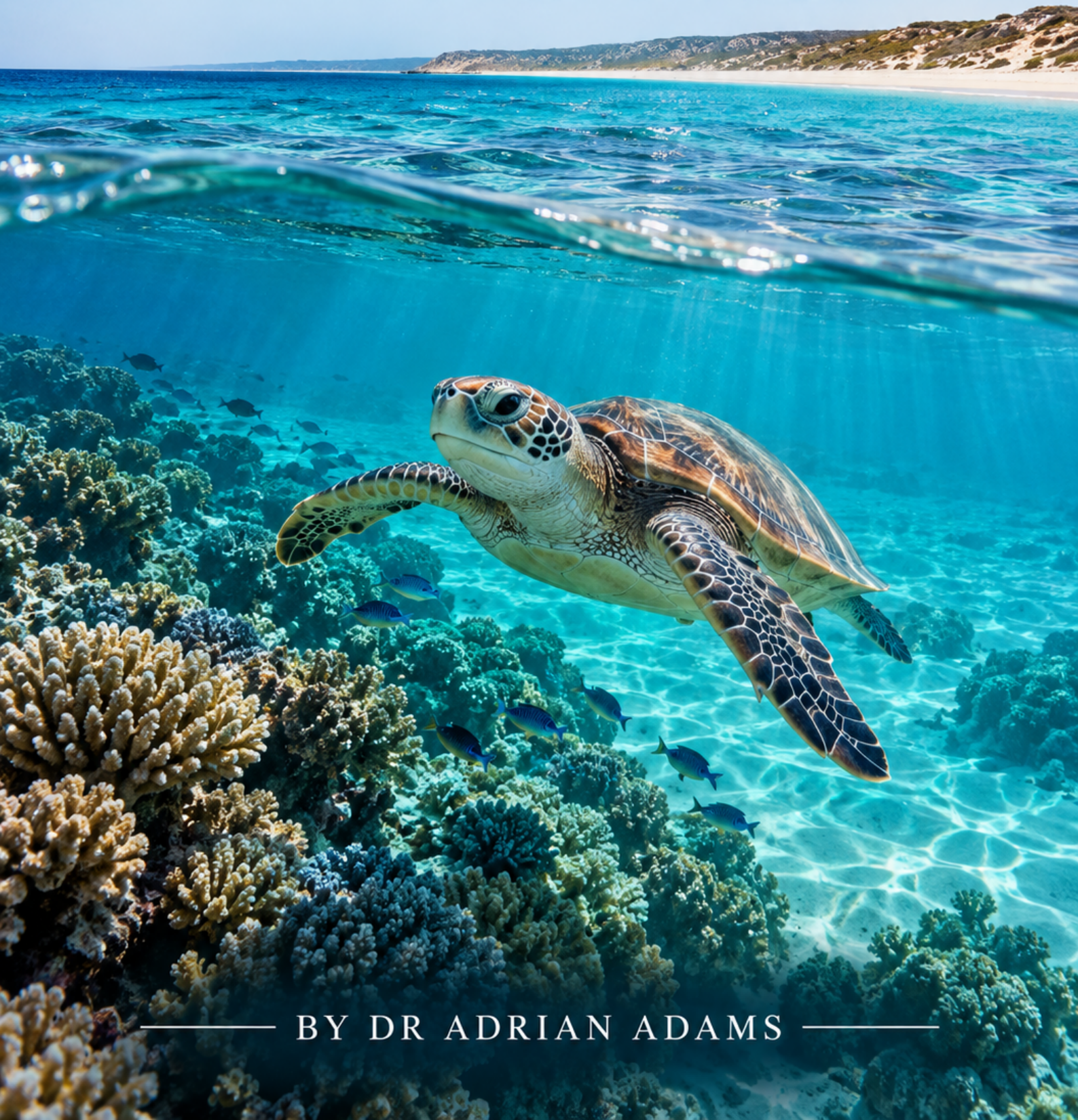


JUNIQ • ENVIRONMENTAL LAW

[Book home](#)[Read PDF](#)[Chapter 1 crossword](#)[Chapter 2 crossword](#)

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.

CONTENTS

Table of Contents

Preface	1
Publication and Source Note	5
How to Use This Book	8
Interactive Glossary of Terms A-Z	11
Legal Research: Cases, Legislation and Authorities	15
Chapter 1 - Environmental Law: Context, Values, Evolution and Meaning	17
Environmental ethics and values	19
Evolution of environmental thought	22
Mon Repos and the meaning of environment	25
Reading environmental legislation properly	27
Experts, evidence and the lawyer's role	28
From law student to lawyer: the professional method	30
From student answer to client advice	32
Environmental Law problem solving in IRAC	33
End-of-Chapter FAQs and Answers	35
Multiple Choice Questions and Answers	38
Short Answer Questions and Model Answers	43
IRAC Problems and Model Answers	47
Chapter 1 Bibliography	53
Chapter 1 Resources	55
Chapter 2 - Roles and Responsibilities for Environmental Regulation	—
Chapter 2 FAQs	—
Chapter 2 Multiple Choice	—
Chapter 2 Short Answers	—
Week 2 Tutorial Questions and Model Answers	—
Chapter 2 IRAC Problems and Model Answers	—
Chapter 2 Resources	—

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

49

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

Application

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

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

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

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

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

Conclusion

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

WEEK 1 APPLICATION / TUTORIAL QUESTIONS

Chapter 1 Tutorial Questions

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

Question 1 — Comparing statutory definitions of “environment”

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

Question 2 — Wildlife fight taken to the top

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

Question 3 — Environmental ethics and competing development needs

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

WEEK 1 APPLICATION / MODEL ANSWERS

Chapter 1 Tutorial Model Answers

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

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

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

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

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

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

CHAPTER 1 FINAL REVISION

From Student to Lawyer - One-Page Attack Sheet

IF YOU REMEMBER ONLY ONE METHOD

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

Core concepts

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

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

Authorities to know from Chapter 1

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

PROFESSIONAL ENDPOINT

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

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

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

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

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

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

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

CHAPTER 1 SOURCES

Bibliography

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

A Articles / Books / Reports

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

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

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

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

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

B Cases

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

Sierra Club v Morton, 405 US 727 (1972)

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

C Legislation

Acts Interpretation Act 1901 (Cth)

Acts Interpretation Act 1954 (Qld)

Environment Protection and Biodiversity Conservation Act 1999 (Cth)

Environmental Protection Act 1994 (Qld)

National Environmental Protection Agency Act 2025 (Cth)

CHAPTER 1 RESEARCH

Resources

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

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

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

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

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

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

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

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

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

RESEARCH RULE

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

End of Chapter 1.

CHAPTER 2

ROLES AND RESPONSIBILITIES FOR ENVIRONMENTAL REGULATION

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

Tutorial integration. This chapter incorporates the Week 3 first-hour discussion answering the Week 2 Roles and Responsibilities tutorial. The answers are integrated into the narrative so that the tutorial does not sit apart from the doctrine: it demonstrates how lawyers move from a factual prompt to primary legislation, databases, evidence, authority and advice.

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 Tutorial consolidation: how a lawyer proves that a protected matter is actually engaged

The first hour of the following seminar converts the Week 2 doctrine into a professional research method. That step is essential. It is one thing to memorise that “listed threatened species” and “listed migratory species” are matters of national environmental significance; it is another to advise a client whether a particular animal, population, place or activity actually falls within the statutory category.

The correct method is to move from the facts to the primary law and then to the best available regulatory evidence. For threatened species, begin with [Environment Protection and Biodiversity Conservation Act 1999 \(Cth\)](#), Chapter 2, Part 3, Division 1, Subdivision C. Section 18 contains the civil controlling provisions for actions significantly affecting listed threatened species and certain listed threatened ecological communities; s 18A contains associated offences. The statutory listing machinery sits later in the Act, including s 178 for threatened species. The [Species Profile and Threats Database \(SPRAT\)](#) is then an efficient research interface for identifying the listed taxon, its category, distribution, conservation advice and recovery material.

Primary-source rule. SPRAT is a highly useful Commonwealth database, but it is not a substitute for the legal list or legislative instrument. In professional advice, use SPRAT to locate and understand the relevant species or community, then confirm the current statutory status and any population/subspecies qualification. Common names can be misleading.

Koala — why the population description matters

The word “koala” does not itself answer the legal question. The Commonwealth listing relevant to this course is the combined koala populations of Queensland, New South Wales and the Australian Capital Territory, which are listed as endangered under national environmental law. The official Commonwealth [koala listing material](#) explains that geographic limitation. A lawyer therefore asks not simply “are koalas present?” but **which population is present, where is the site, what is the statutory listing, and what impact is proposed?**

Tasmanian devil, kangaroo and wombat — taxonomy before assumption

The Tasmanian devil is nationally listed as threatened. By contrast, the ordinary word “kangaroo” produces many search results and cannot be treated as a legal conclusion that an MNES is present. The species and taxon must be identified precisely. The same lesson appears with wombats: the common wombat is not thereby a nationally listed threatened species, while the [northern hairy-nosed wombat](#) is a highly threatened nationally protected species. The southern hairy-nosed wombat has been nominated at various times; the current Commonwealth [not-prioritised nominations page](#) records that the 2025 nomination was not included in the 2026 priority assessment list. This demonstrates that listing is dynamic and must be checked at the date of advice.

Professional lesson. Never infer EPBC status from whether an animal is iconic, rare-looking, familiar, commercially valuable or emotionally important. The legal question is whether the relevant species, population or ecological community is within the current statutory category and whether the proposed action may have the requisite significant impact.

2.19 Migratory species: from scientific name to treaty to constitutional power

Tutorial Question 2 demonstrates how legal research links taxonomy, statute, treaty and constitutional power. The species *Balaenoptera bonaerensis* is the Antarctic minke whale. Section 20 of the EPBC Act is the civil controlling provision for actions with a

significant impact on a listed migratory species; s 20A creates associated offences; and s 209 establishes the listed migratory species list.

A listed migratory species may be protected because of Australia's international obligations rather than because the species is endemic to Australia. The relevant treaty architecture includes the Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention/CMS) and bilateral migratory-bird agreements such as CAMBA, JAMBA and ROKAMBA. This is where Chapter 2's constitutional narrative connects directly to statutory problem solving: the Commonwealth's **external affairs power in s 51(xxix)** helps support federal legislation giving domestic effect to international environmental commitments.

FACT → identify scientific taxon → check SPRAT/current statutory list → identify whether the species is threatened, migratory or both → locate the EPBC controlling provision → identify the treaty/international source where relevant → connect the federal law to s 51(xxix) → analyse the proposed action and significant impact.

2.20 The nuclear PPP problem: reading a State Act before reaching for constitutional supremacy

The nuclear tutorial problem is deliberately designed to test legal method. A weak answer begins with "Commonwealth law beats State law". A strong lawyer first reads the State Act carefully, because the State statute may itself answer part of the problem.

The current [Nuclear Facilities Prohibition Act 2007 \(Qld\)](#) should be approached in this sequence. First, check its application provision. Section 4(1) states that the Act binds all persons, including the State and, *so far as Queensland's legislative power permits*, the Commonwealth and the other States. That qualification immediately signals a constitutional limit. Second, move to s 7. Section 7(1) provides that a person must not construct or operate a nuclear facility. A corporation such as NML is a legal person. Third, read the exceptions: s 7(2)(a) excludes a facility for the storage or disposal of radioactive waste material resulting from nuclear material used for research or medical purposes.

Applied to the hypothetical, the proposed medical-purpose radioactive-waste facility may fall within s 7(2)(a), so the State prohibition may not apply to that facility at all. The proposed nuclear reactor, however, falls within the type of facility targeted by the prohibition. Only then does the lawyer move to the constitutional questions: who will own the land; is it a Commonwealth place; who will construct and operate the reactor; is a Commonwealth agency involved; what valid Commonwealth legislation exists or

could Parliament enact; which head of power supports it; and is there an operative inconsistency engaging s 109?

Do not overstate Commonwealth immunity. Commonwealth ownership, a Commonwealth contract or a PPP label does not automatically make every State law disappear for a private corporation. Section 52(i), Commonwealth immunity principles, federal statutory provisions and s 109 must be applied to the actual legal relationships. A lawyer should not promise a client that acquiring Commonwealth land or creating an agency is a universal “work-around”.

The Queensland Act also illustrates the difference between **legal effect** and **political effect**. Section 21 provides a mechanism for a statewide plebiscite if the Queensland Minister is satisfied that the Commonwealth has taken or is likely to take steps supporting or allowing construction of a prohibited nuclear facility. A plebiscite of this kind is a mechanism for obtaining and communicating public opinion; it is not, by itself, a constitutional veto over valid Commonwealth action. For a board, government or project team, however, that political risk may still have major consequences for timing, financing, stakeholder management and project strategy.

2.21 Heritage redevelopment: the protected object is the heritage value, not simply the address

The former High Court at 450 Little Bourke Street, Melbourne, is a useful example because it looks unlike the stereotypical biodiversity problem. The Commonwealth’s current [National Heritage listing page](#) confirms that the former High Court building is on the National Heritage List. Under EPBC Act s 15B, the controlling question is whether the proposed action has, will have or is likely to have a significant impact on the **National Heritage values** of a National Heritage place.

That wording changes the lawyer’s investigation. It is not enough to say “the place is listed, therefore nothing can be built” or “the façade is retained, therefore the project is safe”. The lawyer must obtain the formal listing record and statement of values, identify the listing boundary, understand why the place is nationally significant, and then compare each proposed physical and operational change with those protected values. Height, bulk, setting, visual relationships, fabric, internal spaces, historical associations and construction impacts may all require evidence depending on the formal values.

Client advice. The commercially useful answer is not merely “there is a heritage problem”. It is: the federal heritage trigger exists; these are the protected values; these design elements create the highest legal risk; these investigations are

needed; these design changes may reduce the impact; and this is the federal decision pathway that must be resolved before committing to construction.

2.22 PMST, desktop information and ground-truthing

The [Protected Matters Search Tool \(PMST\)](#) is a screening tool, not an approval and not a substitute for evidence. A practitioner can define a project area, use an appropriate buffer and generate a report identifying protected matters that may occur in or near the site. Near rivers, wetlands or other connected systems, the area of investigation may need to extend beyond the cadastral boundary because impacts can move through water, habitat corridors, emissions, noise or other pathways.

The next step is **ground-truthing**. Commonwealth guidance on [on-ground surveys and data](#) explains why desktop records can be incomplete or outdated and why appropriately timed field surveys may be needed. The legal adviser therefore treats a PMST report as a hypothesis generator: it tells the team what must be investigated, not what conclusively exists or does not exist.

DESKTOP SCREEN → PMST / heritage / species databases → identify possible protected matters → commission qualified expert surveys → ground-truth presence, habitat and condition → map direct and indirect impacts → apply the statutory significant-impact test → document uncertainty → advise on referral, redesign, mitigation and approval strategy.

2.23 Murray–Darling Basin: distinguish seminar critique from current legal status

The tutorial discussion used the Murray–Darling Basin to illustrate the practical difficulty of cooperative federalism. Different governments, irrigators, communities, First Nations interests and environmental objectives compete within one interconnected river system. The legal framework is anchored in the [Water Act 2007 \(Cth\)](#) and the Basin Plan, but implementation and policy settings continue to change.

As at September 2026, the Commonwealth's [Basin Plan implementation dashboard](#) shows continuing water-recovery work rather than a concluded scheme. The 2026 statutory review process also remains relevant. The important professional habit is to separate: **(1) the governing Act and Basin Plan; (2) legally operative amendments and deadlines; (3) current implementation data; and (4) political or academic assessments of whether the scheme has succeeded.** A seminar description that the

arrangement has “failed” is a perspective about performance, not a substitute for the current legal status.

2.24 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?

CHAPTER 2 FAQ QUESTIONS

Chapter 2 FAQs — Questions

1. Why can the Commonwealth regulate environmental matters when the Constitution does not contain a general “environment” head of power?

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

3. What exactly does s 109 inconsistency do?

4. Why is local government so important to developers if it is not separately recognised in the Commonwealth Constitution?

5. Why are scientific names and statutory population descriptions important when advising whether a threatened species is an MNES?

6. Is SPRAT the law?

7. Why can a migratory whale be nationally protected even if it is not native to Australia in the ordinary sense?

8. Does the presence of an MNES automatically prohibit development?

9. What is the difference between the PMST and ground-truthing?

10. Why does the statement of National Heritage values matter more than the fact that an address appears on a heritage list?

11. Can a Queensland plebiscite under the Nuclear Facilities Prohibition Act 2007 legally veto valid Commonwealth action?

12. What should a lawyer put in a federal/State/local environmental approvals matrix?

CHAPTER 2 FAQ ANSWERS

Chapter 2 FAQs — Answers

1. Commonwealth legislation must be connected to a constitutional source of power. Environmental laws commonly rely on s 51(i) trade and commerce, s 51(xx) corporations, s 51(xxix) external affairs and other heads. The legal character of the law, not the presence of the word “environment” in the Constitution, is decisive.
2. Exclusive power belongs only to the Commonwealth in the relevant constitutional field; concurrent power can be exercised by both Commonwealth and States; residual/general State capacity continues subject to constitutional limitations. The classification tells the lawyer whether overlap is possible and which conflict rules may become relevant.
3. Section 109 does not erase the State Act. Where a valid Commonwealth law and a valid State law are inconsistent, the State law is inoperative to the extent of the inconsistency while the inconsistency exists.
4. Councils exercise powers delegated or conferred by State law, particularly planning, local laws, infrastructure and some environmental administration. For a project, council can therefore be a critical operational regulator even though its constitutional status is derivative.
5. The EPBC listing may protect only a particular species, subspecies or population. “Koala”, “kangaroo” or “wombat” is not sufficiently precise legal research. Correct taxonomy and geographic population can determine whether the federal controlling provision is engaged.

6. No. SPRAT is an official and highly useful Commonwealth information database. The primary legal status comes from the Act and the relevant current statutory lists/instruments. A careful adviser checks both.

7. Listed migratory species protection reflects international agreements implemented through Commonwealth legislation. Section 51(xxix) external affairs provides a constitutional bridge between the international obligation and domestic legislation.

8. No. The Act asks whether an action has, will have or is likely to have a significant impact on the particular protected matter, subject to the statutory exceptions and approval architecture. Presence is the beginning of analysis, not the end.

9. PMST is desktop screening based on mapped and modelled information. Ground-truthing uses properly designed field investigation and expert evidence to determine what is actually present, its habitat/condition and the likely effects of the proposed action.

10. EPBC s 15B protects the *National Heritage values* of a National Heritage place. The formal statement of values therefore tells the lawyer what the federal law is protecting and which project effects matter.

11. No. The plebiscite is a mechanism for recording and communicating public opinion. It may create substantial political and project risk, but it is not itself a constitutional override of valid Commonwealth law.

12. At minimum: jurisdiction; Act/instrument; exact section; regulated actor/action; protected matter; regulator; trigger; evidence required; decision/approval; timing; conditions; appeal/review; enforcement exposure; dependencies on other approvals; and the responsible project-team owner.

CHAPTER 2 MULTIPLE CHOICE — QUESTIONS

Chapter 2 Multiple Choice Questions

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

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

2. Which constitutional power was central to implementation of the World Heritage Convention in the Tasmanian Dam Case?

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

3. Local government principally derives its environmental and planning authority from:

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

4. Which statement best captures *Murphyores*?

A. An environmental objective invalidates trade legislation B. A law supported by trade and commerce power may operate while taking environmental considerations into account C. State mining permission always excludes Commonwealth involvement D. Export regulation cannot be used in environmental decision-making

5. Which is the best first response to a client saying “a koala occurs on my land, so the EPBC Act must apply”?

A. Agree immediately B. Identify the listed taxon/population, location, current legal status and proposed impact C. Ignore federal law D. Ask only whether council approval exists

6. SPRAT is best described as:

- A. the Constitution B. the primary legislative instrument itself C. an official database assisting identification and understanding of listed species/communities
D. a development approval

7. Under the EPBC Act, the Antarctic minke whale tutorial problem principally engages which MNES category?

- A. Ramsar B. listed migratory species C. nuclear action D. National Heritage

8. Under Queensland's Nuclear Facilities Prohibition Act 2007, the medical-purpose radioactive-waste facility in the tutorial requires attention to:

- A. s 7(2)(a) exception B. s 92 only C. no statutory text D. only local planning law

9. For a National Heritage place, the EPBC controlling question focuses on significant impact on:

- A. any aesthetic preference B. National Heritage values C. the owner's profit
D. State heritage values only

10. A PMST report is:

- A. final proof of species presence B. an approval C. a screening tool that should be followed by appropriate evidence and legal analysis D. a court order

11. The best statement of *Cole v Whitfield* is that s 92 is concerned with:

- A. discriminatory burdens of a protectionist kind on interstate trade B. treaty implementation C. local government power D. heritage listing

12. A Queensland plebiscite concerning a proposed nuclear facility is best characterised as:

A. a binding federal referendum B. a State High Court appeal C. a political/
public-opinion mechanism whose legal effect must not be overstated D.
automatic Commonwealth approval

CHAPTER 2 MULTIPLE CHOICE — ANSWERS

Chapter 2 Multiple Choice Answers

1. **D — s 109.** It makes the State law inoperative to the extent of inconsistency with a valid Commonwealth law.
2. **B — external affairs.** Section 51(xxix) was central to the treaty-implementation reasoning in *Commonwealth v Tasmania*.
3. **B — State legislation.** Local government's legal existence and powers come from State law.
4. **B.** *Murphyores* teaches that a law validly characterised under the trade and commerce power is not invalid merely because environmental considerations influence its operation.
5. **B.** Legal status can be limited by taxon, population and geography; impact still must be analysed.
6. **C.** Use SPRAT, but confirm the legal listing where precision matters.
7. **B.** The tutorial identifies *Balaenoptera bonaerensis* as a listed migratory species, engaging ss 20–20A and the list established under s 209.
8. **A.** Section 7(2)(a) is an express exception relevant to waste resulting from nuclear material used for research or medical purposes.

9. B. Section 15B focuses on significant impact on the National Heritage values of the listed place.

10. C. PMST screens for potential protected matters; it does not replace field evidence or the statutory test.

11. A. The leading formulation is freedom from discriminatory burdens of a protectionist kind.

12. C. The plebiscite may matter politically and commercially, but it does not itself displace the Constitution or valid Commonwealth legislation.

CHAPTER 2 SHORT ANSWER — QUESTIONS

Chapter 2 Short Answer Questions

1. Explain why a developer's lawyer should identify land tenure and the legal identity of the actor before analysing environmental approvals.
2. Explain how ss 51 and 109 of the Constitution can operate together.
3. Explain the constitutional significance of *Commonwealth v Tasmania*.
4. Explain why "there is a threatened species on the site" is not yet a complete EPBC legal conclusion.
5. Explain the difference between SPRAT, PMST and the primary legislation.
6. Explain why the formal National Heritage values are central to the 450 Little Bourke Street problem.
7. Explain the statutory sequence for analysing s 7 of the Nuclear Facilities Prohibition Act 2007 (Qld).
8. Explain what "ground-truthing" adds to desktop environmental due diligence.
9. Why are the Murray–Darling arrangements an example of cooperative federalism?

10. What should an environmental approvals matrix contain?

CHAPTER 2 SHORT ANSWER — MODEL ANSWERS

Chapter 2 Short Answer Model Answers

1. Tenure and actor identity can determine the source and reach of regulatory power. Commonwealth places, Commonwealth agencies, constitutional corporations, State land and private actors can engage different constitutional and statutory provisions. Jurisdiction is therefore a threshold issue, not an afterthought.
2. Section 51 supplies heads of Commonwealth legislative power, often concurrent with State law-making. If both valid regimes operate and their commands are inconsistent, s 109 makes the State law inoperative to the extent of the inconsistency.
3. The Tasmanian Dam Case demonstrates the broad significance of s 51(xxix) external affairs for environmental regulation and the ability of Commonwealth legislation to implement international environmental obligations even where the physical project lies wholly within a State.
4. The adviser must identify the exact species/population and its current statutory category, then connect the proposed action to the relevant controlling provision and the statutory significant-impact threshold. Mere presence is not the whole test.
5. The EPBC Act and statutory instruments supply the law. SPRAT assists species/community research. PMST screens a geographic area for possible protected matters. Each tool serves a different step and none should be mistaken for the others.

6. Section 15B protects National Heritage *values*. The statement of values identifies what makes the place nationally significant, so it provides the benchmark against which the redevelopment's impacts must be analysed.
7. Start with s 4 application; then s 7(1) prohibition; then statutory definitions; then s 7(2) exceptions; only after applying the State Act move to Commonwealth-place/immunity, federal head-of-power and s 109 issues.
8. Ground-truthing tests desktop predictions against actual site conditions using appropriately qualified experts and properly timed surveys. It turns a database indication into evidence capable of supporting legal advice about presence, habitat, condition and likely impact.
9. The Basin crosses several jurisdictions and requires shared rules, institutions, funding and environmental-water arrangements. The scheme therefore illustrates both the promise and difficulty of intergovernmental cooperation.
10. Record jurisdiction; statute/instrument; exact provision; actor/action; protected matter; regulator; trigger; evidence; approval/prohibition/condition; timing; appeal/review; penalties/enforcement; dependencies; and a clear next action for the client team.

WEEK 2 TUTORIAL — QUESTIONS

Chapter 2 Tutorial Questions

Question 1 — Threatened species identification

The koala is an iconic Australian species. Is it a matter of national environmental significance? What about: (a) the Tasmanian devil; (b) the kangaroo; and (c) the wombat?

Question 2 — Antarctic minke whale

In 1867 a nearly 10-metre male whale was found in the Rio de la Plata near Buenos Aires and described as *Balaenoptera bonaerensis*. 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 (NML) in a proposed \$95 million public-private partnership with the Commonwealth. The Commonwealth proposes to construct in Queensland (1) a nuclear reactor for the production of nuclear energy and (2) a radioactive-waste management facility for disposal of nuclear material used for medical purposes. Advise whether the *Nuclear Facilities Prohibition Act 2007* (Qld) would effectively prohibit the Commonwealth Government's construction of those facilities.

Question 4 — Former High Court, 450 Little Bourke Street

JurisPrudent Pty Ltd proposes a mixed-use redevelopment of the former High Court site at 450 Little Bourke Street, Melbourne, retaining the old façade at ground and first levels and adding an eight-storey serviced-apartment building at the rear. Will the EPBC Act potentially be relevant?

Question 5 — Murray–Darling Basin Plan

What is the current status of the Murray–Darling Basin Plan discussed in the Week 2 seminar?

Question 6 — Protected Matters Search Tool

Use the PMST for an Australian location, define an appropriate search area and generate a report. Explain what the report can and cannot tell a legal adviser and what should happen next if protected matters are indicated.

WEEK 2 TUTORIAL — FULL MODEL ANSWERS

Chapter 2 Tutorial Model Answers

Question 1 — Koala, Tasmanian devil, kangaroo and wombat

Issue. Whether each common-name animal is legally a matter of national environmental significance because it is a listed threatened species under the EPBC Act.

Rule. Chapter 2, Part 3, Division 1, Subdivision C of the [EPBC Act](#) regulates actions significantly affecting listed threatened species and certain listed threatened ecological communities. Section 18 contains the civil controlling provisions and s 18A associated offences. Section 178 concerns the threatened-species list. Most threatened categories relevant to the tutorial can be MNES, but the legal answer depends on the current statutory taxon, category and any population qualification. [SPRAT](#) is the practical research interface; the statutory list/instrument remains the primary legal source.

Application — koala. The Commonwealth [listing material](#) identifies the combined koala populations of Queensland, New South Wales and the ACT as endangered. Therefore a Queensland project affecting that listed population potentially engages the threatened-species MNES. Do not generalise the answer to every koala everywhere without checking the current listing.

Application — Tasmanian devil. The Tasmanian devil is a nationally listed threatened species. The lawyer should still confirm the current SPRAT/listing record and then move from status to the project-specific significant-impact question.

Application — kangaroo. “Kangaroo” is too general. A SPRAT search can return place names, plants and other taxa containing the word. The familiar kangaroo as a generic common-name animal is not automatically an MNES. Identify the scientific species before advising.

Application — wombat. The common wombat is not automatically a threatened-species MNES, but the [northern hairy-nosed wombat](#) is a nationally protected highly threatened species. The southern hairy-nosed wombat was publicly nominated for listing but the current [Commonwealth nomination status](#) records that it was not included in the 2026 priority assessment list.

Counterargument / caution. Database results and conservation status can change. A current listing can also be geographically or taxonomically narrower than a common name suggests.

Conclusion. The correct answer is species/population-specific. A competent adviser identifies the scientific taxon, verifies the current legal list, reads any geographic qualification, and only then analyses significant impact.

Question 2 — Antarctic minke whale

Issue. Why can *Balaenoptera bonaerensis*, discovered outside Australia, nevertheless be a nationally protected matter under Australian environmental law?

Rule. EPBC s 20 is the civil controlling provision for listed migratory species, s 20A creates related offences, and s 209 requires the Minister to maintain the migratory-species list. Migratory listing is connected to international agreements, including the Bonn Convention/CMS and relevant bilateral agreements. Commonwealth implementation of treaty obligations is supported by the Constitution's external affairs power, s 51(xxix).

Application. Searching the scientific name identifies the Antarctic minke whale as a listed migratory species. It need not be "native" in the narrow sense suggested by the facts; migratory protection exists precisely because species cross national boundaries and require coordinated international protection. The treaty connection explains both the policy logic and the constitutional basis for federal involvement.

Conclusion. The whale is relevant as a listed migratory species MNES. In a real project, the next questions are whether the proposed action may significantly impact the species and which referral/approval pathway follows.

Question 3 — Nuclear reactor and medical radioactive-waste facility

Issue. Whether Queensland's [Nuclear Facilities Prohibition Act 2007 \(Qld\)](#) prevents the two Commonwealth PPP facilities, and how Commonwealth/State constitutional principles change the advice.

Rule — application of the State Act. Start with s 4(1): the Act binds all persons, including the State and, so far as Queensland's legislative power permits, the

Commonwealth and the other States. The italicised limitation is important because a State Act cannot enlarge State constitutional power. Section 7(1) provides that a person must not construct or operate a nuclear facility. NML, as a corporation, is a legal person. The statutory definition of nuclear facility captures a nuclear reactor. Section 7(2)(a), however, creates an exception for a facility for storage or disposal of radioactive waste material resulting from nuclear material used for research or medical purposes.

Application — waste facility. On the stated facts, the second facility disposes of nuclear material used for medical purposes. It is therefore necessary to apply s 7(2)(a) before considering constitutional override. If the facts fall within that exception, s 7(1) does not prohibit that facility.

Application — reactor. The reactor falls within the State prohibition on its face. The analysis then moves to constitutional structure: identify the owner/operator, site tenure, whether the land is a Commonwealth place engaging s 52(i), whether a Commonwealth agency is involved, and whether valid Commonwealth legislation authorises the project. If a valid Commonwealth law and the Queensland prohibition are inconsistent, s 109 makes the State law inoperative to the extent of inconsistency. Any Commonwealth law itself requires a supporting head of power—for example, depending on its design, the corporations power in relation to NML, external affairs where an international obligation is implemented, or exclusive Commonwealth-place power where the constitutional requirements are satisfied.

Political dimension. Section 21 of the Queensland Act provides for a statewide plebiscite in specified circumstances where the Queensland Minister is satisfied that the Commonwealth has taken or is likely to take steps supporting or allowing a prohibited nuclear facility. That mechanism can create political and commercial pressure, but it is not a legally binding referendum capable by itself of defeating otherwise valid Commonwealth law.

Counterargument. It would be too broad to say that a PPP, Commonwealth interest or Commonwealth-owned land automatically immunises NML from every State law. The precise legal actor, land status and federal statutory scheme must be established.

Conclusion. The medical-waste facility may be outside the State prohibition because of s 7(2)(a). The reactor is prohibited by s 7(1) on the face of Queensland law, but final advice requires the Commonwealth-place/immunity, federal legislation and s 109 questions to be resolved. The client should not

proceed on a simple “State law wins” or “Commonwealth always wins” assumption.

Question 4 — Former High Court redevelopment

Issue. Whether an apparently ordinary central-Melbourne redevelopment can engage federal environmental law because of heritage.

Rule. National Heritage is an MNES. EPBC s 15B regulates actions by relevant actors that have, will have or are likely to have a significant impact on the **National Heritage values** of a National Heritage place; s 15C contains associated offences. The Commonwealth’s [official page](#) confirms that the former High Court at 450 Little Bourke Street is on the National Heritage List.

Application. The lawyer should first confirm the listing and boundary using the Australian Heritage Database/official record, then read the formal statement of values. Retaining the street façade is relevant but not decisive. An eight-storey rear addition may affect architectural form, setting, views, fabric or historical associations depending on the protected values. Conversely, careful design, setbacks, retention and construction methodology may reduce impacts. Those are evidence questions to be tested against the values.

Counterargument. Listing does not mean the property is frozen forever. The Act regulates significant impacts on protected values and provides an assessment/approval architecture that is studied later in the course.

Conclusion. The EPBC Act is potentially relevant. Before committing to design or finance, the client should obtain the formal listing documents, heritage expertise and federal referral advice and integrate them with Victorian and local approvals.

Question 5 — Current Murray–Darling Basin Plan status

Issue. How should a current legal answer describe a cooperative-federalism scheme whose implementation and policy settings continue to change?

Rule / framework. The legal architecture is based on the [Water Act 2007 \(Cth\)](#), intergovernmental arrangements and the Basin Plan. Later reforms altered implementation timeframes and water-recovery mechanisms.

Current position. As at September 2026, the scheme remains in active implementation rather than being legally “finished”. The Commonwealth’s

[implementation dashboard](#), updated 3 September 2026, records ongoing water-recovery progress. The statutory review processes in 2026 also mean the regulatory framework is under active examination.

How to describe the seminar discussion. The lecturer used the Basin as an example of the difficulty of cooperative governance and referred to substantial cost and criticism of outcomes. Those observations are useful context, but a legal answer should distinguish evaluative criticism from the present statutory status and verified implementation data.

Conclusion. The Basin remains a live example of cooperative federalism: a Commonwealth statutory framework operating across multiple jurisdictions, with continuing implementation, review and political contestation. Always date the answer and verify the current Commonwealth dashboard and review materials.

Question 6 — PMST, buffers and ground-truthing

Issue. What does a PMST report prove, and what evidence is required before giving project advice?

Rule / methodology. The [PMST](#) screens a defined geographic area for protected matters. It is desktop information. Commonwealth guidance on [surveys and data](#) emphasises that field surveys may be necessary and that data can become outdated.

Application. Define the actual project footprint and a rational buffer. Where ecological pathways extend beyond the property boundary—particularly watercourses, wetlands or mobile species—consider a wider area. Review every identified MNES and its source information. Then engage appropriately qualified experts to ground-truth whether the species, community, habitat or relevant value is actually present, its condition and how the proposed action could affect it.

Counterargument / caution. A blank or low-risk desktop result does not guarantee absence; a positive result does not prove that a species occurs on every part of the site. The quality, age, seasonality and spatial resolution of data matter.

Conclusion. PMST is the start of defensible due diligence, not the end. The professional chain is desktop screening → targeted evidence → legal significant-impact analysis → referral/approval strategy.

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. Dredging plumes may extend into the Commonwealth marine area and migratory shorebird habitat is nearby. State development approval is likely. Advise the board what jurisdictional and evidentiary 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 of the Constitution. Advise.

IRAC 3 — World Heritage infrastructure project

A State-owned electricity 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 must be investigated.

IRAC 4 — Species detected after desktop screening

A property developer receives a PMST report indicating that an endangered listed species “may occur” within the project area. A consultant says no further work is needed because nobody has personally seen the species on the site. Advise the developer’s board.

IRAC 5 — Commonwealth-backed nuclear project

A constitutional corporation enters a PPP with the Commonwealth to build a nuclear reactor in Queensland and a separate facility disposing of radioactive waste generated by medical nuclear material. Queensland objects and proposes a statewide plebiscite. Advise the corporation on the Chapter 2 issues, without attempting the detailed EPBC assessment process reserved for later chapters.

CHAPTER 2 IRAC PROBLEMS — FULL MODEL ANSWERS

Chapter 2 Detailed IRAC Model Answers

IRAC 1 — Port expansion and overlapping governments

Issue. Whether State approval alone is sufficient and whether the action may engage Commonwealth marine and listed-migratory-species controlling provisions.

Rule. Marine jurisdiction is spatial. The [Seas and Submerged Lands Act 1973 \(Cth\)](#) and Offshore Constitutional Settlement legislation form part of the jurisdictional background. Under the [EPBC Act](#), s 20 regulates significant impacts on listed migratory species, while ss 23–24A deal with the Commonwealth marine environment. State and local approvals can operate concurrently; EPBC s 10 confirms that State law is not generally displaced simply because federal law also applies.

Application. Counsel should obtain geospatial coordinates for the works, dredge footprint and plume; map the State/Commonwealth marine boundary; run a PMST search; identify the relevant shorebird taxa and statutory migratory listings; commission appropriately timed surveys; and model direct, indirect and downstream impacts. The approvals matrix should separately record Queensland planning/environmental permissions and Commonwealth screening/referral issues. Contractual “notice to proceed” should be conditional on all required approvals.

Counterargument. The proponent may contend that plumes are temporary, below ecological thresholds or avoid protected habitat. Those propositions require credible hydrodynamic and ecological evidence.

Conclusion. State approval alone does not answer the Commonwealth question. Complete jurisdictional mapping, ground-truthing and significant-impact advice before physical works commence.

IRAC 2 — State conservation law and interstate trade

Issue. Whether the shellfish rule contravenes s 92 by burdening interstate trade.

Rule. Section 92 protects interstate trade from discriminatory burdens of a protectionist kind. In [Cole v Whitfield \[1988\] HCA 18; \(1988\) 165 CLR 360](#), a minimum-size crayfish rule applied to local and imported crayfish. The High Court's modern approach asks whether the law discriminates against interstate trade in a protectionist sense.

Application. The stated rule applies the same minimum-size requirement regardless of origin. If its practical operation is genuinely directed to conservation and there is no discriminatory local advantage, the mere burden on imported shellfish does not establish protectionism.

Counterargument. Evidence that the rule's design or practical effect shelters local producers while disproportionately excluding interstate goods could change the characterisation.

Conclusion. On the stated facts, the conservation rule is likely consistent with the *Cole v Whitfield* approach; the decisive question is protectionist discrimination, not whether interstate trade is burdened at all.

IRAC 3 — World Heritage infrastructure project

Issue. Whether an intrastate State-corporation project can be regulated by Commonwealth environmental law.

Rule. Constitution s 51(xxix) external affairs supports Commonwealth legislation implementing international obligations. [Commonwealth v Tasmania \[1983\] HCA 21; \(1983\) 158 CLR 1](#) is the central authority. Depending on the corporation's character and the statutory design, s 51(xx) corporations power may also be relevant. Under EPBC s 12, significant impacts on World Heritage values are controlled.

Application. The project being physically intrastate does not end the inquiry. Identify the World Heritage property and formal values, the international obligation, the federal provision implementing protection, and the legal character of the State-owned corporation. State project authorisation cannot authorise conduct contrary to valid Commonwealth law; if valid laws are inconsistent, s 109 becomes relevant.

Counterargument. The State can contest whether the actual project significantly impacts protected values or whether a particular statutory provision is constitutionally supported on its precise terms. Those are legal/evidentiary arguments, not a blanket "intrastate immunity".

Conclusion. There is a substantial Commonwealth pathway. World Heritage values, constitutional power and the EPBC controlling provision must be resolved before the corporation proceeds.

IRAC 4 — PMST result and absence of a sighting

Issue. Whether a consultant can dismiss federal species risk because no individual animal has been observed.

Rule. EPBC threatened-species protection focuses on significant impact on the listed species, which can include impacts to habitat critical to survival and other ecologically significant effects. PMST is a screening tool; Commonwealth survey guidance recognises that desktop data can be incomplete and that properly timed field surveys may be required.

Application. “May occur” creates a due-diligence issue, not proof of presence and not proof of absence. The board should identify the species profile, habitat requirements and seasonality; assess whether the site contains suitable habitat; commission qualified ecological surveys if indicated; and ensure survey timing/methodology is defensible. The absence of an opportunistic sighting is weak evidence where a cryptic, seasonal or mobile species is concerned.

Counterargument. If robust, current surveys using accepted methods demonstrate absence of the species and absence of relevant habitat, the federal risk may materially reduce. That conclusion must be evidence-based.

Conclusion. Do not proceed on the consultant’s assertion alone. Ground-truth the desktop result and then give a reasoned significant-impact/referral opinion.

IRAC 5 — Commonwealth-backed nuclear project

Issue. Whether Queensland can prohibit both facilities, what constitutional pathways may affect that result, and what practical advice should be given to the corporate proponent.

Rule. Queensland *Nuclear Facilities Prohibition Act 2007* s 4(1) purports to bind persons including the Commonwealth only to the extent of State legislative power. Section 7(1) prohibits constructing or operating a nuclear facility, but s 7(2)(a) excludes storage/disposal of radioactive waste resulting from nuclear material used for research or medical purposes. Constitution s 52(i) may be relevant to Commonwealth places; s 51 heads may support federal legislation; s 109

resolves actual inconsistency between valid Commonwealth and State laws. The State Act's s 21 plebiscite mechanism is politically significant but is not itself a federal veto.

Application. Analyse the waste facility first: the medical-use facts point directly to s 7(2)(a), so the State prohibition may not apply. The reactor is within s 7(1) on its face. Counsel must then identify who owns the site, whether it is a Commonwealth place, who constructs/operates the reactor, the precise federal authorising legislation and its constitutional support, and whether there is actual legal inconsistency. The corporation should also model plebiscite, stakeholder, financing and timetable risks independently of the constitutional merits.

Counterargument. Commonwealth participation does not automatically immunise a private corporation from State law. A court would examine the actual constitutional/statutory structure.

Conclusion. The two facilities require different initial answers under State law. The reactor then requires a precise Commonwealth/State analysis. Legal, regulatory and political risks should be separated in the advice so the board understands what is prohibited, what is arguable and what is strategically risky.

CHAPTER 2 RESEARCH

Chapter 2 Authoritative Resources

[Commonwealth of Australia Constitution Act — current Federal Register text](#) — ss 51, 52, 90, 92, 107–109.

[Environment Protection and Biodiversity Conservation Act 1999 \(Cth\) — current Federal Register text](#) — Chapter 2, Part 3 and current listing provisions.

[Seas and Submerged Lands Act 1973 \(Cth\)](#) — marine jurisdiction background.

[Coastal Waters \(State Title\) Act 1980 \(Cth\)](#) and [Coastal Waters \(State Powers\) Act 1980 \(Cth\)](#).

[Local Government Act 2009 \(Qld\)](#); [Planning Act 2016 \(Qld\)](#); [Environmental Protection Act 1994 \(Qld\)](#).

[Nuclear Facilities Prohibition Act 2007 \(Qld\)](#) — ss 4, 7 and 21 are central to the Week 2 tutorial problem.

[Water Act 2007 \(Cth\)](#) and [Murray–Darling Basin Plan implementation dashboard](#).

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

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

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

[Protected Matters Search Tool \(PMST\)](#).

[DCCEEW — On-ground surveys and data for referred actions](#) — includes SPRAT and field-survey guidance.

[DCCEEW — Koala listing under national environmental law](#).

[DCCEEW — Northern hairy-nosed wombat](#).

[DCCEEW — Species nominations not prioritised for assessment](#) — current southern hairy-nosed wombat nomination status.

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

[DCCEEW — EPBC Act publications and resources](#).

HYPERLINK AND AUTHORITY RULE

Blue links are there to teach research habits. Start with the book's explanation, then open the current primary source. Where a case-text database is used because an older AustLII deep link is no longer reliable, the citation identifies the court and reported decision so the case can also be located through any authorised legal database available to the reader.

CHAPTER 2 PROFESSIONAL RULE

Never advise from a general impression that “the Commonwealth handles the environment” or “the State owns the project”. Identify the client, actor, site, tenure, action, impact pathway, constitutional source, exact statute and subsection, protected matter, evidence and decision-maker. Then connect those elements to the authority and give the client a reasoned next step.

End of Chapter 2.