

Summary of laws and policies for marine & coastal management in Queensland

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The laws and policies for marine and coastal management in Queensland, and the wider environmental legal system, are comprised of many parts that can be complex and confusing. No single part of the system or single level of government regulates all activities. Instead, the many parts of the system and different levels of government are interlinked, forming a safety net protecting the environment. While complex, this “safety net” has some large “holes” – such as for climate change – due both to practical and political difficulties.

While traditional categories such as “pollution” and “fisheries” can be useful for explaining and understanding environmental law at a simplistic level, modern environmental laws defy them.¹ What laws apply to any activity depends, not on simple categories, but on many issues including:

- what is the nature of the activity (e.g. mining, clearing native vegetation, or fishing);
- the level of impact (e.g. more than negligible);
- what is impacted (e.g. threatened species);
- where it is done or its impacts occur (e.g. mining is prohibited in national parks); and
- who is doing it (e.g. some laws apply differently to Aboriginal and Torres Strait Islanders).

The central paradigm for the environmental legal system in Australia, at least on paper, is ecologically sustainable development (**ESD**). It is drawn from the concept of “sustainable development” advanced internationally by the seminal Brundtland report.² The *National Strategy for Ecologically Sustainable Development* defined it as:³

Using, conserving and enhancing the community’s resources so that ecological processes, on which life depends, are maintained, and the total quality of life, now and in the future, can be increased.

This objective reflects in an environmental context the principal purpose of the law – to protect people, including their quality of life. The environmental legal system contributes to meeting this overall objective just as other areas of law, such as the criminal law and workplace health and safety laws, play their roles.

While sustainable development is the central aim of environmental law and plays a role in government decision-making, its importance should not be naively overstated. In practice, political and economic issues still generally dominate government decision-making and policy in Australia.

The Queensland environmental legal system has many laws within four overall levels (Appendix 1):

- international law;
- Commonwealth (Federal or Australian) law;
- Queensland (State) law; and
- the Common Law.

This structure reflects the international context of the system, Australia’s federal system of government,⁴ and the Common Law tradition it inherited from England. All levels play an important role but State legislation is of the most relevance to normal, day-to-day activities. Local governments operate under State law and provide an important subset of plans and laws applying within their areas.

The Queensland environmental legal system is administered principally by Commonwealth,⁵ State and local governments and the courts. The Commonwealth and Queensland governments divide administration of the

¹ See McGrath C, *Does Environmental Law Work?* (Lambert Academic Publishing, Saarbrücken, 2010), Ch 3, pp 60-69, <http://www.envlaw.com.au/delw.pdf>.

² World Commission on Environment & Development, *Our Common Future* (Oxford University Press, Oxford, 1987).

³ ESD Steering Committee, *National Strategy for Ecologically Sustainable Development* (AGPS, Canberra, 1992).

⁴ See <http://australia.gov.au/about-australia/our-government/australias-federation>.

⁵ The terms “Commonwealth”, “Federal” or “Australian” Government are used interchangeably to refer to Australia’s national level of government.

different parts of the system among large departments. They frequently re-organise and rename these departments but information about them can be found easily on the internet.⁶

Main fisheries laws

At an international level under the *United Nations Convention on the Law of the Sea 1982 (UNCLOS)*, Australia can regulate fisheries within its exclusive economic zone (**EEZ**), which extends for up to 200 nautical miles from the coast (see Appendix 2). Australia can also regulate fishing from vessels registered (or “flagged”) in Australia and Australian citizens outside its EEZ, on the High Seas.

In waters adjacent to the Queensland coast, a complex network of federal and State laws regulate fisheries and the protection of marine species such as turtles. The main Act is the *Fisheries Act 1994 (Qld)*, under which the *Fisheries Regulation 2008 (Qld)* provides detailed restrictions on fishing. These restrictions operate in conjunction with zoning plans for marine parks made under the *Great Barrier Reef Marine Park Act 1975 (Cth)* and the *Marine Parks Act 2004 (Qld)*. Some areas and fisheries are also regulated under the *Fisheries Management Act 1991 (Cth)* (e.g. tuna) and fishing in the Torres Strait is regulated under the *Torres Strait Fisheries Act 1984 (Cth)*. Some marine species (e.g. dugong and turtles) are protected wildlife under the *Nature Conservation Act 1992 (Qld)*.

Collectively, the main laws regulating fisheries in Queensland can be summarised as:

- **commercial fishing** requires a licence and is subject to special controls on fishing effort and equipment (e.g., under the *Fisheries (East Coast Trawl) Management Plan 2010 (Qld)*, trawl nets must be fitted with specified turtle-excluder devices and other by-catch reduction devices);
- **zoning plans in marine parks** restrict fishing and other activities in areas such as the Great Barrier Reef Marine Park and the Moreton Bay Marine Park (e.g. fishing is prohibited in a “Green Zone”);⁷
- **regulated waters** are declared⁸ both inside and outside marine parks and restrict fishing for conservation purposes (e.g. dugong protection areas) or to protect fish stocks;
- **size limits** prescribe minimum and maximum legal size limits for many species of fish and other marine organisms such as crabs and crayfish;
- **bag limits** restrict the total number of fish of a species that a person may possess at any one time;
- **closed seasons** prohibit taking or possessing some species (e.g. barramundi) during certain times (e.g. a breeding season);
- **gear restrictions** apply to certain gear types such as maximum net lengths and prohibitions on the highly damaging fishing methods such as the use of explosives and poisons to catch fish;
- **noxious fish** (e.g. tilapia, carp and gambusia) are illegal to possess or keep, hatch, rear, sell, consign or place in any container;
- **protected sexes** of certain species (e.g. female mud crabs and sand (blue-swimmer) crabs) are fully protected and may not be deliberately killed or kept;
- **protected species** (e.g. dugongs, whales, dolphins and turtles) are fully protected and must not be taken;
- **traditional hunting rights** permit Aboriginal and Torres Strait Islanders to take otherwise protected species (e.g. dugong and turtles) for use traditional or customary use (but not to sell commercially and subject to animal cruelty laws); and
- **marine plants** (e.g. mangroves) and **fish habitat areas** are protected, including on inter-tidal land.⁹

The *Fisheries Act 1994 (Qld)* is administered by Fisheries Queensland and the Queensland Boating and Fisheries Patrol within the Queensland Department of Agriculture and Fisheries (**DAF**). A great deal of information about fisheries regulation is available on its website.¹⁰

⁶ See www.australia.gov.au and www.qld.gov.au.

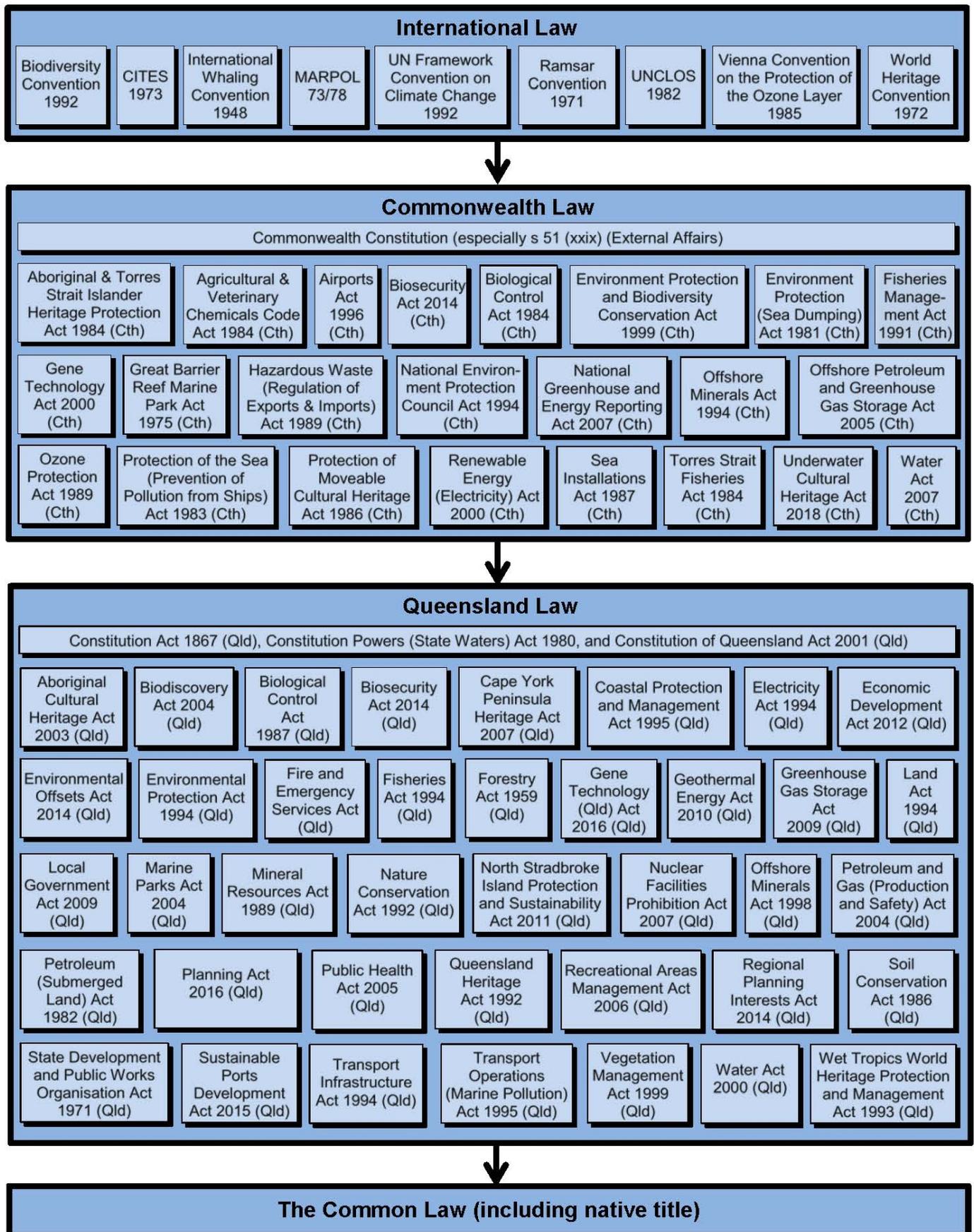
⁷ See GBRMPA, <http://www.gbrmpa.gov.au/zoning-permits-and-plans/zoning/zoning-maps> and QPWS, <https://www.qld.gov.au/environment/coasts-waterways/marine-parks/>

⁸ Under the *Fisheries Regulation 2008 (Qld)*, Sch 1.

⁹ The *Planning Act 2016 (Qld)* provides the main approval system for damaging marine plants or fish habitat areas.

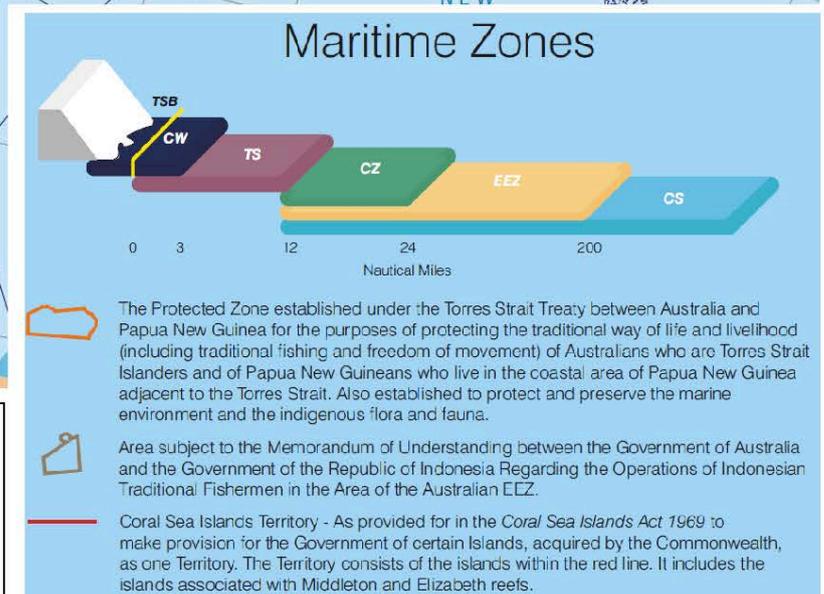
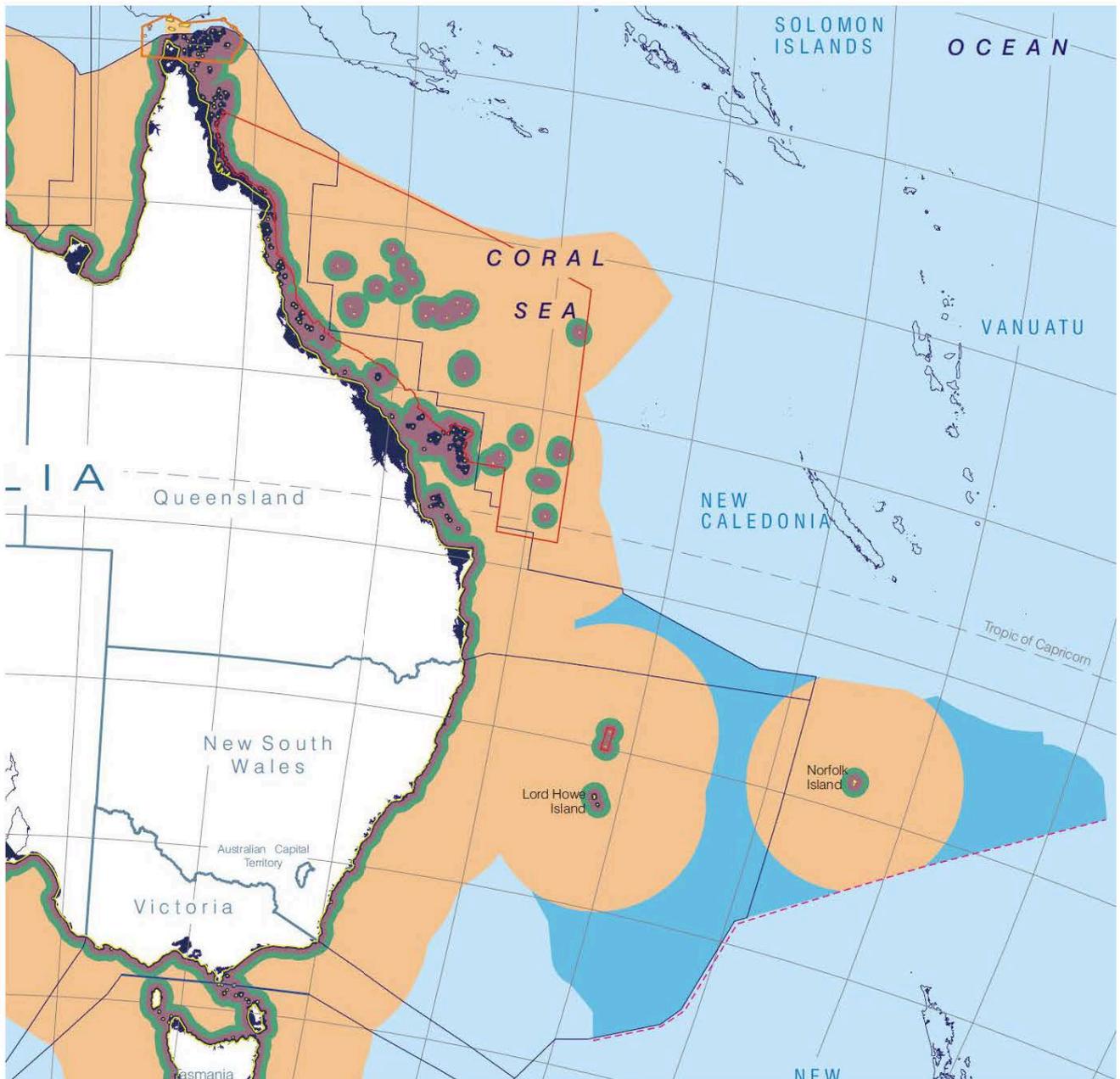
¹⁰ See <https://www.daf.qld.gov.au/business-priorities/fisheries>

Appendix 1: Major pieces of the Queensland environmental legal system¹¹



¹¹ Extracted from Chris McGrath, *Synopsis of the Queensland Environmental Legal System* (6th ed, Environmental Law Australia, 2018) (forthcoming). See <http://envlaw.com.au/publications/>

Appendix 2: Australia's maritime zones adjacent to the Queensland coast



Appendix 2: Extract from Map of Australia's Maritime Zones by Geoscience Australia, available at http://www.ga.gov.au/webtemp/image_cache/GA8896.pdf (15MB)