



An introduction to environmental law in Queensland

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HopgoodGanim, Brisbane

This seminar is aimed at early career environmental professionals (not lawyers).

General reference for more detailed lectures -
<http://envlaw.com.au/category/lectures/>



INTRODUCTION TO
GOVERNMENT IN AUSTRALIA
A short introduction to government in Australia for the environment.



ENVIRONMENTAL PROTECTION
ACT 1994 (QLD) LECTURE 2014
A lecture on the Environmental Protection Act 1994 (QLD).



EPBC ACT LECTURE 2015
A lecture on Australia's main national environmental law, the Environment Protection and Biodiversity Conservation Act 1999 (Cth).

Preliminary topic: the role of a basic knowledge of the law relevant to your professional careers
"Champions do the basics well" (Anon)



Roger Federer.
Image source:
Superb Wallpapers

This seminar focuses on two basic skills that are central to you navigating environment law in Queensland (and elsewhere):

1. How to think about (conceptualise) environmental law.
2. The basics of statutory interpretation.

Seminar outline

1. Our (real world) problem: Nathan Dam
2. Does the proposed dam comply with the law and, if not, what steps need to be taken to make it comply?
 - What laws regulate this activity?
 - How to think about (conceptualise) environmental law.
 - How to interpret the law.
 - Are any applications needed to gain government approval?
 - EPBC Act

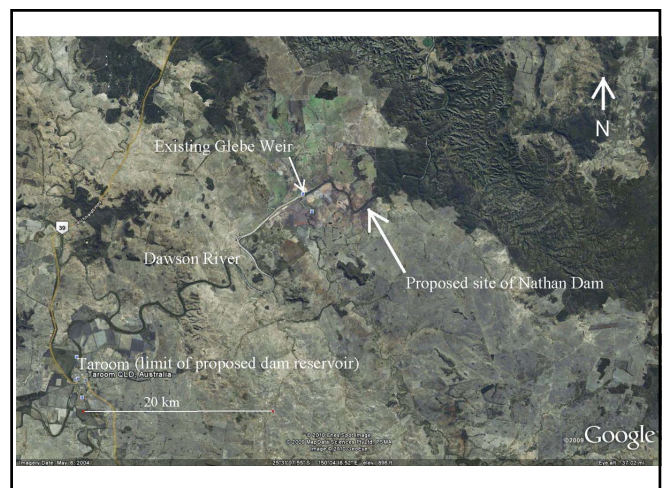
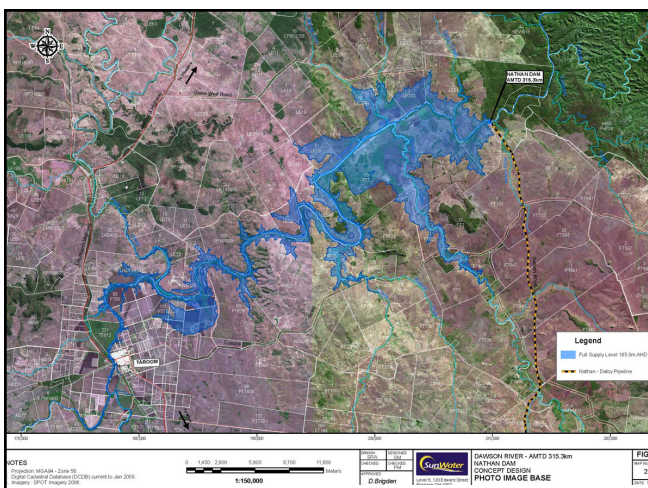
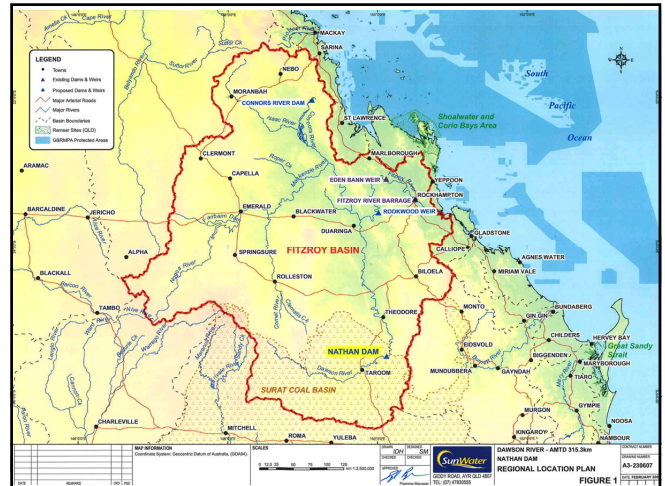
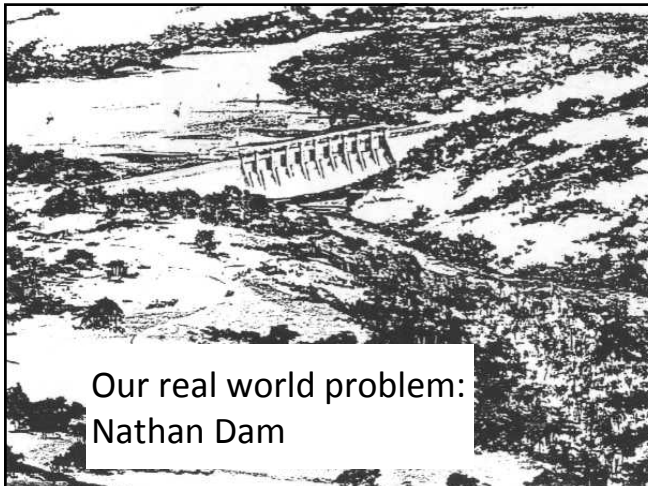
Problem-based learning underpins this seminar.

This is deliberate both to make the seminar interesting but also to prepare you for your careers.

Good professionals are good problem-solvers.

A major reason that I use problems as the basis for teaching is because as a law student and later as a lawyer I learnt that:

All law is boring until you try to apply it to solve a problem.



e.g. <https://planning.dsdmip.qld.gov.au/>



Traditional categories are widely used in textbooks



Figure 1: Major pieces of the Queensland environmental legal system

Business Convention 1982	CTHR 1975	Transboundary Convention 1985	MAWFTA 1975	UN Framework Convention on Climate Change 1992	Rome Convention 1971	UNCLOS 1982	Vienna Convention on the Protection of the Ozone Layer 1985	Waste Shipping Convention 1997
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Commonwealth Law								
Commonwealth Constitution (especially s 51 (xxix) (External Affairs))								
Integrated & Timor Sea Seaborne Petroleum Act 1994 (Cth)	Antarctic and Southern Ocean Act 2001 (Cth)	Environment & Veterinary Treaties Act 2001 (Cth)	Resource Management Act 2011 (Cth)	Carbon Pollution Reduction Act 2011 (Cth)	Nature Conservation Act 2011 (Cth)	Nuclear Energy Control Act 2007 (Cth)	Environment Protection Act 1986 (Cth)	Environmental Protection Act 1986 (Cth)
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Queensland Law								
Legislation Act 1987 (Cth), Queensland Powers of the Governor in Council and Constitution of Queensland Act 2001 (Cth)								
Marine and Coastal Management Act 2004 (Qld)	Integrated Coastal Management Act 2004 (Qld)	Resource Management Act 2011 (Qld)	Climate Change Act 2007 (Qld)	Energy and Environmental Management Act 2007 (Qld)	Electricity Act 2004 (Qld)	Environmental Management Act 2004 (Qld)	Land Act 2004 (Qld)	Land Act 2004 (Qld)
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Note: as a broad summary, there are three basic rules for complying with environmental laws:

1. Obtain and comply with any necessary licence or government approval;
2. Comply with any relevant standard imposed by the law, including taking all reasonable and practicable measures to prevent or minimise environmental harm; and
3. If unlawful material or serious environmental harm occurs or may occur, notify the Queensland government.

See SQELS

[illegible][illegible]

How do I interpret legislation?



To anyone without legal training the interpretation of statutes can seem like black magic. The answers seem to come from lawyers burning incense and chanting “abracadabra”.



Lawyers can fuel this feeling of legal inadequacy and mystique, saying dismissively to a non-lawyer, “that’s a legal matter”, and treating statutory interpretation like some secret business that outsiders cannot participate in.

Textbooks on statutory interpretation in Australia and elsewhere and introductory law books focus on the many, technical and complex rules and decisions of appellate courts in complex cases.

This can seem like an impenetrable thicket to non-lawyers understanding and applying the law.

Thinking that statutory interpretation is something mysterious and that only lawyers can do is, however, largely a misunderstanding of the basics of how to do it.

A key message of this seminar is this:

A central challenge you face in your careers as environmental professionals from the law is to **navigate multiple, large, overlapping Acts and related documents at the same time.**

You often need to do this while:

- dealing with multiple levels of government and decision-makers; and
- bridging transitions between old and new laws and related documents (such as old and new planning schemes).

There are some basic skills that you need to do this and you will become better (and quicker) at with experience and practice.

“related documents” can include:

Statutory instruments (i.e. made under an Act):

- regulations
- regional plans
- planning schemes
- planning scheme policies
- development permits
- environmental authorities
- environmental protection orders (EPOs)
- etc.

Non-statutory documents:

- DES prosecution policy
- etc.

The vast majority of legal problem solving (which principally involves statutory interpretation) requires little more than the abilities and willingness to:

1. locate and read often large documents;
2. follow cross-references within them; and
3. think logically about what they say & apply this to the facts.

You need to develop the confidence to do these things for your professional career.

Basics of statutory interpretation

[see handout]

Core skills for statutory interpretation by environmental professionals in Queensland

THREE BASIC STEPS

The following three steps will resolve 95% of problems involving the interpretation of Acts of Parliament (normally called statutes or legislation), regulations (subordinate legislation), planning schemes and conditions of approvals in Queensland. For simplicity here legislation, regulations, planning schemes and approvals are referred to as "statutes".

1. Find the statute in force at the time relevant to your problem and any related document.

Normally, this will be the current version of a statute but if your problem involves something that occurred in the past the statute in force at that time may apply. Legislation starts as a Bill before Parliament. It may be amended many times before being enacted. Ensuring you have the version in force at the time relevant to your problem is a vital first step. If a statute was recently enacted, pay particular attention for transitional arrangements that link to any previous statute.

All relevant documents need to be obtained. For example, in problems involving a planning issue, the relevant planning legislation, regulations, planning scheme and any development application or approval will normally be required.

Legislative and subordinate legislation should be obtained from the official website of the government that created it (e.g. Federal Register of Legislation for Commonwealth legislation) and the OQPC website for Queensland legislation. You can check the history of the statute there too. The Austral website also covers all Australian legislation and regulations but the official government websites such as OQPC are preferable. Planning schemes are now commonly available on local government websites.

2. If you are unfamiliar with the statute, skim read it and any related documents and identify the parts relevant to your problem.

Modern statutes are often long and complex in their structure and it is important not to get bogged down in long parts that are not relevant to your problem. You might find it useful in this step to read the table of contents and note the chapter headings in a list on a single page so that you can see a simplified structure of the whole statute.

3. Interpret the parts of the statute and related documents relevant to your problem according to their plain meaning, having regard to the objects of the statute and the context.

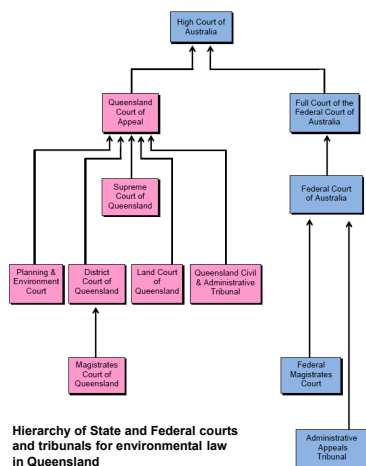
Pay particular attention to terms defined in the statute (normally found in a schedule called "dictionary" or "definitions"). Some common terms are also defined in the *Acts Interpretation*

Recognise that lawyers & court do **not** do most statutory interpretation. E.g. Development applications and planning appeals in 2008/09

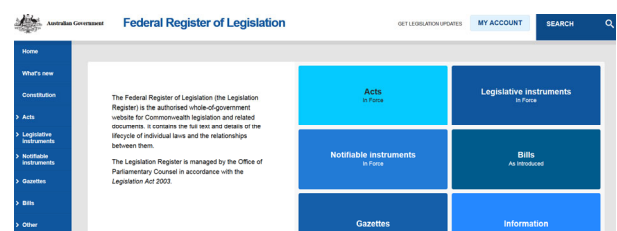
Development applications and planning appeals in 2008/09

State / Territory	Number of development applications (DAs)	Number of reviews/appeals of planning decisions and as a percentage of DAs	Number of contested planning decisions by trial courts and as a percent of DAs	Number of planning decisions by appeal courts and as a percent of DAs	Number of appeals for planning matters to High Court and as a percent of DAs
QLD	23,609	591 (2.5%)	96 (0.5%)	10 (0.04%)	0 (0%)
NSW	87,056	1,132 (1.3%)	397 (0.5%)	10 (0.01%)	0 (0%)
VIC	54,162	3623 (7%)	2027 (3.7%)	6 (0.01%)	0 (0%)
TAS	8,997	333 (3.7%)	140 (1.6%)	6 (0.07%)	0 (0%)
SA	70,852	580 (0.82%)	79 (0.1%)	12 (0.02%)	0 (0%)
WA	4,921	133 (2.7%)	118 (2.4%)	4 (0.08%)	0 (0%)
ACT	1,319	66 (3%)	10 (0.8%)	0 (0.0%)	0 (0%)
NT	921	8 (0.86%)	3 (0.3%)	0 (0.0%)	0 (0%)
TOTAL (average)	251,837	6,466 (2.7%)	2870 (1.1%)	49 (0.02%)	0 (0%)

Source: McGrath C (2016) "Myth drives Australian Government attack on standing & environmental 'lawfare'" 33(1) EPLJ 3. DA data from Local Government and Planning Ministers' Council, *First National Report on Development Assessment Performance 2008/09* (Prepared by the South Australian Government, Adelaide, 2010).



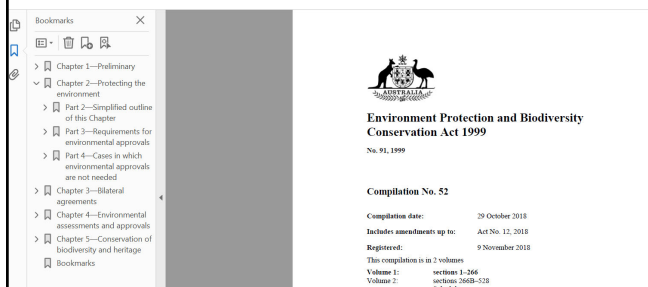
Step 1: Find the law in force at the time relevant to your question and any related document



Cth: <https://www.legislation.gov.au/Home>

Qld: <http://www.legislation.qld.gov.au>

Step 2: Skim read the A



Step 3: Interpret the relevant parts according to their plain meaning

Part 3—Requirements for environmental approvals

Division 1—Requirements relating to matters of national environmental significance

Subdivision A—World Heritage

12 Requirement for approval of activities with a significant impact on a declared World Heritage property

- (1) A person must not take an action that:
- (a) has or will have a significant impact on the world heritage values of a declared World Heritage property; or
 - (b) is likely to have a significant impact on the world heritage values of a declared World Heritage property.

Civil penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

Can “impacts” be direct and indirect?

- Dam for agricultural development
- Highway
- Airport
- Shopping centre – traffic generated
- Coal mine – burning of coal overseas

Step 3: Interpret the relevant parts according to their plain meaning

Subdivision F—Impacts

527E Meaning of impact

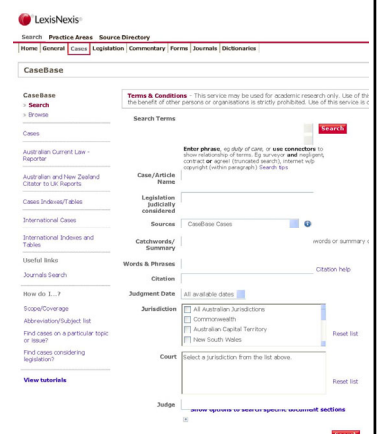
- (1) For the purposes of this Act, an event or circumstance is an *impact* of an action taken by a person if:
- (a) the event or circumstance is a direct consequence of the action; or
 - (b) for an event or circumstance that is an indirect consequence of the action—subject to subsection (2), the action is a substantial cause of that event or circumstance.
- (2) For the purposes of paragraph (1)(b), if:
- (a) a person (the *primary person*) takes an action (the *primary action*); and
 - (b) as a consequence of the primary action, another person (the *secondary person*) takes another action (the *secondary action*); and
 - (c) the secondary action is not taken at the direction or request of the primary person; and
 - (d) an event or circumstance is a consequence of the secondary action;
- then that event or circumstance is an *impact* of the primary action only if:
- (e) the primary action facilitates, to a major extent, the secondary action; and
 - (f) the secondary action is:
 - (i) within the contemplation of the primary person; or
 - (ii) a reasonably foreseeable consequence of the primary action; and
 - (g) the event or circumstance is:
 - (i) within the contemplation of the primary person; or
 - (ii) a reasonably foreseeable consequence of the secondary action.

Step 4 (optional): Search for court decisions applying the statute



<http://www.austlii.edu.au>

Step 4 (optional): Search for court decisions



Recognise your limits for problems involving statutory interpretation.

Just as you wouldn't attempt open heart surgery if you've only learnt first aid.

Allow for more difficult cases and, if something is unclear, recognise it in your use of the statute.

If the problem is important to resolve conclusively (e.g. because your client risks prosecution or major costs and delay if you get it wrong), you should **seek professional legal advice**

Seminar outline

1. Our (real world) problem: Nathan Dam
2. Does the proposed dam comply with the law and, if not, what steps need to be taken to make it comply?
 - What laws regulate this activity?
 - How to think about (conceptualise) environmental law.
 - How to interpret the law.
 - Are any applications needed to gain government approval?
 - EPBC Act

This seminar focuses on two basic skills that are central to you navigating environment law in Queensland (and elsewhere):

1. How to think about (conceptualise) environmental law.

2. The basics of statutory interpretation.