

Regulatory controls for Queensland Wetlands



December 2002

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List of relevant acronyms

AFFA	Department of Agriculture, Fisheries and Forestry Australia
ANZECC	Australian and New Zealand Environmental Conservation Council
ARMCANZ	Agriculture and Resource Management and conservation Council of Australia and New Zealand
CAMBA	China-Australia Migratory Bird Agreement
CHRIS	Coastal Habitat Resource Information System
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
COAG	Council of Australian Governments
CoP	Codes of Practice
DEH	Department of Environment and Heritage
DEO	Desired Environmental Outcome
DFAT	Department of Foreign Affairs and Trade
DLGP	Department of Local Government and Planning
DPI	Department of Primary Industries
EA	Environment Australia
EPBC	Environmental Protection and Biodiversity Conservation Act
EPA	Environmental Protection Agency
ERA	Environmentally Relevant Activity
GBRMPA	Great Barrier Reef Marine Park Protection Agency
HAT	Highest Astronomical Tide
ICM	Integrated Catchment Management
IDAS	Integrated Development Assessment System
IGAE	Intergovernmental Agreement on the Environment
IPA	Integrated Planning Act
JAMBA	Japan-Australia Migratory Bird Agreement
MARPOL	International Convention for the Protection of Pollution from Ships
NAPSWQ	National Action Plan on Salinity and Water Quality
NEWR	North-East Wetlands Region
NRA	National Registration Authority for Agricultural and Veterinary Chemicals
NRM	Natural Resources and Mines
NSESD	National Strategy for Ecologically Sustainable Development
NSW	New South Wales
NT	Native Title
NWQMS	National Water Quality Management strategy
R&D	Research and Development
SoE	State of the Environment
SPP	State Planning Policy
UNCLOS	United Nations Convention on the Law of the Sea
UNFCCC	United Nations Framework Convention on Climate Change

1.0 Introduction

Wetlands are defined by the Convention on Wetlands of International Importance (Ramsar, Iran, 1971) as:

areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres.

While this definition forms the basis of wetland definitions used in Australian Commonwealth and State wetland policies, definitions of wetlands in legislation are rare. Instead, the implementation of legislation relating to wetlands is guided by a number of wetland inventories with differing objectives, methodologies and coverage (Watkins 1999).

Wetlands provide a number of highly valuable ecosystem goods and services to the Australian community. In particular, wetlands support a high level of biodiversity (Environment Australia, 2001). For example in Queensland, wetlands cover approximately 4.1% of the State, or nearly 7.1 million hectares, here the most diverse freshwater fish fauna of any state in Australia is supported by wetlands (EPA, 1999). In addition to this wetlands also contribute to flood control, groundwater recharge, erosion control and water purification (EPA, 1999).

Given the importance of wetlands to the environment and community, it is important to ensure that they are adequately protected. Though many pieces of legislation in Australia impact on the management of wetlands, none have protecting wetlands as their primary aim. To protect wetlands through existing legislation therefore requires an informed understanding of how the statutory regime relates to the management of these areas. The objective of this information paper is to identify the main statutes and policy documents that affect the management of Queensland's coastal wetlands. The volume of legislation is enormous with numerous areas of overlap requiring coordination between the different levels of government.

Figure 1 provides a schematic presentation of the interrelationships between international conventions and agreements for the management of wetlands, a number of national policies that set the context for the regulation of wetlands and Commonwealth legislation implementing these conventions and policies. In addition, it shows how State legislation regulating activities impacting on wetlands within the jurisdiction of the state fits within the overall policy framework as well as an indication of the ordinances and by-laws of local authorities managing wetland areas.

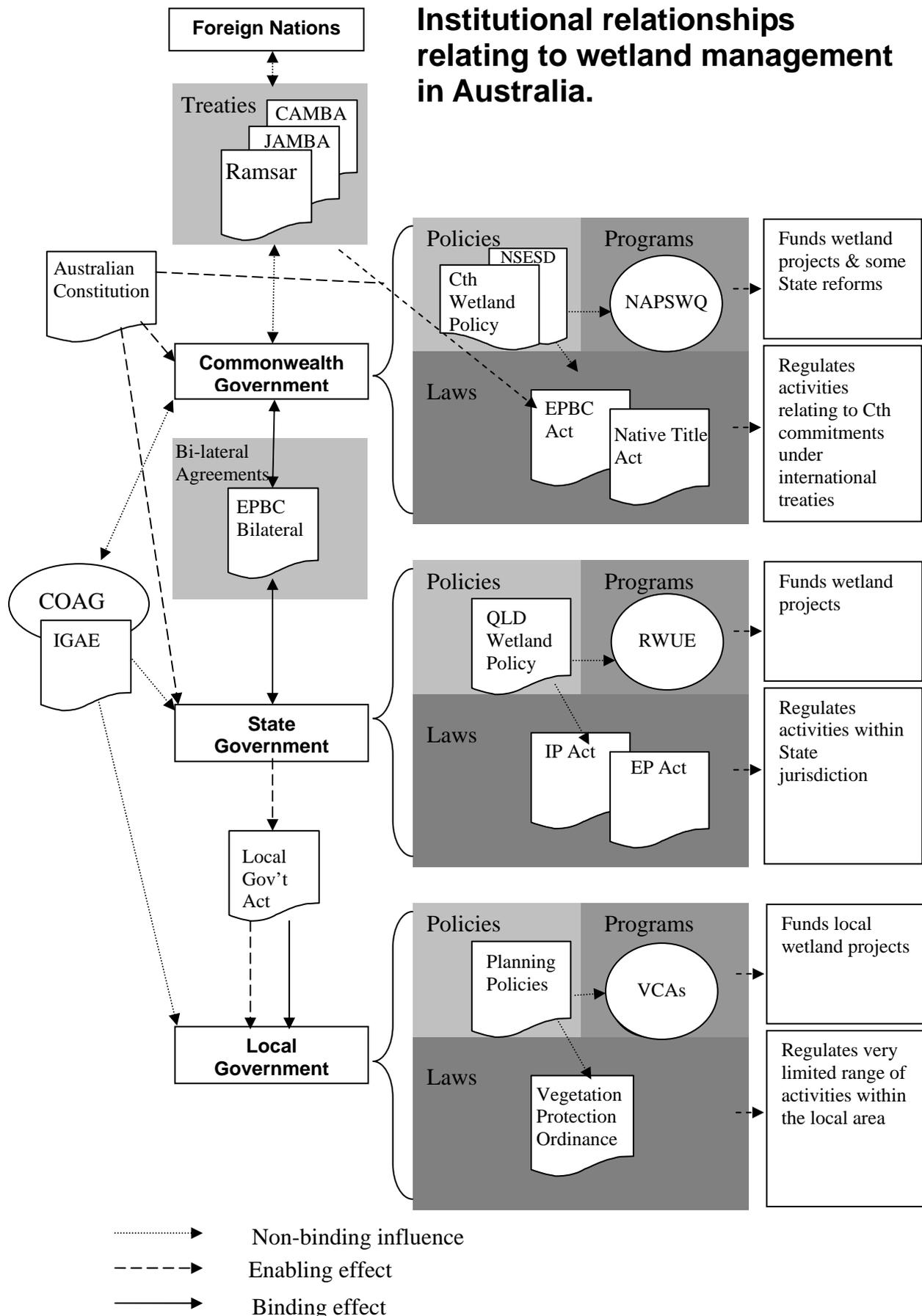
Section 2 of this paper describes a number of international conventions and agreements to which Australia is a signatory. In particular, it provides summary information on the scope of the various conventions and identifies the primary method for implementation within Australia.

While national policies are not legally binding, they set the context for coordinating Commonwealth and State legislation. Section 3 outlines the major national policies and programs that impact on the management of wetlands. This section deals also with a number of major pieces of Commonwealth legislation summarised under a number of headings. Initially, a brief description is provided of the objectives of the legislation and how it is applied. Next, the agency responsible for its implementation and the spatial coverage of the Act are identified. This is followed by an account of any specific activities that might trigger the application of the Act. Finally, the range of constraints likely to be available to implement the Act are identified.

Section 4 describes a range of state policies and legislation for managing wetland areas. For the most part, the legislation is described in summary form under the same headings as in the previous section.

Where the relationship between the legislation has been spatially represented, this information is noted in the text and relevant maps provided in Appendix 1. In addition, throughout the paper information is provided to direct the reader to relevant websites.

Institutional relationships relating to wetland management in Australia.



2.0 International Conventions

International conventions and agreements play a key role in the regulation of wetlands in Australia. Conventions, or treaties, become binding on Australia when they are signed and ratified by the Australian Government. The enforcement provisions for most treaties rely on international goodwill and political pressure. Even when ratified, conventions have little effect on Australia's domestic legal system until implemented by legislation. For this reason most conventions relating to wetland are implemented through federal legislation.

The Australian Government is a signatory to several international agreements that aim to protect and manage wetlands directly or indirectly as habitats for migratory species. While the Department of Foreign Affairs and Trade (DFAT), is the lead agency for the formation of such agreements, the Department of Environment and Heritage, Environment Australia, has some responsibilities for reporting on their implementation. Environment Australia also administers the majority of national legislation, policies and programs implementing conventions in relation to wetlands.

2.1 CAMBA, JAMBA & Bonn

Three of the most important agreements for the protection of migratory species and their habitats, including wetlands, are:

- The *China-Australia Migratory Bird Agreement* (CAMBA);
- The *Japan-Australia Migratory Bird Agreement* (JAMBA); and
- The *Convention on the Conservation of Migratory Species of Wild Animals* (the Bonn Convention).

Both CAMBA, which entered into force in 1988, and JAMBA, which entered into force in 1981, seek to protect migratory birds and their environment. The parties to these conventions agreed to preserve and enhance migratory birds and their environment. The birds protected by these agreements are listed in the appendices of the agreements and include 30 species that use Moreton Bay and neighbouring wetlands including the Whimbrel, *Numenius phaeopus*, and Eastern Curlew, *Numenius madagascariensis*.

The Bonn Convention, which entered into force in 1991, applies similar provisions aimed at the conservation and management of a broader range of migratory species, including wetland species, and their habitat. The parties agreed to pay particular attention to migratory species whose conservation status is unfavourable or at risk of becoming endangered. The convention provides for the listing of migratory species and includes the Loggerhead Turtle, *Caretta caretta*, and Dugong, *Dugong dugon*. With limited exceptions, parties to the convention agreed to prohibit the taking of any listed animals.

Australia meets and reports regularly with other parties to these conventions but the primary method of implementing the agreements is through domestic legislation and arrangements. The *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) is the principal national legislation relating to this commitment. Species

covered by JAMBA, CAMBA or the Bonn Convention are included in the list of migratory species protected under the EPBC Act. Any action likely to have a significant impact on the listed species requires Commonwealth approval.

Consideration of migratory birds, and their wetland habitats, is also incorporated into a number of national plans and policies, including:

- *Wetlands Policy of the Commonwealth Government of Australia*;
- *Ramsar Convention Strategic Plan 1997-2002*;
- *Asia-Pacific Migratory Waterbird Conservation Strategy 2001-2005*; and
- *Action Plan for Conservation of Migratory Shorebirds in Asia Pacific 2001-2005*.

Like to know more?

See: CAMBA: www.austlii.edu.au/au/other/dfat/treaties/1988/22.html

JAMBA: www.austlii.edu.au/au/other/dfat/treaties/1981/6.html

Bonn Convention: www.austlii.edu.au/au/other/dfat/treaties/1991/32.html

Commonwealth of Australia (2002) *Australia's National Report to the Eighth Conference of Contracting Parties to the Convention on Wetlands* (Ramsar, Iran, 1971)
Commonwealth of Australia (1999) *Australia's National Report for the Tenth JAMBA and Fourth CAMBA Consultative Meetings*, (Nanchang, China, 22-25 November 1999)

2.2 The Ramsar Convention

The *Convention on Wetlands of International Importance especially as Waterfowl Habitat*, called the 'Ramsar Convention,' entered into force in 1975. The objective of the Convention is the conservation and wise use of internationally important wetlands. Signatories to the convention agreed to designate at least one site that meets the Ramsar criteria for inclusion in the 'List of Wetlands of International Importance'. Australia has 63 Ramsar sites, five of which are in Queensland (Moreton Bay; Bowling Green Bay; Great Sandy Strait; Currawinya Lakes; and Shoalwater and Corio Bays) and one in waters adjacent to Queensland (Coral Sea Reserves). Parties agreed to conserve listed wetlands and make wise use of all wetlands within the contracting parties' territory. This includes providing wetland conservation within national land-use planning, establishing nature reserves on wetlands and promoting wetland education.

There are a number of regulatory and policy instruments that provide various degrees of protection to Ramsar sites in Australia. In general, the protection and management of Ramsar wetlands is conducted through State and Territory legislation, such as Queensland's *Marine Parks Act 1982* and *Coastal Protection and Management Act 1995*. However, federal legislation and policy also contribute to wetlands protection. For instance, the EPBC Act is the key national legislation for Ramsar wetlands while, national policies that provide protection to these wetlands include, the *Wetlands Policy of the Commonwealth Government of Australia*, The *Ramsar Convention Strategic Plan 1997-2002*, and the National Heritage Trust. To see the areas listed as Ramsar sites in Queensland, please see map 2.2 in Appendix 1.

Like to know more?

See: RAMSAR: www.austlii.edu.au/au/other/dfat/treaties/1975/48.html

2.3 World Heritage Convention

The *Convention for the Protection of the World Cultural and Natural Heritage* (World Heritage Convention) entered into force in 1975. The World Heritage Convention aims to identify and protect cultural and natural heritage that is of “outstanding universal value”. The convention encourages parties to nominate sites within their national territory for inclusion on the World Heritage List. Signatories to the convention agree to a number of actions to conserve heritage, including:

- a) to adopt policies integrating protection of heritage into planning;
- b) to set up services for the protection, conservation and presentation of heritage;
- c) to develop studies and operating methods to counteract threats to heritage; and
- d) to identify, conserve, present and rehabilitate heritage.

The convention establishes the World Heritage Committee to make decisions in relation to the selection and protection of sites on the World Heritage List. The signatories maintain the responsibility for conserving heritage through domestic programs. In Australia sites on the World Heritage List are a matter of national environmental significance for the Commonwealth's EPBC Act (see 3.2.1). There are five World Heritage sites in Queensland, three of which are closely connected with wetlands (Wet Tropics of Queensland, Great Barrier Reef Marine Park and Fraser Island). Several of these sites are protected by particular Commonwealth and State legislation, including:

- *Great Barrier Reef Marine Park Act 1975* (Cth); and
- *Wet Tropics of Queensland World Heritage Area Conservation Act 1994* (Cth);
- *Wet Tropics World Heritage Protection and Management Act 1993* (Qld).

Heritage is also protected more generally through State Acts, including the *Queensland Heritage Act 1992*, *Nature Conservation Act 1992* and *Fisheries Act 1994*. To see the area of land that has been World Heritage Listed in Queensland, please see map 2.3 in Appendix 1.

Like to know more

See: World Heritage Convention: www.austlii.edu.au/au/other/dfat/treaties/1975/47.html

2.4 Convention on Biological Diversity

The *Convention on Biological Diversity* entered into force generally and for Australia in 1993. The convention promotes the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources. Parties to the convention agreed to a number of actions including:

- identification and monitoring of biological diversity,
- sustainable management of biological resources;

- rehabilitation and restoration of degraded ecosystems and threatened species; and
- to adopt economic incentives for the conservation and sustainable use biological resources.

The Convention is implemented through national strategies, plans and programs. The key national strategy for the implementation of the Convention, is the *National Strategy for the Conservation of Australia's Biodiversity 1996* (see 3.1.4). The main national legislation for the conservation of biological diversity is the EPBC Act, which provides for the listing of threatened species and ecological communities. Certain activities that affect these species or communities require Commonwealth approval. The Act also provides for a number of tools to assist with the conservation of species and habitats (see 3.2.1).

Like to know more?

See: Convention on Biological Diversity:

www.austlii.edu.au/au/other/dfat/treaties/1993/32.html

2.5 Other Relevant Conventions

Other relevant conventions for the conservation of wetlands include:

- *Convention on Conservation of Nature in the South Pacific* (Apia, Western Samoa, 12 June 1976);
- *Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (SPREP)* (Noumea, 24 November 1986);
- *Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)* (Washington, 3 March 1973);
- *United Nations Convention on the Law of the Sea (UNCLOS)* (Montego Bay, 10 December 1982);
- *International Convention for the Prevention of Pollution from Ships 1973/78 (MARPOL 73/78)*; and
- *United Nations Framework Convention on Climate Change (UNFCCC)* (New York, 9 May 1992).

3.0 National Legislation and Policy

3.1 Policies and Programs

While not legally binding national policies can be instrumental in setting the context for and coordinating Commonwealth and State regulation of wetlands. National programs can also have a strong influence on sustainable management of wetlands through, amongst other things, the financial assistance they provide to land managers.

3.1.1 National Strategy for Ecologically Sustainable Development

National Strategy for Ecologically Sustainable Development (NSES), adopted by all levels of government in 1992, sets out principles and objectives for “development that

aims to meet the needs of Australians today, while conserving our ecosystems for the benefit of future generations”. Key elements of the strategy include: integrating the economic, social and environmental need of the community; accounting properly for the economic costs of environmental degradation; and accepting that each generation is responsible for the welfare of future generations. These principles provide the core policy framework for a number of strategies and plans provide a focus for particular resource issues, including:

- the *National Strategy for the Conservation of Australia's Biological Diversity*;
- the *National Water Quality Management Strategy (NWQMS)*; and
- the *Council of Australian Governments (COAG) Water Reform Framework*.

The principles of ecologically sustainable development, as set out in the strategy, have also been progressively incorporated into national and State legislation in relation to wetlands, including the EPBC Act (Cth), *Integrated Planning Act 1997* (Qld), *Coastal Protection and Management Act 1995* (Qld) and *Fisheries Act 1994* (Qld).

Like to know more?

See: National Strategy for Ecologically Sustainable Development:

www.ea.gov.au/esd/national/nse/d/strategy/index.html

3.1.2 Intergovernmental Agreement on the Environment

The Intergovernmental Agreement on the Environment (IGAE), 1992, sets out the roles and responsibilities of the Commonwealth, States and Territories in relation to environmental issues. The IGAE also committed all level of government to integrate environmental considerations into Government decision-making and ensure that the principles of ecologically sustainable development inform policymaking and program implementation.

Like to know more?

See: Intergovernmental Agreement on the Environment:

www.ea.gov.au/esd/national/igae/index.html

3.1.3 Commonwealth Wetlands Policy

The *Wetlands Policy of the Commonwealth Government of Australia* was created by Environment Australia in 1997 to ensure that the activities of the Commonwealth Government promote the conservation, repair, and sustainable use of wetlands. The Policy provides objectives, principles and strategies for the development of a national framework of wetland policies and strategies. The *Implementation Plan for the Wetlands Policy of the Commonwealth Government of Australia*, released in 1999, identifies specific actions, timeframes, responsibilities, and performance indicators against each of the strategies of the Policy.

Like to know more?

See: The Wetlands Policy of the Commonwealth of Australia:

3.1.4 National Strategy for the Conservation of Australia's Biodiversity

The *National Strategy for the Conservation of Australia's Biological Diversity* 1996, sets out principles and objectives for the effective identification, conservation and management of Australia's biological diversity. Principles include a preference for in-situ conservation, the need for a cooperative approach to conservation, and the need for a comprehensive, representative and adequate reserve system managed in an integrated fashion with all other areas. The strategy is implemented primarily through the EPBC Act at a national level and the *Nature Conservation Act 1992* in Queensland.

Like to know more?

See: National Strategy for the Conservation of Australia's Biodiversity:
www.ea.gov.au/biodiversity/publications/strategy/

3.1.5 COAG Water Reform Framework

In 1994 COAG established the national Water Reform Framework to address the need for the sustainable management of Australia's water resources. The major elements of the COAG Water Reform Framework include: consumption-based full cost recovery for water pricing; water allocation systems that separate water rights from land and allow trading; allocation of water to the environment; and the management, protection and restoration of water resources and dependent ecosystems. Large financial incentives, in the form of Commonwealth payments to the States under the National Competition Policy, were dependant on the progress of the States in implementing the COAG reforms. The framework is implemented primarily through State legislation such as the *Water Act 2000* (Qld).

Like to know more?

See: Council of Australian Governments Water Reform Framework
www.ea.gov.au/water/policy/coag.html

3.1.6 National Principles for the Provision of Water for Ecosystems 1996

The *National Principles for the Provision of Water for Ecosystems 1996* aim to sustain and, where necessary, restore ecological processes and biodiversity of water-dependant ecosystems by ensuring the provision of water for ecosystems. Principles include:

- taking into account the impact of water use on ecological values;
- basing provision of water for ecosystems on best available scientific information;
- meeting environmental needs for water; and
- use of demand management and water pricing to assist sustaining ecological values of water resources.

These principles are intended to provide policy direction on the issue of water for the environment within the broader framework dealing with allocation of water for all users.

Like to know more?

See: ARMCANZ/ANZECC 'National Principles for the Provision of Water for Ecosystems' (Sustainable Land and Water Resources Management Committee Subcommittee on Water Resources Occasional Paper SWR No 3, July 1996)

3.1.7 National Water Quality Management Strategy 1992

The NWQMS was jointly developed by the Australian and New Zealand Environment and Conservation Council (ANZECC) and the Agriculture and Resources Management Council of Australia and New Zealand (ARMCANZ). The objective of this strategy is to achieve sustainable use of the nation's surface and groundwater resources by protecting and enhancing their quality while maintaining economic and social development. It aims to achieve this through the development of guidelines for setting local environmental values and water quality objectives for water bodies by communities and government. Implementation of management programs to achieve these objectives is mainly a State and Territory responsibility. In Queensland local environmental values and water quality objectives can be set through the *Environmental Protection (Water) Policy 1997*.

Like to know more?

See: National Water Quality Management Strategy 1992:
www.ea.gov.au/water/quality/nwqms/

3.1.8 Natural Heritage Trust

The Natural Heritage Trust (NHT), is jointly administered by Agriculture, Fisheries and Forestry Australia (AFFA), and EA and was established in 1997. The NHT is essentially a funding program that commits \$2.7 billion to help restore and conserve Australia's environment and natural resources. The first phase of the NHT has invested \$1.4 billion in environmental programs. The second phase has now commenced, extending the program to 2006-07 with an additional \$1 billion in funding.

Rivers, coasts and wetlands are a major focus of the NHT with a National Wetlands Program being an initiative of the first phase. Wetland commitments will now be met through the four program areas of the second phase, these are: Rivercare, Bushcare, Landcare and Coastcare.

Like to know more?

See: Nation Heritage Trust: www.nht.gov.au/
Landcare: www.landcareaustralia.com.au/
Coastcare: www.ea.gov.au/coasts/coastcare/

3.1.9 National Action Plan for Salinity and Water Quality

The National Action Plan for Salinity and Water Quality (NAPSWQ) was established by the agreement of the Council of Australian Governments in 2000. Administered by AFFA, the NAPSWQ incorporates the Commonwealth's proposed framework for protecting, maintaining and enhancing natural resources in rural Australia. The

NAPSWQ aims to set targets and standards for water quality and salinity which will be met through community based, regional management plans. These plans are expected to include actions for the protection and rehabilitation of waterways.

The regional plans will incorporate existing statutory processes such as regional coastal management planning and water resource plans. Implementation of the regional natural resource management plans will be through a wide range of mechanisms, from local government planning schemes and budget allocations, to adoption of industry best management practice. Substantial funding is available through the NAPSWQ to assist in the setting and achieving of salinity and water quality targets. Several wetlands projects have attracted funding in the first round of the NAPSWQ such as Glenelg-Hopkins Catchment Management Authority's Wannon Basin program, in Victoria, that aim in part to protect and enhance wetland sites to contribute to nutrient management and prevent algal blooms in Lake Hamilton

Like to know more?

See: National Action Plan for Salinity and Water Quality: www.napswq.gov.au/

3.1.10 Other Relevant Policies

Additional national policy instruments with implications for wetlands include: *Greenhouse 21C Strategy; National Weeds Strategy; National Forest Policy Statement; and Oceans Policy*

3.2 Legislation

3.2.1 *The Environmental Protection and Biodiversity Conservation Act 1999*

Objectives and Application: The objectives of the EPBC Act, include:

- (a) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources;
- (b) to promote the conservation of biodiversity; and
- (c) to assist in the co-operative implementation of Australia's international environmental responsibilities.

The EPBC Act is the key statute for implementing Australia's commitments to international conventions. The two main mechanisms employed by the act to achieve its objectives are a system of development assessments and approvals and a system for the identification, protection and recovery of threatened biodiversity.

Responsible Agency: Environment Australia

Spatial Coverage: The Act potentially applies to all activities within Australia's territorial boundaries but it is in effect limited to those activities related to matters of national significance.

In determining sites of national significance Environment Australia relies on several different inventories including the "Directory of Important Wetlands in Australia" (third edition) and the Ramsar Sites Database . The Directory of Important Wetlands uses a classification system and criteria developed by ANZECC in 1994. The directory identified 165 Queensland wetlands as important and 83 of these are found in the coastal zone (EPA,1999). The Ramsar Sites Database contains those site considered internationally important and listed under Ramsar convention. The database includes four coastal wetlands in Queensland: Moreton Bay, Bowling Green Bay, Great Sandy Strait, Shoalwater and Corio Bays.

Factors that Trigger Application: To trigger Commonwealth assessments or approvals it must be likely that the action will result in a "significant impact" on a "matter of national environmental significance". The Act currently identifies six matters of national environmental significance:

- World Heritage properties;
- Ramsar wetlands of international significance;
- listed threatened species and ecological communities;
- listed migratory species (including those listed under the CAMBA, JAMBA and Bonn Conventions);
- Commonwealth marine areas; and
- nuclear actions (including uranium mining).

Constraints Applied: Any action likely to have a significant impact on these areas requires an application to the Commonwealth for approval before proceeding. To avoid

duplication of the State's approval requirements, the Act provides for bilateral agreements that accredit State assessment and/or approval processes.

In addition to the approvals regime the act also provides for a number of tools to assist with the conservation of listed species and habitats including:

- the identification of key threatening processes;
- the preparation of: recovery plans, threat abatement plans and conservation agreements; and
- the issuing of conservation orders.

Like to know more?

See: *Environment Protection and Biodiversity Conservation Act 1999:*

<http://scaleplus.law.gov.au/html/pasteact/3/3295/top.htm>

3.2.2 Great Barrier Reef Marine Park Act 1975

Objectives and Application: The *Great Barrier Reef Marine Park Act 1975* provides protection for the marine environments within the Great Barrier Reef. It aims to achieve this through provisions that establish the Great Barrier Reef Marine Park, Great Barrier Reef Marine Park Authority (GBRMPA), Great Barrier Reef Consultative Committee and provides a framework for planning and management of the Marine Park. The day to day management of the park is conducted in partnership with Queensland Parks and Wildlife.

Responsible Agency: GBRMPA

Spatial Coverage: The Act mainly governs activities within the Park area, although two regulations extend the controls associated with the Act. The *Great Barrier Reef (Prohibition of Mining) Regulations 1999*, extend the prohibition of mining within the park area to include the Great Barrier Reef Region. The *Great Barrier Reef Aquaculture Regulations 2000* prohibit the unauthorised discharge of certain aquaculture wastes in an area directly west of the Marine Park up to five kilometres inland from the line of highest astronomical tide (HAT).

Factors that Trigger Application: There are a large number of activities that are regulated by GBRMPA. For example, most commercial operations in the Park area are liable for an environmental management charge used by the Authority for research, education and Marine Park management. Many large vessels must also carry a licensed pilot when navigating several shipping routes within the Park. Certain activities also require a Marine Parks permit including:

- Most commercial activities, including tourist operations;
- Installation and operation of structures, such as jetties, marinas, pontoons and mariculture facilities;
- Anchoring or mooring for an extended period;
- Waste discharge from a fixed structure;
- Research and Educational programs;

- Traditional hunting.

The Marine Park zones guide the requirement for permits.

Constraints Applied: Permits are assessed against a number of criteria, including:

- The objective of the zone;
- The conservation of the natural resources of the Marine Park;
- The likely effects of the proposed use on adjoining and adjacent areas;
- The health and safety aspects involved;
- The arrangements for making good any damage caused by the activity; and
- the effect that a proposal is likely to have on World Heritage Values.

If the proposal is considered to have a significant impact on a matter of National Environmental Significance, approval under the EPBC Act may also be required.

Like to know more?

See: *Great Barrier Reef Marine Park Act 1975:*

<http://scaleplus.law.gov.au/html/pasteact/0/306/top.htm>

Great Barrier Reef Marine Park Authority: www.gbrmpa.gov.au

3.2.3 *Native Title Act 1993*

Objectives and Application: The *Native Title Act 1993* (NT Act), came into operation on 1 January 1994 and serves three main functions:

1. validating past acts in relation to native title;
2. providing for the recognition and protection of existing native title; and
3. regulating future dealings with native title;

Responsible Agency: The Commonwealth is responsible for the *Native Title Act 1993* with a number of important functions performed by the Native Title Tribunal.

Spatial Coverage: Native title may have been extinguished due to a lack of continued connection with the land, as a result of Crown grants, or inconsistent rights in land or through Crown use of land with a clear and plain intention to extinguish native title. Generally all grants of freehold title extinguished native title. The areas where native title may exist include:

- Vacant Crown land;
- Some national parks, forests and public reserves;
- Some types of pastoral lease;
- Some land held for Aboriginal communities;
- Beaches, oceans, seas, reefs, lakes, rivers, creeks, swamps and other waters that are not privately owned.

Factors that Trigger Application: Certain future acts that may affect native title are required to involve native title claimants or bodies. These future acts include

development proposals or activities may affect native title by extinguishing it or creating interests that are inconsistent with the existence or exercise of native title (for example the grant of mining or exploration rights).

Constraints Applied: If the negotiation procedures set out in the NT Act are not complied with, the relevant future act will be invalid to the extent that it affects native title. Negotiation requires the involvement of native title parties in discussions with a view to reaching an agreement about the future act. If an agreement is not reached then an arbitral body, or a Minister, will make a determination.

Specific requirements depend on the determination of native title that will determine the rights held by the native titleholders.

It is good practice to include indigenous communities in the planning and management of wetlands. The Brisbane City Council, for example, consulted with traditional owners in the development of sustainability and management plans for the North-East Wetlands Region (NEWR). NEWR includes Kedron Brook, Boondall Wetlands, Deagon Wetlands and Tinchi Tamba on the southern banks of the Pine River.

Like to know more?

See: *Native Title Act 1993:* <http://scaleplus.law.gov.au/html/pasteact/2/1142/top.htm>

3.2.4 Other Relevant Acts

Other Commonwealth Acts that relate to wetlands include:

- *Australian Heritage Commission Act 1975* which allows for the protection of Australia's heritage through the Heritage Commission and the Register of the National Estate. Listing of areas on the National Estate Register creates certain obligations on the Commonwealth Government to protect related heritage. The Boondall Wetlands, for example, are currently on the register of the National Estate.
- *Murray Darling Basin Act 1993* which approves and provides for carrying out the Murray-Darling Basin Agreement entered into between the Commonwealth, New South Wales, Victorian and South Australian governments to promote and co-ordinate effective planning and management for the equitable efficient and sustainable use of the water, land and other environmental resources of the Murray-Darling Basin. Queensland became a signatory to the agreement in 1996.
- *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* which aims to preserve and protect places, areas and objects of particular significance to Aboriginal people, including wetlands.
- *Airports (Environment Protection) Regulations 1997* that establishes measures to regulate activities likely to cause pollution or excessive noise and promotes improvement of environmental management practices at airport sites. Airports to which the provisions apply include Archerfield Airport.

4.0 State Legislation and Policy

While the Commonwealth has primary responsibility for implementing international conventions the States have the primary responsibility for land management. In the case of wetlands these responsibilities often overlap leading to the need for coordination between the levels of government. This is achieved partly through general intergovernmental agreements such as the Intergovernmental Agreement on the Environment 1992 (IGAE). Agreements relate to specific issues such as the bilateral agreements on the assessment and approval of developments under the EPBC Act. Due to the large number of issues the State must deal with in land management, wetland regulation tends to be across numerous Acts. In the event of an inconsistency between State and Commonwealth law, the Commonwealth law will prevail to the extent of the inconsistency. The lead agency for wetlands management in Queensland is the Environmental Protection Agency (EPA). The EPA is responsible for implementing the *Queensland Government's Strategy for the Conservation and Management of Queensland Wetlands* as well as most other wetland related policies, programs and legislation.

4.1 Strategy for the conservation management of Queensland wetlands 1999

The intent of Queensland's wetlands strategy is to coordinate State agencies and encourage landholders to manage wetlands in accordance with the NSESD (see above). The strategy has four objectives in relation to wetlands management, they are:

1. Avoid further loss and degradation of natural wetlands unless overriding public interest can be shown;
2. Ensure a comprehensive and adequate representation of wetlands in the conservation reserve system;
3. Base the management and use of natural wetlands on ecologically sustainable management and integrated catchment management practices; and
4. Develop community awareness of and respect for the value and benefits of wetlands and involvement in management.

The strategy details various initiatives to meet these objectives. Rather than creating new tools to achieve its objectives the policy aims to use existing legislation, policies and programs to protect wetlands. These tools include inventory programs, regional planning, local planning schemes, industry policies, and whole-property planning.

Like to know more?

See:

Strategy for the conservation management of Queensland wetlands 1999:

www.epa.qld.gov.au/register/p00565aa.pdf

Queensland Environmental Protection Agency: www.epa.qld.gov.au

Search Terms: wetlands, coastal wetlands, wetlands protection, Ramsar

4.2 Fisheries Act 1994

Objectives and Techniques: The main objective of the *Fisheries Act 1994* is to provide for the use, conservation and enhancement of the community's fisheries resources and fish habitats. This is to be done in a manner that seeks to apply and balance the principles of ecologically sustainable development and to promote ecologically sustainable development.

There are several mechanisms that the Act employs to achieve its objectives. These mechanisms include the management and protection of fish habitats through the declaration of fish habitat areas, the protection of marine plants and the restoration of fish habitats. Also, the Act aims to achieve its objectives by managing commercial, recreational and indigenous fishing; preventing, controlling and eradicating disease in fish and managing aquaculture.

Responsible Agency: Department of Primary Industries (DPI).

Spatial Coverage: The Act generally applies to the limits of the state and to Queensland waters. The Act also applies to certain activities within the Australian fishing zone adjacent to Queensland waters. To see the areas in Queensland that are subject to dugong protection areas, fisheries habitat areas, and aquaculture permits, please see map 4.1 in appendix 1.

In administering the Act the DPI, relies on maps of coastal wetlands contained in the Coastal Habitat Resource Information System, CHRIS. These maps classify wetland types predominantly on the basis of associated vegetation such as mangrove families. Vegetation coverage was determined by interpreting satellite and aerial photograph data with ground truthing. Information contained in these maps, in combination with fisheries productivity information, contributes to the nomination of wetlands of high fisheries conservation value as Fisheries Habitat Areas under the *Fisheries Act 1994*.

Factors that Trigger Application: The Act prohibits the removal, damaging or destruction of marine plants without approval. According to the Act, Marine plants are generally considered to be plants that grow on, or adjacent to, tidal lands. Tidal land is any land that is at or below the HAT or land permanently or periodically submerged by waters subject to tidal influence, including many tidal wetlands. Marine plants can also be protected in declared marine habitat areas or when the restoration of a marine habitat is ordered.

The Act will also be triggered if works and related activities are conducted without approval in a declared fish habitat area. This is a prohibited act. Fish habitat areas can be declared on the basis of specific habitats and fisheries values.

Applicable Constraints: The DPI may issue permits for works in fish habitat areas or to permit interference with marine plant. The DPI has developed guidelines for allowable works in fish habitat areas. Generally commercial, recreational and indigenous fishing

are still permitted in declared fish habitat areas but, there are restrictions on development activities such as dredging.

Permits for interfering with marine plant are guided by the *Policy for the Management & Protection of Marine Plants* (FHMOP 001 2002). Permits for the removal of marine vegetation are required for the reclamation of wetlands. The approval process is likely to change as some approvals are amalgamated with the Integrated Development Assessment System under the *Integrated Planning Act 1997* (see Chapter 4.4)

Like to know more?

See: *Fisheries Act 1994*: www.legislation.qld.gov.au/

Queensland Department of Primary Industries: www.dpi.qld.gov.au

Search Terms: Fisheries, Wetlands, Fish Habitat, Marine Plants, CHRIS

4.3 Environmental Protection Act 1994

Objectives and Techniques: The objective of this Act is to protect Queensland's environment while allowing for development that improves total quality of life both now and in the future, in a way that maintains the ecological processes on which life depends.

The act seeks to achieve these aims through a series of cyclical phases. The first phase involves describing the state of the environment and defining environmental objectives. Phase two involves the development of environmental strategies. Phase three requires that these environmental strategies are implemented and integrated into efficient resource management. Finally, phase four focuses on ensuring accountability of environmental strategies.

Mechanisms used to achieve the objective of the Act include the use of licenses to control certain environmentally relevant activities (ERAs), the creation of environmental offences and the requirement for environmental plans to be created and followed under the environmental protection policies.

Responsible Agency: EPA

Spatial Coverage: The *Environmental Protection Act 1994* potentially applies to all actions conducted within Queensland.

Factors that Trigger Application: There are several broad ways in which this act can be triggered in relation to the protection of wetlands. First, commencing ERA will require either an authority (licence) under the *Environmental Protection Act 1994* or a development approval under IPA.

Second, wilfully and unlawfully creating serious or material environmental harm or environmental nuisance are offences under the Act if they are not authorised under instruments such as an environmental authority or development approval. It is a defence

to these offences to show that the defendant complied with the general environmental duty. The general environmental duty applies to all persons in Queensland and states that, “a person must not carry out any activity that causes, or is likely to cause, environmental harm unless the person takes all reasonable and practicable measures to prevent or minimise the harm”.

It is also an offence under the Act to contravene an environmental protection policy. This could become relevant in wetlands protection if elements of the *Environmental Protection (Water) Policy 1997* were to be contravened. The Act also regulates the release of certain proscribed contaminants.

Applicable Constraints: An authority or development approval is required prior to undertaking a proscribed environmentally relevant activity. The conditions on the authority may, amongst other things, require the holder to:

- Take measures to minimise the likelihood of environmental harm being caused;
- Install and operate plant or equipment in a stated way; and
- Carry out and report an annual monitoring program.

For activities not covered by an environmental authority, voluntary industry codes of practice (CoP) can help avoid creating environmental harm and demonstrate compliance with the general environmental duty. Current approved codes include the Environmental CoP for Australian Prawn Farmers, Sustainable Fruit and Vegetable Production in Queensland and Sustainable Cane Growing in Queensland.

Like to know more?

See: *Environmental Protection Act 1994*: www.legislation.qld.gov.au

Queensland Environmental Protection Agency: www.epa.qld.gov.au

Search Terms: Industry code of practice, water quality objectives, Environmental Protection (Water) Policy

4.4 Integrated Planning Act 1997

Objectives and Techniques: The objective of IPA is to seek to achieve ecological sustainability through:

- a) Coordinating and integrating planning at the local, regional, and state levels;
- b) Managing the process by which the development occurs; and
- c) Managing the effects of development on the environment.

The two main mechanisms employed by the act are the creation of local planning schemes and a system of development assessment.

Responsible Agency: Department of Local Government and Planning (DLGP)

Spatial Coverage: The Act applies to the limits of the State. However, the majority of planning occurs at a local government level so it is often local government boundaries and their planning scheme maps that are most important for determining applicable constraints. To see the various stages of completion that planning schemes are at throughout Queensland please see map 4.3 in appendix 1.

Factors that Trigger Application: Only certain types and degrees of development require approval through IPA. IPA categorises development as either exempt development, self-assessable development or assessable development. Exempt development is not required to comply with any codes or planning instruments. A schedule to the Act includes a list of some exempt development such as certain mining activities. Self-assessable development, such as minor building work, does not require a permit but must comply with applicable planning scheme codes. Assessable development requires development approval through IDAS and may be categorised by the local planning scheme as either code assessable or impact assessable. The main difference between these types of assessment is that impact assessable developments are required to engage in public consultation on the proposed development.

IDAS includes provision to coordinate all approvals required for the development by involving other agencies. Approvals and permits associated with development but required under other Acts are intended to be ‘rolled in’ to the IDAS process. When these ‘roll ins’ are complete the IDAS process is likely to become paramount for assessing and mitigating the impact of development on wetlands.

Applicable Constraints: The specific requirements for each development will vary with each planning scheme area. IPA requires all local governments to develop planning schemes, which seek to achieve desired environmental outcomes (DEOs) through a development assessment process. Unlike previous zoning schemes the IPA planning schemes cannot prohibit development outright in most cases. Instead each development application must be assessed, on its merits, against the desired environmental outcomes. Planning schemes also contain a number of codes that specify in greater detail the performance criteria required to achieve DEOs.

Codes can relate to the requirements of a specific area (such as wetlands), activity (such as subdivision) or element (such as biodiversity) within the local government area. These codes can contain provisions specific to the requirements of wetlands such as Brisbane City Council’s Wetlands Codes.

Local planning schemes must also embody matters of ‘state interest’ during their formulation. These include state planning policies such as “SPP 2/02: Planning and Managing Development Involving Acid Sulfate Soils” and State and Regional Coastal Management Plans. Through this mechanism state planning policies that relate to wetlands can be incorporated into local planning schemes and influence development assessment.

Effective Land-use Planning Under IPA

Land-use planning, in general, involves identifying strategies to achieve future desired outcomes for land-use and balancing the competing objectives associated with land use.

In Queensland, land-use planning is based on the concept of Ecological Sustainable Development (ESD) implemented primarily through the Environmental Protection Act (1994) and the Integrated Planning Act (1997). More specifically, the stated purpose of the IPA is to achieve ESD by coordinating and integrating planning at the local, regional and state level. The object of EPA on the other hand is to protect Queensland's environment while allowing for ESD (development that improves the quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends).

Local government level may not be the best level for planning, as many problems go outside political boundaries (Leong 2002/03:141). For example, a wetland could be protected within one LGA but have a large urban development on its shores in another LGA.

It is possible that IPA “waters down” Acts under which State and Regional plans are made, such as the *Coastal Protection and Management Act 1995* (Leong 2002/03:141-142). This is because they are implemented under IPA, which does not have ecological sustainability as the centre of its mission, but rather balances environmental concerns with economic development and maintenance of cultural, physical, economic and social well-being of its constituents. The purpose of the Act under which the State and regional plans are developed is at conflict with the Act under which they take effect (i.e.: IPA).

Like to know more?

See: *Integrated Planning Act 1997*: www.legislation.qld.gov.au

Queensland Department of Local Government and Planning: www.ipa.qld.gov.au

Search Terms: local government planning schemes, IDAS, IPA

4.5 Coastal Protection and Management Act 1995

Objectives and Techniques: The objects of the *Coastal Protection and Management Act 1995* are to:

- a) provide for the protection, conservation, rehabilitation and management of the coast, including its resources and biological diversity;
- b) have regard to the goal, core objectives and guiding principles of the National Strategy for Ecologically Sustainable Development;
- c) provide, in conjunction with other legislation, a coordinated and integrated management and administrative framework for the ecologically sustainable development of the coastal zone; and

- d) encourage the enhancement of knowledge of coastal resources and the effects of human activities on the coastal zone.

The Act uses three main tools to achieve these stated objectives, these are:

- a) the creation of State and regional coastal management plans;
- b) the declaration control districts¹ requiring special development controls and management practices; and
- c) using other relevant legislation wherever practicable.

Responsible Agency: EPA

Spatial Coverage: The *Coastal Protection and Management Act 1995* broadly relates to the coastal zone of Queensland which stretches from three nautical miles offshore to all landward areas that potentially affect the coast. More specific control districts can be declared over coastal waters, coastal islands, up to 100m inland from internal tidal waters, up to 400m inland from the foreshore and up to 1000m inland from river mouths or estuarine deltas. Control districts may also include key coastal sites or coastal wetlands, defined to include “tidal wetlands, estuaries, salt marshes, melaleuca swamps (and any other coastal swamps), mangrove areas, marshes, lakes or minor coastal streams regardless of whether they are of a saline, freshwater or brackish nature.” To see the areas in Queensland affected by coastal management plan areas and coastal management control districts, please see map 4.4 in appendix 1.

Factors that Trigger Application: Certain developments within a control district, including the construction of artificial waterways associated with residential subdivision, will trigger assessment by the EPA.

In addition, if a person is conducting an activity that is likely to have a significant effect on coastal management or cause wind erosion within a control district they can be issued with a coastal protection notice.

Applicable Constrains: Development assessment of proposed developments within control districts will be assessed against the policies and principles listed in the state and regional coastal management plans. The state coastal management plan contains a specific coastal wetlands policy, which states, “further loss or degradation of coastal wetlands is to be avoided and impacts on coastal wetlands prevented, minimised or mitigated.” Outside control districts the assessing authority for assessable developments is obliged to consider the policies contained within the state or regional coastal management plans.

Like to know more?

See:

Fisk, G. (2002) “Regulation of Development on Queensland’s Coast under the Coastal

¹ Control districts will be called ‘coastal management districts’ when the amending legislation commences in December 2003.

Protection and Management Act” Paper presented to Coast to Coast 2002, Australia’s National Coastal Conference, Tweed Heads, 4 - 8 November

www.coastal.crc.org.au/coast2coast2002/

Coastal Protection and Management Act 1995: www.legislation.qld.gov.au

Queensland EPA, 2001. “What is a control district?”:

www.epa.qld.gov.au/register/p00857aa.pdf

Queensland Environmental Protection Agency: www.epa.qld.gov.au

State Coastal Management Plan:

www.epa.qld.gov.au/environmental_management/coast_and_oceans/coastal_management/state_coastal_management_plan/

Search Terms: coastal management, coastal management plans, coasts and oceans

4.6 Water Act 2000

Objectives and Techniques: The three main objectives of the *Water Act 2000* are: to provide for the sustainable management and efficient use of water and other resources; to establish a regulatory framework for providing water and sewerage services; and to establish a framework for the creation and operation of water authorities.

The provisions most relevant to wetlands relate to the objective of sustainable management and efficient use of water and other resources. The Act aims to achieve this objective through a number of techniques including;

- a) The creation of system water planning including catchment wide Water Resource Plans, local area Resource Operation Plans and property scale Land and Water Management Plans;
- b) The granting of water licenses and allocation for the taking of water; and
- c) The granting of permits to destroy vegetation, excavate or place fill in a watercourse, lake or spring.

Responsible Agency: Natural Resources and Mines (NRM)

Spatial Coverage: The *Water Act 2000* applies to the entire state and creates Water Resource Plans that relate to specifically defined areas. Currently, there are water resource plans for the Boyne River Basin, Barron, Burnett basin, Cooper Creek, and Pioneer Valley.

Factors that Trigger Application: Water licenses are required to take or interfere with water. This can be from a watercourse, lake or spring, water flowing over the land or underground but generally not when it is from a water supply scheme such as the town water supply.

Also, the *Water Act 2000* states that a permit is required to destroy vegetation in a watercourse, lake or spring; excavate in a watercourse, lake or spring; or place fill in a watercourse, lake or spring. The types of vegetation to which this requirement applies includes vegetation growing in the bed, banks or any other element of a river, creek or stream that confines or contains water, including wetlands.

Applications can be made under the *Water Act 2000* for an allocation of quarry materials that form part of bed and banks of watercourse of lakes. This is State owned material.

Applicable Constraints: Applications for a water licence must be assessed against a number of considerations, including:

- Water Resource Plans and Resource Operations Plans,
- policies developed with the local community for sustainable water management; and
- sustainable resource management strategies, including any relevant coastal zone.

Water Resource Plans attempt to ensure adequate provision of water for the environment through a number of means including the setting of environmental flow objectives.

When a water licence is issued, it may contain conditions including:

- requirements to monitor how much water is taken
- the period, place and rate of water extraction
- threshold flow conditions that must be met before water can be taken

Water taken under a water allocation or licence generally cannot be used for irrigation unless the person also has an approved land and water management plan. These Plans describe infrastructure, natural resources and management practices in the use of land and water resources.

Permits to destroy vegetation, excavate or place fill in a watercourse, lake or spring are assessed against a number of factors, including:

- the effects of the proposed activity on water quality and the physical integrity of the watercourse;
- the quantity, type and position material to be destroyed, excavated or placed;
- the reasons given by the applicant for wishing to carry out the activity; and
- the implications for the long-term sustainable use of Australia's river systems.

Like to know more?

See: *Water Act 2000*: www.legislation.qld.gov.au

Queensland Department of Natural Resources and Mines: www.nrm.qld.gov.au

Search Terms: Water Act, water planning, water resource plans, resource operation plans, water licences

4.7 Nature Conservation Act 1992

Objectives and Techniques: The objective of the *Nature Conservation Act 1992* is to conserve nature. Some of the mechanisms and techniques used to achieve this objective include dedicating and managing protected areas, protecting native wildlife and its habitat and ensuring use of wildlife areas is ecologically sustainable.

There are a number of mechanisms in this act that could relate to the protection of wetlands, including:

- the declaration of protected areas on state land;
- the creation of nature refuges and conservation agreements on non-state land; and
- prescribing protected wildlife (including wildlife that is presumed extinct, endangered, vulnerable, rare or common – listed in the *Nature Conservation (Wildlife) Regulation 1994*).

Responsible Agency: EPA

Spatial Coverage: The Act applies to the limits of the State. To see the areas in Queensland covered by various reserves, critical habitats and nature refuges, conservation areas and national parks, please see map 4.6 in appendix 1.

Factors that Trigger Application: Protected areas can be formed by the Governor in Council and are divided into a number of classes including national parks, conservation parks and resources reserves. The class of the area helps determine what activities are allowed, subject to approval or prohibited.

Conservation agreements are voluntary and any landholder can apply to be considered for inclusion of their land in an agreement with the State government.

The Act allows native wildlife to be prescribed as presumed extinct, endangered, vulnerable, rare or common. Presumed extinct, endangered, vulnerable wildlife are collectively referred to as threatened wildlife. An example of a rare plant found is the bog rush, *Schoenus scabripes*, a sedge found in several wetlands in south east Queensland (EPA, 2001).

Applicable Constraints: Constraints on activities within protected areas on state land will depend largely on the class of the reserve and any plans specific to the area.

Similarly conservation agreements over non-state land will largely depend on the individual agreements made to cater for each particular site provided the Minister and the landholder of affected areas both agree on the proposed area to be protected, the class of protected area to be declared and the management intent of that area. Once formulated the conservation agreement may contain terms, which are both binding on the state, the landholder and the landholder's successors in title. The conservation agreement itself can contain additional terms including restriction on the use or management of land, certain land uses may be prohibited and landholders may be required to carryout specific actions. In the event that a landholder and the minister cannot agree on the terms of a conservation agreement or a proposal to declare a nature refuge the minister can compulsorily declare the area a nature refuge. This is a last resort where the minister is satisfied that the area of land in question is an area of major interest, or includes critical habitat, and should be declared a nature refuge.

The commercial and non-commercial taking, keeping and using of protected wildlife is guided by codes of practice describing standards and procedures that must be complied with. Taking, using or keeping threatened or rare wildlife is generally an offence unless it is done under: (a) a conservation plan; (b) a licence, permit or other authority; or (c) an exemption under a regulation. Interim conservation orders can also be issued under the Act. These require the conservation, protection or management of wildlife, habitat or areas subject to a significant threatening process.

Like to know more?

See: *Nature Conservation Act 1992:* www.legislation.qld.gov.au

Queensland Environmental Protection Agency: www.epa.qld.gov.au

Search Terms: Parks and wildlife, conservation plan, protected area, nature conservation, nature refuge

4.8 Marine Parks Act 1982

Objectives and Techniques: The objective of the *Marine Parks Act 1982* is to provide for the setting apart of tidal lands and tidal waters as marine parks and related purposes. Once declared, zoning plans apply to these marine parks. These zoning plans take on the form of subordinate legislation and can only be enforced once they have been approved by the Governor in Council. Once approved, the zoning plans dictate the entry to and use various sections of the marine parks through a series of specified regulations and listed of prohibited actions. There are penalties for failure to comply with provisions contained within zoning plans.

Responsible Agency: EPA

Spatial Coverage: The two marine parks listed in the Marine Park Regulations are the Moreton Bay Marine Park and the Trinity Inlet/ Marlin Coast Marine Park. The *Marine Park Regulation 1990* specifies at a broader level what actions are permissible within Marine Parks and who can enter under what conditions. To see the area covered by marine park zones in Queensland, please see map 4.7.

Factors that Trigger Application:

The range of activities that trigger specific requirements under the Act depends largely on the zoning plan within the marine park. Moreton Bay marine park, for example, is divided into five zones: general use zones, habitat zones, conservation zones, buffer zones and protection zones. In the general use zone most recreational activities are allowed without a permit and many commercial activities can be undertaken provided permission is granted. Other zones allow a more limited range of commercial activities under a permit. The use of these zone can be use to provide protection to wetlands within the park area.

Like to know more?

See: *Marine Parks Act 1982:* www.legislation.qld.gov.au

4.9 Vegetation Management Act 1999

Objectives and techniques: The objective of the *Vegetation Management Act 1999* is to regulate the clearing of vegetation on freehold land to:

- Preserve remnant endangered regional ecosystems and vegetation in areas of high nature conservation value and areas vulnerable to land degradation;
- Ensure that clearing does not cause land degradation;
- Preserve maintain or increase biodiversity;
- Maintain ecological processes; and
- Allow for ecologically sustainable land use.

The Act aims to achieve its objectives by providing for:

- a) codes under the *Integrated Planning Act 1997* relating to the clearing of vegetation and
- b) the enforcement of vegetation clearing provisions.

Responsible agency: NRM

Spatial coverage: The *Vegetation Management Act 1999* applies only to vegetation on freehold land but works in concert with land clearing provision in the *Land Act 1994* that relates to state owned land.

Factors that trigger application: The clearing of native vegetation on freehold land triggers the need for a development approval under the *Integrated Planning Act 1997* unless it fall within one of the listed exceptions (see *Integrated Planning Act 1997*, schedule 8, section 3A).

Applicable Constraints: Applications to clear native vegetation are assessed against planning codes that detail the circumstances in which clearing will be permitted. The State Vegetation Management Policy sets out the principles and objectives for vegetation management and contains the assessment code to be applied if there is no Regional Vegetation Management Plan approved for the area. The principal requirements of the assessment code within the State Policy are:

- no clearing of remnant *endangered* regional ecosystems or declared areas of high nature conservation value on freehold land.
- retaining vegetation so that regional ecosystems do not move to a lower conservation status (for example, from *of concern* to *endangered*).
- retaining vegetation so that the total extent of remnant vegetation in a bioregion does not fall below 30 per cent of the pre-clearing extent.

All applications must also be accompanied by a Property Vegetation Management Plan. Other performance requirements for clearing applications include the maintenance of nature conservation values and water quality of significant natural wetlands, lakes and springs. An acceptable means of achieving that requirement is by retaining vegetation in wetlands, lakes and springs; within at least 50 metres of wetlands, lakes or springs. For the purposes of the policy, a wetland is considered significant if it is listed in the *Directory of Important Wetlands in Australia*, a Regional Strategy Plan, a Planning Scheme or shown on a 1:100 000 topographic map.

Where a Regional Vegetation Management Plan has been approved for the area it will contain a region-specific code for assessing applications. This code must at least achieve the objectives of the State Policy outlined above. The regional plans may also declare areas to be of high nature conservation value and/or vulnerable to land degradation. There are a number of criteria for the declaration of an area as an area of high conservation value including that it contains an area that contributes to the conservation value of a wetland, lake or spring. An area can be declared on an interim basis if the Minister is satisfied that urgent action is required to protect it. Land under these orders must not be cleared and there are penalties for doing so.

Like to know more?

See: *Vegetation Management Act 1999*: www.legislation.qld.gov.au

Queensland Department of Natural Resources and Mines: www.nrm.qld.gov.au

Search Terms: vegetation management, regional vegetation management plans

4.10 Land Act 1994

The objectives of the *Land Act 1994* is to manage State controlled land, and some other State owned resources, for the benefit of the people of Queensland by having regard to principles including:

- Sustainability of resource use;
- Development of most appropriate land uses within State's planning framework;
- Retaining land for community purposes;
- Protection of environmentally and culturally valuable and sensitive areas and features; and
- Consultation with community groups, industry associations and authorities in decision making.

To achieve this objective the act provides a process for the allocation of State land, either wholly or for a limited time and/or purposes. The Act also sets out a number of provisions affecting those who hold an interest in state land, such as a lease, license or permit. These provisions include a condition that all lessees, licensees and permittees have the responsibility for a duty of care for the land. The act also prohibits the clearing of trees on State land without a permit. The granting of permits is guided by the Broad-scale Tree Clearing Policy for State Land which compliments and extends the State Policy for Vegetation Management on Freehold Land. In granting clearing permits the

protection environmentally sensitive areas must be considered. These areas cannot be cleared for routine management without a permit and are defined in the *Land Act Regulation 1995* to include areas that contribute to the conservation of wetlands. The *Land Act 1994* is administered by NRM.

Like to know more?

See:

Land Act 1994: www.legislation.qld.gov.au

NRM: www.nrm.qld.gov.au/

Search Terms: State land, Tree Clearing, Duty of Care

4.11 Local Government Act 1993

The objectives of this Act include:

- a) providing a framework for an effective, efficient and accountable system of local government; and
- b) allowing a local government to take autonomous responsibility for the good rule and government of its area; and
- c) providing for community participation in the local government system; and
- d) defining the role of participants in the local government system; and
- e) establishing an independent process for ongoing review of certain important local government issues.

To achieve these objectives the Act provides for the declaration of local government areas and delineates the jurisdiction and roles of local government. This provides for, amongst others, the election of local government councilors and the passing of local laws. Brisbane City Council, for example, has passed the *Natural Assets Local Law (Interim) 2002* that aims to, amongst other things, protect biodiversity and preserve wetlands by restricting the indiscriminant clearing of vegetation. Wetland vegetation is considered protected vegetation under the local law and interference with protected vegetation without permission is prohibited. Introduction of vegetation to a waterway or wetland without authorisation is also prohibited. The scope for this type of local law is limited by the fact that since 30 March 1998 the local government can not pass a local law similar to the development assessment process set out in IPA. The *Local Government Act 1993* is administered through DLGP.

Like to know more?

See:

Local Government Act 1993: www.legislation.qld.gov.au

Department of Local Government and Planning www.dlgp.qld.gov.au/

Search Terms: Local laws, community participation

4.12 Health Act 1937

The *Health Act 1937* is an Act to amend and consolidate the laws relating to public health. The Act itself does not cover material directly relevant to the management of wetlands, however, the *Health Regulations 1996* does contain provisions for the control of mosquito breeding grounds. Under these regulations land owners and the local government must ensure that at all times any pond, pool, trough, fountain, barrel, trench or other like place or receptacle which ordinarily or occasionally contains water or other liquid is prevented from becoming a breeding place or harbourage for mosquitoes. Also, the regulations hold that where there is on any premises any pond, pool, swamp or other accumulation of water or other liquid, whether permanent or not, which is likely to serve as a breeding place or harbourage for mosquitoes if it is not drained or filled in the owner of the premises shall effectively drain or fully fill such a body of liquid. The regulations further list the methods by which these two provisions can be complied with and also list the penalties for failure to comply. The *Health Act 1937* is administered by Queensland Health and is applicable throughout Queensland.

Like to know more?

See:

Health Act 1937: www.legislation.qld.gov.au

Queensland Health: www.health.qld.gov.au

4.13 Mineral Resources Act 1989

The purpose of the *Mineral Resources Act 1989* is to provide for the assessment, development and utilization of mineral resources to the maximum extent practicable consistent with sound economic and land use management. Two of the principal objectives of the Act are to both encourage environmental responsibility in prospecting, exploring and mining, and to encourage responsible land care management in prospecting, exploring and mining. The Act outlines several details and restrictions in relation to land subject to mining claims. For instance the Act states when land is subject to mining claims, it states the restrictions on claims, the conditions of a mining claim, provision of security, under what circumstances mining claims must be surrendered, native title provisions in relation to mining permits, and finally the Act provides details on the permits required for the various stages of mining the mining process from prospecting through to mineral development licences and mining leases. The *Mineral Resources Act 1989* is administered by NRM and is applied throughout Queensland. Much of the responsibility for the ongoing regulation of mining activities occurs through the *Environmental Protection Act 1994*.

Like to know more?

See:

Mineral Resources Act 1989: www.legislation.qld.gov.au

Department of Natural Resources and Mines: www.nrm.qld.gov.au

Search Terms: mine site rehabilitation, mine site environmental management

4.14 River Improvement Trust Act 1940

The *River Improvement Trust Act 1940* provides for the constitution of trusts to protect and improve the bed and banks of rivers and mitigate flooding within a river improvement area. The trust area can comprise of one or more local governments or part thereof. The local governments may make an application to the Minister who may then constitute the trust by regulation. Trust funds are generated mainly through a charge on the Local governments within the area that can be transferred to the rate payers through a levy. These funds can be used to undertake and maintain a range of activities but are generally directed at stream engineering works with a view to flood mitigation. Trusts also have a limited power to issue improvement notices prohibiting persons from contributing to damage from floods or cyclones. While the trust bodies are not directly concern with wetland protection, coordination with River Improvement Trusts within river improvement trust areas is required effective wetland management. The *River Improvement Trust Act 1940* is administered by the Department of Natural Resources and Mines.

Like to know more?

See: *River Improvement Trust Act 1940* : www.legislation.qld.gov.au

Department of Natural Resources and Mines: www.nrm.qld.gov.au

Search Terms: River Improvement

4.15 Land Protection (Pest and Stock Route Management) Act 2001

The main purpose of this Act is to provide for:

- (a) pest management for land; and
- (b) stock route network management.

Pest management can be of particular relevance to wetland management. This is to be achieve in a number of ways including:

- (a) establishing principles and planning for pest management;
- (b) declaring pests and restricting their introduction, spread, sale or keeping;
- (c) establishing the Land Protection (Pest and Stock Route Management) Council;
- and
- (d) monitoring, surveying and controlling pests

Relevant State departments and local governments are required to have pest management plans and landowners are obliged to take reasonable steps to keep their land, and adjacent areas and waterways free of certain classes of pests. The Act is administered by NRM.

Like to know more?

See:

Land Protection (pest and Stock Route Management) Act 2001:

www.legislation.qld.gov.au

NRM: www.nrm.qld.gov.au

Search Terms: land protection, pest management for land, stock route network management

4.16 Aboriginal Land Act 1991

The purpose of the *Aboriginal Land Act 1991* is to provide for the grant, and the claim and grant of land as Aboriginal land, and other purposes. A central feature of this Act is the definition of lands that can be claimed by Aboriginal people. Under this act claimable land includes the bed and banks of watercourses and lakes if the beds and banks of watercourse and lakes fall within the boundaries of land that is otherwise available crown land; and provided that the land is capable of being owned in fee simple by a person other than the crown. Also, available crown land includes tidal lands if the particular tidal land is declared by regulation to be available crown land. Provided that this condition is met, this Act applies to tidal land as if it were not tidal land. In the case of the *Aboriginal Land Act 1991* a watercourse is as defined in schedule 4 of the *Water Act 2000*. The *Aboriginal Land Act 1991* applies throughout Queensland and is administered by NRM. To see the area of land covered by Aboriginal land interests 1993, excluding native title, please see map 4.13 in appendix 1.

Like to know more?

See: *Aboriginal Land Act 1991*: www.legislation.qld.gov.au

NRM: www.nrm.qld.gov.au

Search Terms: Aboriginal land, native title

4.17 Torres Strait Islander Land Act 1991

The purpose of the *Torres Strait Islander Land Act 1991* is to provide for the grant, and the claim and grant of land as Torres Strait Islander land, and other purposes. A central feature of this Act is to define what lands can be claimed by Torres Strait Islander people. Under this Act land that can be claimed by Torres Strait Islander people includes the bed and banks of watercourses and lakes if the beds and banks of watercourse and lakes fall within the boundaries of land that is otherwise available crown land; and provided that the land is capable of being owned in fee simple by a person other than the crown. Also, available crown land includes tidal lands if the particular tidal land is declared by regulation to be available crown land. Provided that this is condition is met, this Act applies to tidal land as if it were not tidal land. In the case of the *Torres Strait Islander Land Act 1991* a watercourse is as defined in schedule 4 of the *Water Act 2000*. The *Torres Strait Islander Land Act 1991* applies throughout Queensland and is administered primarily by NRM. To see the area of land covered by Deed of Grant in Trust (DOGIT) in the Torres Strait Island region see map 4.13 in appendix 1.

Like to know more?

See: *Torres Strait Islander Land Act 1991*: www.legislation.qld.gov.au
NRM: www.nrm.qld.gov.au
Search Terms: Torres Strait Islander Land, native title

4.18 Native Title (Queensland) Act 1993

The main objective of the *Native Title (Queensland) Act 1993*, is in accordance with the Commonwealth Native Title Act 1993, to validate past acts, and intermediate period acts, invalidated because of the existence of native title and to confirm certain rights; and to ensure that Queensland law is consistent with standards set by the Commonwealth Native Title Act for future dealings affecting native title. Essentially, the Act deals with the validations of past State acts, the effect of these validations, when native title is extinguished, and the status of natural resources. The Act confirms the existing rights of the State to use, control and regulate the flow of water, plus it confirms public access to waterways, beds and banks or foreshores of waterways, coastal waters and beaches. The *Native Title (Queensland) Act 1993* applies throughout Queensland and the Act is administered by the Department of Premier and Cabinet.

Like to know more?

See: *Native Title (Queensland) Act 1993*: www.legislation.qld.gov.au
Department of Premier and Cabinet: www.premiers.qld.gov.au
Search Terms: native title

4.19 Transport Infrastructure Act 1994

The objective of the *Transport Infrastructure Act 1994* is consistent with the *Transport Planning and Co-ordination Act 1994*, which is to provide a regime that allows for and encourages effective integrated planning and efficient management of a system of transport infrastructure. The Act has provisions that dictate how watercourses are to be managed if they are affected by road works, busways, or rail lines. In this instance, a watercourse is defined as a lake, spring, stream or a swale. Also, the Act defines when the Environment and Planning court can intervene in conditions imposed on road work constructions by local councils, and how the *Integrated Planning Act 1997* and the *Land Act 1994* relate to this Act. The Act applies throughout Queensland and is administered by Queensland Transport.

Like to know more?

See: *Transport Infrastructure Act 1994*: www.legislation.qld.gov.au
Queensland Transport: www.transport.qld.gov.au
Search Terms: transport infrastructure, planning and infrastructure

4.20 Transport Planning and Co-ordination Act 1994

The purpose of the *Transport Planning and Co-ordination Act 1994* is to improve the economic, trade and regional development performance of Queensland and the quality of life for Queenslanders by achieving an overall transport effectiveness and efficiency through strategic planning and management of transport resources. The Act seeks to

achieve its purpose through the construction of transport co-ordinations plans. The plans must take into account the government's environmental policies and the South East Queensland Transport Authority is required to consider environment issues. This Act is administered by Queensland Transport and is applicable throughout the State.

Like to know more?

See: *Transport Planning and Co-ordination Act 1994:* www.legislation.qld.gov.au

Queensland Transport: www.transport.qld.gov.au

Search Terms: Transport co-ordination

4.21 Transport Operations (Marine Pollution) Act 1995

The purpose of the *Transport Operations (Marine Pollution) Act 1995* is to protect Queensland's marine and coastal environment by minimising deliberate and negligent discharges of ship-sources pollutants into coastal waters. A key technique used to achieve this purpose will be to give effect to certain provisions of MARPOL dealing with the control of marine pollutants. Also, the Act seeks to achieve its stated purpose through marine pollution controls and the penalties for those who pollute Queensland's marine and coastal environment. The Act also applies to any discharge of pollution into the marine environment that occurs outside of Queensland coastal waters if the released pollutant then spreads into Queensland waters. The Act is administered by Queensland Transport.

Like to know more?

See: *Transport Operations (Marine Pollution) Act 1995:* www.legislation.qld.gov.au

Queensland Transport: www.transprot.qld.gov.au

Search Terms: Marine pollution, MARPOL, maritime pollution

4.22 Agricultural Chemicals Distribution Control Act 1966

The purpose of the *Agricultural Chemicals Distribution Control Act 1966* is to regulate and control the aerial and ground distribution of agricultural chemicals. Primarily, this is done through licensing those engaged in aerial spraying or the application of herbicide to other people's property. In addition to this, further controls relate to the use of herbicides within "Hazardous areas", which are defined in the relevant regulations. The Act applies to the whole of the State and is administered through DPI.

Like to know more?

See:

Agricultural Chemicals Distribution Control Act 1966: www.legislation.qld.gov.au

Queensland Department of Primary Industries: www.dpi.qld.gov.au

Search Terms: Agricultural Chemicals

4.23 Chemical Usage (Agricultural and Veterinary Control) Act 1988

The purpose of the *Chemical Usage (Agricultural and Veterinary) Control Act 1988* is to control the use of agricultural and veterinary chemicals and substances containing chemical residues. According to this Act only registered chemical products or those authorised by the National Registration Authority for Agricultural and Veterinary Chemicals (NRA) can be used. These chemicals are only to be used in accordance with an approved label or permit instructions. The Act applies throughout Queensland and is administered by DPI.

Like to know more?

See: *Chemical Usage (Agricultural and Veterinary Control) Act 1988:*

www.legislation.qld.gov.au

Queensland DPI: www.dpi.qld.gov.au

Search Terms: Veterinary Chemicals

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List of Relevant Legislation

Federal Legislation

Environment Protection and Biodiversity Conservation Act 1999:

<http://scaleplus.law.gov.au/html/pasteact/3/3295/top.htm>

Great Barrier Reef Marine Park Act 1975:

<http://scaleplus.law.gov.au/html/pasteact/0/306/top.htm>

Native Title Act 1993:

<http://scaleplus.law.gov.au/html/pasteact/2/1142/top.htm>

State Legislation

www.legislation.qld.gov.au

Fisheries Act 1994

Environmental Protection Act 1994

Integrated Planning Act 1997

Coastal Protection and Management Act 1995

Water Act 2000

Nature Conservation Act 1992

Marine Parks Act 1982

Vegetation Management Act 1999

Land Act 1994

Local Government Act 14993

Health Act 1937

Mineral Resources Act 1989

River Improvement Trust Act 1940

Land Protection (Pest and Stock Route Management) Act 2001

Aboriginal Land Act 1991

Torres Strait Islander Land Act 1991

Native Title (Queensland) Act 1993

Transport Infrastructure Act 1994

Transport Planning and Co-ordination Act 1994

Transport Operations (Marine Pollution) Act 1995

Agricultural Chemicals Distribution Control Act 1966

Chemical Usage (Agricultural and Veterinary Control) Act 1988

APPENDIX 1 – MAPS