

# **ENVIRONMENTAL LAW SUMMARY**



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Sample

# Part 1: Sources of law

## Topic 1: The broad framework of environmental law

Environmental law is founded upon traditional philosophies and legal principles that do not necessarily value environmental protection as an end point. It is important to note from the outset that environmental law does not necessarily cater for 'environmental' values such as ecologically sustainable development. Rather, environmental law is principally concerned with development and other such activities and the procedures for their approval. The international and domestic sources of environmental law have largely developed in response to liberalism and private property rights.

### 1.1 International sources

Given that the environment is not bound by political borders, by necessity, the character of environmental law is global. As such, the role of conventions and treaties is fundamental in developing international standards of environmental protection. For example, the *Convention on Biological Diversity, 1993* has aims for the international sphere to cooperate in biological diversity conservation and to promote ecological sustainability. The *Convention on the Conservation of Migratory Species of Wild Animals, 1991* promotes international cooperation in the conservation of animals, especially endangered species, migrating across nation States. The *Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972* ('*World Heritage Convention*') is important in promoting international cooperation to protect all forms of heritage, natural and cultural, that are of universal significance.

Such international sources of law may be ratified by Nation States. In *Minister of State for Immigration and Ethnic Affairs v Ah Hin Teoh* (1995) 128 ALR 353 the High Court upheld the legitimate expectation that decision makers in Australia are to act in accordance with any international conventions that are ratified by the Commonwealth government. As such, those conventions of environmental protection ratified by the Commonwealth are enforceable in Australia.

In 2007 the then Rudd government ratified the *Kyoto Protocol* which chiefly aimed to reduce greenhouse gas emissions. It has been reported in 2010 that Australia was making sound progress to meet its targets in 2012. In 2012, the parties agreed to an extension of the Kyoto protocol for a period of 8 years from 2013.<sup>1</sup>

### 1.1.1 Free trade agreements

Free trade agreements are specific forms of international instruments which may be utilised to protect the environment. Notably, the *General Agreement on Tariffs and Trade* was incorporated into the Charter of the World Trade Organisation ('WTO') with the view to impacting upon domestic policies of environmental protection. The WTO has enacted further free trade agreements such as the *World Trade Agreement on Sanitary and Phytosanitary Measures*, 2002. On 10 January 2012 this agreement issued a strategy for 2012-16 to assist developing countries to implement international food safety and animal and plant health standards. This is and will be done through the Standards and Trade Development Facility, which administers standards for dealing with pests, animal and plant diseases and contaminants in food services and exports.<sup>2</sup> Such standards provide an example of how free trade agreements may operate to facilitate environmental protection. However, opposition to such agreements may be rife where they actually operate to destruct the environment.

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<sup>1</sup> The report on the Convention of Parties 17, available at <<http://unfccc.int/resource/docs/2011/cop17/eng/09a01.pdf>> at 23 January 2014

<sup>2</sup> World Trade Organization, *Sanitary and Phytosanitary Measures: Agencies, donors boost coordination on food safety, animal and plant health aid* (10 January 2012) <[http://www.wto.org/english/news\\_e/news12\\_e/sps\\_10jan12\\_e.htm](http://www.wto.org/english/news_e/news12_e/sps_10jan12_e.htm)> at 23 January 2014