



Fact Sheet:

National Farmers'
F E D E R A T I O N

The EPBC Act and the Australian Constitution

The Commonwealth cannot make laws in relation to just any matter. It is limited by the powers that have been given to it under the Australian Constitution. The list of powers given to the Commonwealth under the Constitution does not expressly refer to the environment. As a result, the Commonwealth has no specific environmental power. However, it has relied on its other constitutional powers, including those over external affairs, trade and commerce, and corporations, to pass laws relating to environmental matters such as the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act).

The External Affairs Power

Most of the provisions in Division 1 of Part 3 of the EPBC Act (relating to matters of national environmental significance) rely constitutionally upon the external affairs power. The external affairs power under section 51(xxix) of the Constitution, allows for the Commonwealth to legislate so as to implement the terms of international treaties that have been signed by Australia. Key provisions of the EPBC Act are largely based on the following treaties:

- > The Convention for the Protection of the World Cultural and Natural Heritage 1975 (World Heritage Convention);
- > The Convention on Wetlands of International Importance especially as Waterfowl Habitat 1975 (the Ramsar Convention);
- > The Convention on Biological Diversity 1992;
- > Japan-Australia Migratory Bird Agreement (JAMBA);
- > China-Australia Migratory Bird Agreement (CAMBA);
- > Convention on the Conservation of Migratory Species of Wild Animals - (Bonn Convention); and
- > The Convention on International Trade in Endangered Species of Wild Fauna and Flora 1976.

Other Constitutional Heads of Power

The Commonwealth has also relied on other constitutional powers to support the EPBC Act, such as:

- > The corporations power - section 51(xx) of the Constitution;
- > The trade and commerce power - section 51(i);
- > The race power - section 51(xxvi); and
- > The Commonwealth's power to make laws for the government of any territory - section 122.

State and Territory Environmental Laws

The EPBC Act specifies that it is not intended to exclude the concurrent operation of State and Territory laws. This means that persons proposing to take actions must comply with both Commonwealth and State and Territory environmental laws.

Further Information

For further information, contact Jol Taber, the Environment Liaison Officer at National Farmers' Federation on 1800 704 520 (freecall), (02) 6269 5666 or environment@nff.org.au.