



**Australian Government**

**Department of the Environment and Heritage**

Senator Webber  
Environment, Communications, Information Technology  
and the Arts Legislation Committee  
Parliament House  
CANBERRA ACT 2600

Dear Senator Webber

I refer to my undertaking at the ECITA hearings on 26 May 2005 to provide you with further information on the status of the Australian Antarctic Exclusive Economic Zone (pages 21 and 22 of the draft Committee Hansard refer).

The enclosed information has been prepared by the Antarctic Division of this department, in consultation with the Department of Foreign Affairs and Trade and the Attorney-General's Department. The information enclosed comprises a description of the status of the maritime zones that were discussed as well as a map which depicts the areas involved.

The contact officers in other departments are:

Mr Michael Johnson  
Sea Law, Environmental Law and Antarctic Policy  
Department of Foreign Affairs and Trade

Mr Mark Zanker  
Office of International Law  
Attorney-General's Department

I would, of course, be happy to provide further information.

Yours sincerely

Conall O'Connell  
Deputy Secretary

3/6/05



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## AUSTRALIAN ANTARCTIC WATERS

### Advice to Senator Webber in response to request made in ECITA hearings 26 May 2005

The following information has been prepared by the Department of the Environment and Heritage, (in consultation with DFAT and A-G's) to provide Senator Webber with information clarifying the status of Australian Antarctic waters and the EEZ, in the context of Japan's scientific whaling.

The areas involved are depicted on the accompanying map (13144 AADC).

Australia is a coastal state under the terms of the United Nations Convention on the Law of the Sea (UNCLOS). A coastal state is entitled to assert either jurisdiction and/or rights in certain maritime zones adjacent to its coastline. For the purposes of whale protection the relevant zones are the Territorial Sea and the Exclusive Economic Zone (EEZ).

The Territorial Sea is, broadly speaking, the area up to 12 nautical miles from the territorial sea base line established in accordance with UNCLOS. This area comprises territory of the coastal state.

The EEZ, broadly speaking, extends up to 200 nautical miles from the territorial sea base line. In this region, while the coastal state does not have territorial sovereignty, UNCLOS allows exclusive rights to be exercised with respect to the living and non-living resources of the water column and sea bed.

Under the *Environment Protection and Biodiversity Conservation Act 1999*, the EEZ is also designated as the Australian Whale Sanctuary.

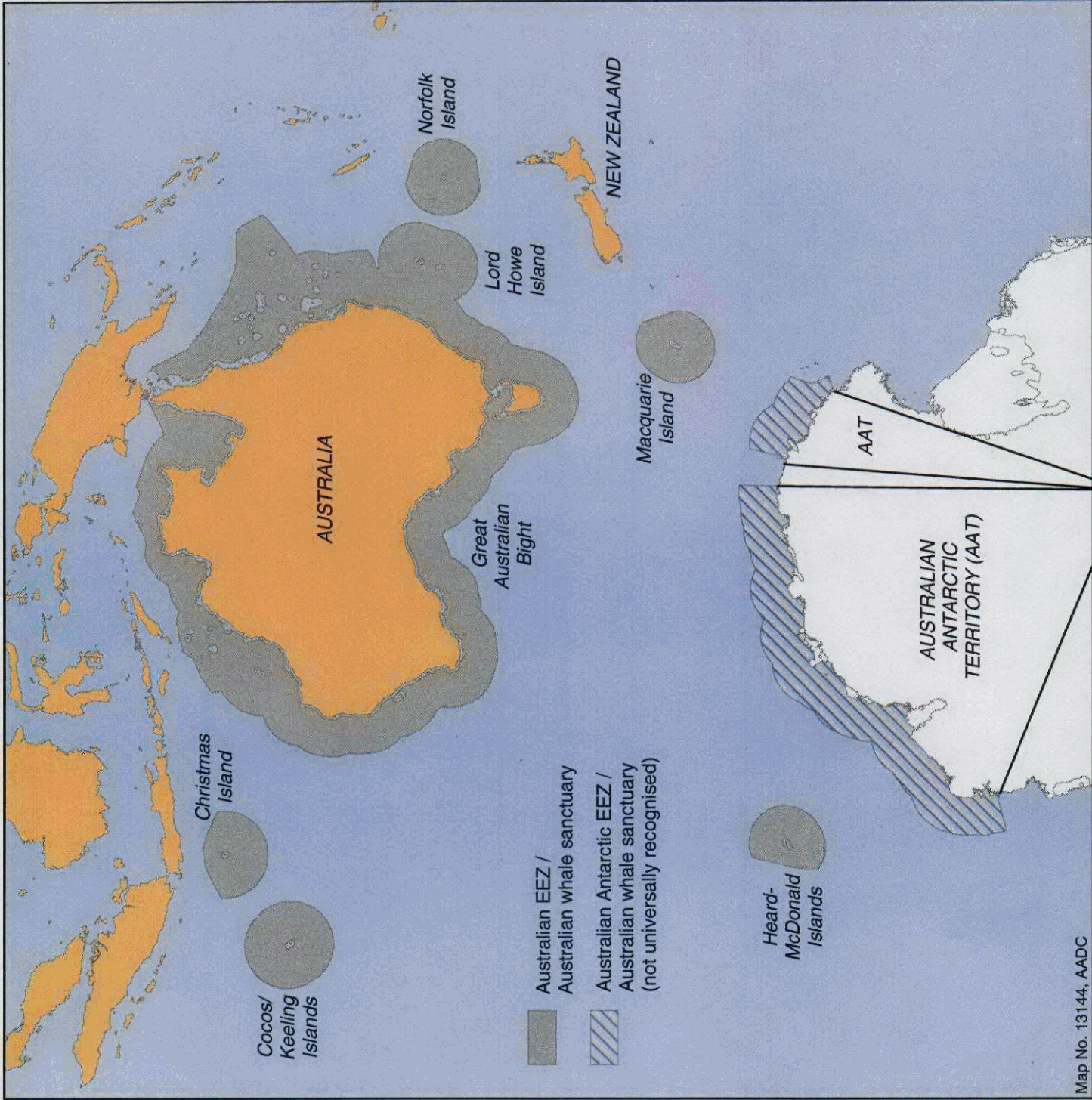
The EEZ around the Australian continent, its islands and external territories (other than Antarctica) is depicted on the enclosed map as the Australian Whale Sanctuary.

Australia claims the Australian Antarctic Territory (AAT) and therefore considers itself to be a coastal state in Antarctica. When Australia proclaimed an EEZ in 1994, this included the Australian waters off the AAT. The accompanying map shows in hatched shading the Australia's Antarctic EEZ, which is therefore also part of the Australian Whale Sanctuary.

Unlike Australia's other territories, and therefore the maritime zones attached to them, the AAT is not subject to universal recognition. In fact, only four other States recognise the validity of the AAT. Australia's interests in the AAT, and the differences of view over questions of sovereignty in Antarctica, are protected by Article IV of the Antarctic Treaty.

As a coastal state, Australia is entitled to assert an EEZ around all of its land territories—in Antarctica this action is protected by the Antarctic Treaty even if our position is not universally recognised. In Australian practice, therefore, the Antarctic EEZ is a whale sanctuary. However, the vast majority of other states (including Japan) do not recognise the validity of the AAT and therefore in Antarctica do not consider that Australia is a coastal state enjoying the right to an EEZ. Such States regard Antarctic waters as high seas and not subject to the jurisdiction or rights of any individual State. In Antarctic practice, each State regulates the conduct of its nationals and activities on the continent and in the waters surrounding the continent. An assertion of jurisdiction over a foreign vessel in the EEZ of the AAT, even when acting contrary to Australian law, is likely to be considered a breach of the Antarctic Treaty and destabilise that regime contrary to Australia's interests.





Australian EEZ /  
 Australian whale sanctuary  
 Australian Antarctic EEZ /  
 Australian whale sanctuary  
 (not universally recognised)

