Journal of Environmental Law, 2024, **36**, 125–132
https://doi.org/10.1093/jel/eqae002
Advance access publication 27 February 2024
Analysis

OXFORD

The *Living Wonders* case: A Backwards Step in Australian Climate Litigation on Coal Mines

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ABSTRACT

As one of the world's largest exporters of coal and gas, Australia's domestic regulation of fossil fuels plays an important part in global greenhouse gas emission reduction efforts. This analysis examines the Australian Federal Court's *Living Wonders* decision—the latest judicial review challenge to coal mines based on Australia's federal environmental law, the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act).[1] This legislation has significant flaws as a tool for regulating the climate impacts of fossil fuel projects, which the *Living Wonders* decision emphasises. The Federal Court found no legal error in the Environment Minister's reasoning that large export-oriented coal mines will produce 'no net increase' in global emissions and/or have emissions which are too 'small' to warrant detailed assessment under the EPBC Act. The *Living Wonders* judgment delivers a blow to hopes for progressive, climate-friendly interpretation of Australia's federal law in coal litigation and strengthens arguments for law reform.

1. INTRODUCTION

On 11 October 2023, Justice McElwaine delivered the judgment of the Australian Federal Court in litigation known as the *Living Wonders* case.[2] The lawsuit is the latest in a series of Australian climate cases seeking to use Australia's federal environmental law—the Environment Protection and Biodiversity Conservation Act 1999 ('the EPBC Act')—to require the Australian government to scrutinise new fossil fuel projects like coal mines based on their potential climate impacts.[3] In this judicial review challenge, the Federal Court found no legal error in the federal

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1 Environment Protection and Biodiversity Conservation Act 1999 ('EPBC Act').

2 *Environment Council of Central Queensland Inc v Minister for the Environment and Water (No 2)* [2023] FCA 1208 ('*Living Wonders*'). The decision has been appealed to the Full Court of the Federal Court. See further, EJA, 'Living Wonders cases back in court' (12 February 2024) <https://envirojustice.org.au/living-wonders-climate-cases-are-back-in-court/> accessed 14 February 2024.

3 The University of Melbourne maintains a database of Australian climate cases searchable by the case jurisdiction and legislation at issue, as well as by subject matter, see <https://law.app.unimelb.edu.au/climate-change/index.php> accessed 20

Environment Minister's reasoning that large export-oriented coal mines in Australia will produce 'no net increase' in global greenhouse gas emissions and/or have emissions which are too 'small' to warrant detailed assessment under the EPBC Act. This was despite the Minister accepting the science of climate change, including the existence of a linear relationship between anthropogenic carbon dioxide ('CO_2') emissions and climate change, and the pressing need for deep reductions in greenhouse gas ('GHG') emissions to avert existential climate change threats.[4] The Court indicated that whether the Minister's powers under the legislation had to be exercised to ensure explicit, detailed consideration of the climate impacts of fossil fuel proposals was a matter for Australia's Parliament.[5]

This analysis provides an overview of the decision in the *Living Wonders* litigation and the key elements of the reasoning of the Federal Court. This study is set against the backdrop of ongoing policy discussions about the need to reform the EPBC Act to ensure better alignment with climate protection goals. With Australia maintaining 'its position as one of the world's largest exporters of liquified natural gas, as well as the world's largest exporter of metallurgical coal and second largest exporter of thermal coal,'[6] the country's domestic law and policy requirements for the assessment of fossil fuel projects will play an important role in determining the fate of global goals under the Paris Agreement to keep global temperature rise (close) to 1.5°C and to achieve net zero emissions by 2050.[7]

In other Australian climate cases determined by courts at the State level, there has been significant progress in recent years in addressing the climate impacts of fossil fuel projects and in placing constraints on the development of new coal mines. For instance, in the 2019 New South Wales ('NSW') case of *Gloucester Resources v Minister for Planning* (the 'Rocky Hill' case), Chief Judge Preston of the NSW Land and Environment Court ruled against a new open-cut coal mine proposal on various environmental grounds, including that such a mine would be 'at the wrong time … because the GHG emissions of the coal mine and its coal product will increase global total concentrations of GHGs at a time when what is now urgently needed, to meet generally agreed climate targets, is a rapid and deep decrease in GHG emissions.'[8] More recently, in the landmark *Waratah Coal* decision issued in November 2022, President Kingham of the Queensland Land Court recommended that the Queensland State government refuse a thermal coal mine in the Galilee Basin, citing human rights obligations and taking account the mine's potential climate impacts that would stem from the combustion of the coal once mined.[9] In this context, the judgment in the *Living Wonders* case represents a backward step, delivering a blow to hopes for the adoption of a similarly progressive, climate-friendly interpretation of applicable environmental laws at the federal level in coal mining cases. Instead, the decision strengthens the argument for federal law reform to address the EPBC Act's limitations as a means for addressing the climate consequences of Australian fossil fuel projects.[10]

October 2023. For a summary of the outcomes of past Australian coal litigation at both the federal and State level see Victoria McGinness and Murray Raff, 'Coal and Climate Change: A Study of Contemporary Climate Litigation in Australia' (2020) 37 Environ Plan L J 87.

4 *Living Wonders* (n 2) [4].

5 ibid [7].

6 See The Hon. Madeleine King MP, Federal Minister for Resources, 'Australia retains energy export world leader status' (Department of Industry, Sciences and Resources, 26 June 2023) <https://www.minister.industry.gov.au/ministers/king/media-releases/australia-retains-energy-export-world-leader-status#:~:text=%E2%80%9CIn%202021%2C%20Australia%20maintained%20its,energy%20projects%20here%20in%20Australia.%E2%80%9D> accessed 20 October 2023 [based on 2021 figures].

7 Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) 3156 UNTS 54113 (Paris Agreement) art.2.1 and art. 4.1.

8 *Gloucester Resources v Minister for Planning* (2019) 234 LGERA 257 [699].

9 *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21.

10 For discussion of the possibilities for a more flexible interpretation of the legislation's requirements to assess the 'impacts' of projects on protected environmental matters see Lee Godden and Jacqueline Peel, The Environment Protection and Biodiversity Conservation Act 1999 (Cth): 'Dark Sides of Virtue' (2007) 31 Melbourne Uni L Rev 106.

2. *LIVING WONDERS* LITIGATION

The *Living Wonders* litigation involved judicial review challenges in respect of two coal mining proposals in the State of NSW, which are amongst a group of 19 coal and gas proposals around Australia being challenged in a campaign led by Environmental Justice Australia ('EJA'), known as the Living Wonders campaign.[11] The essence of the campaign is a series of requests lodged with the Environment Minister, Tanya Plibersek—installed in this role following the Labor government's federal election win in May 2022—asking for the Minister's reconsideration of fossil fuel proposals under the EPBC Act based on significant new evidence about their likely climate change and wider environmental impacts.[12]

The two proposals at the centre of the litigation concerned an application by Narrabri Coal Operations (majority-owned by Whitehaven Coal) to extend an existing underground coal mining operation at Narrabri in NSW and a proposal by MACH Energy Australia to increase the open cut extraction area of an existing coal mine at Bengalla in NSW. A summary of the details of these proposals is included in Table 1.[13]

Both proposals had been determined by the previous Environment Minister under the Coalition government to be ones requiring assessment under the EPBC Act—so-called 'controlled actions'—but had not yet received approval under the legislation. The current

Table 1 : Details of coal mining proposals challenged in *Living Wonders*

Narrabri coal mine extension to allow operation to 2048				
% of AU annual national GHG emissions	**% of global annual GHG emissions**	**Estimated total emissions over life of project**	**% Scope 3 (exported) emissions**	**Major export markets**
0.35% (for 2020 reporting year)	0.043% (for 2019)	475.03 Mt $CO_{2\text{-}e}$	92% (435.17 Mt $CO_{2\text{-}e}$)	*Japan*—61% of estimated product volume *Taiwan*—19% of estimated product volume *South Korea*—10% of exported product volume
Mt Pleasant coal mine increase to extend the life of mine to 2048				
% of AU annual national GHG emissions	**% of global annual GHG emissions**	**Estimated total emissions over life of project**	**% Scope 3 (exported) emissions**	**Major export markets**
0.25% (for 2020 reporting year)	0.042% (for 2019)	534.8Mt $CO_{2\text{-}e}$	93% (496.5 Mt $CO_{2\text{-}e}$)	*Japan*—32.5% of estimated product volume *South Korea*—30% of estimated product volume *Malaysia*—10% of estimated product volume *Taiwan*—10% of estimated product volume

11 For details of the campaign led by EJA see Homepage (*Living Wonders website*) <https://livingwonders.org.au/about-this-action/> accessed 20 October 2023.

12 These requests draw on s 78 of the EPBC Act, which provides powers to the Minister to revoke a controlled action decision under s 75 and substitute a new decision if satisfied that the revocation and substitution is warranted by the availability of substantial new information about the impacts that the action has, will have or is likely to have on matters of national environmental significance protected under the Act.

13 Data was extracted from the Minister's Statements of Reasons for Reconsideration under the Environment Protection and Biodiversity Conservation Act 1999 issued in respect of the Narrabri Coal and MACH Energy proposals. Both statements are available on the Living Wonders website (n 11).

Environment Minister accepted EJA's reconsideration requests for the two mine proposals in November 2022 on the basis that they raised substantial new information, not available at the time of the original 'controlled action' decisions, about the potential environmental impacts of the mines. However, in each case, the Minister reaffirmed the original controlled action decisions finding that she was not satisfied that the information put forward was about relevant impacts of the mines on environmental matters protected under the EPBC Act. This determination was based on two key reasons. First, the Minister was not satisfied that either of the mine extension proposals would cause any 'net increase' in GHG emissions. Second, even if that were so, the Minister considered the likely increase in global GHG emissions associated with each proposal would be 'very small' with the result that the coal mine proposals would not be a substantial cause of adverse impacts on protected areas like Australia's world-heritage listed, Great Barrier Reef.[14]

3. THE EPBC ACT AND GAPS IN ADDRESSING CLIMATE CHANGE

To understand the Australian Federal Court's reasoning in *Living Wonders*, a brief sketch of the relevant provisions of the EPBC Act is in order. The EPBC Act is Australia's federal environmental impact assessment legislation that sets up a process for assessment and decision-making on 'actions' that have actual or likely impacts on environmental assets protected under the Act.[15]

When enacted in 1999, the EPBC Act included only a very narrow list of protected environmental matters—known as 'Matters of National Environmental Significance' or MNES—such as threatened species and world heritage listed areas but, notably, not climate change or GHG emissions.[16] Over the past 25 years there have been various proposals to include a 'greenhouse trigger' in the legislation to ensure that projects with large carbon footprints are assessed for their climate impacts at a federal level, however, these proposals have never progressed.[17]

On coming to power in May 2022, the new federal government led by Prime Minister Anthony Albanese promised 'fundamental reform' of the EPBC Act following a second review of the legislation concluded in October 2020.[18] Nonetheless, neither the review,[19] nor the government's response to it,[20] suggested that such reform will involve any increase in the number of MNES included under the EPBC Act and, in particular, there are no amendments recommended to include a 'greenhouse trigger'.[21] Despite mounting evidence of the deteriorating state of the Australian environment due to biodiversity loss and the impacts of climate change,[22] the government has continued to express a firm view that there is no scope for climate change to form an explicit part of the nation's flagship environmental law.[23]

A key point in the federal assessment process mandated under the EPBC Act is a 'triage' decision by the Environment Minister about whether a given action requires federal assessment

14 The Minister adopted substantially the same reasoning for each proposal: *Living Wonders* (n 2) [10].

15 The current version of the legislation can be found on the Federal Register of Legislation, maintained online at <https://www.legislation.gov.au/Series/C2004A00485> accessed 20 October 2023.

16 For a detailed history of the legislation see: Godden and Peel (n 10).

17 Andrew Macintosh, 'The Greenhouse Trigger: Where did it go and what of its Future?' in Tim Bonyhady and Peter Christoff (eds), *Climate Law in Australia* (Federation Press 2007) 46–66.

18 The government's blueprint for reform of the EPBC Act is outlined in Department of Climate Change, Energy, Environment and Water (DCCEEW), *Nature Positive Plan: better for the environment, better for business*, December 2022.

19 Graham Samuel, *Final Report Independent Review of the EPBC Act* (October 2022) ('Samuel Review').

20 The *Nature Positive Plan* (n 18) is the Australian government's response to the Samuel Review, ibid.

21 The Samuel Review did not recommend broadening the environmental matters that the EPBC Act specifically deals with, for instance, by including a new climate/greenhouse trigger. This recommendation was accepted by the Australian Government in its *Nature Positive Plan*.

22 DCCEEW, *Australia: State of the Environment 2021* <https://soe.dcceew.gov.au/> accessed 17 November 2023.

23 Euan Richtie et al, '5 Things We Need to See in Australia's New Nature Laws', *The Conversation* (17 November 2023) <https://theconversation.com/5-things-we-need-to-see-in-australias-new-nature-laws-217271> accessed 9 December 2023.

and approval, namely whether it is a 'controlled action'.[24]In making this decision, the Minister or her delegate are required to decide whether the action has, will have or is likely to have a significant impact on MNES and if so to determine which are the relevant MNES (known as the 'controlling provisions') for the action.[25]

In the case of the Narrabri and MACH Energy coal mine proposals, both had been determined to be controlled actions with the relevant MNES specified as threatened species and impacts on water resources.[26] In EJA's reconsideration requests, it argued that relevant MNES should be extended to include an assessment of impacts on Australian world heritage areas, including the Great Barrier Reef, that might be damaged by climate change-linked events such as coral bleaching.

EJA's contention for a broader assessment of the climate impacts of the coal mining proposals turned on the interpretation of the EPBC Act's definition of 'impact', which includes the direct and indirect consequences of an action.[27] However, for flow-on events or circumstances to be an 'indirect consequence' of an action, the legislation prescribes that the action must be 'a substantial cause of that event or circumstance'.[28] With respect to the coal mine proposals at issue, this required acceptance by the Minister of the notion that the emissions from these mines would have indirect adverse consequences for areas like the Reef that are a considerable distance (being off the coast of central Queensland) from the NSW mines by virtue of contributing to climate change. It also required the Minister's acceptance that the mines could be considered a 'substantial cause' of those indirect impacts in accordance with the EPBC Act's definition of 'impact'.

The EPBC Act allows a broad range of 'interested persons' to challenge Ministerial decision-making under the legislation including the Minister's controlled action decisions and decisions on reconsideration requests.[29] The applicant in the *Living Wonders* case—the Environmental Council of Central Queensland—brought the challenge to the Minister's reconsideration decisions in respect of the Narrabri and Mount Pleasant mines with no issue raised as to its standing to do so.[30] Review applications are limited under the legislation to judicial review applications challenging the legality of the decision-making process followed by the Minister rather than the merits of her decision.[31]

4. FEDERAL COURT JUDGMENT IN *LIVING WONDERS*

A broad range of judicial review grounds was raised by the Environmental Council in *Living Wonders*, challenging the rationality and rigour of the Minister's reasoning process, as well as its compliance with the precautionary principle.[32] As summarised by Justice McElwaine, these grounds sought to challenge the Minister's two key conclusions, described by his Honour as 'the net increase conclusion' and 'the relative contribution conclusion'.[33]

The former is sometimes known as 'the market substitution argument', putting forward the proposition that stopping a particular coal or other fossil fuel project will not have any net benefit

24 Described as such by Heerey J in *Blue Wedges Inc v Minister for the Environment, Heritage and the Arts* [2008] FCA 8; 165 FCR 211 [22].
25 See EPBC Act (n 1) ss 67 and 75.
26 ibid ss 18, 18A, 24D and 24E.
27 ibid s 527E.
28 ibid s 527E(1)(b).
29 ibid s 487.
30 *Living Wonders* (n 2) [19].
31 On the difficulties of succeeding in judicial review applications on climate issues under the EPBC Act see: Chris McGrath, 'Flying Foxes, Dams and Whales: Using Federal Environmental Laws in the Public Interest' (2008) 25 Environmental & Planning L. J. 324.
32 These grounds were outlined and addressed in *Living Wonders* (n 2) [62]–[162].
33 ibid [61].

in addressing climate change or lowering global GHG emissions as it will be replaced by another such project elsewhere in the world to meet market demand for the fossil fuel in question.[34] This argument has been prominent in climate litigation challenging coal mining proposals under Queensland State law.[35] In the Narrabri and Mount Pleasant Statements of Reasons issued by the Minister in respect of the reconsideration requests, the Minister applied this reasoning as part of her rationale that the proposed actions would not cause any 'net increase in global GHG emissions and global average temperature.'[36] The Minister concluded that it was 'reasonable to assume that, should the proposed action not proceed, the market would respond through an increase in supply elsewhere, in circumstances where there is still anticipated demand for the coal from the proposed action.'[37]

The 'relative contribution conclusion' is a version of the 'drop in the ocean' challenge in climate litigation.[38] In essence, arguments are raised by proponents and/or accepted by decision-makers that the GHG emissions of a particular project or activity are 'too small' to be considered significant or substantial in the context of overall global GHG emissions that cumulatively cause rising global average temperatures and associated climate impacts. The result is that these projects then escape scrutiny under environmental impact assessment and approval laws despite their very large volumes of GHG emissions—especially scope 3 exported emissions—and the cumulative effects of GHG emissions in contributing to the climate problem.

The Minister adopted the 'drop in the ocean' line of reasoning in her decisions on the reconsideration requests for the two coal mining proposals. Contributions to global GHG emissions in the range of 0.042–0.043% were 'very small' in the Minister's view and hence she concluded that proposals could not be said to be a 'substantial cause' of the physical effects of climate change on world heritage-listed areas like the Great Barrier Reef.[39] This kind of reasoning has been challenged in both Australian case law (e.g. the *Gloucester Resources* decision of Chief Judge Preston of the NSW Land and Environment Court)[40] and in international climate cases, such as the US Supreme Court decision in *Massachusetts v EPA*,[41] and the *Urgenda* case in the Netherlands.[42] These precedents stress that it is not the relative size of a particular project's contribution to GHG emissions that is determinative but rather how it contributes, together with other actions, to cumulative emissions and the overall climate change problem and its consequences.[43]

The Federal Court rejected all 10 judicial review grounds raised by the applicant in *Living Wonders*. Justice McElwaine's reasoning in each instance followed similar lines. His Honour stressed at the outset of the judgment that the Court was 'not concerned with the merits of the Minister's decision' and that – in the context of judicial review proceedings – '[t]he judicial function is a limited one'.[44] The Court noted that the Minister was in agreement with the

34 Justine Bell-James and Briana Collins, '"If We Don't Mine Coal, Someone Else Will": Debunking the "Market Substitution Assumption" in Queensland Climate Change Litigation' (2020) 37 Environ Plan L J 167.

35 Summarised in Justine Bell-James and Sean Ryan, 'Climate Change Litigation in Queensland: A Case Study in Incrementalism' (2016) 33 Env Plan L J 515.

36 Narrabri Coal, Statement of Reasons (n 13) [115]; Mt Pleasant Statement of Reasons (n 13) [116].

37 Narrabri Coal, Statement of Reasons (n 13) [115]; Mt Pleasant Statement of Reasons (n 13) [116].

38 Jacqueline Peel, 'Issues in Climate Change Litigation' (2011) 5 Carbon & Climate L. Rev. 15.

39 Narrabri Coal, Statement of Reasons (n 13) [106]; Mt Pleasant Statement of Reasons (n 13) [107].

40 *Gloucester Resources v Minister for Planning* (n 8).

41 *Massachusetts v EPA*, US Supreme Court, 549 U.S. 497 (2007).

42 Nataša Nedeski and André Nollkaemper, 'A Guide to Tackling the Collective Causation Problem in International Climate Change Litigation', *EJIL Talk!* (15 December 2022) <https://www.ejiltalk.org/a-guide-to-tackling-the-collective-causation-problem-in-international-climate-change-litigation/> accessed 23 October 2023.

43 Jacqueline Peel, 'The Land and Environment Court of New South Wales and the Transnationalisation of Climate Law: The Case of Gloucester Resources v Minister for Planning' in Elizabeth Fisher and Brian Preston (eds), *An Environmental Court in Action: Function, Doctrine and Process* (Hart Publishing 2022) 73–92.

44 *Living Wonders* (n 2) [5].

detailed scientific submissions put forward by EJA about the effect of GHG emissions as a primary contributor to climate change and did not dispute that GHG emissions associated with the extraction and burning of coal 'unequivocally has contributed to climate change with severe adverse consequences for our climate,' as well as having effects on many MNES.[45] However, that acceptance of the science did not dictate, in the Court's view, the need for the Minister to adopt a particular course of reasoning. In effect, the way the Minister had reasoned in reaching her 'no net increase' and 'relative contribution' conclusions was an approach that the Court considered was open to her based on the statutory language and would thus not be questioned by the Court in judicial review.

This approach of the Court can be illustrated in the judgment's conclusions on the Minister's 'no net increase' (or market substitution argument) conclusion. Regarding the applicant's contention that this reasoning approach was illogical and wrongly employed a counterfactual to justify finding that a particular mine if not approved would just be replaced by another elsewhere in the world, Justice McElwaine stressed that the EPBC Act is not prescriptive as to the Minister's reasoning process when assessing whether there are likely indirect impacts on MNES. Accordingly, the 'no net increase' reasons she provided were 'intelligible and explained' and 'not lacking in common sense, particularly once it is accepted that the statutory scheme … did not require the Minister to reason in a particular way but did require her to undertake an evaluative assessment to reach the state of satisfaction required by s 78 [the relevant statutory provision governing reconsideration requests]'.[46] His Honour also expressed concern with any line of argument from the applicant that seemed to be 'an invitation to engage in a detailed factual analysis on the merits of the Minister's reasoning and conclusions'.[47]

5. CONCLUSION: SIGNIFICANCE OF THE *LIVING WONDERS* LITIGATION FOR GLOBAL CLIMATE MITIGATION EFFORTS

The International Energy Agency's ('IEA') *World Energy Outlook 2023* report, launched at the end of October 2023, reiterates the significant energy transition challenge ahead if we are to 'keep the door to 1.5°C open'.[48] The IEA noted that the 'key actions required to bend the emissions curve downwards to 2030 are widely known' and embrace 'measures to ensure an orderly decline in the use of fossil fuels, including an end to new approvals of unabated coal-fired power plants'.[49] In this context, the efforts of Australia—as one of the world's largest exporters of fossil fuels like coal and gas—to assess and regulate the climate impacts of proposals to initiate or expand coal mines on its territory assume global importance as part of the global response to climate change.

Australia's principal federal environmental law, the EPBC Act, is not fit-for-purpose as a measure for evaluating how domestic fossil fuel projects contribute to global GHG emissions levels and climate change. As the *Living Wonders* decision of the Federal Court highlights, the legislation does not directly address climate change or projects with large GHG emissions as a 'matter of national environmental significance' and there are limited avenues for challenging government decisions that minimise the significance of these projects' potential climate change

45 ibid [2].
46 ibid [144].
47 ibid [143].
48 International Energy Agency, *World Energy Outlook 2023* (October 2023) ('IEA Report) 22.
49 See the IEA Report, ibid, for a discussion of reducing demand for each fossil fuel (oil, coal and gas) under the IEA Report's scenarios. Demand for each fossil fuel is expected to peak by 2030 and, in the net zero scenario consistent with a 1.5°C pathway, 'a broader phase out of unabated coal across regions begins during the 2020s', see ibid 104.

consequences. In its 25-year history, only one coal mine has ever been refused under the EPBC Act and even then, only on non-climate grounds.[50]

Justice McElwaine's conclusion in the *Living Wonders* case was that '[u]ltimately the applicant's arguments, anchored by the extensive scientific material relied on, raise matters for Parliament to consider whether the Minister's powers must be exercised to explicitly consider the anthropogenic effects of climate change in the manner the applicant submits they must'.[51] This provides a strong argument for legal reform of the EPBC Act as part of the Australian government's efforts to strengthen its domestic regulation of climate change, and to play its part as part of the collective global response designed to rapidly reduce greenhouse emissions and hold temperature rises within safe limits.[52]

50 Justine Bell-James, 'Tanya Plibersek Killed off Clive Palmer's Coal Mine. It's an Australian First – But it May Never Happen Again', *The Conversation* (9 February 2023) <https://theconversation.com/tanya-plibersek-killed-off-clive-palmers-coal-mine-its-an-australian-first-but-it-may-never-happen-again-199512> accessed 9 December 2023.

51 *Living Wonders* (n 2) [7].

52 See further Jacqueline Peel, Gaps in the Environment Protection and Biodiversity Conservation Act and other federal laws for the protection of the climate, Report for the Climate Council (October 2023) <https://www.climatecouncil.org.au/resources/expert-opinion-our-national-environment-law-is-fundamentally-flawed/ > accessed 9 December 2023.