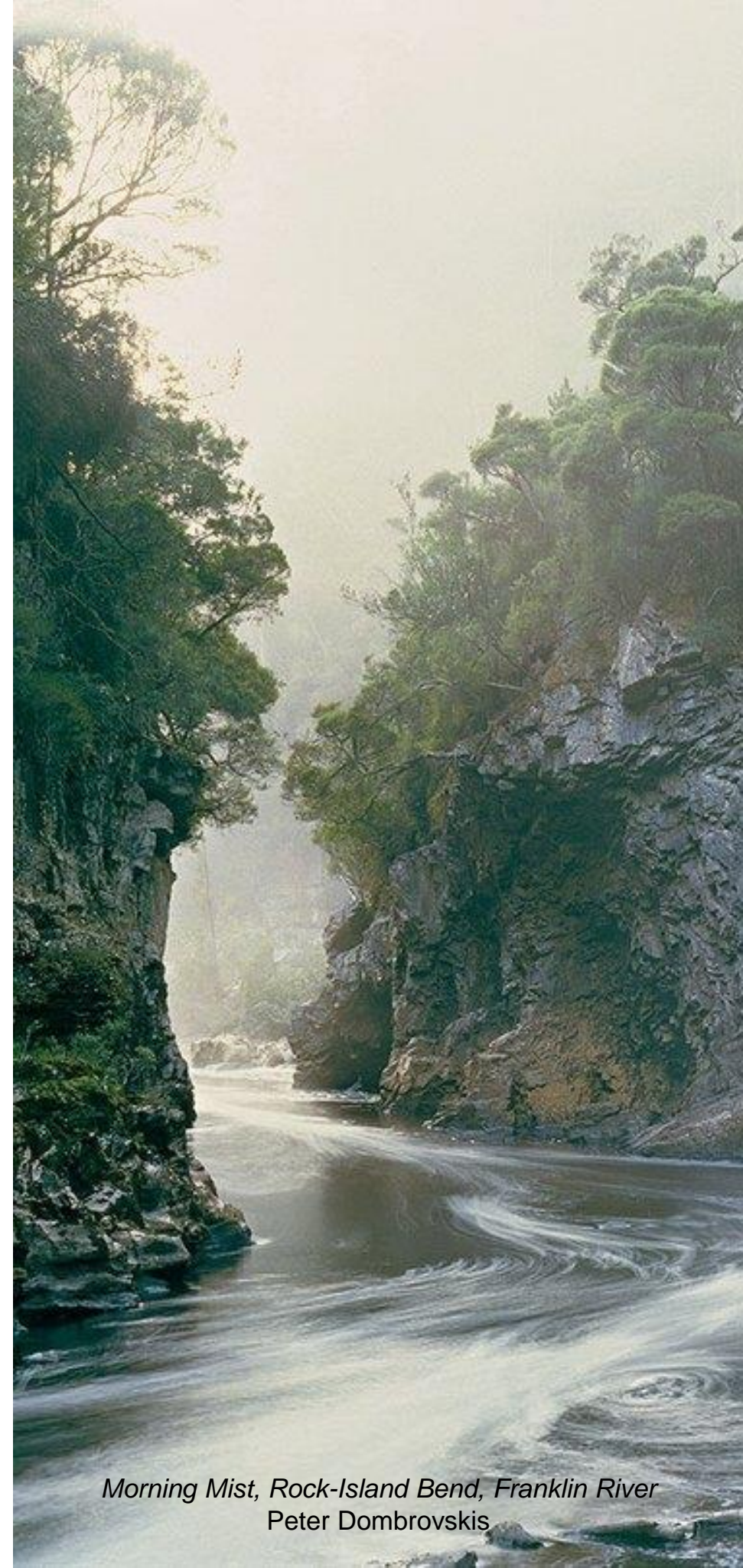


International Environmental Law in Australia: Old Problems, New Challenges

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Law Down Under: Australia's Legal Landscape
The 38th Annual Course of the International Association of
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International Environmental Law

What is International Environmental Law?

- An increasingly important field of public international law (the body of law regulates relations between States and other international legal persons)
- International environmental law (IEL) seeks to conserve/manage natural and cultural/built environments
- Core principles articulated from the 1970s onwards (e.g. 1992 Rio Declaration on Environment and Development)
- IEL mostly made through treaties, especially multilateral treaties
- Australia a party to more than 40 environmental treaties and the treaty-making process involves (1) signature, (2) review by Joint Standing Committee on Treaties, (3) ratification (see the Australian Treaties Database)
- Once ratified, treaty may be implemented by Commonwealth legislation under the external affairs power or other heads of power (see *Tasmanian Dam Case* [1983] HCA 21)
- Complex Commonwealth and State division of responsibilities for environmental and natural resource issues

Australia's Engagement with International Environmental Law

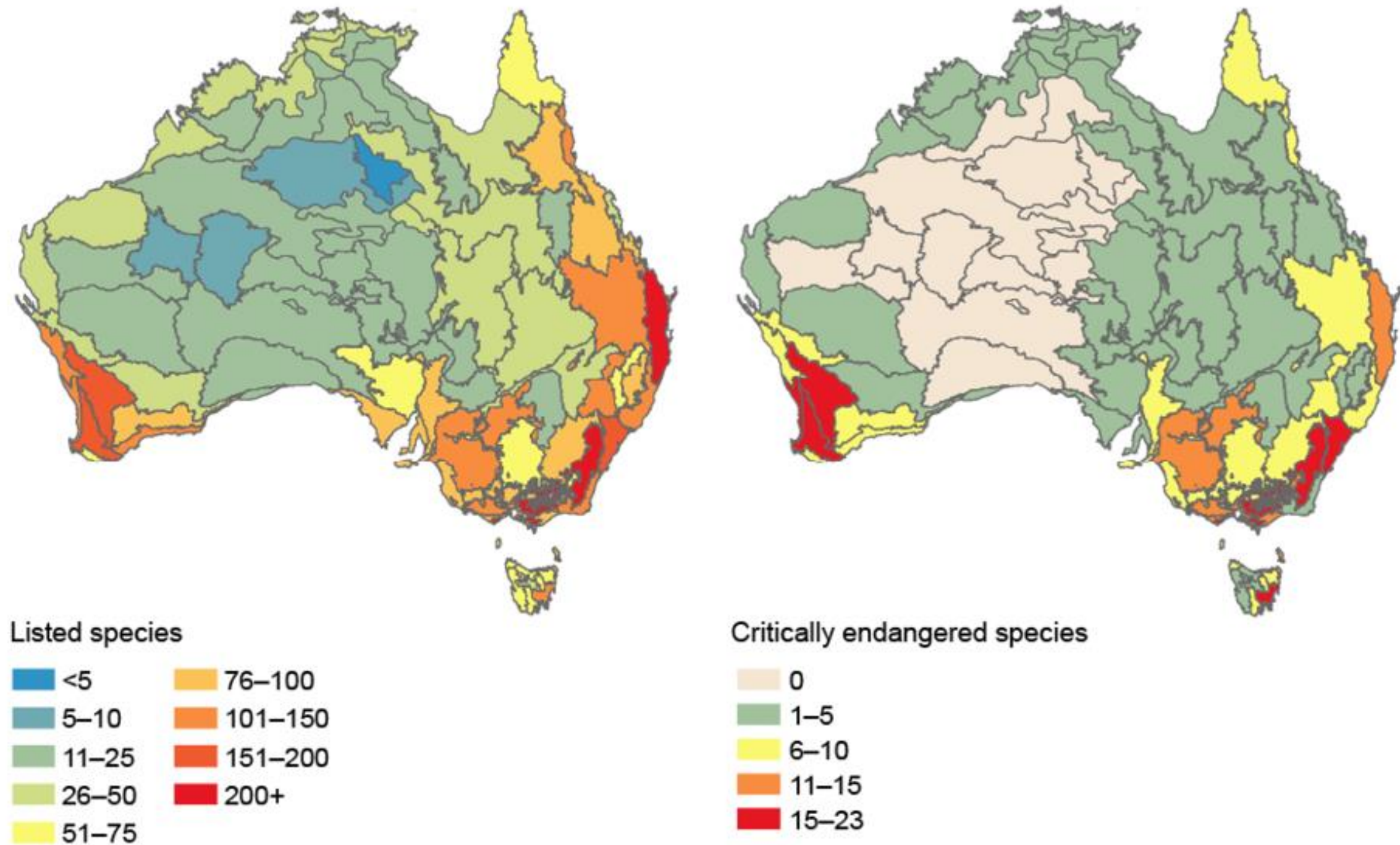
Why Has Australia (Generally) Been a Strong Supporter of IEL?

- Ecological profile of Australia and its offshore territories (including Antarctica) has inclined Australia to participate actively in development of IEL
- An island country, with extensive coastline, one of the world's largest maritime estates, large landmass with exceptional variety of landscape types, ecosystems and species (Australia is one of 17 'mega-diverse' countries)
- Unsurprising therefore that Australia has supported global frameworks to protect species and biodiversity (e.g. Convention on Biological Diversity), protect coastal and marine environments (e.g. UN Convention on the Law of the Sea), and safeguard Antarctica (e.g. mining ban under the 1991 Madrid Protocol)
- On other hand, Australia is a major user and exporter of fossil fuels (coal and gas), and has significant agricultural sector. These economic interests have made Australia ambivalent towards some areas of IEL (e.g. on climate change and GMOs)

Species and Biodiversity – Whaling in Antarctica

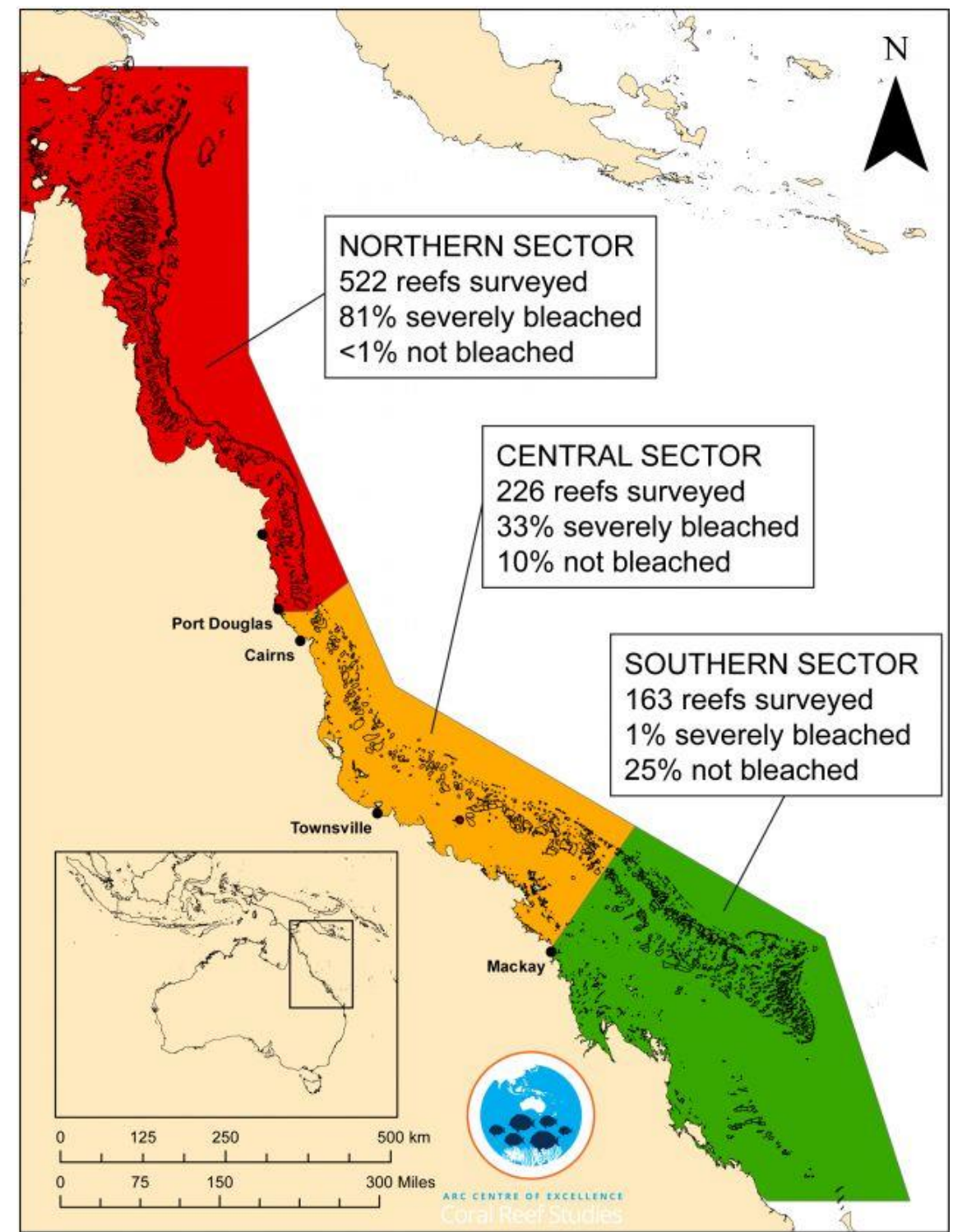


Species and Biodiversity – Extinction Crisis



Numbers of species and critically endangered species listed under the *EPBC Act*.
Source 2016 State of the Environment Report

World Heritage – Great Barrier Reef



The Climate Crisis – Legislative and Judicial Responses



Major Developments

- UNFCCC, Kyoto Protocol, Paris Agreement
- Australia's emission targets (26-28% below 2005 levels by 2030)
- Australia's lacks climate laws (n.b. 2014 repeal of Clean Energy Future legislation)
- Climate change in the courts

The Climate Crisis – Legislative and Judicial Responses

Gloucester Resources Limited (GRL) v Minister for Planning [2019] NSWLEC 7 per Preston CJ:

- “In short, an open cut coal mine in this part of the Gloucester valley would be in the wrong place at the wrong time. Wrong place because an open cut coal mine in this scenic and cultural landscape, proximate to many people’s homes and farms, will cause significant planning, amenity, visual and social impacts. 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, in order to meet generally agreed climate targets, is a rapid and deep decrease in GHG emissions. These dire consequences should be avoided. The Project should be refused.”

Postscript

- Bylong Coal Project, Independent Planning Commission decision, September 2019
- Proposed amendments to NSW law to prohibit approval conditions relating to ‘scope 3’ emissions

Concluding Remarks

- IEL under major challenge in the Anthropocene, and we can expect a new round of international law-making as planetary boundaries are confronted
- As with international human rights law, successive Australian governments have generally (but not always) been strong supporters of international environmental treaties
- The translation of Australia's commitments under IEL into domestic law complicated by Australia's federal system in which the States have primary responsibility for most natural resource management issues
- The EPBC Act 1999 (Cth) is dated and not effective in halting decline of the Australian environment. Unlikely that the latest statutory review will lead to major improvements (e.g. 2009 Hawke Review recommendations largely ignored)
- Need for a new generation of Australian environmental laws to deliver ecologically sustainable development; an Australian Environment Act together with independent institutions (e.g. National Sustainability Commission to set environmental standards, and a National Environmental Protection Agency to assess projects and take enforcement action)