

# ENVIRONMENTAL AND PLANNING LAW JOURNAL

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## ARTICLES

### **A Matter of Principles and Interest: Recalibrating Export Finance Australia's Law and Policy, to Promote Sustainable Export Growth – Jessica Si Jia Xia**

Historically, export credit agencies (ECAs) have directed investment flows towards international fossil fuel projects, hindering the clean energy transition. Export Finance Australia is no exception. However, in December 2023, Australia signed the “Glasgow Statement”, thereby committing to ending “direct new [ECA] support for the international unabated fossil fuel energy sector” within a year (except in limited circumstances), and altering Export Finance Australia’s legislative and policy framework, to prioritise support for the clean energy transition. This article identifies Sweden as an apt comparator nation, which may provide guidance on how to achieve these ambitious goals. Nevertheless, although the substance of the Swedish model is an excellent starting place, cultural and political differences between the two nations justify significant alterations to the method of implementation. This article proposes a two-pronged legislative amendment, tailored to Australia’s contextual specifications, to give effect to the Glasgow commitments, and maximise the durability of this reform. .... 275

### **Greenwashing the Sheets: A Case Study Evaluating Sustainability Claims on Cotton Sheets as Misleading or Deceptive Conduct – Imogen Picker**

This article proposes to contribute to the ever-expanding and cross-disciplinary research field of environmental law by investigating how appropriately adapted s 18 of the *Australian Consumer Law* (ACL) is to respond to potentially misleading or deceptive “sustainability” claims. The article argues that the misleading or deceptive conduct provision of the ACL is underdeveloped and ineffective at upholding the goals of the ACL and promoting environment protection in the face of these claims. The article uses the case study of cotton bedsheets to highlight that consumers are not receiving accurate and transparent information about the sustainability of manufacture of sheets sold in the ACT. The assessment of the s 18 doctrine indicates that there are areas which are not well adapted to responding to sustainability claims such as future matters, areas of scientific disputes, definitional issues with the term “sustainable”, when accreditation schemes are used, and comparative claims. Reform is needed to ensure that the goals of the ACL are met and environmental policy objectives achieved. .... 299

### **Poster Child of Climate Change: The Great Barrier Reef as an Instigator of Climate Change Litigation in Australia – Shi-Mei Ewing**

*Australia’s Environment Protection and Biodiversity Conservation Act 1999* (Cth) (*EPBC Act*) intends to provide guidance for government ministers to consider whether a significant proposed project should go ahead, taking into account potential impacts on the environment. There is no provision in the Act for consideration of a proposed project’s carbon emissions,

though curbing emissions may be one of the most important ways to protect Australia’s environment and biodiversity from the effects of anthropogenic climate change. Notably, the Great Barrier Reef is a “Matter of National Environmental Significance” under the *EPBC Act*, so any proposed project that significantly impacts the Reef will require more sophisticated and rigorous consideration than through state-based legislation. Using this provision, climate litigants are responding to the climate-related shortcomings of the *EPBC Act* and referencing projected impacts to the Reef, in their attempts to prevent proposed projects that will emit significant greenhouse gases. This article analyses the impacts that this strategy has had on climate-related legal precedent and considers more broadly the potential socio-legal effects of using the Great Barrier Reef as a “poster child” in climate litigation. .... 320

**Justiciability Issues in Climate Change Litigation – Brian J Preston**

Climate change litigation often raises politically controversial claims and issues. Defendants may seek dismissal of these claims and issues on the ground that they are non-justiciable, being neither capable nor appropriate to be the subject of judicial resolution and relief. This article examines the concept of justiciability and how it has arisen in climate change litigation in three areas of the law: private law, administrative law, and constitutional and human rights law. This examination reveals that although non-justiciability has led to summary dismissal of some climate change-related claims, the modern judicial inclination is to find these claims to be justiciable. .... 336