

**Submission
on the
Environmental
Planning and
Assessment
Amendment
(Territorial Limits)
Bill 2019**

December 2019



Executive Summary

Doctors for the Environment Australia (DEA) is a non-profit national organisation of Australian doctors and medical students with an interest in preserving health and wellbeing with respect to the environment. It is our stance that human health is indivisible from environmental health.

DEA objects to the proposed *Environmental Planning and Assessment Amendment (Territorial Limits) Bill 2019* as it will negatively affect the ability of consent authorities to protect the public health interest.

DEA holds grave concerns that eliminating assessment of downstream or Scope 3 greenhouse gas emissions from major projects in New South Wales will increase greenhouse gas emissions, driving increased climate change and global temperature rise with severe and predominantly negative health impacts that will be felt on a local and global scale. It is in the public health interest for a planning authority to account for all greenhouse gas emissions produced in the life cycle of major projects in New South Wales.

HEALTH IMPACTS OF CLIMATE CHANGE

Many of the health risks arising from climate change have been well characterised by groups such as the World Health Organisation¹, the Lancet², and the United Nations³. Major health risks to Australia and New South Wales include the physical effect of heat stress, extreme weather events, changed infectious disease patterns, food supply insecurity and increasing mental health distress.

Temperature stress

Rising surface temperatures create conditions that increase mortality on a population level, with the human body less able to continue essential functions as the temperature rises. Population studies have noted a correlation between rising temperatures and mortality⁴. These effects are more significant in people over the age of 65 and those who may be experiencing other conditions such as dehydration or severe infection. Higher rates of acute kidney failure resulting from these heat conditions are anticipated. The effect of heat stress will become more significant as more very hot days are to be expected with overall increases in global temperatures.

Extreme Weather

The likelihood of extreme weather events such as cyclones, floods and bushfires is increased with projections of future climate change. Events previously unknown to NSW such as tornados may occur due to shifting climate patterns. These events have direct health risks due to the danger of death and injury from the initial disaster, but also have public health consequences such as respiratory and cardiac disease following a bushfire due to air pollution, infectious disease following floods, and disrupted access for routine health care needs in the wake of a disaster⁵. As we have ample evidence in recent weeks, bushfires can have a disastrous impact on air quality with corresponding increases in morbidity and mortality, and many of our members have seen this effect in real time as patients attend our practices with increased exacerbations of respiratory disease.

Food Supply

New South Wales is currently experiencing a severe drought, with 98% of the state affected in September 2018 as per NSW Department of Primary Industries figures⁶. Per the CSIRO, "Lower rainfall and reduced runoff in the southeast of Australia associated with the current drought is in part due to natural variability as well as to human-induced climate change." Reduced rainfalls are more likely with changing climate patterns, and higher temperatures increase evaporation of surface water making it less available for agriculture⁷.

Drought has critical impacts on a nation's ability to continue agriculture on a scale to maintain food supply. Access to an affordable, stable supply of healthy nutritious food is essential to maintain health, and this becomes more tenuous with future warming. More expensive food will disproportionately affect the nutrition of people already living in poverty with negative health consequences.

Mental Health

The profound environmental upheavals are extracting a heavy emotional toll on people dealing with a warming world. In New South Wales in recent months, a \$6.3 million dollar package for emergency mental health aid to drought-stricken communities has been announced by the State Government⁸. Research published earlier this

year in the Medical Journal of Australia has affirmed the link between weather conditions and the mental health of farmers⁹.

International research has indicated that climate change and associated disruptions will have a wide range of mental health effects on the whole population, including depression, anxiety, post-traumatic stress disorder and suicidal ideation. The population distress will affect the function of conventional mental health systems with associated implications for future health budgets. However, research suggests that this response can be bolstered by appropriate adaptation and mitigation measures taken on a local and global scale¹⁰.

NEW SOUTH WALES PLANNING LAW AND PUBLIC HEALTH

The scope of planning authority in NSW is partially determined by Section 5.5 of the *Environmental Planning and Assessment Act 1979*¹¹, which states: *a determining authority in its consideration of an activity shall... examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity.*

In this submission we posit that consideration of all greenhouse gas emissions, including those determined as “Scope 3” by current international greenhouse gas accounting standards, are to be understood as a “matter affecting the environment by reason of that activity”. The primary example in the New South Wales context is the combustion of fossil fuels, i.e. coal, in a country of export.

While international collaborations since Kyoto have used the greenhouse gas accounting framework of Scope 1, 2, and 3 emissions to determine the obligations of individual countries towards emissions reduction, these treaties and agreements should not be misunderstood as a framework for environmental and health impact assessment of individual projects.

In recent years, for example, the Paris Agreement has been inappropriately invoked by planning authorities in NSW to determine the environmental impact of projects (see Appendix 1¹²). While the Paris Agreement is an essential part of multilateral collaboration in greenhouse gas emission reduction, it has little or nothing to do with understanding the impact that the greenhouse gas emissions caused by the combustion of exported fossil fuel products from New South Wales will have on our local climate. It would be a cruel irony if a strict interpretation of the Paris Agreement led to an increase in global emissions by the passage of this bill. Reliance on instruments such as the Paris Agreement by planning authorities has historically led to a drastic underestimation of the greenhouse gas impact of major projects in assessment reports, and therefore limited the assessment of the health impacts of major projects on New South Wales residents. This has occurred as Australia’s obligations regarding emissions reductions under the Paris Agreement are isolated to Scope 1 and 2, and significant emissions are only evaluated in that context. However, it is not only the Scope 1 and 2 emissions that will have an environmental and health impact in NSW.

OBJECTION TO PROPOSED ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (TERRITORIAL LIMITS) BILL 2019

DEA objects to the terms of the proposed amendments as they will significantly limit the ability of planning authorities to make full and frank assessments of the health impact of major projects within New South Wales.

1. Objection to Schedule 1:

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979 No 203

Section 4.17A

Insert after section 4.17—

4.17A Prohibited conditions

(1) A condition of a development consent described in this section has no effect despite anything to the contrary in this Act.

(2) A condition imposed for the purpose of achieving outcomes or objectives relating to—

(a) the impacts occurring outside Australia or an external Territory as a result of the development, or

(b) the impacts occurring in the State as a result of any development carried out outside Australia or an external Territory.

As previously described, this amendment significantly limits the effect of Section 5.5 of the same Act. In section 1.3, two Objects of the *Environmental Planning and Assessment Act* are stated thus:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment*

The proposed amendment is explicitly against these objects and intent of the original Act. Artificially constraining the scope of environmental health assessment of major projects does not change the environmental health impact of that project. DEA's stance has always remained that a healthy environment is vital for "social and economic welfare", as the consequences of negative health have social and economic consequence for all.

This amendment will have a negative effect on the ability of planning authorities to make decisions protecting the public health in New South Wales.

2. Objection to Schedule 2:

Schedule 2 Amendment of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007
Clause 14 Natural resource management and environmental management
Omit "(including downstream emissions)" from clause 14(2).

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007, clause 14(2):

- (2) Without limiting subclause (1), in determining a development application for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider an assessment of the greenhouse gas emissions (including downstream emissions) of the development, and must do so having regard to any applicable State or national policies, programs or guidelines concerning greenhouse gas emissions.*

Again, removing the imperative to assess downstream emissions (understood to mean "Scope 3" emissions in this context) places limits on the ability of consent authorities to make a meaningful evaluation of the full environmental and health impact of the development in question. This limit is arbitrary and against the interests of the residents of New South Wales.

SUMMARY:

It is **unacceptable** that downstream or Scope 3 emissions be excluded from assessments of the environmental impact of major projects in New South Wales. The health impact of greenhouse gas emissions is not limited by international borders. The regulatory opportunity to consider the health impact of greenhouse gas emissions from exported fossil fuels should not be discarded.

RECOMMENDATIONS:

To best support future public health, the recommendations that DEA submits to this Committee regarding the *Environmental Planning and Assessment Amendment (Territorial Limits) Bill 2019* are:

- 1. That the *Environmental Planning and Assessment Amendment (Territorial Limits) Bill 2019* be rejected.**
- 2. That any consent authority making an assessment on a major project in New South Wales must make a complete environmental health impact assessment.**
- 3. That a full accounting of Scope 3 or “Downstream” greenhouse gas emissions is necessary to make a complete environmental health impact assessment for major projects in New South Wales.**
- 4. That the Paris Agreement and other international treaties should not be relied upon as a tool for environmental health impact assessment for major projects in New South Wales.**
- 5. That Public Health institutions in New South Wales be fully funded and supported to make accurate assessments of the future health impacts of climate change on the health of New South Wales residents to support consent authorities in their decision making.**

Citations:

1. Climate Change and Human Health, World Health Organisation, <http://www.who.int/globalchange/en/>
2. Beggs PJ, Zhang Y, Bambrick H, Berry HL, Linnenluecke MK, Trueck S, et al. The 2019 report of the MJA–Lancet Countdown on health and climate change: a turbulent year with mixed progress. *Medical Journal of Australia*. 2019 Nov 13; Available from: <https://onlinelibrary.wiley.com/doi/abs/10.5694/mja2.50405IPCC>
3. Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, Summary For Policymakers http://www.ipcc.ch/pdf/assessment-report/ar5/syr/AR5_SYR_FINAL_SPM.pdf
4. Synoptic analysis of heat-related mortality in Sydney, Australia, 1993-2001. Vaneckova P et al. *International Journal Biometeorology* 2008; 52(6): 439–51.
5. NSW Public Health Bulletin: Climate Change and Health Vol.20(1-2) January-February 2009 <http://www.publish.csiro.au/NB/pdf/NBv20n2>
6. NSW State Seasonal Update - September 2018, NSW Department of Primary Industries. <https://www.dpi.nsw.gov.au/climate-and-emergencies/droughthub/information-and-resources/seasonal-conditions/ssu/september-2018>
7. Drought in south-east Australia, CSIRO. <https://www.csiro.au/en/Research/Environment/Extreme-Events/Drought/South-east-Australia>
8. \$6.3m to help drought-stricken farmers suffering mental health issues, ABC News. <https://www.abc.net.au/news/2018-09-02/more-mental-health-support-for-nsw-drought-stricken-farmers/10192724>
9. Drought-related stress among farmers: findings from the Australian Rural Mental Health Study. Austin E et al. *Medical Journal of Australia* 2018. <https://www.mja.com.au/journal/2018/209/4/drought-related-stress-among-farmers-findings-australian-rural-mental-health>
10. Climate change and mental health: risks, impacts and priority actions, Hayes K. et al. *International Journal of Mental Health Systems* 2018 12:28 <https://ijmhs.biomedcentral.com/articles/10.1186/s13033-018-0210-6>
11. Environmental Planning and Assessment Act 1979 No 203 [NSW].
12. Bylong Coal Project: State Significant Development Final Assessment Report (SSD 6367), NSW Department of Planning and Environment, October 2018.

Appendix 1. Extract from Department of Planning Final Assessment Report re: Bylong Coal Project, 2018.

Greenhouse Gas Emissions

The PAR contained an assessment of the project's anticipated greenhouse gas emissions (see Section 6.1 of the PAR).

In November 2016, the NSW Government released its *NSW Climate Change Policy Framework*. The policy sets an "aspirational long-term objective" of achieving net-zero emissions in NSW (ie greenhouse gas emissions within NSW will be balanced by carbon storage) by the year 2050. The policy states that the NSW Government will seek to achieve this objective through particular functions of Government, being:

- *Government policy*: The NSW Government will set policy to achieve emissions savings, consistent with Commonwealth action, and to enable effective adaptation to climate change;
- *Government operations*: The NSW Government is a major purchaser in the NSW economy through delivering government services and managing government assets. The government will lead by example and drive market change; and
- *National and international advocacy*: The NSW Government will advocate for climate policy action at national and international levels.

However, the policy makes no direct reference to coal mining or to the export of coal for consumption in other countries. Nor does it refer to any encouragement or discouragement of particular industries in NSW, or to development consent under the EP&A Act.

The Department considers that the policy is a framework to guide Government in its own operations, rather than a development control policy as such. In this respect, it is important to note that the policy is not an EPI under the EP&A Act, but a policy published by OEH. On this basis, the Department concludes that the policy's content has no direct bearing on either the project or its determination by the Commission.

KEPCO has also provided revised greenhouse gas (GHG) emission estimates based on the Revised Mine Plan, with a comparison against the Commonwealth government's commitments against the Paris Agreement (431 Mt CO_{2e} by 2030).

The Revised Mine Plan reduces Scope 1 and Scope 2 GHG emissions (direct emissions and electricity consumption) by around 3% over the life of the project to 3.4 Mt CO_{2e} (annual average contribution reduced from 0.140 Mt to 0.136 Mt), which is 0.03% of Australia's commitment under the Paris Agreement.

There is also a 2% reduction in Scope 3 emissions, largely due to less extraction and transportation of coal over the life of the project.