

Dear MP

Environmental Planning and Assessment Amendment (Territorial Limits) Bill 2019

Lawyers for Climate Justice Australia (**LCJA**)¹ calls on all NSW MPs to vote against this Bill.

- The *Environmental Planning and Assessment Act 1979 (EP&A Act)* is underpinned by ecologically sustainable development principles.
- The proposed amendments would undermine those principles by unjustifiably reducing environmental protections and unwinding progress made by the NSW Government, courts² and other bodies towards addressing climate change.
- At a time when we are facing a global climate emergency³ unprecedented drought and bushfires in NSW, the NSW Parliament must not bow to pressure from mining interests and should instead present scientifically informed legislative reform in this area.⁴

Purpose and effect of the Bill

The Bill seeks to:

1. insert a new section 4.17A into the EP&A Act to prevent conditions being imposed on new developments (such as coal mines) that relate to impacts occurring a) outside of Australia as a result of the development, or b) within NSW as a result of any development outside of Australia; and
2. amend the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (**Mining SEPP**) so that the impact of downstream emissions of third parties (Scope 3 Emissions) are not a mandatory consideration.

If passed, the Bill would weaken current laws by preventing decision-makers from considering overseas environmental impacts of proposed developments, including coal mines. It would also prevent them from imposing conditions to mitigate the impact of greenhouse gas emissions occurring outside of Australia (ie NSW coal burned overseas).

Reasons for the Bill

The Bill was introduced at short notice by the NSW Minister for Planning. Our understanding is that the Bill was introduced due to pressure by mining interests following recent rejections of proposed new coal mines at Rocky Hill⁵ and Bylong Valley.

Rocky Hill was rejected for a number of environmental and economic reasons including consideration of impacts on social and community interests. Additionally, it was established that the mine would have increased greenhouse gas emissions via downstream emissions of overseas end users of the mined coal (**Scope 3 Emissions**).

¹ LCJA is a diverse group of over 400 Australian legal academics, barristers, solicitors and law students advocating for urgent climate justice throughout Australia.

² *Gray v Minister for Planning* [2006] 152 LGERA 258.

³ *World Scientists' Warning of a Climate Emergency*, BioScience, 5 November 2019, <https://academic.oup.com/bioscience/advance-article/doi/10.1093/biosci/biz088/5610806>.

⁴ See Climate-ready planning laws for NSW – Rocky Hill and beyond at <www.edonsw.org.au/climate_ready_planning_laws>.

⁵ *Gloucester Resources Ltd v Minister for Planning* [2019] NSWLEC 7.

Problems with the Bill

Essentially, the Bill is unnecessary and would assist mining interests to continue to profit financially at the expense of the global environment. Global climate change affects NSW voters as well as people living overseas. The NSW judiciary has demonstrated its understanding of the importance of balancing economic advancement with environmental, social and community degradation. Current laws are adequate and require proper reference to contemporary climate science to address unacceptable climate impacts, including those affecting NSW communities. The laws should not be amended in favour of mining interests in all of the current circumstances. Any legislative reform in this area should be properly considered and scientifically informed.⁶

If enacted, the Bill would stand in contrast to a leading NSW judicial decision and override a number of Independent Planning Commission (**IPC**) decisions.⁷ Rushed legislation to essentially override these evidence-based decisions is cause for great concern.

The scope of the Bill is too broad and could curtail appropriate regulation of impacts of development. The proposed amendments apply, not just to extractive industries or fossil fuel developments, but to all development consent applications under Part 4 of the EP&A Act. This has potentially broad and serious ramifications. For example, because the term “*impacts*” is not defined, proposed section 4.17A would apply to all downstream greenhouse gas and climate change impacts outside Australia from NSW projects, and to conditions regarding environmental impacts other than greenhouse gas emissions or climate change. This could affect conditions regarding Scope 1 and 2 emissions, which have impacts inside and outside of Australia. Applicants proposing their own conditions (such as carbon offsetting conditions) for their own projects, may find such conditions are invalid under the proposed amendments (subsection (1)).

Environmental considerations

Globally, Australia is the third largest exporter of fossil fuels⁸ and the largest exporter of coal.⁹ Australia’s fossil fuel exports create 3.6% of annual global emissions.¹⁰ The scientific consensus on the impacts of burning coal is clear. In a recent article published in *BioScience* journal¹¹ more than 11,000 scientists from around the world (including more than 350 Australian scientists) warned of “*untold suffering*” and called for fossil fuels to be left in the ground.¹² The scientists say:

“The climate crisis has arrived and is accelerating faster than most scientists expected. It is more severe than anticipated, threatening natural ecosystems and the fate of humanity (IPCC 2019)...Potential irreversible climate tipping points...could lead to a catastrophic “hothouse Earth,” well beyond the control of humans (Steffen et al. 2018)...[and] cause significant disruptions to ecosystems, society, and economies, potentially making large areas of Earth uninhabitable.”

The NSW Minerals Council acknowledges that sustained global action is required to reduce the risks of human-induced climate change and supports a measured transition to a low-emissions global economy.¹³

⁶ See note 4 above.

⁷ The Independent Planning Commission decisions regarding the Bylong Coal Project and the United Wambo Open Cut Coal Mine Project.

⁸ *High Carbon from a Land Down Under*, The Australia Institute Climate & Energy Program Report, July 2019, <https://www.tai.org.au/sites/default/files/P667%20High%20Carbon%20from%20a%20Land%20Down%20Under%20%5BWEB%5D_0.pdf>.

⁹ *The Changing Global Market for Australian Coal*, Reserve Bank of Australia Bulletin, September 2019, <<https://www.rba.gov.au/publications/bulletin/2019/sep/the-changing-global-market-for-australian-coal.html>>.

¹⁰ Australia on track to become one of the world’s major climate polluters, *Climate Analytics*, 8 July 2019, <<https://climateanalytics.org/latest/australia-on-track-to-become-one-of-the-worlds-major-climate-polluters/>>.

¹¹ See note 3 above.

¹² See note 3 above.

¹³ *Climate Change, Energy and Emissions Policy*, NSW Minerals Council, <www.nswmining.com.au/environment/climate-change-energy-and-emissions>.

Economic considerations

Global electricity generation from thermal coal has been in decline since 2007.¹⁴ In May 2019, the United Kingdom generated its entire power supply without using any coal for two weeks.¹⁵ In the UK, no new coal plants can be constructed without carbon capture and storage technology.¹⁶

In November 2019 Australia's main electricity grid was briefly powered by 50% renewable energy.¹⁷ New Zealand's government has just passed the *Climate Change Response (Zero Carbon) Amendment Bill* committing to reduce carbon emissions to zero by 2050.

Weakening controls on coal mining developments in NSW would be entirely out of step with global economic trends, environmental stewardship and the renewable energy future.

Public interest

Australians and international communities know there is a climate crisis. Local governments and councils throughout NSW have declared a climate emergency. More than 400,000 Australians have signed a petition urging the Federal Parliament to declare a climate emergency.¹⁸

Australians, including those in NSW, are suffering now due to the effects of climate change including extreme heat, drought¹⁹ and increasingly severe bushfires.²⁰ Widespread public protests in Australia and globally have demanded urgent climate action. Over 350,000 people (including thousands of children) attended strikes in September in Australia alone.

Pressure from mining interests has also been implicated in the current review of the IPC,^{21 22 23} which was established to ensure planning decisions were reviewed independently of government. The IPC has been recognised by the NSW ICAC as an important anti-corruption measure.²⁴ Accordingly, any review of the IPC should be subject to extensive public consultation.

Conclusion

The NSW Government must represent the interests of all voters. We therefore urge all MPs to consider the important stewardship of resources, the need to minimise environmental harm, avoid industries in economic decline, and support clean energy for future economic growth.

If enacted, this Bill would represent a failure by the NSW parliament to act meaningfully on climate change. We therefore call on all NSW MPs to reject it.

Lawyers for Climate Justice Australia – 9 November 2019

¹⁴ See note 8 above.

¹⁵ *Britain in two-week coal-free record*, BBC News, 31 July 2019 <<https://www.bbc.com/news/business-48473259>>.

¹⁶ *How Britain ended its coal addiction*, Financial Times, 1 October 2019, <<https://www.ft.com/content/a05d1dd4-dddd-11e9-9743-db5a370481bc>>.

¹⁷ *Renewables meet 50% of electricity demand on Australia's power grid for first time*, The Guardian, 7 November 2019, <https://www.theguardian.com/environment/2019/nov/07/renewables-meet-50-of-electricity-demand-on-australias-power-grid-for-first-time?CMP=Share_iOSApp_Other>.

¹⁸ Petition EN1041 - *Declare a Climate Emergency*, <https://www.aph.gov.au/petition_list?id=EN1041>.

¹⁹ <http://www.agriculture.gov.au/ag-farm-food/drought/drought-policy>.

²⁰ <https://www.dailytelegraph.com.au/news/nsw/firefighters-brace-themselves-as-winds-fan-fires-across-nsw/news-story/c4436b95aae11370447f90db12044884>

²¹ *NSW Minerals Council pressured 'publicly and privately' for review of planning body*, The Guardian (online), 21 October 2019, <https://www.theguardian.com/australia-news/2019/oct/21/nsw-minerals-council-pressured-publicly-and-privately-for-review-of-planning-body?CMP=Share_iOSApp_Other>.

²² Michaela Whitbourn and Megan Gorrey, 'Government caving into industry pressure over planning commission review says former ICAC boss', (21 October 2019) *Sydney Morning Herald* (online) <<https://www.smh.com.au/national/nsw/government-caving-in-to-industry-pressure-over-planning-commission-review-says-former-icac-bosses-20191021-p532om.html>>.

²³ *Mining industry has more influence than those affected by mines says Georgina Woods*, The Northern Daily Leader, 22 October 2019, <<https://www.northerndailyleader.com.au/story/6450966/corruption-commission-hears-from-miners-lock-the-gate/?cs=159>>.

²⁴ The former Planning Assessment Commission (PAC) was renamed the Independent Planning Commission (IPC) was under Part 2, Division 2.3 of the EEP&A Act on 1 March 2018, <https://www.ipcn.nsw.gov.au/>.