

# Enough Scope

## NSW coal mines, scope 3 emissions and democracy

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*The coal industry backlash to recent 'scope 3' NSW planning decisions ignores the arguments in the decisions and exaggerates coal mining's small size in the NSW economy. The attacks on the Independent Planning Commission threaten its democratic and anti-corruption role. Weakening legal protections against climate change, under coal industry pressure, would set a dangerous precedent and threaten the state's own target of net zero emissions by 2050.*

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# Summary

Recent planning decisions about coal mine proposals in NSW have drawn a strong reaction from the coal industry and senior politicians. NSW Minerals Council (NSWMC) CEO, Stephen Galilee, said "This is an absurd and dangerous economic approach that risks making NSW an international investment laughing stock, losing investment and jobs" by letting decisions be made by "faceless bureaucrats". Later, NSW Deputy Premier John Barilaro said there was "sovereign risk for mining investment in NSW."

The reaction was triggered by three decisions, regarding

- the Rocky Hill coal mine, rejected by the Chief Judge of the NSW Land and Environment Court (LEC),
- the United Wambo mine in the Hunter Valley, approved with conditions by the Independent Planning Commission (IPC), and
- the Bylong coal mine, rejected by the IPC.

All three decisions considered emissions from the final use of the coal, known as "scope 3" emissions. Instead of contesting the evidence and reasoning on which these decisions were made, the coal industry has launched advertising and lobbying efforts aimed at overturning the decisions, abolishing the NSW IPC and preventing consideration of scope 3. In response the NSW Government announced a review of the IPC and new legislation seeking to stop scope 3 emissions from being considered.

In fact, while these cases considered scope 3 emissions, the decisions were mostly based on other issues, such as visual impacts, social impacts, dust and noise, groundwater impacts and poor economic evidence from the proponent. Only 6% of the IPC's Bylong decision related to climate change.

Despite this, the coal industry focus is entirely on scope 3 emissions. Their goal is to keep serious consideration of scope 3 emissions out of Australian decision making.

NSW planning decisions have long required consideration of downstream emissions, typically resulting in cursory treatment. However, in the Rocky Hill case the LEC applied serious scrutiny to coal industry arguments. Importantly, it rejected the idea that if a particular mine is refused the market will simply find a substitute:

If a development will cause an environmental impact that is found to be unacceptable, the environmental impact does not become acceptable because

a hypothetical and uncertain alternative development might also cause the same unacceptable environmental impact.

This reasoning was a precedent in the later decisions. In the Bylong decision, the IPC also found the claimed economic benefits were “uncertain” as the proponent did not consider coal demand under the Paris Agreement. The IPC insisted on including the International Energy Agency (IEA)’s Sustainable Development Scenario (SDS). The SDS combines economic growth, universal energy access and success on meeting climate goals of the Paris Agreement, to which Australia is a signatory. SDS requires coal use to go into immediate, sustained decline.

Contrary to coal industry claims, action on climate change would have impact on the NSW economy. Despite the large *amount* of coal exported out of NSW, the industry is a small part of the NSW economy.

- Of more than 4.1 million people employed in NSW, coal mining accounts for fewer than 1 in 200 jobs. Coal mining provides as many jobs as it did a decade ago, while at the same time NSW jobs overall have grown by 732,000 or 22%.
- Coal royalties make up less than 2% of NSW budget revenue, less than vehicle registration and taxes. Treasury forecasts this to fall as overall revenue grows.
- Business investment in NSW has reached an all-time high.
- Mining makes up just 3.6% of NSW gross state product, with most the benefit going to multinational companies and overseas shareholders.

NSWMC is also disingenuous in claiming the IPC is an “unelected and unaccountable body, with no legal obligation to abide by any of the policies of the elected government”.

The IPC operates under NSW law, passed by NSW Parliament, which is of course democratically elected. Members of the IPC are appointed by the Minister for Planning, who is elected. The IPC consults with the public and holds public hearings. Its decisions are subject to legal appeal.

The IPC requirement to consider law and government policy was part of the coal mine decisions the NSWMC opposes. As required by law, the IPC considered “downstream emissions” and “applicable State... policies”, including the NSW target of net zero emissions by 2050. The NSWMC is opposing a decision based on government policy, yet seeking to undermine it by claiming the IPC is ignoring government policy.

NSWMC made no submission to the IPC public consultation on the Bylong coal mine, the Rocky Hill mine, and nearly all of the 81 IPC decisions on coal matters. In one exception, a letter relating to the United Wambo project, the NSWMC acknowledged

“it is not normal practice for NSWMC to make submissions on projects”, claims the IPC is “usurping” government and says it is lobbying government to “clarify” the law.

Similarly, in a public hearing of the NSW Independent Commission Against Corruption (ICAC) the NSWMC outlined its public and private pressure on the government, including up to 25 direct meetings with Ministers of Chiefs of Staff over the last few years – potentially five times greater than its submissions to the IPC.

Concerns about corruption risks are a major reason why Parliament has repeatedly strengthened the IPC. Following NSW Labor’s landslide loss in 2010, ICAC itself argued “expanding the decision-making role of the [IPC] would provide an important safeguard against potential corrupt conduct”, advice the Coalition government has followed. Many of the corruption scandals later uncovered by ICAC involved coal mining, including in the Bylong valley. Former ICAC commissioners are now expressing concerns about influence over government and efforts to weaken the IPC.

The NSW Government is now seeking to stop future decisions from imposing conditions to limit downstream emissions. This has nothing to do with the Paris Agreement, which does not *prohibit* consideration of scope 3 emissions. Rather it sets global goals to avoid global impacts and encourages action to reduce them.

New coal mines also contradict the NSW Government’s own emissions target. Fugitive emissions directly from coal mines make up 10% of NSW’s total emissions. Coal mining also uses a lot of diesel. New mines producing additional emissions for many decades directly undermines the NSW Government’s goal of net zero emissions by 2050.

The NSW government itself stresses economic benefits of the climate goal, citing a CSIRO study showing “Net-zero emissions is consistent with strong economic growth” and notes

Net-zero emissions by 2050 is consistent with the approach of leading Australian corporations... Aligning with leading corporations will improve collaboration and improve investment certainty.

The importance of scope 3 emissions is indeed understood by many in the financial and mining industry. Major Australian banks have policies limiting lending to coal mines. All major climate investor initiatives include disclosure and target setting for scope 3 emissions. BHP recently started reporting scope 3 emissions and says it will set targets for reducing them that are aligned with Paris. A recent survey showed mining executives see scope 3 emissions as a rising risk to mining’s social license and sector leaders say action to reduce scope 3 emissions will be expected and may be regulated.

At a time of escalating climate impacts in NSW, it is entirely appropriate for independent decision makers to minimise the major causes of those impacts, in line with their legal mandates. Indeed, it would be inappropriate for them not to do so. If mining lobby pressure and access changes laws to reduce action on climate change, this would set a dangerous precedent.

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# Introduction

In September 2019 the NSW Independent Planning Commission (IPC) rejected a proposed coal mine, in the Bylong Valley, between Muswellbrook and Mudgee. Few would have known anything about the proposal or its location. Yet the decision drew a strong reaction from the coal industry and senior politicians. The NSW Minerals Council CEO, Stephen Galilee, said

This is an absurd and dangerous economic approach that risks making NSW an international investment laughing stock, losing investment and jobs due to uncertainty on who sets planning policy in NSW - faceless bureaucrats or elected representatives?<sup>1</sup>

Later, NSW Deputy Premier John Barilaro said

Uncertainty around the commission's decision-making process is creating a sovereign risk for mining investment in NSW.<sup>2</sup>

Two earlier decisions in NSW contributed to this reaction. The first was the refusal of the Rocky Hill mine near Gloucester by the Chief Judge of the NSW Land and Environment Court. The second was the IPC's approval with conditions of the United Wambo mine in the Hunter Valley.

The link between these three decisions is that, compared with previous NSW planning decisions, all make at greater reference to 'scope 3' or 'downstream' emissions. While coal mines themselves directly emit large amounts of greenhouse gases, the overwhelming source of emissions are scope 3 emissions caused by burning the product, coal.

It has been 25 years since the UN Framework Convention on Climate Change came into force, recognising the climate change problem and setting the goal of limiting all greenhouse gas emissions, with industrialised countries such as Australia taking the lead.<sup>3</sup> In the 2015 Paris Agreement, all countries, including Australia, committed to

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<sup>1</sup> Hannam (2019) *Bylong mine rejected for groundwater, 'problematic' carbon emissions*, <https://www.smh.com.au/environment/sustainability/bylong-mine-rejected-for-groundwater-problematic-carbon-emissions-20190918-p52sjn.html>

<sup>2</sup> Bernasconi and Pritchard (2019) *Nationals want planning overhaul before NSW Government is forced to 'tax the hell out of people'* <https://www.abc.net.au/news/2019-10-01/nationals-want-overhaul-of-independent-planning-commission/11560304>

<sup>3</sup> United Nations (1992) UN Framework Convention on Climate Change [https://unfccc.int/files/essential\\_background/background\\_publications\\_htmlpdf/application/pdf/conveng.pdf](https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf)



reducing greenhouse emissions and bringing emissions to net zero over coming decades. NSW itself has committed to reduce emissions to net zero by 2050.

However by far the biggest source of emissions from NSW are those embedded in the coal mined in NSW, most of which is exported. If NSW were a country it would be among the world's largest fossil fuel exporters. Despite this, the topic of scope 3 emissions has been close to taboo in mining, planning and government circles – until recently.

The coal industry dismisses concerns about scope 3 emissions by arguing 'if we don't sell it, someone else will'. The argument is often criticised by calling it the 'drug dealer's defence', although this is misleading. While coal exporters use the argument as a legal defence for exporting more coal, drug dealers cannot use it as a legal defence in court.

Put simply, new coal mines result in more coal being burned, making climate change worse.

Instead of contesting the evidence on which these decisions were made, or disputing the reasoning of the decision makers, the coal industry has launched advertising and lobbying efforts aimed at overturning the decisions and abolishing the NSW IPC. The industry's claims are the decisions have a major impact on the NSW economy and that they are undemocratic. NSW Parliament is now being asked to pass legislation that would limit planning consideration of exported coal emissions.

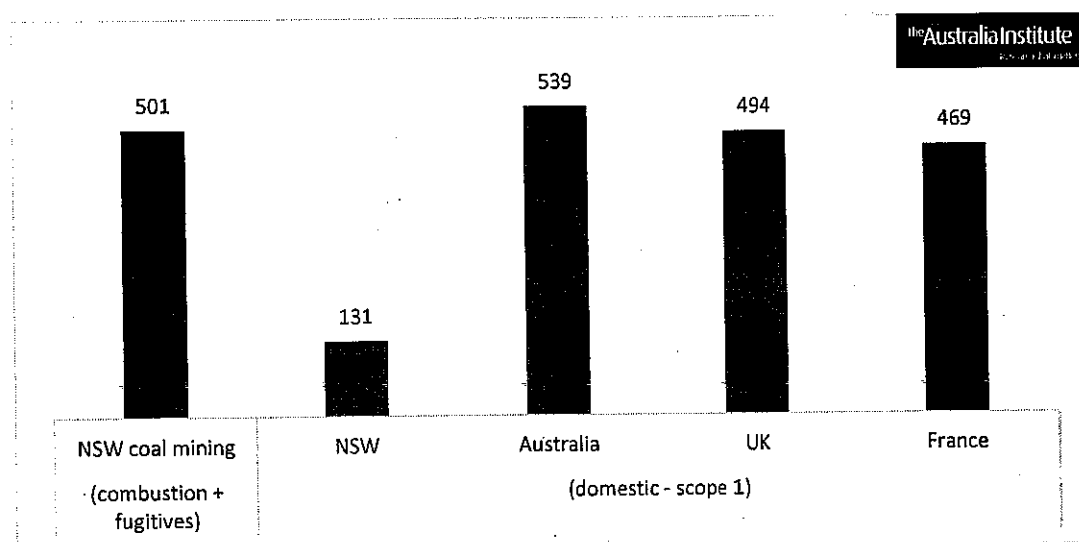
This report examines the scale of NSW coal emissions, the three planning decisions in some detail, puts economic impacts in wider context and assesses claims that these decisions are inconsistent with democracy in NSW.

# NSW coal emissions

Australia exports more fossil fuel CO<sub>2</sub> than any other country except Saudi Arabia and Russia.<sup>4</sup> Most of this is from exported coal, close to half of which comes from NSW.

Coal mined in NSW is responsible for around 500 million tonnes of CO<sub>2</sub>e. This includes combustion emissions (488 Mt CO<sub>2</sub>e) as well as fugitive emissions. Most coal mined in NSW is thermal coal (for power stations). NSW's power system is still heavily based on coal, with 79% of its consumption being met by NSW coal power stations.<sup>5</sup> However the vast majority is exported.

**Figure 1: NSW coal mining emissions in context (Mt CO<sub>2</sub>e)**



Source: calculations and references in appendix

Emissions from coal mining in NSW are larger than domestic emissions from the UK and France, nearly four times larger than emissions from within NSW itself and almost as big as all of Australia's domestic emissions.

<sup>4</sup> Swann (2019) *High Carbon from a Land Down Under: Quantifying CO<sub>2</sub> from Australia's fossil fuel mining and exports*, <https://www.tai.org.au/content/new-analysis-australia-ranks-third-fossil-fuel-export>

<sup>5</sup> OpenNEM (2019) NSW <https://opennem.org.au/energy/nsw1/>

# The decisions in detail

Recent NSW planning decisions about coal mine approvals have a few important matters in common. The coal industry, its supporters and parts of the media have focused on the role of scope 3 emissions in each of the decisions. Yet in each case, most of the decisions related to other issues.

This section looks at the following decisions:

- Rocky Hill – rejected by the Land and Environment Court (LEC)
- United Wambo – approved with export conditions by the IPC
- Bylong – rejected by the IPC

## ROCKY HILL

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### Background

The Rocky Hill mine was long opposed by the Gloucester community, due mainly to its proximity to the town. It was formally opposed by the Gloucester Shire Council, until that council was merged into the Mid Coast Council, which maintained its opposition—despite the appointment of a Council administrator who was linked to Whitehaven Coal.<sup>6</sup> The NSW Department of Planning and Environment (the Department) had recommended against approving the mine and it was rejected by the IPC's predecessor body, the Planning and Assessment Commission (PAC).

The proponents of the mine, Gloucester Resources, appealed the IPC's rejection to the NSW Land and Environment Court (LEC). Despite the coal industry and its supporters' regular claims of 'environmental lawfare', it is important to remember that this case was an appeal from a coal company, Gloucester Resources Limited (GRL).

The Department and PAC's decisions made only the most cursory mention of climate change and scope 3 emissions:

Scope 3 emissions, which relate to the transport and combustion of product coal, are accounted for by the end user of the coal... Many submissions were

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<sup>6</sup> Keen (2017) *Council upholds Rocky Hill mine position*, <https://www.winghamchronicle.com.au/story/5015026/council-upholds-rocky-hill-mine-position/>; Dobney (2016) 'Coal miners' mate' now running Gloucester, <https://www.echo.net.au/2016/05/coal-miners-mate-now-running-gloucester/>

concerned with the impact of burning fossil fuels on the world's climate. As GRL has pointed out in its amended [response to submissions], 95% of the coal proposed to be mined would be used as a reducing agent in steel manufacture and is not able to be replaced by renewable energy sources.<sup>7</sup>

This is the extent of scope 3 emissions discussion in the Department's 112 page recommendation report, and the PAC's 32 page decision report.

The comments are cursory, not to mention inaccurate, as there are alternatives to coking coal. Nonetheless, the decision makers were required to 'consider' such emissions, under the *NSW State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*:

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.<sup>8</sup>

For most planning decisions in NSW consideration of downstream emissions has always been as shallow as the Department's quote above. However, for possibly the first time in NSW planning history, the LEC applied serious scrutiny to arguments around scope 3 emissions.

The LEC decision went into detail on scope 3 emissions because the issue had been raised by Groundswell Gloucester, a community group opposed to the mine, represented by the Environmental Defenders Office NSW (EDO NSW). While the appeal had been launched by Gloucester Resources against the NSW Government's decision via the PAC, the LEC had granted permission to Groundswell to join the case as co-respondents, along with the NSW Government. The case was heard by the Chief Judge of the LEC, Brian Preston (Preston CJ).

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<sup>7</sup> DPE (2016) *Rocky Hill Coal Project (SSD 5156): Environmental Assessment Report*, p58, <https://majorprojects.accelo.com/public/39bec827a10ce780dc804786b3315a0f/Rocky%20Hill%20Assessment%20Report%20Final.pdf>

<sup>8</sup> NSW Parliamentary Counsel's Office (2019) *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*, <https://www.legislation.nsw.gov.au/#/view/EPI/2007/65/part3>

## LEC Judgement

More than 80% of the Rocky Hill judgment addresses issues other than climate change.

The judgement is 205 pages long, with exactly 700 paragraphs. Climate change evidence is addressed in 42 pages, paragraphs 422 to 556. In quantitative terms, this equates to 19% of the judgement.

Similarly, in the 14-paragraph concluding section of the judgement, *"Balancing the benefits and the impacts of the mine"*, just one paragraph is devoted to climate. The main reason given for the rejection of the mine was "its visual, amenity and social impacts", not climate change specifically.<sup>9</sup>

The judgement found that the greenhouse gas emissions of the project "support refusal of the project" (par 486). However, emissions were not the main reason for the mine's refusal. The vast majority of the judgement addresses other issues: impacts of the mine on existing land uses in the Gloucester valley, the impacts on noise, dust and visibility, social impacts in Gloucester and the economic case for the mine. The judge weighed each of these factors, summarised below.

- *Visual impacts* (pages 90 to 222, totalling 132 pages). The judgement notes the NSW Minister's point that the area was "an emotive and iconic landscape" (par 110). As such, the impacts of light pollution, vegetative degradation around the mine site and "high contrast between the proposed mine and the existing visual environment" justified refusal of consent for the Project. The judgment criticised the inability of the mine management to adequately account for the visual impact the project would have, and instead seek to downplay its effects (par 123).
- *Social impacts* (par 270-421). The judgment addressed the many social impacts the proposed mine would have on the area, both positive and negative. The judgement noted the benefits of the mine would accrue only during the life of the mine, while the "disbenefits of the mine may persist for longer" (par 286). The project would negatively impact Gloucester as a "green tourism destination" and agri-tourism businesses (par 281). Noting community opposition, the judgement references two surveys: a 2012 Gloucester Shire Council survey found 82% of people opposed the mine and a 2017 ReachTEL survey found 73.2% of the community disagreed with the project (par 289). The Project would "negatively impact on the composition, cohesion and character of the community" and the resulting social risk was "extreme" (par 320-322).

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<sup>9</sup> *Glouster Resources Limited v Minister for Planning* (2019) NSWLEC [86], <https://www.caselaw.nsw.gov.au/decision/5c59012ce4b02a5a800be47f>

- *Noise and dust impacts.* Approximately 5% of the judgment deals with these issues. The judgement found that the project would “adversely affect the amenity of residents” due to noise and dust. The judgement notes that while the noise and dust impact was not grounds in itself for refusal of the project, it contributed to the overall adverse social impacts that were grounds for a refusal.
- *Economic evidence* (31 pages). The judgment addresses issues such as the contested cost benefit analysis of the mine, benefits to workers and impacts on the local economy. On the cost benefit analysis, the judgement found the economic case for the mine was “uncertain and in any event substantially overstated.” (par 563) Similarly, the mine’s economist had “sought to inflate the benefit to workers by adopting a different methodological approach to that required by [NSW] Economic Assessment Guidelines.” (par 590) The judge found the mine’s economist’s assessment of effects on the local economy “unreliable and unhelpful.” (par 681)

In addition to these primary grounds for rejection, the judgement addressed climate change. The judgement listed NSW legislation under which assessment of scope 3 greenhouse gas emissions were relevant, including the *EPA Act*, the *State Environment and Planning Policy – Mining (Mining SEPP)* and the *Gloucester Local Environmental Plan 2010*. The judgement lists six Australian legal cases where scope 3 emissions were considered relevant and six international examples.

On climate, the judgement found that with no specific proposal to offset the emissions of the project that it would increase world emissions:

There is no evidence before the Court of any specific and certain action to “net out” the GHG emissions of the Project. A consent authority cannot rationally approve a development that is likely to have some identified environmental impact on the theoretical possibility that the environmental impact will be mitigated or offset by some unspecified and uncertain action at some unspecified and uncertain time in the future. (par 530)

Perhaps the key reason for the coal industry’s opposition to the Rocky Hill judgement is that it refutes the argument that if a particular mine is refused that the market will simply find a substitute coal supply elsewhere. Preston CJ refers to it as the ‘market substitution assumption’. The judgement is worth quoting at length:

There is also a logical flaw in the market substitution assumption. If a development will cause an environmental impact that is found to be unacceptable, the environmental impact does not become acceptable because

a hypothetical and uncertain alternative development might also cause the same unacceptable environmental impact. The environmental impact remains unacceptable regardless of where it is caused. The potential for a hypothetical but uncertain alternative development to cause the same unacceptable environmental impact is not a reason to approve a definite development that will certainly cause the unacceptable environmental impacts. In this case, the potential that if the Project were not to be approved and therefore not cause the unacceptable GHG emissions and climate change impacts, some other coal mine would do so, is not a reason for approving the Project and its unacceptable GHG emissions and climate change impacts. (par 545)

It is this logic that the coal industry hopes to keep out of Australian decision making. It is telling that the industry has not attempted to take on the argument itself. The Rocky Hill case was not appealed. There has been no report or article published by the NSWMC or its members to contest the merits of this argument. Instead, their attacks have focused on the IPC and its members that have adopted the LEC's logic.

## UNITED WAMBO

Despite industry claims that the IPC now opposes coal developments, in August 2019 the Commission approved a major development that will combine the Hunter Valley's United and Wambo mines, owned by multinational coal companies Glencore and Peabody. This would expand coal production from these mines by around 2 million tonnes per year and extend the mines operation by around 20 years.

The IPC found that the impacts of the mine were acceptable or could be managed and mitigated, if conditions imposed on the mine are complied with. These impacts included impacts on endangered ecological communities, water resources as well as local noise, dust and amenity issues.

Controversially, this project will leave two large voids. The proponents' own economic assessment showed that these voids could be filled and the project still benefit the proponents by over \$139 million.<sup>10</sup> This was confirmed by the proponents' economic consultants, Deloitte Access Economics in project documentation.<sup>11</sup>

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<sup>10</sup> Campbell (2019) *United Wambo Mine May 2019 comments to Independent Planning Commission*, <https://www.tai.org.au/sites/default/files/United%20Wambo%20comments%20on%20Deloitte%20response%20%5BWEB%5D.pdf>

<sup>11</sup> Deloitte Access Economics (2019) *Response to comments by The Australia Institute*, [http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=7142](http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7142)

The IPC's decision noted the emissions clause of the Mining SEPP and the Rocky Hill judgement on scope 3 emissions.<sup>12</sup> As a result, scope 3 emissions were factored in to the decision and, like other environmental impacts of the project, approved with conditions aiming to moderate this impact.

The conditions placed on the Project are that it "use all reasonable and feasible measures" to ensure that coal extracted from the mine and exported from Australia is only exported to countries that are party to the Paris Agreement or that have policies similar to that of countries party to the Agreement (par 309).

Given the Paris Agreement has almost universal acceptance, this condition is very easy to comply with and unlikely to affect the operations of this mine, or any other NSW mine with a similar condition in the future.<sup>13</sup> The Commission noted that according to the proponents' own submission "the most likely countries that the coal from the Project will be exported to, all are parties to the Paris Agreement." (par 312)

The IPC noted the lack of policy clarity in relation to emission reductions, that neither the Paris Agreement, Australia's target under Paris or the *NSW Climate Change Policy Framework* (CCPF) outlines how greenhouse gas emissions will be reduced to zero by 2050 (par 300). Indeed, as the IPC noted (par 272) the Department's submission stated that the

CCPF does not set any prescriptive emission reduction criteria, targets, or other outcomes that have application to the private sector or to development assessment and control.

Of the Commission's final decision document containing 546 paragraphs, only 16 were dedicated to Scope 3 emissions – a mere 3% of the total decision text.

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<sup>12</sup> IPC (2019) *Statement of reasons for decisions: United Wambo project*, par 310, <https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2018/11/united-wambo-open-cut-coal-mine-project-ssd-7142/determination/uwiv--sor--final.pdf>

<sup>13</sup> As argued in The Australia Institute's submission, Campbell (2019) *United Wambo Mine: Submission to Planning Assessment Commission* <https://www.tai.org.au/content/united-wambo-mine-submission-planning-assessment-commission>

The exception is Taiwan, but the island's climate policies are similar to the Paris Agreement.



# BYLONG

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## Background

In September the IPC rejected an open cut thermal coal mine project in Bylong Valley proposed by mining company KEPCO, majority owned by the South Korean Government. The project has been controversial as it is a new coal mine proposed for a valley that has no existing coal development. It would also impact on valuable agricultural land and heritage properties, such as the “iconic” Tarwin Park famous for innovative farming techniques.<sup>14</sup> Impact on water resources has also been a long-running source of opposition to the project.

The impacts of the project were acknowledged by the Department in its March 2017 Assessment Report:

The impacts on the local community and the environment are acknowledged, and a range of detailed conditions are recommended to ensure that these impacts are effectively minimised, mitigated and/or compensated for.<sup>15</sup>

The PAC (the IPC’s predecessor) was not convinced that these impacts could be minimised. In an earlier decision it stated:

Substantial doubt persists about the potential benefits and impacts of the Bylong Coal Project, despite extensive research and peer assessment. As a result, all aspects of the project will need to be comprehensively and cautiously considered, carefully weighted and balanced one against another in any decision about the project.<sup>16</sup>

In these earlier deliberations, the PAC had raised concerns with how the proponent had accounted for greenhouse pollution, while the Department made the well-known ‘market substitution’ argument:

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<sup>14</sup> Foley (2016) *Mine tears at Tarwyn Park*, <https://www.theland.com.au/story/4067022/mine-tears-at-tarwyn-park-photos/>

<sup>15</sup> DPE (2017) *Assessment Report: Bylong Coal Project*, <https://majorprojects.accelo.com/public/37139af9743af49b6525597cf003a520/01.%20Bylong%20Coal%20Project%20-%20Preliminary%20Assessment%20Report.pdf>

<sup>16</sup> PAC (2017) *Bylong Coal Project Review Report*, <https://majorprojects.accelo.com/public/c03560003026c2e671dee8a5d1804915/01.%20Bylong%20Coal%20Project%20Commission%20Review%20Report.pdf>

Refusing the project would not reduce global greenhouse emissions, as the gap in coal supply would almost certainly be filled by another coal resource locally or overseas.<sup>17</sup>

Modifications were made to the project, including removing mining from Tarwyn Park, which made the project “approvable subject to strict conditions”, according to the Department’s Final Assessment Report.<sup>18</sup>

## IPC decision

Like most of the preceding documentation, the IPC decision focused on water, agricultural land and heritage properties. In its 146-page *Statement of Reasons For Decision* document, there are 817 paragraphs, only 49 of which discuss climate change in relation to the project.<sup>19</sup>

Only 6% the Bylong decision is about climate change.

The IPC’s central reasons rejection were “unacceptable” impacts to the groundwater (par 297), heritage (par 483), visual amenity (par 488). The Commission found that the project would “fundamentally change the nature of the Bylong Valley.” (par 734) The Commission also found that there is “a reasonable level of uncertainty in the estimation of the economic benefits of the project.” (par 817) The Australia Institute had made this point in several submissions.<sup>20</sup>

On climate, much of the IPC’s reasoning followed the precedent set by Preston CJ:

The commission does not accept the Department’s assessment that refusal would not reduce global GHG emissions, as a gap in supply will almost certainly

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<sup>17</sup> DPE (2017) *Assessment Report: Bylong Coal Project*, cited in par 662, IPC (2019)

<https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2018/10/bylong-coal-project/determination/bylong-coal-project-ssd-6367--statement-of-reasons-for-decision.pdf>

<sup>18</sup> DPE (2018) *Bylong Coal Project: Final Assessment Report*,

<https://majorprojects.accelo.com/public/62beb1e53dbde83178cb92015374f1f3/Bylong%20Final%20Assessment%20Report.pdf>

<sup>19</sup> IPC (2019) *Bylong Coal Project: Statement of Reasons For Decision*,

<https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2018/10/bylong-coal-project/determination/bylong-coal-project-ssd-6367--statement-of-reasons-for-decision.pdf>

<sup>20</sup> Campbell (2015) *Bylong Coal Project: Submission on Environmental Impact Statement, Appendix AE Economic Assessment*,

<https://www.tai.org.au/sites/default/files/TAI%202015%20Bylong%20coal%20submission%20FINAL.pdf>; Campbell (2018) *Bylong Coal Project Submission to the NSW Independent Planning Commission*, <https://www.tai.org.au/sites/default/files/P646%20Bylong%20coal%20submission.pdf>

be filled by another coal resource locally or overseas, as no evidence to support this argument was provided to the Commission.

The Commission does not have evidence before it to determine whether, if the Project... is not approved, the Applicant will need to secure an alternative source of coal and that this coal may be of an inferior quality and may lead to poorer environmental outcomes, as was asserted [by the Applicant and Department]. The Commission Agrees with Preston CJ that, in any event, an unacceptable impact does not become acceptable because the Applicant may end up pursuing an alternative development that has unacceptable impacts. (par 693-694)

Related to considerations of climate impacts is consideration of the future of the coal market under the Paris Agreement. The proponents had argued that consideration of reduced coal demand under the Paris Agreement, as modelled by the International Energy Agency (IEA)'s Sustainable Development Scenario (SDS), was "highly speculative". The Commission found:

The IEA is a reputable international organisation of which Australia is a signatory member. The SDS therefore can be taken as one possible outcome of the expected level of disruption to energy resources markets from the pursuit of stated GHG emissions, air quality and energy access goals.

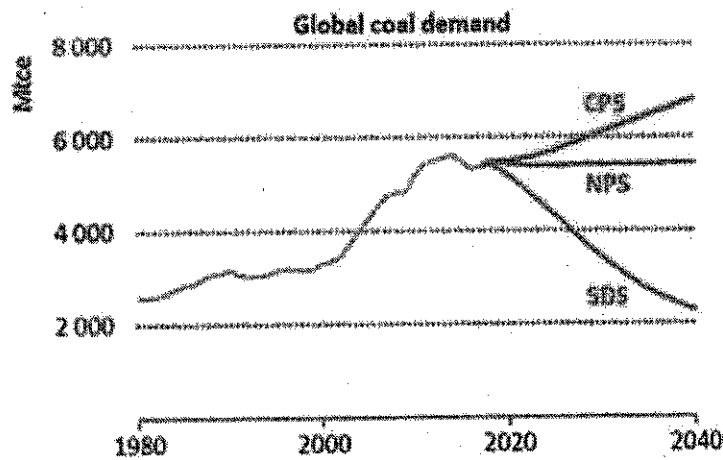
The SDS presents the changes to the energy sector that would be needed to deliver the internationally agreed objectives of the Paris Agreement on climate change. The Paris Agreement is referred to in the NSW Climate Change Policy, which is a relevant consideration for this project.

The Commission considers that the introduction of an open cut and underground coal mine in a greenfield site that will impact on agricultural and heritage values into the long-term warrants the consideration of as many reasonable market scenarios as are available...the commission therefore considers that the SDS represents a market scenario that should have been considered. (par 780)

The IEA's SDS considers policies delivering economic growth, universal energy access and success on climate change. In the SDS coal use goes into immediate and sustained decline. Even in the IEA's *New Policies Scenario (NPS)*, based on current policies insufficient to meet the Paris Agreement goal, global coal use is flat.

Figure 1 below summarises global coal demand under the IEA's three main scenarios – Current Policy Scenario (CPS), NPS and SDS:

Figure 2: IEA coal demand estimates



Source: IEA (2018) *World Energy Outlook 2018*, [www.iea.org](http://www.iea.org)

Figure 1 shows that under the SDS, which approaches the goals of the Paris Agreement, coal consumption drops rapidly after 2020. As the NSW and Commonwealth Governments support the Paris Agreement, the Commission rightly recognises the need to consider the implications for the NSW coal industry.

A major reduction in NSW coal production is also likely under this scenario. As discussed below, this will have only minor implications for the NSW economy.

# Coal in the NSW economy

The NSW coal industry routinely portrays itself as essential to the NSW economy. It is not surprising they portray recent planning decisions as a major threat to the NSW economy overall.

NSW is a large coal exporter. In 2018, NSW mines exported 165 million tonnes of coal, or 12% of the world's traded coal. If NSW was a country it would be the world's third biggest exporter, behind Indonesia and the rest of Australia, particularly Queensland.<sup>21</sup>

Despite the large *amount* of coal exported out of NSW, the industry is a small part of the NSW economy. State-wide coal is a negligible employer and makes only minor contributions to state revenues and economic output.

The NSW Minerals Council often points out that mining uses a small share of land in NSW. It never points out mining is a small share of NSW jobs and government revenue.

## NSW COAL MINING EMPLOYMENT

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Data from the Australian Bureau of Statistics (ABS) show around 18,000 people work in coal mining in NSW.<sup>22</sup> This represents less than half of one percent of the more than 4.1 million people employed in NSW, or less than 1 in every 200 jobs.

Employment in NSW has grown from 3.4 million in 2009 to 4.1 million in 2019, an increase of 22%. Coal mining employment experienced growth through the middle of this period, but has now declined back to around 18,000, the same level as in 2009. Over the decade, NSW coal mining jobs have fallen as a share of all NSW jobs, while overall NSW employment has increased by 732,000.

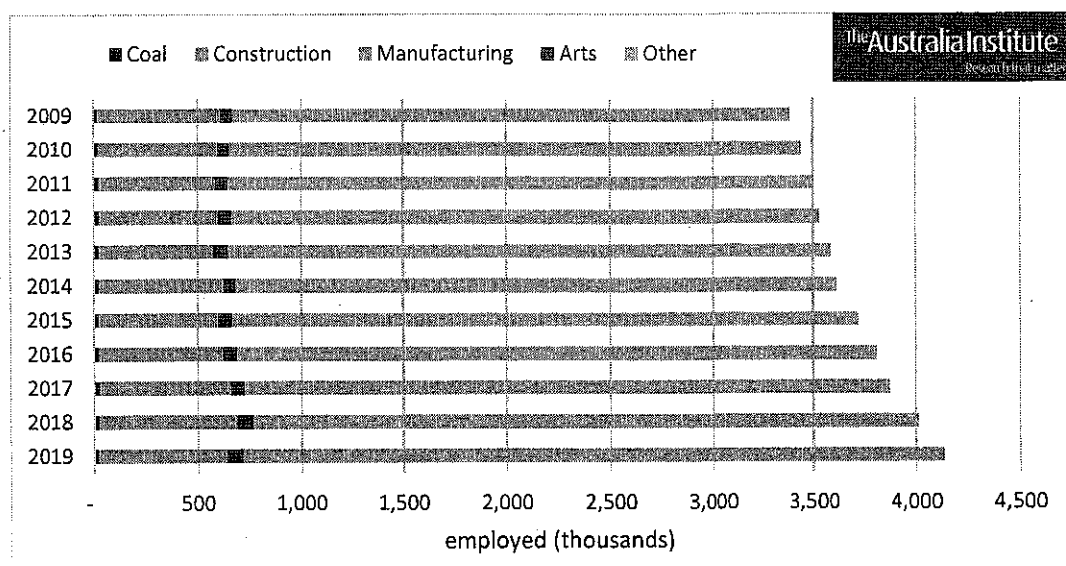
Far more people work in other sectors such as construction, manufacturing and arts & recreation, as shown in Figure 2 below.

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<sup>21</sup> NSW Mining (2019) *New analysis shows NSW coal export volumes have doubled since 2001*, 31 March 2019, <http://www.nswmining.com.au/menu/media/news/2019/march/new-analysis-shows-nsw-coal-export-volumes-have-do>; Department of Industry (2019) *Resources and Energy Quarterly*, <https://publications.industry.gov.au/publications/resourcesandenergyquarterlyjune2019/documents/Resources-and-Energy-Quarterly-June-2019.pdf>

<sup>22</sup> ABS (2019) 6291.0.55.003 - EQ06 - *Employed persons by Industry group of main job (ANZSIC)* <https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6291.0.55.003Aug%202019>

**Figure 2: NSW employment by industry**



Source: ABS (2019) 6291.0.55.003 - EQ06 - Employed persons by industry group of main job (ANZSIC) <https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6291.0.55.003Aug%202019>

Coal employment is coloured dark blue, next to the vertical axis, but is almost invisible as it is dwarfed by the employment of other industries. The data is shown in detail in Table 1.

**Table 1: NSW Employment by selected industry group ('000s)**

Year	Coal Mining	Construction	M'facturing	Arts & Rec	Other	Total
2009	18	291	302	56	2,716	3,382
2010	18	286	294	54	2,790	3,442
2011	21	281	284	59	2,858	3,503
2012	24	288	288	61	2,866	3,527
2013	21	278	278	68	2,939	3,585
2014	24	321	281	57	2,932	3,614
2015	22	311	264	66	3,053	3,717
2016	23	330	270	68	3,120	3,811
2017	25	360	272	68	3,149	3,874
2018	23	383	285	74	3,247	4,011
2019	18	365	258	76	3,416	4,133

Source: annual average. ABS (2019) 6291.0.55.003 - EQ06 - Employed persons by industry group <https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6291.0.55.003Aug%202019>

Coal mining employment can be important in some local areas, for example it makes up 22% in Singleton, 20% in Muswellbrook and 8% in Lithgow. However, these local

areas are themselves part of more diverse regional areas. In the Hunter Valley, excluding Newcastle, coal mining makes up just 3.5% of jobs.<sup>23</sup>

## NSW BUDGET AND COAL

While the coal industry claims royalties as a 'contribution' to the state budget, they do not put their claims into the context of the overall NSW budget. Royalties from all mining make up just 2% of NSW budget revenue. Coal mining makes up 91% of those royalties.<sup>24</sup> More than 98% of NSW schools, hospitals and other government services are paid for by other parts of the economy. Coal royalties provide less revenue than vehicle registration and taxes at 3%.

As shown in Table 2 below, NSW Treasury forecasts mining royalties to fall and flatline even as overall revenue grows.

**Table 2: Selected NSW Budget Revenues (\$ billion)**

Year	Mining Royalties	Vehicle Registration and Taxes	Total Budget Revenue
17-18	1.8	2.7	80.7
18-19	2.1	2.7	81.1
19-20	2.0	2.8	84.3
20-21 (f)	2.0	2.9	87.6
21-22 (f)	2.0	3.0	90.0
22-23 (f)	2.0	3.2	92.0

Source: NSW Government (2019) Budget paper 1, Revenue,  
[https://www.budget.nsw.gov.au/sites/default/files/budget-2019-06/4.%20Revenue-BP1-Budget\\_201920.pdf](https://www.budget.nsw.gov.au/sites/default/files/budget-2019-06/4.%20Revenue-BP1-Budget_201920.pdf)

The increase in royalty revenue from 2017-18 to 2018-19 reflects an increase in coal prices in those years, while export volumes have been largely flat. NSW Treasury forecasts falls in coal prices over the coming 3 years and as result they expect mining royalties to contribute somewhat less to the NSW budget.<sup>25</sup>

<sup>23</sup> ABS (2016) Census 2016, accessed via TableBuilder Basic.

<sup>24</sup> NSW Government (2019) *Royalty revenue* <https://www.resourcesandgeoscience.nsw.gov.au/miners-and-explorers/enforcement/royalties>

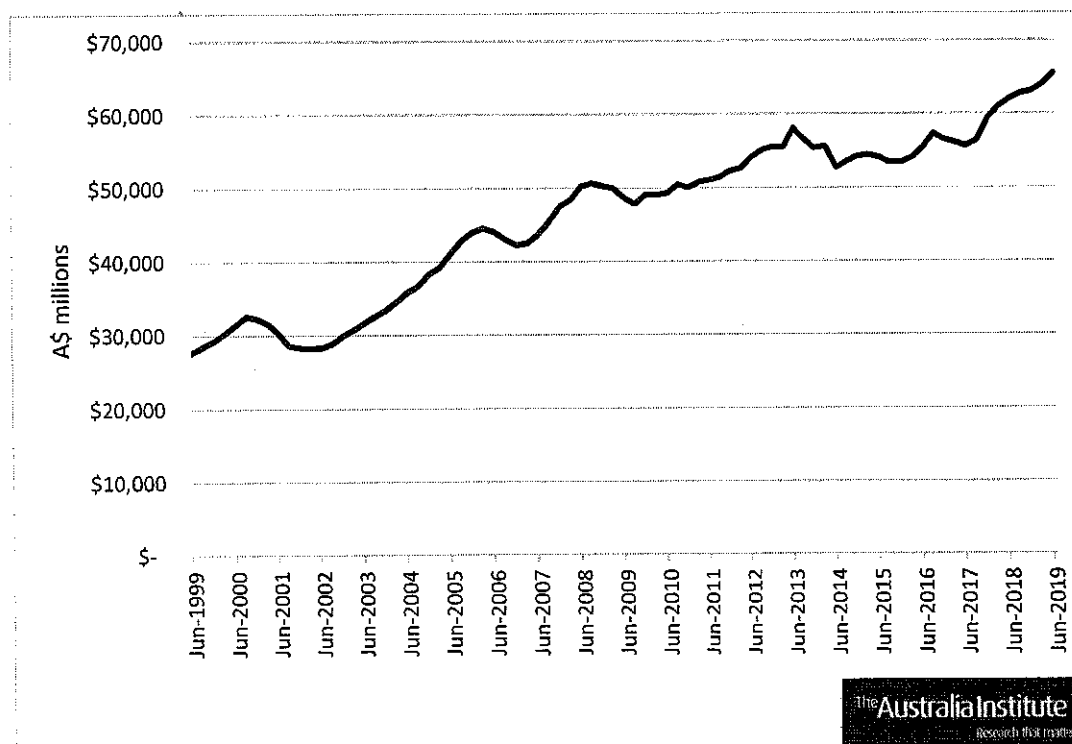
<sup>25</sup> NSW Government (2019) *Budget paper 1, Revenue*,  
[https://www.budget.nsw.gov.au/sites/default/files/budget-2019-06/4.%20Revenue-BP1-Budget\\_201920.pdf](https://www.budget.nsw.gov.au/sites/default/files/budget-2019-06/4.%20Revenue-BP1-Budget_201920.pdf)

At the same time Treasury also forecasts total revenue to grow by \$7.7 billion or 9% over three years to 2022-23.

## INVESTMENT

The Minerals Council CEO claimed NSW risked becoming an “international investment laughing stock” with planning decisions such as those by the LEC and IPC. This does not seem to be the case with the Rocky Hill decision in February 2019 and business investment in the state reached an all time high in June 2019, as shown in Figure 3:

**Figure 3: NSW Business investment**



Source: quarterly figures presented as year to date. ABS (2019) 5206.0 - Australian National Accounts: National Income, Expenditure and Product, Jun 2019

Figure 3 shows that NSW continues to experience increasing business investment, despite the Rocky Hill decision and earlier rejections and shelving of coal mines such as the LEC decision on the Mt Thorley Warkworth mine in 2013 and the abandonment of the Cobbora coal project in 2015.

In reality, investment in coal, or mining more broadly, is a small part of investment in NSW.



Regional NSW also continues to attract new investment. The NSW Government's Invest Regional website lists recent investments in transport, education, food processing and infrastructure.<sup>26</sup>

## NSW COAL AND ECONOMIC OUTPUT

The NSW coal industry is around 90% foreign-owned,<sup>27</sup> meaning that most profits from coal mining go to international owners. The industry's role in NSW economic output is therefore of limited relevance to the welfare of NSW citizens.

Even so, the portion of NSW Gross State Product (GSP) produced by the coal industry is small. In 2018 *total* mining was estimated at \$17.8 billion, or 3.6% of the state's output. Data is not available on how much of this 3.6% would be from coal specifically, although it is likely to be the majority. Table 3 below compares mining to other sectors within the NSW economy:

**Table 3: NSW Gross State Product, selected Industries (\$ million)**

Year	Mining	Manufacturing	Construction	Health, social assistance	Education	Total GSP
2014	16,057	31,688	36,330	30,528	22,890	483,349
2015	16,635	30,377	37,425	31,473	23,932	496,601
2016	17,278	30,537	39,287	32,547	25,336	515,147
2017	17,294	30,783	40,500	34,260	25,743	531,931
2018	17,822	32,160	42,973	35,591	26,308	545,540

Source: ABS (2018) *Australian National Accounts: State Accounts, 2017-18, Table 2. Expenditure, Income and Industry Components of Gross State Product, New South Wales*,

Table 3 shows that mining is a small industry in the context of the NSW economy. In comparison, manufacturing accounts for over \$30 billion per year, or around 6% of GSP, construction almost 8% and healthcare over 6% of gross state product.<sup>28</sup>

<sup>26</sup> NSW Government (2019) *Regional NSW – News*, <https://www.investregional.nsw.gov.au/news/>

<sup>27</sup> Campbell (2014) *Seeing through the dust: Coal in the Hunter Valley economy*, <https://www.tai.org.au/sites/default/files/PB%2062%20Seeing%20through%20the%20dust%20-%20Coal%20in%20the%20Hunter%20Valley%20economy.pdf>

<sup>28</sup> ABS (2018) *Australian National Accounts: State Accounts, 2017-18, Table 2. Expenditure, Income and Industry Components of Gross State Product, New South Wales, Chain volume measures and current prices* <https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/5220.02017-18>

# Coal, democracy and governance

The coal industry and its supporters claim to be concerned about the undemocratic nature of the IPC. Following the IPC's rejection of the Bylong coal mine, NSW Minerals Council CEO Stephen Galilee said

The role of the IPC demonstrates how the NSW Government has allowed the economic future of regional NSW... to be left at the mercy of an unelected and unaccountable body, with no legal obligation to abide by any of the policies of the elected government of the day.<sup>29</sup>

Mr Galilee's criticism is disingenuous, ignore the purpose of the IPC and ignores the government policies the IPC was following.

## THE IPC

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The IPC operates under NSW law. NSW laws are passed by NSW Parliament, which is of course democratically elected.

IPC is established by and bound to uphold the *Environmental Planning and Assessment Act 1979* (EPA Act). The Act gives the IPC its powers and responsibilities and determines how the IPC can make decisions. The role of the IPC has been strengthened by parliament many times over the past decade.

While members of the IPC are not elected by the public, they are appointed by the Minister for Planning, who is elected.<sup>30</sup> Term limits mean each IPC member comes up for re-appointment or replacement at least once each term of government, and cannot serve for more than six years.

The NSWMC appear to have no objection to other government appointed bodies that make decisions relevant to their members. Following the LEC's rejection of the Rocky Hill mine, the NSWMC did not even put out a press release. When the LEC has rejected other coal mines, Mr Galilee did not call for democratisation of court appointments.<sup>31</sup>

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<sup>29</sup> 2NM (2019) *Independent Planning Commission rejects Kepco's mine proposal for Bylong Valley*, <https://www.2nm.com.au/news/local-news/89309-independent-planning-commission-rejects-kepco-s-mine-proposal-for-bylong-valley>

<sup>30</sup> IPC (2019) *About us* <https://www.ipcn.nsw.gov.au/about-us>

<sup>31</sup> Condon (2014) *Court again blocks Warkworth expansion, but Rio tries again*, <https://www.abc.net.au/news/rural/2014-04-07/nsw-mine-approval-back-in-court-07-04-14/5372012>

The NSWMC also opposed recent decisions by the National Competition Council (NCC) regarding the Port of Newcastle. The NCC is also not democratically elected and the NSWMC didn't call for its democratisation. In fact, it called for the involvement of the ACCC, which is also not democratically elected.<sup>32</sup>

The IPC's decision-making is not subject to Ministerial direction or control, except with regard to certain procedural matters.

The alternative, assessment only by the Department of Planning, is still less democratic. Its officers are not democratically elected, nor are most of them appointed directly by elected ministers.

The IPC has requirements for consultation. It must consider the comments from government Departments and take public submissions. If it receives more than 25 submissions in opposition, it must hold public hearings.

IPC decisions are subject to legal appeal. The Rocky Hill case is an example of where IPC findings were contested, taken to court by a mining company and ultimately upheld.

Contrary to the NSWMC's claim, the IPC is required to consider government policy. s4.15(1)(a) of the EPAA Act requires the IPC to consider planning environmental planning instruments, including the State Environmental Planning Policies (SEPPs). In the Bylong decision, the IPC considered requirements of the Mining SEPP, which itself requires the decision-maker to consider "downstream emissions" and "any applicable State or national policies" (s14(2)).

This is why, in the Bylong decision, the IPC considered downstream emissions and NSW climate policy.

The NSWMC is simply incorrect to state the IPC ignores state government policy on emissions. It has complained about an IPC decision based on government policy, then tried to undermine that decision by complaining the IPC ignores government policy.

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<sup>32</sup> NSW Minerals Council, (2019) *Statement from the NSW Minerals Council on the revocation of the declaration of the channel services at the Port of Newcastle*, <http://www.nswmining.com.au/menu/media/news/2019/september/statement-from-the-nsw-minerals-council-on-the-rev>

## NSWMC ON DEMOCRATIC PROCESS

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Despite NSWMC criticising the IPC for being undemocratic and unaccountable, the NSWMC itself shows little enthusiasm for democratic process. IPC decision-making is required to receive and consider public submissions.

The NSWMC made no submission to the IPC assessment Bylong coal mine.<sup>33</sup> This is despite the fact the proponent Kepco Bylong is a NSWMC member.<sup>34</sup>

One submission critical of the Bylong project came from Glencore, also a NSWMC member. Glencore argued the proposal would negatively impact rail access for their own coal mine operations in the area. Glencore urged IPC not to approve the Bylong mine unless this was resolved.<sup>35</sup>

Out of 81 IPC decisions on coal projects, 76 received no submission from the NSWMC.<sup>36</sup> In three cases it was unclear or the submission could not be accessed. The clearest exceptions related to United Wambo, including a commissioned environmental report and a letter regarding scope 3 conditions.

The letter begins by acknowledging "it is not normal practice for NSWMC to make submissions on projects under active assessment".<sup>37</sup> While NSWMC makes submissions under other processes, it appears to have largely ignored the democratic process it is now criticising.

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<sup>33</sup> NSW Department of Planning (2018) *Submissions – Bylong Coal Mine*  
<https://www.planningportal.nsw.gov.au/major-projects/project/SSD-6367/submissions/12931/3251>  
NSW IPC (2019) *Bylong Coal Project* <https://www.ipcn.nsw.gov.au/projects/2018/10/bylong-coal-project>

Google (2019) site:<http://www.nswmining.com.au/bylong-submission>  
<https://www.google.com/search?client=firefox-b-d&q=site%3Ahttp%3A%2F%2Fwww.nswmining.com.au+bylong+submission>

<sup>34</sup> NSWMC (2019) *Our Members* <http://www.nswmining.com.au/menu/about-nsw-minerals-council/our-members>

<sup>35</sup> Glencore (2018) *Submission re the Bylong Coal Project*  
<https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2018/10/bylong-coal-project/presentations-and-comments/glencore.pdf>

<sup>36</sup> Searching projects by "coal", searching each page by "Minerals Council", "MC" and "Galilee"  
IPC (2019) *Search*,  
<https://www.ipcn.nsw.gov.au/projects?scrolltop=true&Keywords=coal&year=&ProjectLGA=&ProjectStatus=&ProjectType=&page=9>

<sup>37</sup> NSWMC (2019) *United Wambo Project: Proposed Condition*  
<https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2018/11/united-wambo-open-cut-coal-mine-project-ssd-7142/comments-on-proposed-condition-august-2019/nswmc.pdf>

The letter continues to object to consideration of scope 3 emissions saying the “proponent has no control”, it is “inconsistent with the Paris Agreement”, and the IPC is “seeking to set policy, usurping the role of elected governments”.

None of these claims is correct. Coal mine proponents manifestly have some control over the emissions in the coal they mine. Nothing in the Paris Agreement rules out considering scope 3 emissions; to the contrary, it encourages parties to act in support of its goals. By considering scope 3 emissions the IPC is following its legal duties and NSW government policy.

The NSWMC letter also emphasises efforts to get the NSW government to “clarify” the law.

In a recent hearing of the NSW Independent Commission Against Corruption (ICAC), the CEO of the NSWMC emphasised his organisation had been raising the issues “publicly and privately to the government and the minister”.<sup>38</sup> He said in the last few years he had met with ministers as many as ten times and with chiefs of staff as many as fifteen. Direct meetings between NSWMC and ministers or their chiefs of staff have been far more numerous than NSWMC submissions to IPC consultations, potentially by a factor of five. Such access is not available to the rest of the public.

## CORRUPTION RISK

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Simplistic criticism of the IPC as unelected and unaccountable ignores the reasons for its independence. A key feature of part of political debates around the IPC and its predecessor has been the risk, perception and existence of corruption.

Perceptions of impropriety, especially around planning decisions, were a major factor in the NSW Labor landslide loss in 2010.

Following the election, the NSW Independent Commission Against Corruption (ICAC) released a report outlining a major corruption risk in the planning system. The previous Labor government had given the Minister for Planning increased powers to make planning decisions, taking these decisions out of purview of the PAC, and Ministers had increasingly used these decisions. Without alleging any corrupt use of this power, ICAC said it was a major corruption risk.

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<sup>38</sup> Knaus (2019) *NSW Minerals Council pressured 'publicly and privately' for review of planning body*  
<https://www.theguardian.com/australia-news/2019/oct/21/nsw-minerals-council-pressured-publicly-and-privately-for-review-of-planning-body>

ICAC recommended "expanding the decision-making role of the PAC" as it "would provide an important safeguard against potential corrupt conduct".<sup>39</sup>

The Coalition government followed this advice. The role of the PAC, and later IPC, has been strengthened many times.

Many of the subsequent scandals unearthed by ICAC and its findings of corruption involved coal mining. One of the highest profile scandals involved a coal lease in the Bylong valley.

Following recent pressure from the NSWMC, the NSW Government has announced a review into the IPC. In response, former ICAC commissioner David Ipp said weakening or abolishing the IPC would be a "recipe for corruption", while former ICAC commissioner Anthony Whealy said

The review, announced by the NSW government under pressure from the Minerals Council of NSW ... raises questions about the vested interests of the Minerals Council and the impact that is having on our accountability institutions.<sup>40</sup>

## IMPROVING IPC ACCOUNTABILITY

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All institutions face accountability issues and the IPC is no different, including in relation to coal. However, there have been improvements.

The IPC has previously had problems with conflicts of interest, particularly during the PAC era, from 2008 to 2018. For example, the PAC consistently appointed coal-friendly academic Jeff Bennett to assist with reviews of coal mines.<sup>41</sup> Bennett at that time was closely associated with regular coal industry consultant, Rob Gillespie of Gillespie Economics, and was his PhD supervisor. In another example, a commissioner hearing

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<sup>39</sup> Salusinsky (2010) *Kristina Keneally wrong to reduce planning controls: ICAC*

<https://www.theaustralian.com.au/national-affairs/kristina-keneally-wrong-to-reduce-planning-controls-icac/news-story/70c98562eca1304b07edeb935806f9e3>

<sup>40</sup> Knaus (2019) *NSW Minerals Council pressured 'publicly and privately' for review of planning body*

<https://www.theguardian.com/australia-news/2019/oct/21/nsw-minerals-council-pressured-publicly-and-privately-for-review-of-planning-body>

<sup>41</sup> Kibble (2010) *NSW Planning Assessment Commission Annual Report 2009/2010*,

<https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/general/2009--2010-annual-report.pdf?la=en&hash=109A589F5F94F319F61525477139FDDA;>

Kibble (2011) *NSW Planning Assessment Commission Annual Report 2010/2011*,

<https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/general/2010--2011-annual-report.pdf?la=en&hash=1145DD150A712B66660A7ABC7AC22CEB>

an application for the Cobbora coal project was a director of a consulting firm that also worked for that project. This was pointed out in The Australia Institute's submission on this mine.<sup>42</sup> The IPC subsequently improved its declaration of interests.

The IPC publishes transcripts of all its meetings, including with project proponents, for example coal companies. This previously was not the case, another example of improvement in accountability.

In 2014 the IPC criticised the quality of economic assessment from coal mine proponents saying it was "simply not credible".<sup>43</sup> However, the Department set about reviewing the guidelines by engaging with the coal industry and its consultants in secret, despite the issue having been raised by civil society members, largely the Australia Institute.<sup>44</sup> This evidence of industry capture was disclosed through Freedom of Information and gives further grounds for maintaining the IPC.

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<sup>42</sup> Campbell (2014) *Cobbora coal project: Submission to Planning and Assessment Commission*,  
<https://www.tai.org.au/sites/default/files/TAI%202014%20Cobbora%20PAC%20submission%20FINAL.pdf>

<sup>43</sup> Mckenny and Whitbourn (2014) *Mining Assessments to be beefed up after scathing review*  
<https://www.smh.com.au/national/nsw/mining-assessments-to-be-beefed-up-after-scathing-review-20140616-zs9sd.html>

<sup>44</sup> McCarthy (2015) *Critics claim coal industry 'writing its own rules' in NSW*,  
<https://www.newcastleherald.com.au/story/3280198/coal-industry-writing-its-own-rules-in-nsw/>;  
Campbell (2015) *Coal industry writing the NSW Govt's rules on economics*,  
<http://www.theaustralian.com.au/news/coal-industry-writing-the-nsw-govts-rules-on-economics/news-story/32a04f7a2e02965f336792eed32e0c6e>

# NSW climate policy

In 2016 the NSW government adopted the *NSW Climate Change Policy Framework* (CCPF). The CCPF acknowledges the Paris Agreement as “a commitment to achieve net-zero emissions, globally, by the second half of the century” and with countries like Australia reducing emissions “sooner than developing nations”.<sup>45</sup> On this basis, the CCPF states

The NSW Government endorses the Paris Agreement and will take action that is consistent with the level of effort to achieve Australia’s commitments to the Paris Agreement.<sup>46</sup>

As a result, the NSW government has adopted an emissions target:

The NSW Government’s objective is to achieve net-zero emissions by 2050.<sup>47</sup>

While “aspirational”, it “sets a clear statement of government’s intent, commitment and level of ambition and sets expectations about future emissions constraints that will help the private sector to plan and act”.<sup>48</sup>

The IPC was legally required to consider the commitment to the Paris Agreement and the NSW net zero target. Consideration of the CCPF lead the IPC to reject the proponent’s economic assessment of the claimed benefits of the mine as “uncertain”, as they had not considered economic scenarios consistent with the Paris Agreement goals. (par 784)

The uncertainty of benefits was important when “weighing up the acceptability of GHG emissions” and other impacts.

The NSW Government has tabled legislation that aims to prevent consideration of scope 3 emissions.<sup>49</sup> The Bill prevents planning decisions from being based on impacts occurring outside of Australia, or impacts on NSW due to developments overseas.

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<sup>45</sup> Ibid. p.1

<sup>46</sup> Office of Environment and Heritage (2016) *NSW Climate Change Policy Framework*, p.2, <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Climate-change/nsw-climate-change-policy-framework-160618.pdf>

<sup>47</sup> Ibid. p.2

<sup>48</sup> Ibid.

<sup>49</sup>



This has nothing to do with the Paris Agreement. Paris certainly does not *prohibit* consideration of scope 3 emissions. It is more correct to say the legislation undermines the NSW Government claims to endorse the Paris goals. The Paris Agreement sets a global goal and encourages actions to meet it, beyond domestic emission targets.

## COAL FUGITIVE EMISSIONS

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While the current controversy relates to scope 3 emissions from exported coal, it is also important to consider domestic emissions from coal mines.

Mining coal is very emissions intensive, in particular due to fugitive emissions directly from mines. In 2017 fugitive emissions from “solid fuels”, that is from coal and coal mines, was 10% of NSW emissions.<sup>50</sup> Coal mining also uses a lot of diesel for transport and other machinery, as well as using electricity.

NSW Government policy is to reduce emissions from within NSW to net zero by 2050. The NSW Government cannot meet its own goal if new mines are built producing additional emissions for many decades.

If mines are approved producing additional emissions, they should be required to fully offset their emissions. This would be required simply to stop emissions from increasing. It could make it more costly for the rest of NSW to meet the net zero target. From the perspective of emissions policy, it is far more preferable to prevent the construction of new mines.

## ECONOMIC BENEFITS OF REDUCING EMISSIONS

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The NSW government itself emphasises the economic benefits of cutting carbon. A government factsheet notes:

Leading businesses and investors are also committing to action to reduce their emissions and diverting investment to clean technology. Net-zero emissions by 2050 is consistent with the approach of leading Australian corporations such as

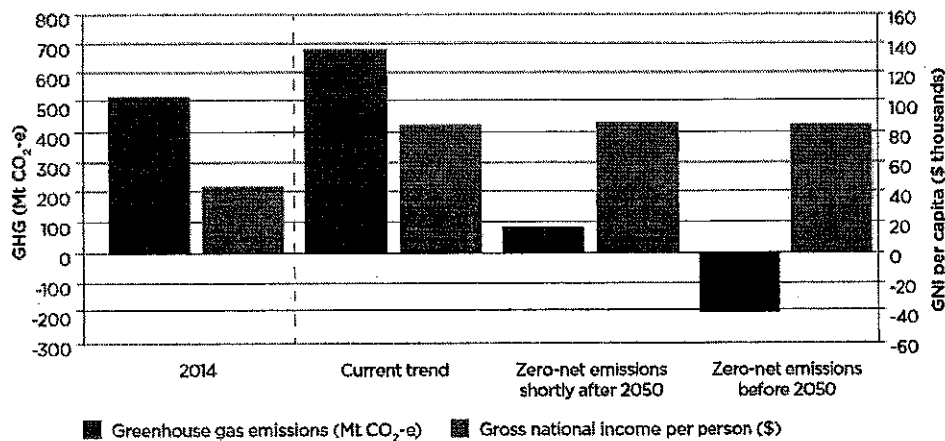
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<sup>50</sup> Department of the Environment and Energy (2019) *State and Territory Greenhouse Gas Inventories 2017* <https://www.environment.gov.au/system/files/resources/917a98ab-85cd-45e4-ae7a-bcd1b914cfb2/files/state-territory-inventories-2017.pdf> page 29

AGL, Amcor, Wesfarmers and Telstra. Aligning with leading corporations will improve collaboration and improve investment certainty.<sup>51</sup>

It also emphasises that “Net-Zero Emissions Is Consistent With Strong Economic Growth”. It cites a CSIRO study showing economic growth is not only possible with deep cuts in emissions, but that achieving the cuts earlier will increase growth.

**Figure 3: NSW Government cites CSIRO showing decarbonisation with strong growth**



Source: Attributed to CSIRO, from DoE (2016) *Fact Sheet: Achieving Net-Zero Emissions By 2050*

A large economic literature shows decarbonisation is consistent with economic growth.<sup>52</sup> Decarbonisation is not consistent, however, with building new coal mines.

## SCOPE 3 IN CORPORATE GOVERNANCE

While the NSWMC argues no NSW government policy or agency should consider scope 3 emissions, leaders in the financial and mining industry understand the importance of scope 3 emissions.

<sup>51</sup> NSW Department of Environment (2016) *Fact Sheet: Achieving Net-Zero Emissions By 2050*  
<https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Climate-change/achieving-net-zero-emissions-by-2050-fact-sheet-160604.pdf>

<sup>52</sup> Swann (2019) *A Model Line-up* <http://www.tai.org.au/content/new-analysis-brian-fisher-modelling-climate-outlier>

Major Australian banks have formal policies limiting lending to coal mines. NAB will not fund new thermal coal mines.<sup>53</sup> Westpac will not fund mines below a quality threshold or in a new basin.<sup>54</sup> Many major international banks have similar policies.

All major investor initiatives on climate change include disclosure and target setting for scope 3 emissions. This includes the Taskforce on Climate Related Financial Disclosures (TCFD),<sup>55</sup> CDP,<sup>56</sup> and the Science Based Targets Initiative.<sup>57</sup>

The TCFD was set up by the Financial Stability Board of the G20. A key part of the TCFD recommendations is stress testing assets against climate change scenarios, including at least one 'Paris aligned' scenario consistent with limiting global warming to below two degrees. This includes scope 3 emissions. The IPC's decision on the Bylong coal mine in effect requires proponents to follow this recommendation.

BHP recently started reporting scope 3 emissions and says it will set targets for reducing them that are aligned with Paris.<sup>58</sup> BHP has been a key part of TCFD. It is also a NSWMC member.

Ernst and Young (EY), who are BHP's auditor, recently surveyed mining executives and found many see scope 3 emissions as a rising risk to mining's social license. EY global mining leader Paul Mitchell said, "miners will inevitably be expected to participate in reducing the carbon footprint of the end products" which could include regulation "hence the need to begin focusing on scope 3 emissions."<sup>59</sup>

Mitchell also said companies will be expected to consider which customers they sell to as part of reducing scope 3 emissions. This principle was seen already in an earlier IPC

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<sup>53</sup> NAB (2017) *Update on Financing of New Thermal Coal Mining Projects*

<https://news.nab.com.au/update-on-financing-of-new-thermal-coal-mining-projects/>

<sup>54</sup> Westpac (2017) *Climate Change Position Statement and 2020 Action Plan*

[https://www.westpac.com.au/content/dam/public/wbc/documents/pdf/aw/sustainability/WestpacCC\\_EActionPlan.pdf](https://www.westpac.com.au/content/dam/public/wbc/documents/pdf/aw/sustainability/WestpacCC_EActionPlan.pdf)

<sup>55</sup> FSB TCFD (2017) *Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures* <https://www.fsb-tcf.org/wp-content/uploads/2017/06/FINAL-TCFD-Annex-062817.pdf>

<sup>56</sup> CDP (2019) *How can companies address their scope 3 greenhouse gas emissions?*

<https://www.cdp.net/en/articles/companies/how-can-companies-address-their-scope-3-greenhouse-gas-emissions>

<sup>57</sup> SBTi (2019) *Science Based Targets* <https://sciencebasedtargets.org/>

<sup>58</sup> Toscano (2019) *BHP sets emissions cuts for customers in major carbon push*

<https://www.smh.com.au/business/companies/bhp-sets-emissions-cuts-for-customers-in-major-carbon-push-20190723-p529wk.html>

<sup>59</sup> Ker (2019) *Scope 3 accountability inevitable for miners, says EY*

<https://www.afr.com/companies/mining/scope-3-accountability-inevitable-for-miners-says-ey-20191002-p52wzb>

recommendation that the United Wambo mine be required to sell coal only to countries complying with the Paris Agreement.

In short, considering scope 3 emissions from coal mines is in line with increasing corporate expectations.

# Conclusion

At a time of escalating climate impacts on NSW and on Australia, it is entirely proper for independent decision makers to consider and seek to minimise the major causes of those impacts. NSW is a large coal exporter and its coal mines play an oversized role in causing climate impacts.

Reactions by the coal industry and some senior politicians to recent planning decisions around coal mines have been hyperbolic and are not supported by the facts.

The NSW coal industry, despite the large size of its output and emissions, is a small part of the NSW economy, employing less than one in 200 workers and providing less than 2% of government revenue. Both figures are falling, while at the same time NSW jobs, investment and economic output are all growing.

While climate change and scope 3 emissions have played a new and important role in recent planning decisions, most of their content relates to other issues. The decisions themselves have been based on laws and policies as they stand, including on climate change.

Attacks on the Independent Planning Commission as unelected and unaccountable ignore substantial democratic and legal accountability in its decision making. By no means above criticism in its own right, the IPC has improved planning decision making. By contrast, criticisms of its coal decision ignore the IPC's purpose, in part to ward against corruption risk.

It would be highly concerning if mining lobby pressure and access resulted in new laws to reduce action on climate change. Excluding scope 3 emissions from consideration would be out of step with evolving corporate expectations and contrary to NSW government commitments to the goals of the Paris Agreement. Moreover, the NSW government's net zero emissions target is directly undermined by construction of new coal mines. As the NSW government itself acknowledges, deep decarbonisation is an economic opportunity, possible while maintaining strong economic growth.

While NSW coal companies and the NSWMC are working to exclude any focus on scope 3 emissions, it is ironic that at the same time the Commonwealth Government and WA gas companies like Woodside are claiming that gas exports reduce emissions through scope 3 'displacement' of coal in other countries. These parts of the fossil fuel industry and their political supporters might discuss the contradiction between their positions.

# Appendix: NSW coal emissions calculation and references

Table 1: NSW coal mining emissions in context

	Data	Units	Source
<b>National / state emissions (scope 1)</b>			
Australia	539	MtCO <sub>2</sub> e	Year to March 2019, total <sup>60</sup>
NSW	131	MtCO <sub>2</sub> e	2017, total <sup>61</sup>
United Kingdom	494	MtCO <sub>2</sub> e	2016, total, ex LULUCF <sup>62</sup>
France	469	MtCO <sub>2</sub> e	2016, total, ex LULUCF <sup>62</sup>
<b>NSW coal mining emissions (combustion and fugitives)</b>			
coal mined	197	Mt	Saleable, FY2019 <sup>63</sup>
(coking)	30	Mt	Saleable, FY2019 <sup>63</sup>
(thermal)	167	Mt	Saleable, FY2019 <sup>63</sup>
<b>combustion emissions</b>			
(coking)	80	MtCO <sub>2</sub>	IPCC emission factor <sup>64</sup>
(thermal)	408	MtCO <sub>2</sub>	IPCC emission factor <sup>64</sup>
<b>Total</b>	<b>488</b>	<b>MtCO<sub>2</sub></b>	
NSW coal fugitives	13	MtCO <sub>2</sub> e	2017, 'solid fuels' <sup>65</sup>
<b>TOTAL</b>	<b>501</b>	<b>MtCO<sub>2</sub>e</b>	Sum two figures above.

<sup>60</sup> NGGI (2019) *Quarterly Update of Australia's National Greenhouse Gas Inventory: March 2019* page 7, <https://www.environment.gov.au/system/files/resources/6686d48f-3f9c-448d-a1b7-7e410fe4f376/files/nggi-quarterly-update-mar-2019.pdf>

<sup>61</sup> Department of the Environment and Energy (2019) *State and Territory Greenhouse Gas Inventories 2017*, page 29, <https://www.environment.gov.au/system/files/resources/917a98ab-85cd-45e4-ae7a-bcd1b914cfb2/files/state-territory-inventories-2017.pdf>

<sup>62</sup> NB these countries are reducing emissions. Data is all Kyoto GHG, excluding LULUCF, 2016 Potsdam Institute data, accessed via WRI (2019) *Climate Watch*, <https://www.climatewatchdata.org/>

<sup>63</sup> Office of Chief Economist (2019) *Resources and Quarterly Sept 2019* <https://publications.industry.gov.au/publications/resourcesandenergyquarterlyseptember2019/index.html>

<sup>64</sup> Converting default energy figures into mass, then mass into default emissions. IPCC (2006) *2006 IPCC Guidelines for National Greenhouse Gas Inventories*, Table 1.2 [https://www.ipcc-nggip.iges.or.jp/public/2006gl/pdf/2\\_Volume2/V2\\_1\\_Ch1\\_Introduction.pdf](https://www.ipcc-nggip.iges.or.jp/public/2006gl/pdf/2_Volume2/V2_1_Ch1_Introduction.pdf)

<sup>65</sup> Department of the Environment and Energy (2019) *State and Territory Greenhouse Gas Inventories 2017*, page 29, <https://www.environment.gov.au/system/files/resources/917a98ab-85cd-45e4-ae7a-bcd1b914cfb2/files/state-territory-inventories-2017.pdf>