Submission No 7

INQUIRY INTO ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (TERRITORIAL LIMITS) BILL 2019

Organisation: Construction, Forestry, Maritime, Mining & Energy Union

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Portfolio Committee No. 7 – Planning and Environment
NSW Legislative Council
SYDNEY NSW

Submitted via email: PortfolioCommittee7@parliament.nsw.gov.au

Dear Committee,

Brief submission –
Inquiry into the provisions of Environmental Planning and Assessment Amendment (Territorial Limits) Bill 2019

The union has noted the Committee's invitation to make comments or provide a submission to this Inquiry and takes this opportunity to do so.

The union is broadly supportive of the intent of the Bill but is concerned that the intent may not be achieved.

The interests that the union has with respect to the mine assessment and approval process include the following points.

1. CFMEU Mining and Energy Division is part of the Construction, Forestry, Maritime, Mining and Energy Union, the major trade union in the industries of its title. The Division represents approximately 20,000 workers in Australian mining – especially coal mining – and in power generation – especially coal power generation. In NSW we are easily the major union in coal mining and in coal power generation, both of which have highly unionised workforces.

2. It must be made clear that the union accepts the science of global warming as stated by the Intergovernmental Panel on Climate Change,

and endorsed Australian ratification of the Kyoto Protocol (1997) and the Paris Agreement (2015) under the United Nations Framework Convention on Climate Change (UNFCCC).

3. The coal mining industry is one NSW's key export industries. Along with Queensland, it produced $69.6 billion of exports in 2018-19. Only iron ore is a larger export industry, while the nearest services export industry is the education of overseas students at $32.4 billion – and that is already at a scale that is causing controversy and vulnerability for the education sector.

4. Coal mining produced the vast bulk of mining royalty revenue for the NSW govt, which in the 2019 NSW Budget is estimated at just over $2 billion. NSW, like all States, is heavily reliant on transfers from the federal government for a large part of its budget, so the royalty stream is a major one that is independent of that.

5. The NSW coal mining industry has around 21,800 workers directly employed as of August 2019. These workers are typically paid between $100,000 and $150,000 per year. (Efforts by mining companies to reduce wages through the use of labour hire and contractors push some wages towards the lower end cited, but are still required to be above wages in other industries in order to attract and retain workers in an intensive shift-work context.)

6. The jobs in coal mining have significant multipliers – both through the spending of those good wages in regional areas, and through the activities of suppliers to the mines. That multiplier is between 1 and 2 per job in the industry. There are actually more jobs outside the industry that are dependent on the industry than there are within it. Add in dependent spouses and children and the number of people reliant on coal mining is substantial – and in particular regions can be the major or defining demographic feature of the region.

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The proposed changes to the Environmental Planning and Assessment Act 1979 and the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007, are intended to address recent decisions of the Independent Planning Commission and the NSW Land and

Environment Court where coal mine developments have been rejected wholly or in part because the greenhouse gas (GHG) emissions that will be produced in other countries by the use of the coal.

These are the so-called "Scope 3" emissions. As developed by the GHG Protocol, Scope 3 emissions are those that arise along the value chain associated with an enterprise or business but are not produced, directly or indirectly, by that enterprise or business. Scope 1 emissions are those produced directly by the activity of the business, while Scope 2 emissions are that are produced indirectly as a result of the consumption of electricity by the business.

The critical point here is that all Scope 3 emissions are the Scope 1 and 2 emissions of other businesses. Assigning legal responsibility for Scope 3 emissions to a mine project has the implicit effect of removing that responsibility from the entities that are the Scope 1 and Scope 2 emitters.

Scope 3 emission calculations were never intended to be used that way. Such calculations are meant to inform the strategic thinking of a business in the context of climate change, but are not meant to remove liability for Scope 1 and Scope 2 emitters from those that actually produce them. Thus, while the GHG Protocol provides a standard for measuring Scope 3 emissions, the Climate Disclosures Standards Board (CDSB) which provides a reporting framework for such disclosures that corresponds to the financial reporting framework for companies does not require reporting of Scope 3 emissions.[1]

Decisions of the IPC or the Land and Environment Court that seek to impose conditions with respect to Scope 3 emissions, or reject a mine proposal on that basis, are wrongly attributing legal responsibility for Scope 3 emissions and are mis-applying the GHG Protocol.

Further, they are sabotaging the international carbon accounting framework that is used by the UN Framework Convention on Climate Change, by the Kyoto Protocol and now the Paris Agreement of 2015.

1 https://www.cdsb.net/sites/default/files/cdsb framework 2019 v2.2.pdf

Under those international instruments, nations are responsible for GHG emissions that occur within their borders, and are obliged to adopt national targets to mitigate them.

Emissions from coal that is burnt for power generation in China is the responsibility of China, regardless of whether that coal was mined in China, Australia or any other nation.

For planning authorities to seek to attribute responsibility for GHG emissions to the producer of the fuel is to contradict the process by which countries submit Nationally Determined Contributions under the Paris Agreement and seek to implement them.

It should be noted that the Scope 3 issue does not just apply to fossil fuels; it applies to the production of any goods or services that contribute to others producing emissions. Under the Paris Agreement, Australia is responsible for the GHG emissions that arise from cars and trucks on our roads. Even though those emissions are the Scope 3 emissions of oil producers in the Middle East, and are also the Scope 3 emissions of car and truck makers from Japan, Korea and other nations that export vehicles to Australia. But no one appears to suggest that Australia can avoid responsibility for emissions from our transport sector by assigning Scope 3 responsibility to liquid fuel or vehicle manufacturers in other countries.

Australia has national emission reduction targets that it is struggling to meet, and many would argue that it should develop and implement much tougher targets.

Australian coal mines have significant Scope 1 and Scope 2 emissions that come under those national targets, and nobody is arguing that they should not be responsible for them.

The union has major concerns about how the decline of coal power in Australia is being managed (or rather, not managed!) and has argued strongly for the development of measures to achieve Just Transition for coal power workers and communities.[2]

[2] See, for example: http://bit.ly/IRRC report

But assigning responsibility for Scope 3 emissions to Australian mines is to strip others of their responsibility for their own Scope 1 and 2 emissions and is incompatible with international carbon accounting and the global framework for mitigating emissions.

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A key concern with the Bill is that it may not achieve its intention. The Committee's attention is directed to the advice of international law firm Allens[3] that the prohibition of approval conditions that concern impacts in another country does not prevent the authority from continuing to consider Scope 3 emissions in other countries.

Allens points out that such consideration may result in a mine project being refused because the authority is not able to impose a condition of approval with respect to Scope 3 emissions.

Perhaps what is needed is careful scoping of what the legitimate considerations should be in assessing a mine proposal, with Scope 3 emissions, being the primary responsibility of other parties, not being a legitimate consideration.

Yours sincerely,

General President, CFMEU Mining and Energy
National President, CFMMEU

[3] https://www.allens.com.au/insights-news/insights/2019/10/nsw-government-to-prohibit-scope-3-greenhouse-gas-emissions-conditions/