

Submission
No 9

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

Organisation: Public Health Association of Australia

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Public Health Association
AUSTRALIA

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

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Preamble

The Public Health Association of Australia

The Public Health Association of Australia (PHAA) is recognised as the principal non-government organisation for public health in Australia working to promote the health and well-being of all Australians. It is the pre-eminent voice for the public's health in Australia.

The PHAA works to ensure that the public's health is improved through sustained and determined efforts of the Board, the National Office, the State and Territory Branches, the Special Interest Groups and members.

The efforts of the PHAA are enhanced by our vision for a healthy Australia and by engaging with like-minded stakeholders in order to build coalitions of interest that influence public opinion, the media, political parties and governments.

Health is a human right, a vital resource for everyday life, and key factor in sustainability. Health equity and inequity do not exist in isolation from the conditions that underpin people's health. The health status of all people is impacted by the social, cultural, political, environmental and economic determinants of health. Specific focus on these determinants is necessary to reduce the unfair and unjust effects of conditions of living that cause poor health and disease. These determinants underpin the strategic direction of the Association.

All members of the Association are committed to better health outcomes based on these principles.

Vision for a healthy population

A healthy region, a healthy nation, healthy people: living in an equitable society underpinned by a well-functioning ecosystem and a healthy environment, improving and promoting health for all.

The reduction of social and health inequities should be an over-arching goal of national policy and recognised as a key measure of our progress as a society. All public health activities and related government policy should be directed towards reducing social and health inequity nationally and, where possible, internationally.

Mission for the Public Health Association of Australia

As the leading national peak body for public health representation and advocacy, to drive better health outcomes through increased knowledge, better access and equity, evidence informed policy and effective population-based practice in public health.



PHAA view of the *Environmental Planning and Assessment Amendment (Territorial Limits) Bill*

The PHAA welcomes the opportunity to make a brief submission to the [inquiry in NSW parliament examining the Government's "Territorial Limits" Bill that will report on 17 March](#).

The PHAA strongly opposes this Bill's purpose to blinker planning authorities from considering or dealing with environmental impacts that go beyond Australia's physical borders. It is an obvious fallacy to presume that the only environmental impacts which require attention exist solely within our arbitrary geographic borders.

It is of grave concern to PHAA that the Bill was drafted by the Government in response to mining industry pressure. No doubt consequent on this pressure, the Bill ignores the contribution NSW coal mines make to climate change when the product coal is burnt, either here or overseas. The resulting "downstream" greenhouse gas emissions are referred to in accounting frameworks as "Scope 3" emissions. We urge the NSW Government to prioritise the health of its own and global citizens above mining industry interests. The Bill has two Schedules, and our core concerns are addressed against each are as follows.

Schedule 1

Schedule 1 will make it unlawful to impose a condition on any development for the purpose of achieving something related to impacts occurring outside Australia as a result of the development (ie: climate change) or impacts occurring here that are the result of development carried out outside Australia (ie: climate change).

PHAA core concerns with Schedule 1:

While this schedule focusses on imposition of conditions, not the question of determination and whether a mine should proceed or not, the PHAA believes it would prevent a consent authority from requiring conditions to protect public health. Protective conditions will be made unlawful, such as requiring greenhouse offsets, or payments into adaptation funds, or other climate change related mitigation measures related to public health and community wellbeing.

Further, it is profoundly inappropriate that the schedule will apply retrospectively, thereby voiding existing conditions set on approvals for coal mines in NSW. Proponents were granted those approvals on the basis of conditions set at the time, involving trade-offs of licence value against particular impacts and conditions. To establish a precedent that approvals and licences could be made free of initially set conditions is both a fraud on the public interest and also fosters a policy context conducive to future corruption of governments and legislators.

Schedule 2

Schedule 2 will remove the words "(including downstream emissions)" from clause 14 (2) of the State Environmental Planning Policy for Mining (Mining SEPP). These words that have been present since the inception of the Mining SEPP in 2007. Consent authorities would no longer be required to consider the impact of downstream emissions when they're deciding whether or not to let a mine (or a gasfield) be developed. This change introduces considerable doubt over whether they should do so, and may leave them open to legal action by mining companies if they do.

The PHAA recommends the whole bill be scrapped

The PHAA strongly opposes this Bill and, in the interests of halting the health and climate emergency that NSW is currently in, urges the NSW Government and the Parliament to regulate and take action to support the transition of the New South Wales' fossil fuel industry to renewables. We set out below three reasons to scrap the Bill.

The Bill is out of step with the evidence linking fossil fuels and health, international agreements, and the global market

By removing the requirement to consider 'downstream' carbon emissions, the NSW government is actively putting human health at risk. This Bill directly contradicts the known evidence linking fossil fuels and health (see PHAA Policy Position Statement- Health Effects of Fossil Fuels). These health consequences include direct impacts from pollution, volatile chemical exposures and heavy metal dispersion, but also indirect health effects brought on by global heating caused by carbon emission (Smith et al, 2014; Castleden et al, 2011). The 1,485 million tonnes of NSW coal mined since 2010 has contributed about 3 per cent of global emissions from coal. This, and any future emissions, will contribute to Australia's climate disruption. The public health impacts of climate disruption are already being felt across NSW, nationally and globally as a result of natural disasters including more frequent and intense drought, critical water shortages, bushfires and heat waves.

In addition, these actions are out of step with international agreements concerning action to address the climate and ecological emergency, such as the Paris Agreement, contradicting to the NSW Government's own policy framework.

Finally, these actions are outdated as it is well known that the global market for coal is slowing down and energy should be directed towards transitioning into renewable energy. The Reserve Bank of Australia has only recently stated the global challenges facing coal mining in Australia:

“Over the longer term, however, the balance of risks for [coal] demand appear to be to the downside, as the transition from coal to other energy sources in advanced economies continues – including in Europe, the United States, South Korea and Japan.”

Rather than continuing with such retrograde policy decisions, the NSW Government ought to instead be one of the many countries and jurisdictions actively involved in the transition away from coal.

The current reality is however that by considering this Bill, NSW is hurting the health and wellbeing of the people in NSW and globally, and at the same time places itself in an objectionable and backwards position on the national and global stage.

The proposed changes undermine the purpose and objectives of the EP&A legislation in NSW.

Proposed changes to the legislation, *Environmental Planning & Assessment Act 1979* and *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*, risk compromising the necessary purpose of approving and setting conditions for development projects based on a balance of economic, health, social, and environmental impacts.

It is irresponsible for the Government to propose obstructing a planning authority from considering important environmental impacts of a development. It is contrary to the spirit of the Environmental Planning and Assessment Act and established case law.

Clause 14 (2) of the Mining SEPP has never been the sole reason a coal mine has been refused. The Rocky Hill and Bylong coal projects were both refused primarily because of their local environmental impacts.

Nevertheless, since the *Rocky Hill* judgement in February, mining companies have been for the first time providing in-depth information about the climate change context of new coal mines. This is information planning authorities need, and the public needs. Ignoring the impact of NSW coal mines on the current climate and health emergency is not going to stop those impacts occurring and will worsen those impacts.

Lack of public consultation

The Government introduced this Bill without consulting the public. The contribution of NSW coal to the climate and health emergency is a matter of public interest that concerns the whole of the community. The NSW (and Australian) community has clearly expressed that the climate crisis is their main concern in polls, questionnaires and mass protests. The PHAA is of the view that were the Bill to be subject to broad public consultation within the next few months, the idea would roundly be dismissed in the wider community and in Parliament.

Conclusion

PHAA's position is therefore clearly that this Bill should be abandoned.

The PHAA appreciates the opportunity to make this submission. Please do not hesitate to contact us should you require additional information or have any queries in relation to this submission.

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References

Castleden WM, Shearman D, Crisp G, Finch P. The mining and burning of coal: effects on health and the environment. *The Medical journal of Australia*. 2011;195(6):333-5.

PHAA Policy Position Statement- Health Effects of Fossil Fuels:
<https://www.phaa.net.au/documents/item/2901>

Smith KR, Woodward A, Campbell-Lendrum D, Chadee DD, Honda Y, Liu Q, et al. Human health: impacts, adaptation and cobenefits. In: Field CB, Barros VR, Dokken DJ, Mach KJ, Mastrandrea MD, Billir TE, et al., editors. *Climate Change 2014: Impacts, Adaptation, and Vulnerability Part A: Global and Sectoral Aspects Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge, United Kingdom and New York, NY, USA: Cambridge University Press; 2014. p. 709-54.