REPORT OF PROCEEDINGS BEFORE

PORTFOLIO COMMITTEE NO. 7 - PLANNING AND ENVIRONMENT

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

CORRECTED

At Macquarie Room, Parliament House, Sydney, on Thursday 6 February 2020

The Committee met at 9:30

PRESENT

Ms Cate Faehrmann (Chair)

Ms Abigail Boyd
The Hon. Mark Buttigieg
The Hon. Catherine Cusack
The Hon. Ben Franklin
The Hon. Shayne Mallard
The Hon. Mark Pearson (Deputy Chair)
The Hon. Adam Searle
The Hon. Penny Sharpe

The CHAIR: Welcome to this hearing for the Portfolio Committee No. 7 inquiry into the provisions of the Environmental Planning and Assessment Amendment (Territorial Limits) Bill 2019. Before I commence I would like to acknowledge the Gadigal people, who are the traditional custodians of this land. I would also like to pay respect to the elders past and present and extend that respect to other Aboriginal people present. We will hear today from environmental and health organisations; the Construction, Forestry, Maritime, Mining and Energy Union; the NSW Minerals Council; and the New South Wales Government.

Before we commence I will make some brief comments about the procedures for today's hearing. Today's hearing is open to the public and is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, while members of the media may film or record committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I also remind media representatives that you must take responsibility for what you publish about the Committee's proceedings.

It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of their evidence at the hearing, so I urge witnesses to be careful about any comments you may make to the media or to others after you complete your evidence, as such comments would not be protected by parliamentary privilege if another person decided to take an action for defamation. The guidelines for the broadcast of proceedings are available from the secretariat. All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. Due to the short time frame of this inquiry the Committee has previously resolved that no questions on notice shall be taken during this hearing.

I remind everyone here today that committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. I therefore request that witnesses focus on the issues raised by the inquiry terms of reference and avoid naming individuals unnecessarily. Witnesses are advised that any messages should be delivered to committee members through the committee staff. To aid the audibility of this hearing the room is fitted with induction loops compatible with hearing aid systems that have telecoil receivers. In addition several seats have been reserved near the loudspeakers for persons in the public gallery who have hearing difficulties. Finally, could everyone please turn their mobile phones to silent for the duration of the hearing.

GEORGINA WOODS, NSW Coordinator, Lock the Gate Alliance, affirmed and examined

CHRIS GAMBIAN, Chief Executive, Nature Conservation Council of NSW, sworn and examined

LIZ HADJIA, Climate and Energy Campaigner, Nature Conservation Council, affirmed and examined

The CHAIR: I welcome our first witnesses. Would any or all of you like to begin by making a short opening statement?

Mr GAMBIAN: Thanks, Chair, and thanks to the Committee for the opportunity to present today. In the spring of 1938 members of the Waterside Workers' Federation refused to load pig iron onto the SS *Dalfram*. The *Dalfram* was bound for imperial Japan, which had just started its conquest against China and seized every Chinese seaport. The view of the waterside workers and the Australian Council of Trade Unions was that Japanese militarism was a threat to the world in general and to Australia in particular. That view was not shared by the Australian Government. Australia had a contract to sell 300,000 tonnes of pig iron to Japan and the Attorney-General of the day, Robert Menzies—hereafter Pig Iron Bob—did not welcome the involvement of the trade union movement in Australian foreign policy.

In 2020 in New South Wales I think there may be a great many people in business and government who would not welcome the involvement of the Independent Planning Commission [IPC] or any other planning body in climate and energy policy, which is likely where the motivation of this bill lies. But the waterside workers were proved right and the extremely modest actions in recent times of planning bodies after duly reflecting on the consequences of greenhouse gas emissions certain developments will cause, though uncomfortable for some, are overwhelmingly in the public interest. Precisely no-one in this Parliament would object to a law that prevented a development whose purpose was to supply Iran or North Korea with uranium. No-one would argue that it is beyond the purview of the State Parliament to regulate some aspect of the New South Wales economy that is contributing to an egregious international security problem. Climate change is the most egregious international security problem the world has ever known.

In December I travelled to far western New South Wales and saw firsthand the effects of drought on the landscape, the agricultural sector and their communities. Towns are running out of water, farms are being destocked and communities are dying. Since September the worst fires we have ever known have had catastrophic consequences up and down the New South Wales coast. I will not bother too much with the debate about whether or not these events are a consequence of climate change. No serious commentator, politician, businessperson, trade unionist or advocate disagrees that climate change is here and its predicted impact is unfolding, but in March we run the risk that the first opportunity this Parliament has to respond to climate change since the fires will be to make it easier to emit greenhouse pollution and easier to deny the consequences of that pollution.

The question the overwhelming majority of people in New South Wales will be asking is whether this Parliament stands in lock step with the Federal Government and its program of climate denial or whether this Parliament is capable of coming to terms with this serious, complex and critically urgent issue. In 11 years the provision which is set to be removed in this bill has directly resulted in the refusal of zero developments, contributed to the refusal of one development and posed a completely achievable condition on one more. The bill as it stands serves two purposes.

First, it makes it easier for any climate deniers lurking in the State's planning assessment system to ignore the consequences of greenhouse gas pollution caused by certain developments. That is to say removing the requirement to consider scope 3 emissions does not necessarily prevent a diligent commissioner or judge from considering scope 3 emissions but the bill proposed means consent authorities do not have to consider the full climate impacts of coal and gas projects. When deciding whether to approve new coalmines and new coal seam gas projects the IPC weighs up the costs and benefits of the project in light of government policies and laws. This change will reduce the weight that is given to downstream greenhouse pollution even though that very pollution has just delivered us a horror bushfire season. It is a climate denier's dream.

Second, it prohibits the ability of a person who has independently considered all of the pertinent facts of the application from making a decision based on his or her best judgement. By removing the ability of a planning body to impose a condition relating to scope 3 emissions on a development application the planning system's ability to make judgements in the public interest is eroded. Indeed we might reasonably ask why the condition that New South Wales only sell coal to those countries which are part of the international framework for carbon reduction and which have a genuine plan to limit global heating to less than two degrees is not in fact a blanket rule. Perhaps the Committee might reflect on such a provision.

We hear a lot of rhetoric from those who do not accept climate science that even if climate change were real Australia's carbon footprint is so relatively low compared to other larger countries that our actions would be futile. But consider this: Scope 3 emissions from New South Wales account for more emissions than the entire United Kingdom and more than the entire country of France. A thoughtful approach to new mining developments is easily one of the most meaningful actions this State can take on the global climate crisis. The prosperity of this State and of the nation was built on the hard work and sacrifice of coalminers. Whole towns and regions in New South Wales currently depend on coalmining for their livelihoods. To say any less would be to do our fellow citizens a grave disservice. But the international trade in coal is in decline. Soon it is going to be in freefall.

If we owe our children and generations to come responsibility for climate change, we owe it to this generation of mining communities to be honest about the long-term prospects of their sector. Instead of this bill I look forward to the day that this Parliament is considering mechanisms for the economic renewal of our coal communities. I look forward to supporting a jobs guarantee and investments in new sectors for our modern economy. The New South Wales Government and the Parliament have a responsibility to the people of New South Wales for serious climate change and action on that climate change. Take that step today and bin this bill.

The CHAIR: Thank you. Ms Woods, do you have an opening statement?

Ms WOODS: Yes. I begin by thanking the Committee for taking the trouble to examine this bill, which was introduced without any prior public consultation. It is great to have the opportunity to have some input into it because it is something that affects everybody in New South Wales. There is a fair bit of detail in our submission about the history of this provision in the mining State Environmental Planning Policy. It has been part of the State Environmental Planning Policy since it was created in 2007, following the judgement of the NSW Land and Environment Court in the Anvil Hill case, so it is of long standing. I emphasise that because there is a lot of overstatement about the effect of having a provision such as this in our regulation. Clearly, a great number of mining projects have been approved since 2007 and this regulation that this bill seeks to change and remove has not been leading to a shutdown of the New South Wales coal industry.

Following the judgement in the Gloucester Resources case in February last year, there was a change in the way that the Independent Planning Commission was applying this regulation. We were pleased to see that, moving on from a simple cursory examination of the downstream greenhouse gas emissions of coal projects, the commission was taking the time and consideration to explore how this longstanding regulation applied in the age that we are now in, where there is a great deal of urgency about climate change and it is affecting people in New South Wales. Even after the Rocky Hill judgement coalmining projects continued to be approved while this regulations was in place. I think it is important to note that the Bylong and Rocky Hill mines would both have been refused, regardless of their contribution to climate change because of the intense local environmental impacts they would have had on water and local communities.

What is really at issue here is that the bill confuses where there is currently clarity in the law and overreaches to solve quite a simple problem. Last year in August the Independent Planning Commission approved a mine called United Wambo in the Hunter and imposed on that mine a condition that the coal exported from United Wambo must only be sold to the countries that are parties to the Paris Agreement or taking commensurate mitigation action. There was a great deal of disquiet about that—about the practicality of implementing it by the proponent of the mine and about the jurisdictional confusion it created between New South Wales and the Commonwealth over the Commonwealth trade prerogative. If that is a problem that needs to be solved by legislation then the Parliament should turn its mind to that, but the proposed legislation in schedule 1 does a great deal more than that and will harm the people of New South Wales by blinding planning authorities and constraining them from being able to impose conditions that account for the contribution that our coal export industry makes to climate change.

I will not continue going on much longer, but today we table some additional information so that the Committee is aware of the implications of this bill because there are 11 coalmining projects and one gas field currently in the planning system that will likely be determined by the commission or another planning authority this year or next. We did some analysis of those projects and calculated the potential downstream greenhouse gas emissions of those projects, which comes to 2.1 gigatonnes. That is far from an insignificant amount of greenhouse gas emissions to be adding to the atmosphere at a time when we are up against the edge of being able to achieve the temperature goals of the Paris Agreement, to which New South Wales has pledged its support. Before we go on I make one remark about the issue of accounting because there is a lot of mischievous commentary about this issue and whether, by allowing planning authorities to consider the climate change consequences of coalmines, they are impinging on some international regime of accounting.

Nothing could be further from the truth. The international carbon accounting regime is in place to ensure that countries are properly accounting for their greenhouse emissions and that there is no overlap in that accounting and that all greenhouse emissions are accounted for. The Australian Government has responsibility for doing that—it does not concern the New South Wales Government. What is at issue is not about accounting, it is simply about ensuring that planning authorities are not blindfolded and are able to see the full range, scale, depth and complexity of the environmental consequences of the decisions that they are making. That is a longstanding provision of New South Wales planning laws that I hope this Parliament will not wind back.

The CHAIR: Thank you, Ms Woods. Ms Hadjia, do you have an opening statement as well?

Ms HADJIA: Yes. Thank you for the opportunity to speak at this Committee. Global greenhouse gas emissions are a local problem and it is absurd to me that we sit here today differentiating between climate change impacts between scope 1, scope 2 and scope 3 emissions. Every new emission source is impacting on New South Wales' nature and communities and every new emission source should be subject to interrogation under New South Wales planning and environment laws. Scientists say that extreme weather events and the impacts of climate change will become even more severe unless we take significant action to reduce our greenhouse gas emissions. Yet we are debating a bill that attempts to weaken environmental planning laws that consider the impacts of these greenhouse gas emissions.

If we want to avoid dangerous climate change, all of Australia's coal-fired power stations need to close by 2030 and 90 per cent of our coal reserves must remain unburnt. This is supported by many independent studies. This bill undermines our chance to do this. It will essentially make it easier to get new fossil fuel projects approved. We have all just lived through a climate-fuelled disaster; this is not the time to take a step backwards. The public is watching and there is a lot of anger. Based on current polling the public believes that the Government is already not doing enough to tackle climate change. This bill would only worsen public opinion. This is the first opportunity this Parliament has to respond to climate change since the bushfires have happened. I urge the Committee to show that New South Wales can be a leader on climate change and oppose this bill.

The Hon. ADAM SEARLE: The stated problem that the Government says it is addressing in this bill is issues to do with assessment of coalmines that have arisen in these recent decisions. As I read the bill, it is not limited to dealing with extractive industries—mining or petroleum. The amendments would apply to the totality of the planning and assessment system. Is that your understanding of the legislation?

Ms WOODS: I would say that is true of schedule 1. Schedule 2 is specific to mining and petroleum. Schedule 1 applies to all projects under the Environmental Planning and Assessment Act.

The Hon. ADAM SEARLE: The legislation also refers to so-called impacts—it does not seem to be limited to environmental impacts. It also does not seem to be limited to the issue of greenhouse gases. "Impacts" is a pretty broad term. Is that one of the areas where you are of the opinion that the legislation appears to go significantly further than the Minister's stated concern in his second reading speech?

Ms WOODS: Yes. I think that schedule 1 is far broader than the intent expressed by the Minister in his second reading speech and the Government's stated intent. It would simply make it unlawful to impose a condition for the purpose of achieving anything related to impacts occurring outside of Australia because of things that happen here or impacts occurring here because of activities outside of Australia. That would certainly not limit it to climate change. On the subject of climate change, if the planning authority, for example, wanted a proponent to put money into an adaptation fund or ensure that they were buying greenhouse offsets, I think that that would be difficult for them to do if schedule 1 went through as it is.

The Hon. ADAM SEARLE: As I said, the Government's concerns are, as I understand it, saying, "the environmental assessments of these issues should be dealing with environmental assessments inside New South Wales. We should not be concerned with what environmental or other impacts occur outside Australia." Again, as I read it, all of proposed section 4.17A (b) seems to prohibit planning authorities taking into account environmental impacts that actually occur inside New South Wales. For example, if the planning authority was concerned about a particular proposal—the resource of that, wherever it is consumed or whatever you want to determine—it would prohibit the planning and assessment authority from considering what impacts there might be for New South Wales in terms of greenhouse gases or climate change. Is that one of your concerns?

Ms WOODS: Yes, absolutely. Somebody remarked yesterday that there are not territorial limits to climate change and the impacts of greenhouse gases, even though the greenhouse gases might be produced somewhere else, they do have an environmental effect here.

The Hon. ADAM SEARLE: So even if the Parliament was to say, "Look, it is none of our business what happens overseas; that is a matter for somebody else. We are only concerned with New South Wales and what happens here and environmental impacts here", this legislation actually waters down and prevents conditions being imposed that deal with impacts in New South Wales. Is that correct?

Ms WOODS: Yes.

Mr GAMBIAN: Yes, absolutely.

The Hon. ADAM SEARLE: The other concern is—and I know this terminology has not always been used correctly; there are always these different types of the emissions, scope 1, scope 2, scope 3, and I think the Deputy Premier and the Government said, "We do not really want the planning bodies to be concerned with scope 3 emissions or emissions that occur overseas"—some of the submissions we have received indicate that the legislation in its current form would prevent the assessment bodies here in New South Wales taking into account scope 1 and 2 emissions. Is that a correct understanding of the bill?

Ms WOODS: I would say, again, that would be true of schedule 1 for conditioning. Schedule 2 is specifically about downstream emissions, but I would consider that it would include downstream emissions created in New South Wales. So coalmines that supply coal to Mount Piper or Bayswater, the scope 3 emissions from those power stations also would be captured by schedule 2. But schedule 1, I believe, would eliminate consideration of any greenhouse contribution.

The Hon. ADAM SEARLE: You mentioned a number of the decisions that have been matters of public controversy that I think gave rise to this legislation. In relation to, particularly, the Wambo mine and the condition that was imposed about only selling the resource to countries that signed the Paris accord, or some similar arrangement, it is the case that the NSW Climate Change Policy Framework specifically endorses the climate framework in the Paris accord, does it not?

Ms WOODS: The NSW Climate Change Policy Framework supports the Paris Climate Agreement, yes.

The Hon. ADAM SEARLE: So there is nothing inconsistent between that condition and NSW State Government policy?

Ms WOODS: I do not think so. In fact, prior to the controversy we obtained documents under the Government Information (Public Access) Act saying the planning department was not terribly concerned about that either. I think it is consistent with New South Wales policy that the State environmental planning policy for mining says before granting approval for a project, planning authorities should consider imposing conditions to ensure that greenhouse gas emissions are reduced to the greatest extent practicable. I believe it was that provision of policy that enabled that condition to be imposed.

The Hon. ADAM SEARLE: That condition was not imposed on the proponent; it was sought by the proponent, was it not?

Ms WOODS: I do not think so, no.

The Hon. ADAM SEARLE: That was not appealed in any way or sought to be challenged?

Ms WOODS: No, I do not believe so. But the condition allowed the planning secretary to vary the condition and give the proponent the opportunity to not have to comply with it in any case. I know that the proponent of that mine was very unhappy about that condition and they claimed that it would be very difficult for them to comply with it because they used their party coal traders rather than direct selling to customers in other countries. But the condition was worded in such a way that they were not going to have to go through with it in any case if the planning secretary decided that it was not practicable or necessary.

The Hon. ADAM SEARLE: So it was a best endeavours clause rather than a sort of a blanket—

Ms WOODS: Yes.

The Hon. ADAM SEARLE: One of the concerns raised, not by your groups but by some of the other submissions we have received, was that the legislation before the House does not deliver with clarity on the Government's stated aim of simply excluding consideration of scope 3 emissions or emissions from overseas, and because of the inability to develop conditions of consent that meet various concerns it might actually raise the prospect that because the assessment authority cannot deal with certain environmental concerns or impacts that a proposal might have, it might increase the chances of resource applications being refused consent. Do you have any view about that aspect of the legislation?

Ms WOODS: I would not think that it would increase the likelihood that they would be refused consent. I do not think it is going to change the likelihood that they would be granted or refused consent. I just think that the consent decisions will be made with a robust and comprehensive understanding of the implications of those decisions, and that is really our key point. I do think that this bill is creating a lot of confusion where currently there is a great deal of clarity because, as you say, it is not expressly prohibiting in its language the consideration of downstream emissions, and we hope very much that it is not made worse by doing so. So I think it would potentially open up new confusion and legal challenges. The planning commission is being taken to court right now because it had the temerity to consider climate change one of the consequences of the Bylong coal project.

I think that there are people in this discussion who think that you can just sort of deal with this and make a law and we do not have to worry about it anymore. Really, climate change is something that is going to continue imposing itself on lawmakers and planning authorities and the general populace increasingly over the next decades. By passing this law we are really only going to hamper New South Wales' ability to have a clear-eyed and comprehensive understanding of its path in this matter.

The Hon. PENNY SHARPE: Thanks very much for coming in today. I want to go back to the very basics. I find that most of the discussion in relation to this becomes very technical very quickly and I just want to try to extract from your submissions the key issues. The first thing I wanted to ask you to comment on is the fact that the current arrangements in relation to looking at greenhouse gases have been in our laws since 2007 and that has not had any impact in relation to the approval of mines in New South Wales. Is that correct?

Ms WOODS: It has been in the State environmental planning policy since it was created in March 2007. It has not been responsible solely for the refusal of any coalmines. It was cited as a factor in the refusal of the Rocky Hill mine by the Land and Environment Court, and the Bylong mine by the Independent Planning Commission.

The Hon. PENNY SHARPE: They are very recent ones as well.

Ms WOODS: Last year.

The Hon. PENNY SHARPE: It is fair to say that the court has started to look at this more closely as the issues of climate change have become more urgent.

Ms WOODS: Absolutely, but it has not had a dramatic inhibiting effect on the mining industry by any means.

The Hon. PENNY SHARPE: The rejection of Rocky Hill and Bylong were mostly on local factors. Could you just put on the record what those issues were? Because the reason that these were knocked off is because of the consideration of greenhouse gases, and that is not the main reason why they were rejected by the commission.

Ms WOODS: Yes. Gloucester, Groundswell and the Environmental Defenders Office [EDO] will be speaking later and they will be able to speak to that in more detail. But essentially for Gloucester it was incapability with the surrounding land use and the social impacts on the village of Gloucester. The Rocky Hill mine was going to be very, very close to the populated areas of Gloucester. In Bylong primarily it was about the dramatic effect it would have on groundwater. It is a highly constrained productive aquifer, a very productive agricultural landscape, and it would have had quite intense groundwater impacts as well as impacts on the heritage and amenity of the Bylong Valley.

The Hon. PENNY SHARPE: What this bill is trying to do is remove the requirement to report specifically on scope 3 emissions. Is that correct?

Ms WOODS: No.

The Hon. PENNY SHARPE: Explain that. I know it is quite complex.

Ms WOODS: If we are talking about schedule 2 I suppose that would be the effect, but schedule 2 is specifically about decision-making. So when making a decision about whether to grant consent to a mine or a gas field, currently a consent authority is required to consider the greenhouse emissions including downstream emissions. So yes, I suppose they would stop assessing it. But it is a list of matters that the consent authority turns their mind to when they are deciding.

The Hon. PENNY SHARPE: But they would have to specifically ask for that to be considered if this is changed, or is it automatically provided?

Ms WOODS: That is a very good question. I think your question really speaks to the confusion that this bill creates because it really would not be clear. The planning department and the proponents have not really been in the practice of providing very fulsome and robust information about the climate change consequences of projects. Now, since the Rocky Hill judgement, they are more in the practice of doing that. The proponents have been providing more substantial information to contextualise their projects in climate change globally.

I think it is useful in the list that I provided—for example, the Glendale expansion—that Glencore specified in that assessment material that that project is consistent with the Intergovernmental Panel on Climate Change [IPCC] A2 emission scenario. That is really useful information for us to have because that scenario will lead to global warming of more than three degrees. We know that the Glendale coalmine expansion is part of a world and is anticipated to be part of a future that means we miss achieving the Paris temperature goals. New South Wales, as has been mentioned, has committed itself to the Paris climate agreement so that mine is really at odds with New South Wales's commitment to Paris.

Ms ABIGAIL BOYD: Just picking up on that last point, effectively the main impact of the Rocky Hill and Bylong decisions has been a request for more information and provision of better information from proponents. Is that the point there?

Ms WOODS: Yes. We have noticed a marked improvement in, I suppose, the quality of the information being provided and turned over when considering the climate change contribution of coal projects.

Ms ABIGAIL BOYD: In our submission you refer to the departmental briefing note that was given for a meeting with the Minerals Council on 12 June that was obtained through the Government Information (Private Access) Act [GIPAA]. They comment on that as well, don't they, by saying something along the lines of that is not really being much of a burden on proponents and that is a quite positive development. Can you talk a little bit about that briefing note?

Ms WOODS: Yes. We obtained via the Government Information (Private Access) Act a briefing note that the department prepared for a meeting of the planning Minister with the Minerals Council in June last year. At that time the department was briefing the Minister that a change like this—that this bill would do—was not necessary and would in fact confuse the law. They were of the view that it was not a good idea, essentially.

I suppose, you know, there is nothing in the regulation that says that a mine like the Glendale continuation project, which is currently in the system, should be refused consent because it assumes that we are going to breach the temperature goals of the Paris Agreement. There is no clear direction about that. It is simply a matter of: Is this something that a consent authority to should turn its mind to? The planning department clearly at that time thought that that was an important and useful thing for the planning authorities to be able to do.

Ms ABIGAIL BOYD: The submission we received from the Minerals Council echoed also your submission. It primarily relies on this accounting of emissions as the argument for why this bill should be enacted. Did the department briefing note talk about the accounting argument from the Minerals Council?

Ms WOODS: Yes. The department briefing note took pretty much the same view that I do, which is that this really is not a matter of accounting—which is a matter for the United Nations Framework Convention on Climate Change and the parties to it, which is the Australian Government—and this is more about the sort of merits assessment of a particular project, and that accounting is not really part of the issue.

Ms ABIGAIL BOYD: So that argument was rejected by the department.

Ms WOODS: Yes.

Ms ABIGAIL BOYD: On the unintended consequences of the schedule 1 drafting and the way it is drafted not just covering, for example, conditions to do with climate or with omissions: What other kind of conditions would be prohibited?

Ms WOODS: As I say in the submission—I do not know whether Mr Gambian has more to add on this—but, for example, in New South Wales there is going to be a terrible cost for many communities in responding to the disasters of climate change, the bushfires we are still experiencing, so we need substantial funds to be able to mobilise, to make those responses and also to invest in different infrastructure to prepare for flooding and to provide for a water-constrained environment. For example, it could be a condition that, yes, you can have your coalmine but you need to put a bunch of money into a New South Wales climate adaptation fund. I think that a condition like that would be valuable because it would mean that the industry is, in line with the polluter pays principle, actually meeting the cost of the environmental effects of their projects, but I do not think it would be allowable under schedule 1.

Ms ABIGAIL BOYD: Would that have retrospective impact on the conditions on existing licenses?

Ms WOODS: Well, I do have a quibble with the Minister's second reading speech in this regard. He said it was not retrospective but I believe the language of schedule 1 makes it clear that it renders ineffective any existing condition that does what the schedule prohibits.

Ms ABIGAIL BOYD: So there is huge uncertainty than?

Ms WOODS: I am not across all of the conditions so I do not know how many would be affected. It would certainly affect the United Wambo condition that we have already discussed. I do not know if there are any others. The EDO might have light to shed on that.

The Hon. MARK PEARSON: Ms Woods, in your submission you refer to the Minister having met with the Mineral Council's representatives and that the Government at that time did not support removing downstream emissions from planning law. Can you tell me when that was?

Ms WOODS: It was 12 June last year.

The Hon. MARK PEARSON: In the judgements of the courts or tribunals about the applications, they cite several factors for why permits were not given to continue with it. Was it ever indicated by the court how much of a factor climate warming or global warming was in that determination?

Ms WOODS: Not in a quantitative way. The language of the Rocky Hill judgement—again, the EDO will correct me when they come on if I am wrong—but the language of the Rock Hill judgement really sort of says that where there is a mind that has local, regional and relevant environmental impacts in New South Wales and is also contributing to climate change, that contribution to climate change is an additional reason why it ought to be refused. Rocky Hill is quite a small mine and so it is not something that has had a quantum attached to it.

The Hon. MARK PEARSON: But if we put our feet in the shoes of the mining industry, would you not think that that would spark a fear that this is the beginning of a tribunal or a court considering climate warming, global warming, as a factor and that that factor may become more significant and is therefore a serious threat to the mining industry?

Ms WOODS: I think it certainly sparked fear and it is evident from the GIPAA that we obtained that the Minerals Council was lobbying the Government throughout the year to do very much what this legislation is doing. I think the mining industry has yet to mature to the point where it itself is willing to be candid about the role that our coal export industry in fuelling climate change. It is very unfortunate for New South Wales that the response of the mining industry is simply to push, to ignore and to deny and to not take account of these things rather than just to be up front and admit that our coal export industry is playing a role in this. It behoves all of us to come to terms with that and somehow respond in a way that somehow allows coalmining communities to continue to thrive but puts the public interest and the interests of other people in New South Wales into the mix.

The Hon. MARK PEARSON: Mr Gambian, you referred to the issue of it being a security problem internationally here in relation to global warming. Can you expand on what you mean by security?

Mr GAMBIAN: Sure. I think that, as the impacts of climate change are felt around the world, as we have seen here in New South Wales in recent times, some of the things that we have previously taken for granted are just no longer going to be true. So shortages in water, shortages in food, shortages in habitable land, all of these things are going to put pressure on the security arrangements of the world. As we head towards the two degrees warming and beyond, these problems are going to get more and more severe. If in the past wars were fought over oil or wars were fought over land, in future there is a very serious risk the wars will be fought over sheer survival.

The Hon. MARK PEARSON: Good point. It is often said, federally and in New South Wales, "We are so minuscule in our contribution to this issue, what is the fuss all about? Why do we not just get on with our business and leave the big countries like China, India and the United States to deal with the problem?" You gave evidence stating that the coal products from Australia are actually greater than from the United Kingdom and France and their contribution. Can you just expand on that a little?

Mr GAMBIAN: Yes, that is right. We are talking about scope 3 emissions in this inquiry and scope 3 is really what is in question in this bill. That in itself demands attention to what we are actually talking about with the size of the emissions under scope 3. In New South Wales we are talking about emissions greater than the total emissions of the United Kingdom and the total emissions of France. Yes, whilst Australia is a smallish country and has a relatively small carbon footprint compared to perhaps an enormous country like China, the United States or India, we have to understand these things in their full terms, because there is no get-out-of-jail-free card just

because the country that you live in happens to be relatively small. We are talking about the product of this country, and the product of this country is having a massive impact on global emissions.

The Hon. MARK PEARSON: Is your evidence that Australia is actually a major contributor?

Mr GAMBIAN: Well, I think it is in terms of scope 3. I agree with what many people say, which is that we should all work within an international framework to reduce emissions according to your own local judgement. I do not think it is necessarily for Australia or Australians to tell other countries how they should reduce their emissions if we are part of an international agreement to reduce emissions. We have a diplomatic role to play to ensure that that agreement is robust. We have an international role to play in terms of making sure that the targets that are set are going to make a meaningful difference. But, essentially, we need to focus on domestic emissions. However, when you are introducing a piece of legislation into the New South Wales Parliament that specifically addresses scope 3, then we have to have an honest conversation about that as well.

The Hon. MARK PEARSON: Can I ask for clarification? Are there middle operators when coal passes through the chain? Can a company give absolute clarity as to where the coal will end up and be burned if that coal is being sold through various agencies along the line and before it gets to the final destination to be used? Can the mine tell the court or the inquiry exactly where that coal is going to go—the trail?

Mr GAMBIAN: Ms Woods probably knows a lot more about this than I do, but let me say this: I think that it is not unreasonable for somebody who is digging coal out of the ground in the current context to be very aware of where that coal is going. The issue of supply chain is an issue in a lot of industries and it absolutely should be an issue with the fossil fuels industry.

Ms WOODS: Yes, many of the mines do sell directly to power station operators in other countries, but there are third-party trading entities to which they also sell coal, who then also market it around. So there is a mix of different approaches.

The Hon. CATHERINE CUSACK: Mr Gambian, did I hear you correctly in terms of suggesting that New South Wales should only export to countries that are signatories to the Paris Agreement?

Mr GAMBIAN: Well, yes, you did. I think that if we are going to be responsible participants in the global community, when there is a very comprehensive global agreement that relates to carbon emissions, I do not think it is unreasonable for us to give some due attention to the sorts of countries and the sorts of operators that we are selling coal to. If we accept that there is a finite number of things that we can do to reduce overall global emissions, surely a responsible thing that we could do is say, "We are only going to do business with people who are part of the global effort." We hear politicians and commentators saying all of the time, "It is not our problem, it is the problem of other countries. They have to reduce their emissions." Well, the one thing that we can contribute to that is to say, "We will be choosy about who we sell coal to."

The Hon. CATHERINE CUSACK: Can I just unpack that a little bit in terms of how that would actually work? The United States has withdrawn from the Paris Agreement, so is it your position that we should ban coal exports to the United States?

Mr GAMBIAN: My understanding is that the United States has given notice to withdraw and let's hope that does not actually end up happening.

The Hon. CATHERINE CUSACK: But in the event that that goes ahead, the New South Wales Government should ban or somehow stop coal from being exported to the United States. Is that how you would work this?

Mr GAMBIAN: I do not claim to have enough insight into how these systems and mechanisms could work, and I am not proposing that I do. But, yes, I think that should be cause for everybody in the world to have a serious think about the kind of business we are prepared to do with the United States.

The Hon. CATHERINE CUSACK: Are there other types of experts that you would like to New South Wales Government to ban to the United States?

Mr GAMBIAN: Experts or exports?

The Hon. CATHERINE CUSACK: Yes. For example, live animals, because they have greenhouse gas effects as well.

Mr GAMBIAN: I am sorry, I am just not prepared to give evidence on that today.

The Hon. CATHERINE CUSACK: Well, you have spoken about the export of iron ore to Japan, so that was obviously not an environmental impact. That was in relation to trade or foreign policy. I guess what I am saying is that your submission appears not to restrict the responsibility of the State Government to being accountable for the impacts of exports in terms of the environment, but you seem to be suggesting there should be a broad responsibility for the impact of our exports, including non-environmental impacts.

Mr GAMBIAN: In my opening remarks what I was presenting you with was an analogous situation.

The Hon. CATHERINE CUSACK: Yes, which was not an environmental—

Mr GAMBIAN: It was not an environmental example, that is true.

The Hon. CATHERINE CUSACK: So you generally believe that, really, the State Government should be accountable for all the impacts of its exports?

Mr GAMBIAN: No, that is not my submission at all. No, that is not my submission. What I was giving you was an analogous situation where, contrary to the view of the Australian Government, some people made a choice to attempt to influence an event that was taking place overseas. I think in the current context of climate change it is not unreasonable, because the argument has been made many times through this debate that it is beyond the scope of this Parliament to try to influence what happens overseas. I disagree with that view. Now, you can broaden that out and try to make the suggestion preposterous by saying that the Parliament somehow has a responsibility for everything that happens around the world. That is absolutely not my submission and it would be a misrepresentation of me and my submission to do that. However, I think that when the Parliament is having a debate about scope 3 emissions and changing an existing piece of legislation—not a proposed, new provision, but one that has existed since 2007—I do not think it is at all unreasonable to talk about what the New South Wales Parliament can or cannot do.

The Hon. CATHERINE CUSACK: Your opening submission talked about the export of iron ore to Japan. Do you believe the New South Wales Government should have legislated to stop that at the time?

Mr GAMBIAN: I do not claim are not historical knowledge of the events. Please, do not diminish the discussion that is going on today by making this about my opening analogy.

The Hon. CATHERINE CUSACK: They were the very first words in your opening statement.

The Hon. ADAM SEARLE: Chair, I think this particular aspect of the witness's opening statement has been well canvassed. It does not go to the subject matter of the legislation or any terms of the bill.

The CHAIR: I am assuming that there is a point of order being taken, Mr Searle?

The Hon. ADAM SEARLE: Yes.

The Hon. SHAYNE MALLARD: To the point of order: The witness introduced this material in his submission and, with respect to Mr Searle, the Hon. Catherine Cusack can explore the relevance of that analogy.

The Hon. ADAM SEARLE: She has, and the witness has answered.

The Hon. CATHERINE CUSACK: Can I add that he has volunteered it as an analogy for why the State Government should be accountable for downstream emissions in other countries. Given that that was the analogy that he introduced, I am trying to understand what he believes the State Government should have done.

The CHAIR: I will allow the line of questioning to continue, but in a respectful manner that does not badger the witness.

Mr GAMBIAN: The witness does not feel particularly badgered.

The Hon. CATHERINE CUSACK: He is a good, strong fellow.

The Hon. SHAYNE MALLARD: Other members may badger you more.

The Hon. CATHERINE CUSACK: In terms of how we would audit these downstream emissions, a country like India had a plan—and we know it is expanding its emissions—to use black coal from New South Wales as an alternative to brown coal and therefore was reducing the emissions at that power station. Would that be counted as an offset to New South Wales, or do all of the emissions get counted as New South Wales emissions?

Mr GAMBIAN: By your eye contact, I suggest you are asking me that question.

The Hon. CATHERINE CUSACK: Correct, yes.

Mr GAMBIAN: But I will defer to Ms Woods in a second. Can I just say, in general, we are not talking about a prospective piece of new regulation. We are talking about a law that has existed since March 2007. The Committee might inquire as to how that currently might happen from the IPC and other bodies. We are not talking about some sort of new, radical, leftist green agenda to impose new conditions on coalmines. We are talking about a piece of law that currently exists and has existed for many years, which says that in the face of an egregious problem relating to climate change, our planning system is going to have consideration to those issues when making its decisions. It has done that three times now in 11 years or 12 years.

The Hon. CATHERINE CUSACK: I am attempting to unpack your evidence, which is that New South Wales needs to take greater responsibilities for the impacts.

The Hon. MARK PEARSON: On that question, could I ask a single question?

The CHAIR: Order! It is the Government's time so it is up to the Government members.

The Hon. CATHERINE CUSACK: You will have another opportunity. Just how that works in a practical way and whether—

Mr GAMBIAN: With respect, Ms Cusack, I am not asking the New South Wales Government, through legislation, to take more responsibility than it currently takes. What I am asking the New South Wales Government to do is to not water down the responsibility that it has already accepted.

The Hon. CATHERINE CUSACK: Given your statements, I am sure that you are aware that the New South Wales Government is not a signatory to the Paris Agreement because it is not a nation; it is a State. But it does support the Paris Agreement.

The Hon. PENNY SHARPE: Theoretically.

The Hon. SHAYNE MALLARD: We did not run interference on your evidence.

The Hon. PENNY SHARPE: I apologise.

The Hon. CATHERINE CUSACK: It has been asserted many times in the discussion.. I am trying to understand how, in a practical sense—Ms Woods, you might be willing to answer these questions. You seem to have a comment to make.

Ms WOODS: I would be very happy to offer some clarification, because there are different regimes that we are talking about and they get mixed up together. This current statute, as it stands and as it has stood for 12 years, does not require New South Wales to account for the emissions that take place in other countries as a result of the coal that we export. That is not required. If this legislation is withdrawn, as I hope it is, New South Wales will not have to be accounting for emissions in other countries as a result of our export coal. The question is really about whether the emissions and the climate change that results from those emissions from our export coal are a relevant consideration. It is not about this coal and that coal and how many emissions per year; it is simply are they relevant? Are they a relevant environmental consequence that ought to be on the minds of people who are making that decision?

I draw your attention to my submission, to ease the Government's concern that this is going to be imposing new restrictions and problems for mining companies. The Rix's Creek mine had an expansion approved in November, I think, last year. The IPC—this is subsequent to Rocky Hill, subsequent to Bylong, subsequent to United Wambo, but before this legislation was introduced. Sorry, it was 12 October. The commission did not impose a condition on Rix's Creek about where the coal ought to be sold. Unlike the one months earlier, they did not do that. Instead, they said in its statement of reasons:

> … market forces are likely to lead buyers in those countries with the most significant emissions reductions targets to seek coal products which best meet their requirements and minimise associated emissions in order to achieve the relevant domestic emissions reduction targets.

They were saying, "We do not need to impose a condition on this mine in this case because we believe that the purchasers of coal have their targets and they will be purchasing coal that best allows them to undertake their domestic mitigation activities." That decision is the most recent one we have under the current rules, which are the rules that are in question today. I just want to ease your minds that there is not any sort of burdensome accounting regime being imposed, nor is there actually an impediment to mine expansions being imposed. This mine was approved just three or four months ago and Bloomfield Rix's Creek is free to sell that coal wherever it likes, safe in the knowledge that the countries that will be burning that coal are responsible themselves for their mitigation activities.

The Hon. SHAYNE MALLARD: Similar to the Hon. Penny Sharpe, I want to pull back to some of the basics. It appears to me that there is a confusion occurring about whether this bill actually prohibits the consideration of greenhouse gas emissions from any development application in the State, whether that is 1, 2 or 3. The bill does not prohibit the consideration. Do you want to comment on that? Do you understand that?

Mr GAMBIAN: Yes, I understand that. No, I do not believe it does prohibit consideration. What it does is remove the requirement.

The Hon. SHAYNE MALLARD: It has been the case since 2007 that that is a consideration. What the bill does is remove the ability to put conditions that are extraterritorial—i.e. conditions that apply overseas—on development consents. This is the first time that has happened. Is that correct?

Ms WOODS: It is the first time I am aware of it happening. I do not pretend to have an encyclopaedic knowledge.

The Hon. SHAYNE MALLARD: I believe it is.

Ms WOODS: I will just clarify, though, if I could, that there are two schedules to the bill. Schedule 1 is about conditions. Schedule 2 is about consents for mines and gas fields. What it will do is remove the requirement to include downstream emissions in those decisions.

The Hon. SHAYNE MALLARD: It does not remove a consent authority to take into consideration scope 1, 2 or 3 emissions in their decision to grant consent. If they are bad enough, they can actually refuse consent.

Ms WOODS: It removes the requirement that they should include downstream emissions in their decision, yes. It removes the requirement. It does not expressly prohibit them from making the choice to do that. I would put to you that during the course of last year the planning commission was left to make its own decisions about what the implications of the Rocky Hill judgement were for the projects that come before it for determination, with no guidance from the Government about how New South Wales is going to grapple with this very complex and difficult area of policy. Then the pressure was mounted by the minerals council. What I am saying is that I do not believe that, if this bill passes, the planning commission will continue to consider the downstream greenhouse gas emissions of coalmining projects in its decisions. I believe that is the intent of the legislation; otherwise, why would you bother introducing it?

The Hon. SHAYNE MALLARD: That is your opinion. It is not the Government's view. But the fact is that the consent authorities will still be able to consider scope 1, 2 or 3 emissions. If they are bad enough, for want of a better technical term, they can refuse consent. The issue here is not allowing conditions that cannot be enforced in an overseas jurisdiction. Mr Gambian opened up his presentation with a colourful flourish about—

The Hon. PENNY SHARPE: Is there a question coming on this?

The CHAIR: Government members have run out of time.

The Hon. SHAYNE MALLARD: Is anyone aware of any other approvals in New South Wales on exports that are applied condition to consent that apply overseas? Has anyone got any knowledge of that?

Ms WOODS: I am afraid I do not know.

The Hon. SHAYNE MALLARD: What about Federal?

The CHAIR: Okay—

The Hon. SHAYNE MALLARD: This is an important point, Madam Chair. Federally?

The Hon. PENNY SHARPE: Your time is up.

The CHAIR: Order! We do have other witnesses coming, so perhaps you can continue that line of questioning to the next witnesses. We have to keep on track because we have a lot of business to get through. Thank you very much for appearing and for your work. There were no questions on notice because we are not taking any this time.

(The witnesses withdrew.)

BEV SMILES, Secretary, Wollar Progress Association, affirmed and examined

ELAINE JOHNSON, Principal Solicitor, Environmental Defenders Office, affirmed and examined

RACHEL WALMSLEY, Policy and Law Reform Director, Environmental Defenders Office, affirmed and examined

JULIE LYFORD, Chairperson, Groundswell Gloucester, affirmed and examined

DIANNE MONTAGUE, Member, Groundswell Gloucester, affirmed and examined

The CHAIR: I am sure some of you would like to begin with an opening statement. Ms Walmsley?

Ms WALMSLEY: Thank you. For those of you who may not know us, the Environmental Defenders Office is a community legal centre specialising in public interest environmental law. We do not support this bill. The bill is a retrograde step that will undermine the ability of decision-makers to properly assess and regulate the climate impacts of fossil fuel projects on the environment and local communities in New South Wales. Further, as drafted the bill is overreaching and ambiguous and will have significant implications for planning decisions and the protection of the environment in New South Wales. In particular, we are concerned that the bill seeks to unnecessarily and inappropriately restrict the consideration and regulation of scope 3 emissions.

As drafted the proposed section 4.17A is overreaching and ambiguous. For example, it is not limited to extractive industries or fossil fuel developments. It does not define the term "impacts" and it applies to impacts that are occurring now in New South Wales. As drafted, that section is likely to have unintended consequences, including with respect to the regulation of scope 1 and scope 2 greenhouse emissions, with respect to potential carbon offsetting and other impact mitigation measures and the regulation of other environmental impacts in New South Wales. We are of the view that the proposed change to the mining State environmental planning policy [SEPP] is unwarranted.

We are also concerned about the context within which this bill has been introduced. Put bluntly, the community has perceived this bill as special legislation coinciding with lobbying from vested industry interests with no community consultation and designed to overcome recent decisions against coalmine companies. This is not an appropriate way to implement sensible science-based laws in New South Wales. We are particularly concerned that some of the arguments being put forward by industry—including in relation to the consideration of scope 3 emissions and potential double counting of scope 3 emissions—are misconstrued. It is not logical to differentiate between impacts based on the distinction between scope 1, scope 2 and scope 3 emissions. Once released into the atmosphere the carbon dioxide becomes both a local and a global problem and clearly creates impacts in New South Wales.

This bill is part of a broader reform package from Government aimed at preventing the regulation of scope 3 emissions in local mining approvals. The other components include a review of the Independent Planning Commission, which, as announced on Saturday, has proposals to potentially limit the ability of the IPC to independently and comprehensively assess projects, and also new Government policy and guidelines on greenhouse gas emissions which we have not yet seen. Special legislation to overcome individual project decisions is the opposite of what is needed by Parliament in terms of planning law reform. This Parliament should be considering amendments to ensure planning laws are climate ready, to ensure decision-makers fully consider all relevant local impacts that we have experienced over the summer.

As our clients will tell you today, the people of New South Wales are already experiencing the impacts of climate change, including extreme drought and bushfires, air quality, extreme weather. New South Wales should be implementing sensible laws based on science that plan for a just and rapid transition to low carbon economies that ensure the proper long-term protection of the people and environment of New South Wales, including a safe climate for current and future generations. The bill fails to provide certainty to New South Wales communities already suffering from the impacts of climate change and leaves both industry and communities vulnerable to a chaotic and unplanned transition away from fossil fuel consumption and use. This is the wrong response at the wrong time. This sinister tweaking of the law is the exact opposite of the climate law reform that we need right now. This bill is a kick in the shins for all those communities that are currently suffering the impacts of bushfire and drought. In contrast I would like to table two EDO reports that set out reforms that we need to make New South Wales climate laws ready. I have copies of the reports for the members here today. Our overarching recommendation is the bill should not proceed.

The CHAIR: Who else would like to make a short opening statement?

Ms LYFORD: Thank you for the opportunity. I would like to say, I am not a lawyer. I have lived in the Gloucester community for 34 years. I am a previous local government councillor, mayor, chair of Hunter councils and a nurse. What we are saying today is for the Government to be considering such a backward step as the territorial limits bill at this critical time in the history of our climate emergency is not only irresponsible, it is also culpable, and we are absolutely insulted as a community that is bearing the brunt of the climate emergency and climate change weather-related incidents across the world. I would just like to briefly give you an insight into that.

Climate fuelled bushfires have decimated our mid-coast communities. A mid-coast resident—who was actually on the front page of *The Sydney Morning Herald* yesterday—could not get out of her house before the fire engulfed it, and she died. That is happening across the country. The village of Bobin was burnt to the ground. In total 130 houses in our region were destroyed by fire; 300 outbuildings and resultant infrastructure in those communities were destroyed. Rural Fire Service volunteers are exhausted from months of fire, not just weeks, months. MidCoast Council declared a climate emergency—which we have with us—late last year and is working on climate policy development. It seems that councils and local government are far ahead of this State Government.

For the first time in recorded history our famous Barrington Tops and Manning River systems ran dry—untold deaths of platypus, fish and eels. The life of the river ecology disappeared. Every day from 27 December to 24 January we were on level 4 water restrictions with the township of 3,000 people and those in surrounds relying on water tankers from the Tea Gardens aquifer, 1½ hours drive away, rolling in every hour, day and night, so we had water to drink and two-minute showers. It was the only water. It was 100 per cent of the water supply of the town's needs. That is unconscionable and I do not understand why the State Government is not picking up its act on all of these issues.

The mighty Manning River stopped flowing on 22 October–this is a huge river system—for 90 days—another climate change impact—and only started to reflow on 24 January. The water issues have been critical. This is a National Party electorate, both State and Federal, a very conservative area, and people are very angry. Taree is supplied from the Bootawa Dam, tens of thousands of people, which was at a critical low. A desalination plant is now under construction in Nabiac, 10 to 15 years earlier than proposed. The economic costs of the lack of water are shown as impacts on tourism; 40 per cent to 50 per cent loss in visitation and affected businesses that rely on that water. Huge costs will be incurred with the overall damage and it will be a long time before local environments rehabilitate back to normal with so many special and sensitive ecosystems damaged so badly.

Let us look at what is happening in our local media. Our Wingham brush is dying. Our flying fox population along the east coast of Australia is decimated. The trees have gone. This is an iconic place. People are devastated by what is happening. Let us have a look at *The Newcastle Herald*, from the Barrington to the beach. Do not think that communities are not understanding what this bill means, and they are outraged by it. We know what is happening with climate change. I could go on but what I find so insulting and so wilfully ignorant that it leaves me white hot with anger, is that this Government and some within its departments are so easily bullied by the fossil fuel lobby to even think of introducing an anti-climate bill while Australia is burning. This bill's proponents have no credibility, no integrity in the eyes of our communities where people have lost their lives and homes. There it is in *The Monthly*, every magazine you pick up. I am going to state it quite clearly: The proponents of this bill are climate criminals. They will be held to account one day by our communities if this goes though. We are all experiencing the direct consequences of Australia's and the global community's inaction on climate change. Abolish this bill.

The CHAIR: Thank you, Ms Lyford.

The Hon. BEN FRANKLIN: Chair, could you please draw the audience's attention to—

The CHAIR: I understand—

The Hon. BEN FRANKLIN: I understand too, but there are rules.

The CHAIR: Excuse me, Mr Franklin. Members of the audience, I understand why you applauded after Ms Lyford's very good speech. However, the rules require those in the public gallery to refrain from commenting or reacting audibly to witnesses' testimony.

Ms SMILES: Thank you for the opportunity to address this hearing. As stated in our submission before you, Wollar Progress Association strongly opposes the changes to current planning law as proposed in the territorial limits bill. It is critical that the full, cumulative impact of coalmining in New South Wales is rigorously assessed and taken into consideration. I note that the New South Wales Government had promised

a cumulative impact assessment guideline for State significant development. That seems to have fallen off the planning radar.

My small community of Wollar is experiencing a double whammy from the impacts of coalmining in our district. The loss of community members due to property acquisition by Peabody Energy has caused our local RFS brigade to close down and amalgamate with a large brigade based 35 kilometres from Wollar village. This has increased our risk during fire and road accident emergencies. We have had two section 44 bushfires on our doorstep in the last three years. One in February 2017 that threatened the village and one starting earlier in the fire season in November 2019 that burnt up to my property boundary. The few remaining local RFS volunteers have worked up to 16-hour shifts on the firegrounds day after day. This season's bushfires across New South Wales have caused incalculable costs and suffering, and are the result of increasing global carbon emissions.

We are also suffering from the intense drought of record with high evaporation rates and declining water supply. The Wilpinjong mine is also experiencing water shortage, as are many other mining operations across Central West New South Wales. Meanwhile, the three large adjacent coalmining operations in our area have been approved to significantly draw down groundwater sources and base flows to the Goulburn River. I have lived on the river for 30 years and have never seen it at such deplorably low levels. Responsible corporate citizens would support the need to consider all greenhouse gas emissions of projects, and a responsible government would not change the planning law at the behest of one industry that is causing harm to lives and livelihoods of all Australians.

Ms MONTAGUE: I was a leader for 10 years in the campaign against Gloucester Resources Ltd [GRL] building a coalmine in the Gloucester Valley. I was vice-president of Groundswell Gloucester during the Rocky Hill coal project campaign and court case. The climate in Gloucester is very different now from when GRL submitted its second environment impact statement for the Rocky Hill mine. Gloucester is on level four water restrictions, the rivers have run dry and the air was polluted with smoke for months—for absolutely months we could not see and breathe. Depression is everywhere. Everybody you talk to is depressed because of what is happening. Yet, this bill, instead of acknowledging the dramatic changes Australia is facing with climate change, suggests that Australia has very little to do with the changing climate. Instead, it suggests that Australia should not accept any responsibility for our coal burnt overseas—"That is their problem".

The further excuse is that we are simply too small a country to have any influence with world affairs. There are many instances when Australia has taken responsibility for influencing international events. Regional and rural communities are crying out for leadership in this—crying out for leadership! We are the ones who bear the burden of the social impacts of coal and coal seam gas mining. Now we, the regional and rural communities, are the ones bearing the burden of the impacts of the heating planet through drought and fires. The analogy that Australia is like the canary in the coalfield when it comes to the impacts of climate change has become all too real. The canary is screeching but the mining companies have closed their ears, blocked them. I hope you do not block yours. The impacts are disproportionate to our claim that Australia is a small emitter. We are bearing these costs. Rural communities bear these costs all the time—not Sydney, not the cities. We are the ones who have to live with it day in and day out.

This bill goes against all evidence and expectation that Australia and New South Wales have a moral obligation to the people of New South Wales, Australia and the international community—a moral obligation. Did we learn about that—moral?

The Hon. ADAM SEARLE: This is a question to the EDO. You indicated that, on your analysis, because the bill is not restricted to mining or gas or to the extractive industries, it may have unintended consequences. Have you turned your mind to what unintended consequences the bill might have for the rest of the planning system?

Ms WALMSLEY: Yes, we have. I draw the Committee's attention to our submission. For example, on page 12 of our submission we talk about the problem that in this bill the word "impacts" is not defined. We talk about the problem relating to regulation of other impacts. One example we give there is in relation to migratory birds—for example, conditions addressing impacts on migratory birds. So a proposed development may have an impact on a key migratory bird breeding site in New South Wales, which would then have flow-on impacts on global bird numbers and the health of populations outside Australia.

The impacts of the New South Wales development on that species would also occur outside Australia. However, in such a scenario consent conditions relating to the management of those impacts on the migratory bird species would now be prohibited if this bill went ahead. Similarly in the paragraph above that we give the example

of a coastal development. If conditions relate to sea level rise or coping with the climate impact on a coastal development, perhaps those conditions would now be under a question mark if this bill goes ahead.

The Hon. ADAM SEARLE: Just on that—on my reading, the bill appears to prevent a consent authority from considering environmental impacts in New South Wales from greenhouse gas emissions caused by the proposed mine due to any burning of that coal overseas. So it is still an impact in New South Wales but the bill seems to prohibit consideration of that in terms of the imposition of conditions.

Ms WALMSLEY: Yes. I think that is one of the most disturbing aspects of the bill. Impacts in New South Wales have to be considered by decision-makers. That is the very purpose of the assessment process under our New South Wales planning laws. As you have heard from our clients, these impacts are very real and very devastating. Any step in law to blindfold decision-makers or to preclude proper consideration of these impacts is against the intent of the Environmental Planning and Assessment Act.

The Hon. ADAM SEARLE: In relation to the particular cases that are of concern to the Government—the Rocky Hill case and the Wambo mine case—are you aware of other cases that involve those issues, where those issues were the sole reason or even the main reason for the refusal?

Ms WALMSLEY: I think it is important, in terms of getting the context of this bill, as you have heard from previous witnesses the provision in the mining SEPP has been there since 2007 and has not actually stopped mines until very recently. Ms Smiles can tell you about the Wollar case. The provision has existed and it has not resulted in the refusal of new coal projects. Similarly the Deputy Premier has made comments saying we need this bill to get the law back to what it was before Rocky Hill. Let's be really clear: The law has not changed. These considerations have been in the law since 2007 and longer in the Environmental Planning and Assessment Act.

What has changed is our understanding of climate change and the relevant impacts that decision-makers need to take into account now. Bearing in mind the science, the impacts on water, social amenity, health, air quality—all those really relevant impacts—are influencing decisions now, so it is not a matter of needing this bill to correct any law. If you look at the Rocky Hill decision, that was a very orthodox application of legal precedence and what is in the law already. There is no radical change of law. That law just very helpfully set out what needs to be considered in this day and age under climate change.

The Hon. ADAM SEARLE: Sure. But it is the case that the Rocky Hill decision was not made on the basis of climate change or scope 3 emissions. As you say, it was a pretty straightforward application of existing legal principles. The chief judge did make comments about those other matters but it does not appear to me to have been the linchpin of the decision. Secondly, this bill does not seek to stop a refusal of a proposal on those bases anyway—is that correct?

Ms WALMSLEY: That is correct. As Ms Lyford can tell you, in Rocky Hill the social impacts and whole other considerations were part of that decision.

The Hon. PENNY SHARPE: Mr Searle asked some of my questions. I am very interested in the regulation of other environmental impacts. Australia is the signatory to a range of international agreements, not least of which is the Paris Agreement, but things like the international agreement on migratory birds, for example. Has the EDO given much more thought to other international instruments that could be affected through the way in which this bill is currently drafted?

Ms WALMSLEY: Yes. Another example could potentially be a Ramsar listed wetland in New South Wales—a condition to ameliorate impacts on a Ramsar wetland. That has also got an international dimension but does this bill mean that a decision-maker should not be considering that or should not be conditioning in relation to that? I think this bill throws up a lot of uncertainty. You are right—there are other implications that need to be considered and should not be prevented by this bill.

The Hon. PENNY SHARPE: I am not sure if you were here during the last lot of questioning but some members of the Committee were asking questions around the role of New South Wales in relation to international agreements. Can you take the Committee through the way in which that operates? With the Paris Agreement, for example, New South Wales is not specifically a signatory to the Paris Agreement. However, all the policy documents et cetera that the Government puts out say that we are and we fit within the Commonwealth and are signed up through our own agreements with the Commonwealth through our Federation. Can you take us through the way that that operates?

Ms WALMSLEY: Yes. I think it is a really important point to flesh out because there is an international system—international agreements that we have signed up to at the national level that the State Government has also endorsed. That is a very important context. But one of the problems with this bill is that some of the language

in the Paris Agreement is being conflated with what the planning Act in New South Wales is meant to do. The focus of the planning Act and what we should be talking about today is the proper consideration of impacts that are happening in New South Wales.

The international context is relevant but what our planning laws should be doing is making sure that decision-makers consider all relevant impacts and can make conditions on all relevant impacts. To give an example of some of the confusion we are getting in relation to the international scheme, so taking the issue of double counting that has come up, the briefing note that was referred to by a previous witness—this was obtained under the Government Information (Public Access) Act and it is a briefing note from the department to the Minister in relation to the NSW Minerals Council [NSWMC]. I think it would be helpful for the Committee if I just refer to a part of it on double counting that illustrates this issue. I understand the department will be appearing later and can talk to this. On the issue of double counting the department's response is:

> The NSWMC has conflated obligations under international and national GHG accounting frameworks with the assessment of impacts associated with projects under the EP&A Act.
>
> Further, NSWMC appears to have misunderstood how the term 'double counting' is applied to GHG emissions under the Paris Agreement. 'Double counting' refers to two or more entities claiming the same emission reduction to comply with their mitigation targets. The rules set out under the Paris Agreement with respect to 'double counting' seek to avoid the risk of counting mitigation benefits twice as this could jeopardise the integrity of the Paris Agreement. The Paris Agreement does not refer to double counting of scope 3 emissions in the context that the NSWMC has put forward.

So I think we need to be really clear there is an international accounting framework that is relevant but the purpose of our planning laws is to make sure we properly consider the impacts that are happening in New South Wales.

The Hon. MARK BUTTIGIEG: In response to my colleague the Hon. Adam Searle's question you outlined something which I thought was interesting. We have a pre-existing legislative framework which has been in place since 2007 which explicitly required the consent authority to consider things like scope 3 emissions. That has been there and it is still there. The fact that the approval of the two latest mines has tweaked the Government's interest because in fact those considerations were activated and that has highlighted that there is an issue in the Government's mind and that is why we now have this proposed legislation to try to thwart that, is that in essence what we are looking at here?

Ms WALMSLEY: That is the evolution. That clause has been there since 2007. It has not prevented the approval of new coal in the intervening years. The thing that has changed is the application of the science and our understanding of the impacts, and that is highly relevant.

The Hon. MARK BUTTIGIEG: As the awareness of global change has become more heightened and our ability to measure that has become more accurate, the ability to apply that legislative framework has become easier and therefore it is now an issue in the Government's mind, which is why we are—

Ms WALMSLEY: Absolutely. And the important thing to remember also in the Rocky Hill decision scientific expert evidence was presented about the carbon budget and many things. That evidence was not disputed. The company did not appeal on that evidence. That is accepted evidence. And there is further detail on the implications for current projects that draws out some of the issues around that expert evidence. These are exactly the kinds of things that should be considered under our planning laws.

The CHAIR: Ms Walmsley, you talked about the Environmental Planning and Assessment Act and said that this potentially goes against the intent of that Act. Could you explain further to the Committee what you mean by that and the specific objectives as to why this goes against the intent?

Ms WALMSLEY: As you would know, the Environmental Planning and Assessment Act includes requirements to consider environmental impacts, to consider the public interest, to consider ecologically sustainable development—and those have been in the Act for a long time. The Rocky Hill judgement draws out those requirements. There are also requirements to consider, for instance, in Gloucester, the local environment plan, relevant government policies—there are a whole lot of requirements set out in the Act that are relevant for consideration by decision-makers. What this bill is attempting to do is to hive off a specific consideration—schedule 2 of this bill is attempting to limit consideration in regard to downstream emissions. Arguably that is trying to inhibit decision-makers from turning their minds to what is a relevant consideration. The whole system in the planning Act—it used to be 79C—we have had in the Act requirements to consider a range of issues for a really long time and that is a fundamentally important part of the Act.

Any effort to try and limit decision-makers in what they can consider is a bit sinister. That is why I refer to this as a sinister tweaking of the law, because we should not be constraining what decision-makers can consider

based on political lobbying, or for one specific industry. As Ms Smiles, Ms Lyford and Ms Montague have said, these impacts are affecting everyone across New South Wales. It is not just about one industry.

The Hon. MARK PEARSON: In your submission you said that the Environmental Planning and Assessment Act 1979 actually does not define "impact". Is that correct?

Ms WALMSLEY: We are saying the bill does not. The problem is—

The Hon. MARK PEARSON: No, the Act, I think.

Ms WALMSLEY: Which page are you looking at, please?

The Hon. MARK PEARSON: I am sorry; I have not actually got your full submission. You say proposed section 4.17A of the environment planning Act does not actually define the term "impacts".

Ms WALMSLEY: No, that is the bill.

The Hon. MARK PEARSON: That is the bill? Okay.

Ms WALMSLEY: Yes. We are saying that the proposed—

The Hon. MARK PEARSON: Are you concerned about that fact, that it does not define—

Ms WALMSLEY: Yes.

The Hon. MARK PEARSON: Why?

Ms WALMSLEY: The Minister's second reading speech and the media put out about this bill were saying this is specifically to deal with extraterritorial impacts and it was a very precise, very technical amendment. However, when you read the bill itself it does not actually say that we are only talking about those very specific impacts. The way the bill is drafted, it could potentially cover broader impacts of broader developments under the Act. So it has been said this bill is necessary to address a certain technicality, but the bill as it is drafted is broader than just addressing that technicality.

The Hon. MARK PEARSON: Just a more general question to all of you: Considering what many of you have been through and what many people who you have seen and communities you have seen have been through since, say, September last year, to then learn that the government of the day is intending to not make sure that it is incumbent upon any development application that the consideration of climate change impact must be considered, but to weaken that—how did it actually hit you people? How did you actually receive that information, both yourselves and from what your general view is from the communities around, when you learnt that this weakening was going to occur in a very relevant Act directly related to what was occurring in terms of climate?

Ms LYFORD: I think one of the things that really needs to be understood—especially in the last few months, but in the last few years—with regards to climate change and the impacts on our communities is that we are very, very well connected now. I am part of a social impacts working group looking at the impacts of mine and coal seam gas developments across New South Wales. Climate change is now so evident to everybody. I think what is most distressing and insulting is that it is in every newspaper, it is in every article, it is on our screens, *Four Corners*. People we know have perished in the fires. Yet we have this bill, because of the Minerals Council bullying the Government—that is the way we view it.

For 10 to 15 years we have been dealing with the behaviour of the mining lobby and the fossil fuel lobby and I can tell you it is pretty cutthroat. We have also been dealing with the, I will say, lies and the complicit behaviour of departments and State Government politicians who have hid behind the might of the Minerals Council. We can see it for what it is. I can tell you, the anger out there—and we are talking about conservative communities—is absolutely profound. If you think that what we have done so far, our protests and everything where we have 80 year olds being arrested in the streets—this is only going to grow. If somebody says to me, "You're just being emotional", I dare them to.

This is absolutely unconscionable behaviour. This bill is making everybody actually say, "What? Are you not actually seeing what we are seeing? Are you not experiencing what we are experiencing?" When your river system runs dry and you have no water at all then we know something is wrong. Our farmers know that something is wrong. Our dairy farmers are going to go out of business. We might get a rain event now, but our dairy farmers will go out of business within 12 months. This is so serious. I cannot believe anybody—politically or from industry or in a departmental position—could even think that this bill is a good idea.

Ms SMILES: People in my area are just astounded, really, by the amount of bias that we have seen over a number of years in regard to decision-making and the influence of the industry. A lot of the arguments are

around jobs, when the industry is really ramping up automation. There are no secure jobs in the mining industry. Anyone who lives in a community with mining people knows they do not have any sense of security in their jobs. The argument about the royalties and benefits—the royalties from the coal industry in New South Wales last year were far outweighed by the cost of just this year's fire season. None of the arguments are stacking up anymore. People are really sick of being trodden over. The anger and disgust are palpable. What else is this Government going to roll over with? People are just astounded.

Ms ABIGAIL BOYD: Ms Walmsley, if we could go back to your comment in relation to schedule 2, I know my colleague the Hon. Shayne Mallard was asking about the impact of removing those words in parentheses and kind of arguing that although it is felt necessary to delete those words that it would not have any real impact. Can you talk about what the real impact would be of those words being removed from the Act?

Ms WALMSLEY: It is proposed to omit the words "including downstream emissions" from clause 14.2. The considering of scope 1, 2, and 3 emissions could still be argued under the public interest, under ecologically sustainable development [ESD], under environmental impact under the Act—it can still be considered. The effect of actually removing that clause—first of all, it sends a signal saying that this Government does not want to take any responsibility in policy for downstream emissions. Secondly, it would actually have a regulatory chill effect on decision-makers such as the IPC, because they are told they cannot do conditions on this topic, so are they allowed to consider it anymore? It has been suggested that they may be up for legal action from mining companies if they do consider it when they are not even allowed to condition it anymore. It will have multiple effects. Taking the word out—we have been told it is just a technical amendment, that this does not make a difference. However, it sends a signal. It will create regulatory chill.

The other thing is that the departmental memo actually says this bill is not necessary; this could be done by doing better guidelines for industry, better guidelines on how all emissions should be considered—so scope 1, 2 and 3. The department could produce guidelines. That would help industry know what they had to address in the material they put forward before decision-makers. Guidelines could be done. These things could still be properly assessed. There is no need for this bill. But what this bill does—and specifically what schedule 2 does—is send a really, really dangerous message. It might be placatory to the mining industry, but to the rest of the community it is actually insulting.

Ms ABIGAIL BOYD: I note that in that briefing the department also says that it would create more uncertainty.

Ms WALMSLEY: It absolutely creates uncertainty, because decision-makers are unsure of their scope. You have got the Act saying one thing and then this bill trying to undermine that.

Ms ABIGAIL BOYD: You very helpfully put forward an amendment designed to limit the restriction on conditions to just the United Wambo type of condition. Can you talk us through the reasons for that and I guess what the impact of that condition was and why it is an issue in terms of international trade?

Ms WALMSLEY: First and foremost, our submission does include possible amendments but we do not support the bill. Our overarching recommendation is to pull this bill. The reason we set out the amendments—and the track change amendment that we did—was to show that there are problems with this bill. First of all, to limit it to actually the type of industries that it is purported to address, so just make it about mining and gas not every other impact. We make recommendations to delete the paragraph, precluding consideration of impacts in New South Wales, and just to tighten up the wording. But having said that, our preference is to just pull the bill not to further tinker with this.

Ms ABIGAIL BOYD: Thank you. If I could just ask Ms Lyford, you mentioned that in your area it is a relatively conservative area and that the MidCoast Council, which I assume is also a relatively conservative counsel, has declared a climate emergency?

Ms LYFORD: Yes.

Ms ABIGAIL BOYD: Can you talk us through what the impact of that climate emergency is and what the community's response was to that?

Ms LYFORD: So this was late last year and it is fantastic. David West, who is the Mayor of MidCoast Council, was actually on the ABC's *The Drum* because the fires that have been burning for months in our area—and have created so much damage and distress—it finally came home to roost with the councillors that this was the climate emergency. So they did declare that and that was published on 30 October 2019. Since then the council is now in the process of looking at climate policy and they will be, firstly, working within house to look at their policies but they will be going to the community for input into those climate policies.

So it is a work in progress I guess but it is really heartening that our local council, and I have lost count of the number of councils across Australia who have declared the climate emergency and once again having been in local government for over 17 years prior, that councils are taking the lead on this. Local government, who are the closest to their constituents, closest to the community, are saying this is a climate emergency and we need to actually move on this. So it is very heartening for us and very distressing to see the State Government—yet again—bow to the fossil fuel lobby, the Minerals Council, and try and take that away.

Ms SMILES: Upper Hunter Shire Council also moved and passed a motion for climate emergency so it really is right in the heart of things, people understanding what is going on.

The CHAIR: Thank you. Just before we go to questions from the Government, Ms Montague do you have those documents you would like to table here.

Ms MONTAGUE: Yes. Sorry I do not know the procedure very well obviously.

The CHAIR: That is okay.

Ms MONTAGUE: This is about the climate emergency and also some newspaper articles and also what I said in the beginning.

The CHAIR: That is fine, thank you.

The Hon. BEN FRANKLIN: My question is to Ms Walmsley. I am interested in your views about the contention that the Government has made on a number of occasions about its power to regulate international trade with potential constitutional prohibition for that. Obviously you have a substantial legal background and I am interested in your view on how that can be reconciled with the other position?

Ms WALMSLEY: As you see from our recommendation number two, if there are amendments that are warranted due to concern about regulation of international trade, these provisions do not address that effectively. At the EDO we are specialist environmental planning lawyers—

The Hon. BEN FRANKLIN: I understand that.

Ms WALMSLEY: We are not trade lawyers and when we spoke to the Minister and also in his second reading speech, he said he has sought advice from the Commonwealth on the implications of trade but had not yet received that advice and that advice is not public. We are saying reject this bill and explore those options if there are international trade implications. Get advice on that. This bill does not effectively address those issues. This is a knee-jerk reaction. The international trade element of this is a bit of a furphy. It is a distraction. Calling this bill a territorial limits bill makes it sound like just a technicality. We need to bring this back to the proper role of the Planning Act and that is to properly assess impacts that are happening in New South Wales.

The Hon. BEN FRANKLIN: But if the legislation were to go through that does not prohibit consideration being given to those impacts?

Ms WALMSLEY: Yes. As I said before, you can still consider those impacts but this will have a regulatory chilling effect on decision-makers being able to put relevant conditions and it could influence their decisions on a range of impacts. This is a poorly crafted tool and the trade elements are just a distraction.

Ms JOHNSON: If I could just add to that from the EDO in relation to the proposed 4.17A. That specific amendment, we understand, is proposed to deal with the type of situation that arose in the United Wambo approval where the export management plan was required as a condition of consent. That condition has not been appealed so it is useful to note that there was no legal challenge to the validity of that condition.

The Hon. SHAYNE MALLARD: Ms Walmsley, I take it that you are a planning lawyer?

Ms WALMSLEY: An environmental lawyer.

The Hon. SHAYNE MALLARD: Okay, thank you. Since you referred to the Minister's second reading speech, are you familiar with his reference to the Newbury planning principles?

Ms WALMSLEY: Yes.

The Hon. SHAYNE MALLARD: Do you want to explain what they are for the Committee?

Ms JOHNSON: I will just find the second reading speech. Have you got it there handy?

The Hon. SHAYNE MALLARD: I am happy to fill it in so that we all know. They are the principles that underpin our planning system, out of the United Kingdom and they have been brought into the New South

Wales Environmental Planning Act. The Minister has argued in his second reading speech that this prohibition on extraterritorial conditions is aligned with the Newbury case. The Newbury Principles are that the conditions must be in place for planning purposes, they must be fair and reasonable, relate to development and they must be reasonable. Also subsequent case law was that they must be enforceable. I think the fourth one is an issue that the Minister raised himself in that speech. That you cannot enforce these conditions upon the applicant. Do you want to comment on that?

Ms WALMSLEY: As Ms Johnson said, the condition in United Wambo has not been legally challenged. In terms of the enforceability, if we look at the practical terms, that is just ensuring that United Wambo sells its coal to a country that is a party to the Paris Agreement or has equivalent measures in place. The earlier witnesses spoke about how there might be third parties involved in that transaction but on the face of it, there are a lot of countries that are signatories to the Paris Agreement so it would be possible to sell their coal to such a country. Can we also say at the outset that EDO thinks that condition is insufficient to achieve the goals of the Paris Agreement and what we need to do. We are not necessarily fans of that condition but we do support the right of the IPC to impose conditions such as these.

The Hon. SHAYNE MALLARD: You are actually saying it is impractical.

Ms WALMSLEY: We are saying it will not achieve what needs to be done. There has been all this fuss about that particular condition. We are sitting here today debating a technical bill about that particular condition that has not been legally challenged when there are so many greater issues and impacts happening right now. It is surreal to be debating the technicalities of that one condition with all the other things that are happening. With all the climate reforms that we need to be doing right now, this is a distraction frankly.

The Hon. SHAYNE MALLARD: Let me get into the role of the State in terms of regulating our exporters and what they do overseas. There are no—and correct me if I am wrong—conditions being put upon New South Wales exports in terms of activities in other countries by New South Wales planning authorities?

Ms WALMSLEY: I am not aware of any but there may be some.

The Hon. SHAYNE MALLARD: I believe there are not but there are Federal ones. Federal ones on live animal exports, Federal ones on weapons production—there have been conditions put on that. Federal ones around uranium when we did export uranium in terms of only for power. So the Government contends that it is a Federal jurisdiction to deal with issues of bilateral or treaty arrangement—as is Paris—in regards to the Commonwealth of Australia. Would you like to respond to that?

Ms WALMSLEY: Yes, I would like to refer you to the decision in the Rocky Hill case where the Chief Justice said that climate change requires actions at the international, the national and the local level. We cannot ignore local impacts of local projects and just say, "Not our problem, this is an international issue," or, "This is an issue for the Federal Government." The judgement clearly sets that out.

The Hon. SHAYNE MALLARD: This proposal does not ignore the impact. It does not say that the assessors cannot take into account level one, two or three emissions. I know that is contentious, it was a contention from the previous witness, but the Government's position is that they are still assessable issues. If it is an issue of threshold, the application can be refused. One and two can be conditioned. Three—overseas emissions—cannot be.

Ms WALMSLEY: The way this bill is drafted, it could actually limit the kinds of conditions also put on one and two. This is a poorly drafted bill.

The Hon. SHAYNE MALLARD: That is an opinion.

The CHAIR: That is why they are here.

The Hon. SHAYNE MALLARD: It is not a fact, though.

The Hon. CATHERINE CUSACK: I am just trying to understand, following on from Labor questions concerning scope 1 and scope 2 impacts, in particular Ms Sharpe's question relating to Ramsar-listed wetlands. Can you explain to me how impacts on those wetlands will not be considered if this bill goes ahead? That is just an enormous concept for me to take in. It certainly has not been flagged to me before.

Ms WALMSLEY: The impacts can still and should still be considered. The ability to make conditions in relation to those impacts may now be under a cloud.

The Hon. CATHERINE CUSACK: Can you point that out in the bill? When you say "may be under a cloud", just in terms of clarity in the bill, could you be more specific?

Ms WALMSLEY: Yes. For example, clause 4.17A. If you go to (2) (b), if you made a condition, it says "… the impacts occurring in the State as a result of any development carried out outside Australia or external Territory." Climate change impacts from release of greenhouse gases externally, from Australian coal, if you were trying to ameliorate impacts locally on a wetland, or make a condition because a wetland is climate impact, that kind of condition may be invalid under this bill.

The Hon. CATHERINE CUSACK: A Ramsar-listed wetland is under an international treaty.

Ms WALMSLEY: Yes.

The Hon. CATHERINE CUSACK: It has its protection in New South Wales law, as you know.

Ms WALMSLEY: Yes.

The Hon. CATHERINE CUSACK: The wetland is physically located in New South Wales. It is part of our sovereign territory. I do not understand how ripping up a wetland is analogous to someone burning coal in a country overseas, in terms of being captured by these technical provisions.

Ms WALMSLEY: Perhaps a better example is the migratory bird example. There are environmental issues where you have impacts locally but, obviously, cross-jurisdictional boundaries. We need to have laws that can consider the local impacts. The international context is relevant, but the international context is not an excuse for local planning laws to not consider things fulsomely.

The Hon. CATHERINE CUSACK: So the international treaties and agreements are signed by the national Government, implemented under State policy, but the thing I cannot get my head around is the land is physically in New South Wales. Even though the birds are migrating, the damage is to the wetland. The purpose of protecting the wetland is the best interest of the migratory birds, obviously. But it is not about the purpose, is it? It is about the impact on the wetland, which is in New South Wales.

Ms WALMSLEY: Sorry, what is your question?

The Hon. CATHERINE CUSACK: I do not understand how that international treaty relates—because the migratory birds are protected under an international treaty, are you saying that, because there is a treaty relating to those birds, therefore it gets nullified by this bill?

Ms WALMSLEY: No.

The Hon. CATHERINE CUSACK: Because there are local protections in place anyway, is my point.

Ms WALMSLEY: I am saying that using an international dimension is a distraction from what should be considered under planning laws. The conversation about the national Government and international agreements and, as I was saying before, the discussion about the international accounting frameworks under Paris, that is a separate system. It is separate but related. What the planning laws of New South Wales need to do is fulsomely consider impacts that are happening here. Yes, there may be international elements to those, but we cannot have laws that hinder proper consideration of impacts that are being felt here.

The Hon. CATHERINE CUSACK: Maybe there is a better way to ask my question. This is a genuine effort to get clarity. To me, a Ramsar-listed wetland that is impacted is in that scope 1 and 2. Am I understanding this correctly? Please feel free to jump in.

The Hon. ADAM SEARLE: Can I just ask a question, which might assist?

The Hon. CATHERINE CUSACK: Yes.

The Hon. ADAM SEARLE: Ms Walmsley, if we look at the bill, let us suppose there is a proposed coalmine or a gas field and let us suppose that the evidence for the planning authority is that when you dig up this resource, wherever it is burned it has a certain greenhouse gas impact and wherever in the world it is consumed that greenhouse gas impact would have a negative impact on the Ramsar-listed wetland. If the planning authority wants to impose a condition that tries to mitigate the damage to the wetland in New South Wales on account of the burning of that resource anywhere in the world—

The Hon. CATHERINE CUSACK: Yes.

The Hon. ADAM SEARLE: —that would be invalid under this legislation and the impact here in New South Wales would not be able to be then acted upon by the consent authority. The consent authority could decide to reject the application, but it could not try to mitigate the impact here in New South Wales by the development and imposition of a condition.

Ms WALMSLEY: Yes.

The Hon. SHAYNE MALLARD: That is contentious. That is the contention.

The Hon. ADAM SEARLE: No, that is my question to her as a legal expert.

Ms WALMSLEY: Yes, that is correct.

The Hon. CATHERINE CUSACK: So just to understand this, are you saying scope 3 emissions are classed 1 and 2 as well, but they all come back?

Ms WALMSLEY: Perhaps it will help if I refer you to page 12 of our submission. We give a concrete example of what we are concerned about. Condition A7 for the Port Waratah Coal Services Terminal 4 Project provides:

> Construction to create the compensatory migratory shorebird habitat at the Tomago Offset Site must be completed prior to the commencement of construction at the Site which would impact on migratory shorebird habitat and in accordance with an approved Biodiversity Offset Package required …

That is an example of a condition that is made about migratory birds that has an international element, but under this bill that kind of condition may not be able to be imposed any more. That is just a concrete example of what we are talking about: the unintended consequences of this poorly drafted bill. That is my expert opinion.

The CHAIR: Thank you very much. That is the end of this session.

(The witnesses withdrew.)

(Short adjournment)

KATHLEEN WILD, Member, Doctors for the Environment, affirmed and examined

JOHN VAN DER KALLEN, Chair, Doctors for the Environment, affirmed and examined

PATRICK HARRIS, NSW Branch President, Public Health Association of Australia, affirmed and examined

INGRID JOHNSTON, Senior Policy Officer, Public Health Association of Australia, affirmed and examined

The CHAIR: We will begin and listen to your opening statements. Would any of you like to begin?

Dr HARRIS: The Public Health Association [PHA] is the leading national peak body for public health representation and advocacy to drive better health outcomes through evidence-informed policy. We have just explained our roles. I am also a senior researcher at the Menzies Centre for Health Policy at the University of Sydney. Our expertise is the intersections between public health and the Environmental Planning and Assessment Act that the territorial limits bill seeks to reform. It seems worth stating by reiterating why we are here, the stated objective of the bill is to prohibit the imposition of conditions of a development consent that purport to regulate any impact of the development occurring outside Australia or any impact of development carried out outside Australia. Specifically this refers to removing the specific requirement to consider downstream greenhouse gas emissions in determining a development application for the purpose of mining, petroleum or extractive industry, and that is quite precise indeed.

Ms JOHNSTON: What does this mean? Perhaps it means what happens within our borders stays within our borders, and we cannot go around thinking about what might happen elsewhere. It is not our fault, not our problem. Once it leaves New South Wales, that is it. Total respect of borders. Okay, so let us think about that proposition for a minute. Now is a particularly interesting time to be asking this question. I live in Canberra and after weeks of rising cabin fever due to virtually non-stop blanketing of smoke, in early January I put a gas mask on my 11-year-old son so that he could go outside to play. At that point I realised that something had to happen. I packed the kids in the camping gear into the car to escape the smoke. We had to get most of the way to Uluru before we were completely free of it. Those darned fires in Canberra. Except at that stage there were not any fires in the Australian Capital Territory.

The last couple of months have demonstrated all too clearly that bushfire smoke does not respect borders, just ask the people on the West Coast of New Zealand. Climate change impacts, by their very nature, are cross jurisdictional and global: More intense fires, longer and more severe drought, rivers drying up, increased flooding, more intense cyclones and tropical storms, increasing length and intensity of heatwaves. None of these impacts has any respect for borders.

This is relevant to this bill because its purpose is so specifically related to activities contributing directly to climate change. There are few people left to continue to deny the links between fossil fuels and climate change, so any activities related to fossil fuels must consider the broader impacts. Any argument that is only actual mining which is relevant fails to consider the reality. The last cycle of coalmining and the global nature of climate change must be considered. Indeed such a global perspective is taken regularly by those who quote Australia's contribution to global emissions.

If the global perspective is important for convenient carbon accounting purposes, it must also be important for less convenient issues of responsibility. The environment Minister here in New South Wales in December specifically acknowledged the need to do more to lower emissions immediately, saying we must, "listen to the scientists and the experts coming up with a plan to make sure the New South Wales does its bit to reduce the impacts of climate change." So let us acknowledge right here what this bill is really about, which is propping up the dying coal industry. This bill then is in fundamental opposition to Minister Kean's statements and to Australia's international obligations.

Dr HARRIS: I will get a little bit more technical at this point. We would like to make our position on the links between coalmining and climate change clear. The impact of coal on global climate change is well known. The health effects of climate change are already being experienced locally around the world, including Australia. The bushfires that remain raging, the hazardous levels of smoke experienced since they began, the resulting increased pressure on health services as well is the mental health impacts we heard about earlier on today across the Australian community are profound examples of these health impacts that will be etched in the mind of the public for a very long time, if not forever. Our fundamental objection to this bill is that the proposed schedules work against the purpose of the New South Wales environmental protection Act. The second object of that legislation reads as follows:

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment

The proposed bill fails entirely to include environmental and social considerations that would tip the balance towards an economics agenda that is not founded on reality. On those economics we agree with all the facts that have been articulated in the work of The Australia Institute around this bill, and we leave discussion of them to that session. Concerning balance, we ask the Committee and the New South Wales Government to remember to recent events. The last time a similar amendment went through Parliament to shift the balance towards industry was in response to the ruling on the Warkworth mine in 2014 and 2015. In response to community outcry that then Premier Mike Baird and planning Minister Rob Stokes very swiftly restored the legislation back to its balanced purpose and the much vaunted pro-industry reforms to the Act between 2011 and 2013 founded because of similar community concerns about the need for balance in planning and assessment decisions, community concerns about the environment are currently at an all-time high that balance must be maintained.

Ms JOHNSTON: We recommend to the Committee that the bill be withdrawn. If there are no problems with downstream emissions, why remove the requirement to consider them? The very existence of the bill acknowledges the reality of the reasons why it should not be supported.

Dr VAN DER KALLEN: I would also like to acknowledge the traditional owners of the land, the Gadigal people, to start with. Thank you for this opportunity to present the inquiry. Doctors for the Environment Australia opposes the bill and calls for the withdrawal of the bill. The emissions from burning fossil fuels in jurisdictions outside New South Wales is having a profound impact on the residents of New South Wales due to the carbon emissions causing climate warming. In New South Wales we have seen catastrophic impacts from climate warming with the bushfires that have resulted in 28 deaths, over two and a half thousand properties destroyed, burnt five and a half million hectares of bushland, killed millions of animals, caused air pollution which has seen a 25 to 30 per cent increase in presentations to emergency departments and affected the growth of children and unborn babies.

In New South Wales we have seen a prolonged drought which has rendered towns without water as well as a massive impact on agriculture with the winter crop 65 per cent below the 10 year average, and three consecutive years of decreased farm output which is the first time this has been recorded in its 63 years of data. Temperatures have increased dramatically with the bureau of meteorology reporting that the average temperature in Australia in 2019 was 1.5 degrees centigrade above average. We know heat has significant health impacts, including death.

The psychological impacts from all of these events will go on for years, and the cost of dealing with these health impacts as well is the economic loss far outstrips the royalties from the export of fossil fuels. Currently the emissions from the export of fossil fuels from Australia accounts for 3.6 per cent of global emissions. I have given some extra data, which I hope you received. By the same analysis, the estimates for 2029 will be that emissions worldwide from the fossil fuels that are exported from Australia will be 13 per cent of global emissions—this is not insignificant; this will have direct impacts on the health of the New South Wales population—and these emissions need to be considered in any fossil fuel development.

The world has looked on in horror. Currently Australia has become the climate pariah of developed countries which are trying to deliver a fair share of emissions reduction. If this bill is passed it will prove to the world that Australia is not serious about dealing with climate change. Therefore, the territorial limits bill should be withdrawn. Thank you.

The CHAIR: Thank you very much. Dr Wild?

Dr WILD: To follow on from Dr Van Der Kallen's comments I would like to speak to our impression of New South Wales' obligation to its citizens' health under planning law more specifically. Doctors for the Environment Australia [DEA] fully supports the Paris Agreement; however, it is frequently inappropriately invoked in this context. Let us recall that the core goal of the Paris Agreement is that it has set a target of holding the increase in the global average temperature to well below 2 degrees Celsius above pre-industrial levels, and pursuing efforts to limit the temperature increase to 1.5 degrees Celsius.

Environmental assessments in New South Wales often refer to Australia's obligations under the Paris Agreement. However, this description of how a project reflects on Australia's scope 1 Paris Agreement commitments are not a full assessment of the environmental impact of a project under the Environmental Planning and Assessment Act. Australia's scope 1 commitments under the Paris Agreement are a starting point for greenhouse gas emissions reductions, not a limit. To use the international accounting protocols as a reason to

ignore the effect of downstream emissions on the health of New South Wales residents is really gross legal mischief.

New South Wales deserves a full and independent analysis of the health impacts of fossil fuel extractive projects, both individually and, really crucially, cumulatively. This assessment is not currently sufficient for consent authorities to make good decisions protecting the health of New South Wales residents. This bill would further limit the imperative for consent authorities to protect the health of New South Wales residents in their considerations, and that is stated in the Environmental Planning and Assessment Act. The goal of that legislation is to promote the social and economic welfare of the community—that includes our health. The present and future health of our State is at risk from climate change, and that has to be assessed and taken into account in every decision going forward.

The CHAIR: Thank you very much. We will move to questions from the Opposition.

The Hon. PENNY SHARPE: Thank you very much for coming in today. Your submissions in relation to this bring us to a different issue that really does not get a lot of consideration, which is the ongoing health impacts. Obviously, in the past few months, as Ms Johnston eloquently pointed out, the population in New South Wales is pretty aware of the impacts and perhaps has felt them severely for the first time. I would like you to elaborate—both or either, it is up to you—on the issues that you raise in relation to what are the individual health impacts that we are already seeing in New South Wales as a result of changing climate.

Dr VAN DER KALLEN: The impacts are multiple and they come at different points and they become cumulative in that one will affect the other. Straightaway we have seen probably the worst drought known to white Australians. This has already affected most of New South Wales. People have had to sell their breeding stock, there has been a decrease in the production of crops. This causes financial stress, people have had to move, and these are causing social impacts. The drought has also caused an increase in air pollution—the dust scenes we have seen are the worst ever—and then the burning of forests also results in pollution. We know that pollution causes an increase in cardiovascular disease, cancers, it impairs mental health, so there is an increased risk of suicide.

The Hon. PENNY SHARPE: Can I just interrupt you there? Given that air quality has been so poor for so long, are you aware of work that is being done that will try to pick up the impact? People who have had a heart attack during this period of time, is there work being done to identify—

Dr VAN DER KALLEN: Sure. There are years of data about air pollution and the effects on health. The unusual circumstance we have had is months of poor air quality, and all the data that is around bushfires and bushfire smoke has usually been in the short term. So a lot of those increased risk of cardiovascular events will happen in the first day after a bushfire event, but usually these things clear. The dust storms, you can see that there is a peak of problems after six days, but for these to be going on for months—and you can only really draw on the data that comes from large studies around the world, such as in Beijing et cetera. In those sort of studies you can see that when air quality does improve that there are improvements in health with cardiovascular disease, things like premature babies, the incidence of still births, the size of the babies that are born.

The Hon. PENNY SHARPE: So the impact really of this summer is something that we will not find out about over the coming months and years.

Dr HARRIS: There is funding available from the National Health and Medical Research Council to look at the air quality issues around the bushfires. That is something that will be happening over the next few years.

The CHAIR: In fact, a parliamentary inquiry has just been established into that as well.

Ms JOHNSTON: Can I just comment on the mental health issues, which nearly got the better of me just then? Everyone I have spoken to in Canberra over the last couple of months is completely traumatised by this and we have not even had flames at our doorstep. It is the long-term nature of this and how long it has been going on for, the fact that it has been the whole of the east coast of Australia and down into South Australia and Tasmania, that we have never seen before. It is on a scale which has just left people terrified, and that is not an impact that is going to be gone by March. It is going to continue on and it will be August before people start being terrified of when the flames are going to start again. So I do not think the mental health impacts should be underestimated.

Dr WILD: Certainly, as a GP, for the past several months I have been seeing patients in my room who have been negatively affected by bushfire smoke, and that clearly has peaks and troughs reflected through the air

quality in our area. I live and practise in Newcastle, a place which has not been directly impacted by fires, but we have seen the air quality affected from the fires elsewhere in the State for months now.

Ms ABIGAIL BOYD: Just picking up on those mental health impacts, Ms Johnston, what do you think the impact is on mental health? You say people are already terrified, they are experiencing something that they have not experienced before. Is that mental health impact exacerbated by a feeling of inaction on climate change?

Ms JOHNSTON: Yes, and it is absolutely translating into people wanting to do something. We have had people camped outside Parliament House in Canberra all week. Protests do not go on for a week every day. People are wanting to do something. The schools in Canberra have been grappling with what to do with all these kids that are going to come back to school and have not had their summer holidays. They have been trapped inside, unable to go outside and play, and in Canberra they were closing all the indoor places as well. The national institutions, the swimming pools, the indoor sports centres were all closing because their own air quality was so poor. There is a real sense of "We don't know what to do. This is so big. We need to do something" and people need to find an outlet for that.

Ms ABIGAIL BOYD: Thank you. Both your submissions really set out quite well the health impacts of climate change—which, as my colleague said, are overlooked a lot of the time—but also the idea that the impacts of climate change, whether it is on our environment or on our health, do not stop at borders. We have seen that in Canberra. Do you think, given the impacts of increasing emissions elsewhere, that it was inconsistent with the stated relevant consideration test for the IPC and the court to have been using the increase in emissions offshore as a relevant consideration in their decisions?

Dr HARRIS: Could you repeat the question?

Ms ABIGAIL BOYD: Yes. It was part statement, part question. I guess I know the answer, but was it really radical for the court in the Rocky Hill decision or for the IPC in its decisions to be including greenhouse gas emissions offshore as something that is relevant to the health impacts?

Dr HARRIS: No. Also, I think other people have said that that was not the only decision that tipped the balance in terms of the Rocky Hill judgement. But it is crucial and absolutely vital. You can see from the previous session with some of the community members that this is a major consideration. Of course it needs to be taken into account.

Dr WILD: I think it is important to reflect on the Environmental Protection and Assessment Act, which describes that the determining authority has the responsibility to take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity. To me—I am not a lawyer; you have missed your chance to talk to them—that describes the effect of downstream emissions on the New South Wales climate. It is the absolute responsibility of determining authorities to take that into account.

Ms ABIGAIL BOYD: In New South Wales we have a Government that has a stated position on climate change, and that is in line with the Paris Agreement and in line with the objective of reducing our emissions to keep us below 1.5 per cent global warming. Knowing also that the science on which that is based says that we basically need to leave all the coal in the ground, do you think we end up with a situation—I guess this is perhaps where the fear comes from for the mining companies. Do you think that we end up with a situation where their fear of any approvals being given on the basis of an increase in emissions?

Dr VAN DER KALLEN: I think it is pretty clear that most of the fossil fuels need to stay in the ground if we are going to stay below that 1.5 degrees. I guess if it is your business model that you need to export and subsequently burn a fossil fuel, then it is going to be a big impact on your business. If it was my business, I guess I would be worried about that.

Dr WILD: I think it needs to be that planning authorities really need to have that health information available for them to make a decision.

Dr HARRIS: I think also there is a general understanding in most of the developed world that we need to transition away from coal. I think that is a given. So I think it is up to industry and Government to start working towards that transition at the same time.

The CHAIR: I was hoping to hear a lot about the economic benefits that the coal industry brings to New South Wales. I was wondering if any of you would be able to tell the Committee what you believe the economic burden of the health impacts of climate change potentially are and whether anybody has done that research.

Dr WILD: *The Lancet*, which is the prestigious medical journal of the United Kingdom, for the past couple of years now has conducted yearly extensive reviews of the evidence around health and climate change. It has cited in its most recent review of the evidence, as of 2019:

> … the economic gains from the health benefits of meeting the Paris agreement substantially outweigh the cost of any intervention by a ratio of 1.45 to 2.45, resulting in trillions of dollars of savings worldwide.

That is to say that by meeting the Paris Agreement, the savings to the health system and in the improved welfare of our global citizens—we will be 1.5 to 2.5 times better off.

The CHAIR: Which raving inner-city lefty publication was that again?

Dr WILD: That was cited in *The Lancet Countdown* 2019 report into health and climate change impacts, from another study that was also published in *The Lancet*.

Dr HARRIS: That is a good point. There is often this discussion about the reputation of the evidence sources. This is all from peer-reviewed scientific sources. Sometimes the vague 3 per cent gets talked about when they are trying to dispute the science, but that is often a scientific process in and of itself. I think there is an acknowledgement that this is fact and this is true, particularly around the whole range of impacts that are occurring.

The CHAIR: While you are addressing the economic impact, remind the Committee about the increase in the rate of hospital admissions of people presenting with respiratory-related conditions during the bushfire smoke crisis. I think there was a 30 per cent increase in presentations.

Dr VAN DER KALLEN: Yes, that is right. That is from our members who are working in emergency departments, who have seen that. That data will be more clarified when the Bureau of Health Information releases its report in probably a month or two.

Ms JOHNSTON: If I can just give a quote from the World Health Organization—another ranting lefty—it has stated:

> The true cost of climate change is felt in our hospitals and in our lungs. The health burden of polluting energy sources is now so high, that moving to cleaner and more sustainable choices for energy supply, transport and food systems effectively pays for itself.

Dr WILD: We have mentioned respiratory illness, but I think it is important to reflect that bushfire smoke contains many particles that also cause a spike in heart disease and renal disease, as well as other kinds of illness. Although it is very intuitive to think about bushfire smoke as affecting the lungs, a lot of the particles are small enough to enter blood vessels and cause toxicity to multiple organ systems.

Dr VAN DER KALLEN: Can I add on the economic side of things that I am from the Hunter Valley and we have seen how the bushfire smoke has ruined much of the wine vintage this year and subsequently affected tourism in the area. I have got patients who breed horses as well. They are very upset with the deterioration in air quality. They also had to get rid of some of their stock as well. So it is not just the benefits that come from mining, but the negative parts are more than just the effects on health.

The Hon. MARK BUTTIGIEG: Chair, could I ask a follow-up question?

The CHAIR: Yes, if we have time.

The Hon. MARK PEARSON: I have two questions, so make it quick.

The Hon. MARK BUTTIGIEG: Will do. The Chair raises a very valid point. I think part of the problem with these issues is that for something like climate change, a lot of people see it as a nebulous concept in terms of quantifying what economists call negative externalities. You can pull up a gross domestic product [GDP] chart and say that coal exports contribute to 3.5 per cent of our economy and it is tangible, whereas the health effects—we know they are there, but are they real? How do we quantify them? Has there been any work done in lobbying the Federal Government to try and integrate some of these negative health effects that you have been outlining to us in the official GDP statistics so that you do actually get a net indication of how bad it is?

Dr VAN DER KALLEN: I guess the health impacts of burning coal have not been factored into the health costs. Various attempts have been made on that and it depends on your assumptions as to what that price is. Some of the best data was done regarding the burning of coal from coal-fired power stations in New South Wales, which was done last year. There are 157 deaths each year in Sydney from the burning of coal in New South Wales. Those numbers do not get factored into the GDP, from what I can understand.

Dr HARRIS: In response to the question, there has been a lot of work within public health trying to impact on policy and bring evidence around public health impacts to policy. The reality is that public health is

less resourced, particularly at the Federal level, in terms of lobbying so we often do not get our voice heard as much as we should. In response to the question, we have been trying for a very long time to include public health as an externality. Whether it has happened is an open question.

The Hon. MARK BUTTIGIEG: It is sort of counter-intuitive—

The CHAIR: I am sorry but you are out of time. The Hon. Mark Pearson has not been able to ask his questions. I will ask the Government's indulgence.

The Hon. MARK BUTTIGIEG: Apologies.

The Hon. MARK PEARSON: Medical doctors, are you not?

Dr VAN DER KALLEN: Yes.

The Hon. MARK PEARSON: When our body temperature rises one degree more than what it usually is, what happens?

Dr VAN DER KALLEN: One degree would make your blood pressure go up a bit, probably make your heart rate go up a bit and would stimulate your sympathetic nervous system. At two degrees you start getting up to 39 and you start feeling pretty unwell, your blood pressure might even start dropping and you would be feeling vertigo and unwell.

The Hon. MARK PEARSON: So our body becomes febrile and very unwell. The body of the earth, it could be argued, something like that might be helpful.

Dr VAN DER KALLEN: That is right. At three degrees and you are at death's door. The earth should definitely be thought of in the same way.

The Hon. MARK PEARSON: The evidence that is coming from a lot of community groups is that they are in a state of trauma and dread. You could say that it is post-traumatic stress disorder or whatever, but it is a bit like what we have seen after wars or very serious violent impact—it is like you are standing in shock. We are going to draft recommendations to the Government. What do you think we should be saying? What recommendations do you think we should be making in relation to how we—the Parliament, the Government—should address not only the reactive or immediate situation, but also the emerging sense of dread from the community that there is no light at the end of the tunnel or leadership?

Dr HARRIS: Can I respond first to that? The first thing is the focus of the inquiry today, which is to withdraw the bill. I think this is part and parcel of the response within the community. People are very concerned that this is a pro-industry bill which will increase issues around climate change for them. They are scared and afraid so my recommendation is to withdraw the bill.

Dr VAN DER KALLEN: We recommend that as well but we are so far behind in trying to adapt to climate change health impacts. Many organisations have declared a climate health emergency, including the Australian Medical Association [AMA] and the Royal Australasian College of Physicians, which represent 65,000 doctors around Australia. We should have been understanding the signs a decade ago or decades ago, and putting plans in place to adapt for these changes. This is just the beginning now. This is one degree and we are looking at a minimum of 1.5 degrees if the world gets its act together and starts changing. But in reality, we are looking at at least two degrees. We do not know what two is going to be like. We can tell you what the temperature is going to be but with one degree we have seen droughts, we have seen farmers affected, populations affected and unprecedented bushfires. What is going to happen? We have been calling on all parties to take this seriously and focus on making changes to reduce our emissions as quickly as possible. That is the only way we are going to prevent cumulative problems.

Dr WILD: To relate back to that community level widespread trauma, our health systems are currently set up to try to interact and deal with that on an individual basis, but what we need to do is to think more systems-based around our response to this. We know that people's mental health around climate grief is ameliorated by action and intervention. That is supported by psychological associations and the resources they have provided. Ultimately, I think dealing with a lot of this grief on an individual level is not sufficient to manage what is going to end up being a level of intergenerational complex trauma, as you described.

Ms JOHNSTON: What she said.

The CHAIR: Any questions from Government members? They are lost for words.

The Hon. SHAYNE MALLARD: No, that is not fair.

The Hon. CATHERINE CUSACK: That is outrageous, actually.

The Hon. SHAYNE MALLARD: We do not need to interrogate the witnesses.

The Hon. CATHERINE CUSACK: The Government agrees that climate change is affecting people's health and needs to be addressed.

The Hon. SHAYNE MALLARD: Yes, we agree with that.

The CHAIR: Excellent.

The Hon. SHAYNE MALLARD: You might be more objective, as the Chair.

The Hon. MARK BUTTIGIEG: I will follow up on that previous question, if that is okay. You said that in the health sector there is some difficulty with lobbying Government to account for internalising negative externalities but it is counterintuitive given the amount we spend on our health budget in what is essentially a reactive system to ailments, instead of prevention. I find it hard to accept the fact that the Government has not grappled with this and tried to integrate it as part of their accounting processes.

Ms JOHNSTON: We spent about 1.4 per cent of our health budget on prevention. That is a minuscule amount and the Public Health Association has been calling for it to be at least be 5 per cent to try to make it something in the accounting books. At the moment the slice for prevention is smaller than the slice for transporting patients. It is not even on the radar right now.

Dr HARRIS: If I could respond, as well: We are equally as flabbergasted as you are that this has not been taken up. The evidence is clear and yet cost-benefit analysis that happens around these projects individually, or even at a policy level, often does not take into account these negative externalities. I am as flabbergasted as you are. We need to be better in public health at working politics, but the issue is really that there seems to be a brick wall around negative externalities—we do not want to know about them so therefore we will focus on business as usual.

The Hon. MARK BUTTIGIEG: What about other jurisdictions overseas? Are other countries doing this better than us?

Ms JOHNSTON: Yes.

Dr HARRIS: I cannot respond to that. I think that there are countries doing better than us but I am not sure if it is around this issue.

Dr WILD: I believe that *The Lancet*'s countdown annual report—I cannot find the exact citation—take's note of jurisdictions that are doing health vulnerability and impact assessments around both mitigation and adaptation, but I cannot find a number for you at this stage.

Dr VAN DER KALLEN: That is where the figure you mentioned before comes in. The benefit of mitigating against climate change has health benefits that are preventative. For instance, getting people out of cars and more active will help with cardiovascular disease and decrease carbon emissions, which is better for our health and better for our planet. You see this with transport, you see this with food and you see this with the sources of our electricity—decreasing coal-fired power will improve our health immediately and that has been very well documented throughout the world.

Dr WILD: Better air quality.

The Hon. ADAM SEARLE: Just on the issue of public health impacts: From your perspective, are public health impacts of development proposals properly taken into account in the planning assessment under the social considerations heading? And, if not, should there be a specific public health impacts consideration?

Dr HARRIS: I will answer that because it is my job. No, is the answer. One of the challenges is that public health gets brought in with other chapters, for example, air quality, noise, et cetera. That is okay but we would like to see a much better causal pathway between an environmental trigger that has changed, down to a health outcome. That does not happen at the moment under legislation.

Dr WILD: Within the Doctors for the Environment submission we included as an example an extract from the Department of Planning's final assessment report regarding the Bylong coal project. Again, this was before the negative IPC assessment, which has been part of the inspiration, I believe, for this process. If you look at the part of the report that refers to greenhouse gas emissions, it does not make any health assessment or discussion of the health impacts of those greenhouse gas emissions. It mainly reflects on the impact of scope 1 emissions on the Australian Paris Agreement commitments, which is a very small part, as we discussed, of the

overall impact of the project. In the projects that I have reviewed, I have continually been very dissatisfied as to how these issues have been addressed.

The Hon. ADAM SEARLE: There is no specific public health impact.

Dr VAN DER KALLEN: No. We would want a health impact study to go alongside an environmental impact study.

Dr WILD: And better frameworks and guidance from the department about how projects should be proceeding with this.

The Hon. CATHERINE CUSACK: I want to clarify the Government not asking questions. First of all, I thank the witnesses for the evidence they have given and we have listened very carefully. I add that my family comes from Canberra and has been affected. I also have affected family in the Cooma region, including losing a house and things like that. It is of no lack of respect whatsoever to the witnesses. We have been very focused on the specific clauses in the bill and the questions that we have been asking in our line of inquiry we do not feel are appropriate for the point that these witnesses are making. That is why we are not pursuing questions in relation to the technicalities of the bill.

The CHAIR: Okay, thank you. Point taken.

Ms ABIGAIL BOYD: Like you, we live with this disconnect between Government policy and what science is telling us and what the actions are on the ground and that uncertainty in created in relation to coalmining in particular. I am wondering whether you have any insight into the workers in the coal industry and the mental health impacts on them of not having a transition plan on having this ongoing uncertainty?

Dr VAN DER KALLEN: I have a number of patients who work in the coal industry. They predominantly want work. They sometimes have an emotional attachment to the coal industry, particularly in the Hunter Valley—there are many families where people have worked for generations in coal. That causes them a bit of conflict. But a lot of them have young families as well, and if they are living in the Hunter Valley and seeing the deteriorating air pollution then they are worried about their kids. They cannot just go and leave, because they need a job. This causes quite a lot of conflict in the Hunter Valley. You may have seen in local media that there is an ongoing conflict in the area, which is why a sensible transition plan is needed so that people can be given employment.

There would be ready employment if there was a philosophical shift to more renewables. There is plenty of work. They would be more than happy to work there. The health impacts on coalminers has already been shown to be detrimental as well. We have seen pneumoconiosis come back—coalminer's lung. We have seen silicosis becoming a bigger issue—some of that is from the mining industry as well. Traditionally, coalminers got lung cancers earlier; a lot of the time that was more when it was underground and with smoking. It is not a healthy occupation. They would rather, I think, have a healthy occupation—as long as they have got an occupation.

The CHAIR: Thank you very much for appearing before the Committee today, and thank you for your ongoing work in this very important space. That is the end of this session.

(The witnesses withdrew.)

TOM SWANN, Senior Researcher, The Australia Institute, affirmed and examined

RODERICK CAMPBELL, Research Director, The Australia Institute, affirmed and examined

The CHAIR: Welcome. Would either of you like to begin by making a short opening statement?

Mr CAMPBELL: The Australia Institute is an independent research organisation looking at economics and policy. It is mainly based in Canberra. It has been extensively involved in research on and debate around the New South Wales coal industry. I have specialised in the cost-benefit analysis of New South Wales coal projects and have been to any number of planning hearings through New South Wales on this topic. As we say in our submission, the context for this bill is possibly more important that the content. The context is that in the middle of fire and drought emergencies exacerbated by climate change this bill would reduce the consideration of climate change at the behest of those who profit most from climate change.

The only reason we are here today is the pressure that has been placed on the New South Wales Government by the NSW Minerals Council through its paid advertising, direct lobbying of Ministers and other politicians and deceptive coverage in *The Daily Telegraph*. If it were not for the NSW Minerals Council's campaign against recent planning decisions, the longstanding requirement to consider scope 3 emissions in planning decisions would not be being considered for amendment. The NSW Minerals Council is, of course, a lobby group. It is expected to spin facts in the interests of its members. It claims that a change to legislation is necessary to prevent coalmines being refused on the basis of downstream emissions. They do not point out that no mine has ever been refused on the basis of emissions. If you look in detail at the decisions that have led to this inquiry—for example, if you look at the Bylong decision it is 817 paragraphs long; just 49 of those paragraphs, or 6 per cent, relate to climate change. The vast majority of those decisions related to other impacts of those mines.

Mr SWANN: We would like to table two documents. One is some graphs where we present some information we are giving in our evidence and was in our submission. The other is a longer report that is the basis of our submission; it is not clear whether it has been provided to the Committee. To avoid confusion, we would like to submit that because it is a more comprehensive treatment. I table both of those documents.

The CHAIR: Thank you.

Mr SWANN: Scope 3 emissions from the New South Wales coal industry are internationally important. Each year, coal mined in New South Wales causes emissions nearly four times greater than the direct scope 1 emissions of New South Wales. It causes emissions larger than those from the United Kingdom and France and almost as big as all of Australia. Coalmining in New South Wales has an internationally significant impact on climate change. This should be at the forefront of mind for New South Wales decision-makers, not something they are prevented or discouraged from considering.

Since the NSW Minerals Council is the driving force behind changing the Environmental Planning and Assessment Act 1979, we should briefly discuss some of its other claims. The Minerals Council submission states that this longstanding practice of consideration of scope 3 emissions undermines and conflicts with the Paris Agreement and United Nations Framework Convention on Climate Change practices, the UNFCCC being the framework convention under which the Paris Agreement is a subsidiary treaty.

This claim from the Minerals Council is unfortunately false. The Paris Agreement and the earlier UNFCCC expressly encourage all kinds of mitigation action towards the global goal of limiting emissions. It does not limit action to scope 1 emissions or domestic policy goals but rather encourages international collaboration and initiatives to reduce emissions beyond each country's nationally determined contributions. I went back and checked: in the UNFCCC text itself it explicitly encourages action to enhance and protect reservoirs of precursors to greenhouse gas emissions—i.e. including fossil fuel reserves.

The NSW Minerals Council deliberately confuses the system for accounting for NDCs—nationally determined contributions—under Paris with the whole of the agreement, its letter and its spirit. Paris and the UNFCCC have never insisted countries only take one kind of action and not others. The Minerals Council CEO, Stephen Galilee, claims that without changes to legislation New South Wales risks becoming an "international investment laughing stock". In fact, as you can see in the graphs that we have presented, a year on from the Rocky Hill judgement business investment in New South Wales is at an all-time record level.

Mr CAMPBELL: The Minerals Council submission to the inquiry cherry-picks economic statistics to give the impression that coal is a significant part of the New South Wales economy. It is not. Coal employs half of 1 per cent of New South Wales workers, or one in 200—far fewer than industries such as health, education, or

even arts and recreation. We have got a graph on that in the documents just tabled. Coal royalties amount to around $2 billion per year—in other words, just 2 per cent of the New South Wales State budget. In other words, 98 per cent of public services in New South Wales are paid for by other parts of the economy. Recent Australian Taxation Office data shows that coal companies, many of them in New South Wales, are some of the least reliable taxpayers in the country.

While the coal industry's contribution to State and Federal government budgets is small, the climate change that coal is driving imposes huge and increasing costs on the New South Wales community. Estimates of the costs of recent bushfires run into the hundreds of billions of dollars even without considering the intangible values that Australians place on affected wildlife. Climate change is increasing the frequency of disasters and increasing their costs to levels that dwarf the royalties that the New South Wales coal industry reluctantly pays. Now is the time to be placing greater emphasis on climate change, not less. Now is the time to be planning for the phase-out of the coal industry, not trying to extend its future. It is time to be making the coal industry pay for the damage that it causes, not ignoring that damage.

Mr SWANN: I thought it would be relevant to raise some recent research we conducted, national research, survey research looking at the scale and breadth of impacts from the bushfires and smoke across the country and in New South Wales. Our research was conducted in mid-January, so while the disasters were still unfolding. We found that there were nearly 2 million days at least of missed work, assuming one worker misses one day, which we know certainly in Canberra was not the case. Many people missed many weeks of work. More than 5 million Australian adults had some kind of illness, respiratory illness or otherwise, as a result of the smoke. Three in four people in New South Wales were impacted in some way from perhaps more trivial through to very serious. One in three people in New South Wales told us that they had some kind of illness. The climate disasters that we have seen recently are having a profound impact on New South Wales, on the people of New South Wales and on its economy.

Ms ABIGAIL BOYD: Thank you very much for your very detailed and informative submission. I just wanted to drill down into the contribution that New South Wales coalmining makes to the New South Wales economy and, in particular, the long-term outlook for jobs. Could you talk about the long-term demand for jobs in coal over the next 10 years and are there are any trends in employment in that industry that would impact on those numbers?

Mr CAMPBELL: Yes. The New South Wales coal industry is back to employing just under—I think the latest statistics were just under 20,000 people, which is about the same as a decade ago. We have seen those numbers decline slightly. I think it is worth looking at—well, predicting the future is inherently difficult. It is always useful to look back at how we predicted the future in the past. If you look back at a lot of the forecasts of coal demand that were driving things like the proposal for a fourth terminal at the Newcastle coal port, clearly the industry expected, or was prepared to tell Planning that it expected, coal exports through Newcastle to approximately double. They were expecting the volume to go from around 150 million tons per year to over 300 million tons per year. That has not happened.

Anyone who has been following that project realises that it has been abandoned and that the forecast increase for coal demand through Newcastle has failed to materialise. That is a good thing for the planet. If we look at what is most frequently discussed, the scenarios that the International Energy Agency [IEA] puts out, it put out a current policies scenario that forecast coal demand to be generally flat internationally. This is certainly consistent with what we have seen since about 2013. But under the Paris Agreement, or a scenario that is broadly reflective of the Paris Agreement, demand for coal internationally goes into immediate decline, as does the volume of traded coal. That would certainly affect coal employment in New South Wales. I would be reluctant to make any kind of forecast about changes in actual workforce numbers. It is quite clear and it is logically consistent that if the world takes action on climate change, as we have all committed to under the Paris Agreement, and if that takes place in a manner vaguely reflecting the IEA's scenario, that volumes of coal will decline quite sharply and head down to zero around 2040 or 2050, then that would be reflected in the numbers of people working in the New South Wales coal industry.

Mr SWANN: If I could just expand a little bit on that scenario: that scenario includes common goals of sustained economic growth, universal access to modern energy services, vastly reduced deaths from air pollution and meets the climate goals. This is the scenario that most of us should want to be pointing out. You can only succeed under those goals together if coal goes into immediate decline.

Ms ABIGAIL BOYD: What about the impact of automation on the industry?

Mr CAMPBELL: Obviously coal companies have an interest in reducing labour costs as much as it can. All kinds of technology are aimed at that goal, as the Hunter Valley is very familiar with, with the advent of longwall mining and increased use of open pit mining. Mining practices usually move in the direction of less employment, not more. While the potential for large-scale automation in the Hunter Valley is probably something you could take up with the Construction, Forestry, Maritime, Mining and Energy Union [CFMEU] shortly, it may not be large. The goal of changing technology within the mining industry is always to reduce labour. If I could just talk a little bit more about IEA scenarios relevant to this inquiry, one of the problems that the IPC saw in the assessment of the Bylong project was the proponent's failure to do economic assessment under the IEA's Paris scenario. Instead it assumed that the Paris goals would not be met and based its economic assessments on a scenario where Paris is not achieved. Due to the New South Wales Government's stated policy support for the Paris Agreement, that economic assessment was seen as not being adequate and that was a part of that decision.

Mr SWANN: It claimed economic benefits were seen as uncertain because the required Paris scenario was not included. This is an increasing expectation in the corporate world and other governments are doing it as well. You have to at least look at what happens in a scenario where the world succeeds in achieving the goal that it set for itself on climate change.

Ms ABIGAIL BOYD: A little bit of a strange question, so ignore my ignorance on this, but we often hear that mining companies are a huge contributor to the economy, which we know is actually a lot less than it is stated to be, but, other than royalties and wages paid to local residents, where else does the State benefit? Where do profits go? Is there any other income stream that we get from those mining companies?

Mr CAMPBELL: In terms of where the profits go, I think our last estimate from a couple of years ago is that certainly the Hunter Valley and probably the wider New South Wales coal industry is about 83 per cent or 85 per cent foreign owned. So 83 per cent to 85 per cent of profits go offshore. There are minimal other benefit streams. When you hear discussion about coal exports as significant as part of New South Wales exports, I mean, as an economist I do not see why a sub-national jurisdiction that does not have its own currency or central bank cares about export volumes at all. I understand politically it is an important thing to be able to talk about. Export revenues do not translate into benefits to the New South Wales public, particularly when these companies are not generally owned by Australian or New South Wales residents.

Ms ABIGAIL BOYD: I was not as ignorant as I thought—good.

The Hon. MARK BUTTIGIEG: Just following up on my colleague's theme with regards to employment and economic growth, particularly with employment, I think one of the mistakes that the proponents of reduction in coalmining make, and I count myself in this, and all sides of politics have been guilty in this. We are faced with a situation—you mentioned 20,000 jobs. The loss of the immediate economic benefit to those people is not an insignificant consideration. When we are trying to implement policy that furthers the cause of climate change action and improves things for the globe and, in particular, New South Wales and Australia, it is important that we put ourselves in the shoes of the people who stand to suffer directly from this in the immediate future. Part of the problem is aligning the time periods. Has the institute done any work on that? You may well say, "Well that's your job as politicians", and it certainly is. We have dropped the ball; I will reiterate that.

But has the institute done any work on what we colloquially or casually call a "just transition"? Part of the problem is that the people working in those industries who stand to lose their jobs do not see a way out. It is particularly hard if you are a 50-year-old coalminer in the Hunter. They are not going to train as a tour guide in ecotourism. Has the institute got a view on what sort of policies the Government should be putting in place to create jobs here and now so that those people have some tangible foresight on where they might go and what they might do, and any commentary on what other jurisdictions might have been doing overseas in this regard?

Mr CAMPBELL: Yes, absolutely. It is important to remember—in relation to this bill and any other projects that come before New South Wales planning authorities—that the change would be in relation to new coalmines or the expansion of existing coalmines. New South Wales has already approved volumes of coal to enable most mines currently operating to continue operating for years if not decades to come. We have done some calculations around that—although not for a couple of years—and I remember that we were looking at tens of millions of tonnes of production that have been approved into the 2040s.

You are absolutely right that if the benefit of those wages was lost immediately it would have a dramatic and traumatic effect, particularly in places like Singleton or Muswellbrook. But no-one is actually proposing that. The institute's main proposal has been for a moratorium on new coalmines and the expansion of existing mines. That would allow existing mines to continue to operate to the end of their economic lives and for a gradual reduction in volume and a controlled phase out of the coal industry that could be planned for.

The Hon. MARK BUTTIGIEG: Given that we have 20 years left on your calculations, we should be doing the work right here and now, should we not?

Mr CAMPBELL: Absolutely, we should. As an economist it is important to think through the logic of the moratorium on new coals. It would place upward pressure on coal prices, allowing existing mines to benefit even as they reach less economic parts of their geology. The support for coal prices would allow those existing coalmines to continue, while the approval of new coalmines might result in their early closure. A moratorium on new coalmines would be to the benefit of people working in those mines and the communities around them. We see that as an important part of planning for a reduction in the coal workforce.

It will also allow for programs such as those have been seen in places like Germany, where there has been a planned approach to workers' retirement. Older workers have been offered early retirement and people in the later parts of their careers have been able to stay working in the operating mines or have moved to where work can continue for the longest. The retraining and reskilling opportunities have been directed primarily to younger workers. Germany has had some real success with programs like that, as has Spain, although I have not read as much about Spain. Mr Swann may want to add to that.

Mr SWANN: There are some examples here in Australia as well—

The Hon. SHAYNE MALLARD: Point of order: Just for the purposes of the inquiry—while it is interesting to hear—it is my contention that this is not admissible evidence.

The Hon. PENNY SHARPE: Are you suggesting that we delete it from the record?

The Hon. SHAYNE MALLARD: It cannot be part of the evidence in the report because the terms of reference are very specific. We are looking at the provisions of the Environmental Planning and Assessment Amendment (Territorial Limits) Bill 2019 and that is it; there are no other related matters. The submission of these witnesses—and I want to talk about that—is very specific about the amendments to the bill. I am interested in what they are saying; I am just making the point that my contention is that it is not admissible evidence to the inquiry. I am happy to hear it, but it cannot be part of the report.

The Hon. PENNY SHARPE: But it is our question time, which you have just taken two minutes of.

The Hon. SHAYNE MALLARD: I am taking a point of order.

The Hon. CATHERINE CUSACK: Take two minutes out of our time, Penny.

The Hon. SHAYNE MALLARD: Yes, you can have two minutes of our time. My point of order is that this is not relevant to the terms of reference.

Ms ABIGAIL BOYD: To the point order: It is not possible to read the provisions of the bill without understanding the context in which they were put forward. The context, overall economics and environmental reach of the Minerals Council are relevant.

The CHAIR: What has been made clear from the evidence presented this morning is that this issue has been reasonably wide reaching in terms of the impact of coal and greenhouse gas emissions. I think we can understand why that it is case through the evidence given this morning.

The Hon. SHAYNE MALLARD: It is getting wider though. That is what I am saying.

The Hon. MARK BUTTIGIEG: So jobs are not relevant?

The Hon. SHAYNE MALLARD: Not to the terms of reference.

The CHAIR: Order!

The Hon. PENNY SHARPE: All I am suggesting is that the Committee can deal with this matter later, when we do not have people here.

The CHAIR: We have dealt with it.

The Hon. SHAYNE MALLARD: No, we are going to have commentary. It is on the record. That is what is important.

The Hon. PENNY SHARPE: Are you suggesting that it should not be on the record?

The Hon. SHAYNE MALLARD: My comments are now on the record.

The Hon. MARK PEARSON: We can deal with it later.

The Hon. SHAYNE MALLARD: Then it will be off the record.

The CHAIR: Mr Pearson, do you have a question?

The Hon. MARK PEARSON: Yes. One of the issues that we have been grappling with is that I think the Government is asking, "What's all the fuss about? This coal isn't actually causing harm. It's cold coal, or whatever you call it, and it isn't actually causing harm here in Australia, except maybe in the extraction. Why should we be turning our minds to what occurs in another country, whether it is aligned with the Paris Agreement or not? How do we justify that?" Part of what we have been trying to do is find other examples of where either a State, Territory or country has grappled with this and has set limitations or restrictions on some types of trade. Can you give us any other examples of where this has been dealt with on any level?

Mr SWANN: Absolutely. First I will address something in the beginning of your question. Coalmining is a very substantial part of New South Wales' scope 1 emissions. It makes up roughly 10 per cent when you look at the gasses that come out of the mines, and it is even more when you count the diesel combustion as well. That raises a serious question around how we can reach the New South Wales Government's own policy of net-zero emission by 2050 while it is approving new coalmines. I understand that is not the main issue here, but it is relevant. The coal industry likes to argue—and has argued in court—that if we do not dig it up someone else will. That is sometimes called the "drug dealer's" defence. What is curious about that label is that it is actually inaccurate because when a drug dealer uses that defence in court they do not have much luck with the judge.

The coal industry's favourite argument does not make much sense, which was the legal logic of the chief judge in the Land and Environment Court in the Rocky Hill case. The idea was that an unacceptable action is not made acceptable by the hypothetical unacceptable action of others. That was reflected in a statement from the Prime Minister recently that emissions do not have a nationality and do not have an accent. The climate does not care where the emissions come from, but it does care that they are emitted. In terms of jurisdictions that are taking a supply-side approach to fossil fuels, it is correct to say that it has not been the predominant approach. But it is increasing. We are seeing it at a subnational level, certainly with regard to unconventional gas extraction. There are moratoriums on fracking and other forms of unconventional gasses all over the world. New Zealand has a moratorium on offshore oil and gas extraction and California has been considering a moratorium on gas as well.

The Hon. MARK PEARSON: Are there any other examples that are not coal?

The Hon. SHAYNE MALLARD: What I was saying before was not a reflection on you. I was just making sure I made the point on the record.

The Hon. PENNY SHARPE: You could have done that now.

The CHAIR: Order! The Hon. Shayne Mallard will continue with his questioning.

The Hon. SHAYNE MALLARD: Thank you for your submission and the fact you turned your mind to the specific terms of reference. There was some debate earlier today about schedule 2. I understand schedule 1, I do not think there is much contention around what it intends to do. Schedule 2, it has been proposed by earlier witnesses that it would remove the ability to assess emissions within New South Wales. On page 7 of your submission you are basically saying that is not the case. Can you go through that for me?

Mr SWANN: Sorry, which page?

The Hon. SHAYNE MALLARD: Page 7 of our submission, you say:

> Schedule 2 removes a requirement to consider downstream emissions. The consent authority would still be *required* to consider emissions from the project, would be *able* to consider impacts from downstream emission, and would be *justified* in doing so, in particular under the precedent of the Rocky Hill case.

You are saying it removes the requirement but it does not say it is a prohibition?

Mr SWANN: That is correct.

The Hon. SHAYNE MALLARD: That is your contention?

Mr SWANN: Yes.

The Hon. SHAYNE MALLARD: That is different to what we have heard from other people today.

The Hon. ADAM SEARLE: No, it is not.

The Hon. PENNY SHARPE: You can look at it, you just cannot make conditions on it.

The Hon. ADAM SEARLE: You can. You do not have to, that is the difference.

The Hon. MARK PEARSON: You are not obliged.

The Hon. SHAYNE MALLARD: All experts around here. It is a technical one. Do you want to clarify that for me then? I guess it is a technical area. Emissions within this State are not prohibited from being considered in the application by the consent authority?

Mr SWANN: The schedule amends a longstanding requirement to consider downstream emissions from a project. That could be emissions within New South Wales that are downstream from a project but within New South Wales, or it could be overseas emissions, or elsewhere in Australia. This schedule removes the requirement to consider, which in our view does not prevent, and indeed does not remove the justification for considering downstream emissions, but it does create legal uncertainty as to whether the consent authority should and how they should. It certainly signals some kind of legislative intent. But strictly reading the words on the page, it does not seem to prohibit it. That seems to be out of line with the stated intent of the bill.

The Hon. SHAYNE MALLARD: Thank you.

Mr CAMPBELL: I think this is where the context of the bill becomes really important. While that is our view on the letter of the bill, but it seems to open a pathway towards other potential policy mechanisms that might indeed prevent that consideration, which would be a highly retrograde step.

Mr SWANN: When they discussed the stated intention of the bill—this is including in statements from the Government in releasing the legislation saying that we need to go back to pre Rocky Hill days, this was in their pre Rocky Hill, of course, but the view is that it would not remove, it would not bear on the Rocky Hill case.

The Hon. ADAM SEARLE: That was a rejection, rather than a condition.

Mr SWANN: But this specific part of the legislation would not be affected by that if there is no prohibition. In fact the reasoning would still stand and should stand, in our views. But there is a new legal uncertainty as to whether that would be the case.

The CHAIR: If the planning authorities can still approve this, why do you think the Minerals Council was pushing this so much?

The Hon. SHAYNE MALLARD: You should ask them.

The Hon. ADAM SEARLE: Because they do not want it.

The CHAIR: We heard through the GIPAA documents that they have been lobbying this.

Mr CAMPBELL: They are so interested in this and so opposed to the Rocky Hill judgement because it exposes the great lie of the coal industry in Australia, the line that if we do not dig it up someone else will. This idea that coalmining in New South Wales does not make a difference on a global scale. As an economist I have been tearing my hair out for years whenever you hear this. This idea that coalminers in other countries or other jurisdictions are watching the Rocky Hill case and deciding whether or not they should go ahead with their mines, it is madness. As an economist, all coalminers around the world are looking at coal prices, and I guess in each case they are looking at their own planning restrictions, their own laws, their own country's climate policies, and they are looking at coal markets as to whether or not projects go ahead.

This idea that if New South Wales does not do something, the rest of the world will do exactly what New South Wales would have done, the logic for it just is not there simply from an economics perspective, because if New South Wales not doing something might push up coal prices, the coal prices respond to any number of other things. The Rocky Hill judgement goes into detail on what it calls the market substitution argument, which is this argument that somebody else will do something, and comes to the conclusion that a project that is unacceptable is not made more acceptable by the idea that a hypothetical project somewhere else might also have an unacceptable impact. That does not make the first project acceptable. The Minerals Council is so opposed to these judgements and so keen to have this legislation changed because this really attacks the great deception that the Australian coal industry has perpetrated for many years.

The Hon. CATHERINE CUSACK: I have an appointment that I have to get to and we have already run over time. Can I ask that for future sessions during the Government time—you allocated the first Government question to the Animal Justice Party, Mr Mallard got to ask one question and then you took the third question. Perhaps as Chair you could reflect on allowing the Government more of its own time.

The CHAIR: Thank you very much for appearing before the inquiry today.

(The witnesses withdrew.)

(Luncheon adjournment)

PETER COLLEY, National Research Director, Mining and Energy Division, Construction Forestry, Maritime, Mining and Energy Union, affirmed and examined

GRAHAME KELLY, General Secretary, Mining and Energy Division, Construction, Forestry, Maritime, Mining and Energy Union, affirmed and examined

The CHAIR: I welcome our next witnesses. Would either of you like to make a short opening statement?

Mr KELLY: I will make an opening statement if I can. We have already introduced ourselves, so I will skip that bit and point out that Peter is the union's expert in the policy field and we are happy to answer questions—mostly by Peter, I have to say. Our union—the CFMEU, Mining and Energy Division—represents coalmining workers as well as coal power workers across New South Wales and Australia. Because our members have such a high stake, our union has been actively engaged with climate policy for over three decades. Our approach is underpinned by the acceptance of the science of climate change, support for the international frameworks to address it and the fair treatment of affected workers and communities.

On the matter at stake in today's hearing, we take the view that the Paris Agreement is clear on how emissions are to be counted. Emissions are counted where they are produced. That means Australian businesses are responsible for their scope 1 and scope 2 emissions. These are accounted for and reported nationally. Scope 3 emissions are someone else's scope 1 and scope 2 emissions. These are accounted for and reported in the countries where they are produced. This is the internationally-agreed approach. It means nations must make their own decisions about how they are going to meet their own targets. If we start making businesses or governments responsible for emissions produced from their products overseas—such as the Japanese government being required to count emissions from Japanese cars on Australian roads or New South Wales roads—then the Paris Agreement would become unworkable and irrelevant.

This is not just the union's view. Ross Garnaut, in his most recent book *Superpower*, states:

> We should be clear on the content of the current international agreements on these matters—

He was talking about counting emissions—

> Each country is responsible for emissions within their own territory and other countries for emissions within theirs.

He goes on to state:

> We do not take responsibility for emissions from burning Australian coal and gas or credit for replacing a more by less emissions-intensive fuel.

If the Kyoto and Paris Agreements were based on nations being responsible for emissions generated in other nations, there would be no agreements. The fact remains that everyone's scope 3 emissions are someone else's scope 1 and scope 2, and the planning laws in New South Wales should maintain this approach and specifically exclude them from deliberation when considering development applications.

In the interests of full disclosure, on behalf of myself and the union I also note that my union has a very small shareholding in United Collieries Pty Ltd, which is also involved in the United Wambo mining project. Peter and I are happy to answer any questions.

The Hon. ADAM SEARLE: Thank you for coming along. The union accepts the science of climate change—that is well-established. In relation to the concerns you have outlined about where emissions should be booked, this legislation, as we understand it, rose in part from concerns the industry had about the Rocky Hill decision. You are aware that the bill does not preclude consideration of the matters you are concerned about in deciding whether or not to approve or reject a mining application? It simply goes to the issue of conditions.

Mr COLLEY: The way I would put it is that the Rocky Hill decision did not rely on the greenhouse gas emissions part of the argument. It was rejected on other grounds—it was the wrong proposal in the wrong place. The issue is the evolving interpretation of the law as to—when we talk about emissions being considered as to then what do we do after they have been considered in terms of what conditions, approvals or rejections do we do? I remember looking at that State environmental planning policy planning-requirements language many years ago, and thinking, "That is remarkably loose wording. Sooner or later some environmental lawyer is going to have a field day with this." That has duly happened. These provisions that the bill seeks to address have been there for a long time but they have not been interpreted this way before. But now they are being interpreted this way, and that is the problem—that they are being interpreted differently.

The Hon. ADAM SEARLE: I understand, but just to be clear, as I understand it, although your union and, I think, the Minerals Council of Australia and the industry generally have expressed concerns about some of the considerations around Rocky Hill and United Wambo and matters like that, none of the decisions made in the planning system to date have hinged on scope 3 emissions or greenhouse gases per se. This is more about pre-empting—

Mr COLLEY: That is correct but it is not difficult to see the way things are evolving in this area. Decisions to date have not relied on the greenhouse gas emissions issue. But certainly when you see some of the commentary that was made about the decisions, there is an expectation that it will head in that direction where the scope 3 greenhouse gas considerations will be the reason for approval or rejection.

The Hon. ADAM SEARLE: You are aware, are you not, that this bill would not prevent those considerations founding a rejection of a mining application?

Mr COLLEY: Yes. Our submission makes the point that we think scope 3 emissions should not be considered in making decisions to approve or reject a mine. We are fully happy for scope 1 and scope 2 emissions to be accounted for—and they should be. Australia should have strong emissions reduction targets, and we should all be working towards that. But the issue is whether the bill adequately achieves that. I have seen argument from different sides saying, firstly, the proposed bill would not stop a mine being not approved because of its scope 3 greenhouse gas emissions. I have seen other commentary more recently saying that there are unintended consequences in other areas of environmental aspects. So you could say that—

The Hon. ADAM SEARLE: The bill is a mess.

Mr COLLEY: The bill might not achieve its purpose. We are not legislative drafters. We do not have an alternative proposal but we do think that the legislative instrument and the planning requirements should not be allowing approvals to be based on scope 3 emissions.

The Hon. ADAM SEARLE: Again, I know you do not have an alternative proposal, but is your union happy with the shape the bill is in or is it critical of the shape the bill is in because it does not clarify things adequately? I am just trying to understand. I know your principal positions. Do you have a view about the bill or are you just coming to let us know what your position is?

Mr COLLEY: Our submission does say that we are not sure that the bill achieves its purpose. That was without taking into account the more recent commentary I have read about unintended consequences with respect to other environmental matters. So the bill may not be the best way to achieve the intended goal but that is for the Parliament to sort out.

The Hon. ADAM SEARLE: In relation to the Paris Agreement, which I think the Government supports, the Opposition supports and I think Australia obviously supports the Paris targets, the intent of the United Wambo condition where the resource would only be sold to a country that was a signatory to the agreement or had a similar approach, that is consistent with the Paris Agreement is it not, the position of the State Government and also your union? I am not saying that you approve of the condition, I am just saying—

Mr COLLEY: I think the criticism there is that it is unworkable in practice.

The Hon. ADAM SEARLE: Whether it is unenforceable?

Mr COLLEY: Yes. I was trying to think of an analogy to this condition and I thought of Australian uranium exports and how there is a safeguards mechanism administered by the Federal Government that overlays the entire industry about how exports are regulated. Imposing a particular condition on a single mine and then trying to direct who they can sell and not sell coal to is highly likely to be unworkable. Fundamentally a significant part of Australian coal is sold on spot markets where you do not know what the final destination is. Spot market systems are not built to handle export requirements. They are built around coal quality issues and where the coal is to be delivered and that is it.

The Hon. ADAM SEARLE: So is your concern that this kind of condition is really unenforceable and therefore probably not appropriate as opposed to necessarily objecting to the objective?

Mr COLLEY: Basically yes. We think all nations should be part of the Paris Agreement. In that vein Taiwan is not because it is not allowed to be because it is not allowed to be by China.

The Hon. ADAM SEARLE: That is right and that is where I think the "like" approach is included.

Mr COLLEY: Then there is this question of similarity, having similar policies and who deems them to be similar? But yes our concern is about the unworkability of it rather than it being inconsistent with the Paris Agreement.

The Hon. ADAM SEARLE: Mr Kelly, you mentioned one of the objectives of the union being the fair treatment of the workforce. I think Mr Colley in the submission talks about measures to achieve fair treatment for coal power workers and communities. Has the union fleshed those objectives or a roadmap of what that might look like? Or are you in the process of doing that?

Mr COLLEY: We have put a lot of work into this but still nowhere near enough. I do not think anyone has, at least in the Australian context. It is fair to say that Australia has had a lot of structural adjustment in many industries over many decades. Aside from that which goes to farming and agricultural communities, the money has been tight, it has been ad hoc, happening after the event, it has been poorly planned and the results have largely been ineffective. So that is why blue-collar workers and beyond basically have a very cynical view about structural adjustment. They know that workers always lose out. That is the experience in Australia. We have commissioned research ourselves. There was our report The Ruhr or Appalachia? Deciding the future of Australia's coal power workers and communities, which we released over a year ago now. We have participated in various workshops, we sit on the Australian Climate Roundtable with the Australian Council of Trade Unions, we have participated in global union reforms on this and we help bring out German union people to Australia to discuss how they handle things in Germany—and that is the best model so far.

We do not think Australians—either in business or in the community or at Government level—have really got their heads around how much work needs to be done to bring everyone along in this matter. The fundamental part of the German program, which secured union consent to coal power being phased out in Germany by 2038, was that there is a guarantee of no forced retrenchments. There is a huge amount allocated to economic development in those coal power regions of Germany. They built upon their success with their black coal industry, where they phased out black coal—basically for economic reasons not for environmental reasons—between 1990 and 2018. That was 160,000 people without a single forced redundancy. Everyone was found a good job to go to or retired. When we look at what is planned for structural adjustment in Australia we do not see anything like that. It is assumed that people will be forcibly made redundant and that they will either be unemployed or forced to take early retirement or that they will have to take less secure work on less pay. That is assumed to be the way that things work in Australia.

The CHAIR: I am just about to move to questions from the crossbench.

Ms ABIGAIL BOYD: I will just pick up on that point as I am very interested in just transitions following what has been happening in Germany. Acknowledging that you are in favour of a just transition, acknowledging that the writing is on the wall for the coal industry, how does that gel with wanting to open new coalmines and create new jobs that will then need to be transitioned out of?

Mr COLLEY: There is an important strategy argument here and I will also say something about the terminology. The term just transition—which we have promoted and which is part of what the international union movement has sought and which is in the Paris Agreement—has been so used and abused in the Australian context that it is becoming a term which we are in danger of walking away from because it is perceived cynically by our membership and by those communities. So we are looking around for another term now.

Ms ABIGAIL BOYD: Sure.

The Hon. ADAM SEARLE: It is all about building economic resilience.

Ms ABIGAIL BOYD: But the basic idea that we are trying to not make people redundant and instead train and provide investment into new industries for those people to go into, how does that objective of getting people out of existing coal jobs gel with wanting to create new coal jobs in new coalmines?

Mr COLLEY: The issue is that we see Australia has a domestic emissions target and there are arguments that it should be stronger. We do not get into the issue of targets ourselves because all targets are painful for us but we accept that governments have to have targets and other stakeholders may have targets. What we focus on is how we get there and the issue for us is that we acknowledge that the domestic coal power industry is in decline. We are focused on how we manage coal power, domestic coal power. It is clearly in decline. Some 10 or 11 coal power stations have already closed and many more are scheduled to close. We have to prove to Australian coalmining communities, coal power communities and the broader community that we can successfully transition those workers. To date we have not. Even with Hazelwood—the most recent one—there was no just transition there.

Ms ABIGAIL BOYD: So how do new coalmines address that issue?

Mr COLLEY: Before we start talking about the export coal industry we have to prove that we can do the right thing in the domestic coal power industry. That has not been done yet. We have people saying we are going to have just transition in the export coal sector and we do not even have it with industries that are in decline.

Ms ABIGAIL BOYD: But we should and one of the things that we would do is begin to transition workers out. I do not understand—

Mr COLLEY: We have not even started.

Ms ABIGAIL BOYD: I will move on because it is not the heart of the argument. The heart of your argument seems to be around the Paris accounting which is really not a relevant argument in this context. You will have heard earlier evidence given about what the department thinks of that argument and how it is conflating the considerations of the target and emissions under Paris with what actually happens at a New South Wales planning process. Have you been made aware of those criticisms?

Mr COLLEY: I did see testimony online this morning and it mentioned the departmental advice in that area. With respect to the department, I think that their advice should always be considered. But that does not mean it is always right. We have disagreed with the department over many matters with respect to the coalmining industry over many decades. It is our view, quite strongly, that the regulator or the courts attempting to assign responsibility for scope 3 emissions to mine proponents in New South Wales is directly contrary to the Paris Agreement and to the international methodology for missions accounting that lies underneath it.

Ms ABIGAIL BOYD: Picking up on that wording because is very similar to what we see in the Mineral's Council wording as well. This responsible for, this idea of making local producers responsible for the emissions overseas. That is not actually what the court decision did. What it did was say that when we are considering relevant considerations for the impact on the environment locally, we need to consider the impact on the environment from an increase in emissions globally. That is a very different thing to saying, we are putting responsibility on producers here for something that gets done overseas.

Mr KELLY: In my opening remark I made the comment and quoted Ross Garnaut from his new book. He does say—

Ms ABIGAIL BOYD: Is he talking about the planning process or is he talking about—

Mr KELLY: He talks about responsibility for emissions from burning coal and gas in Australia—

Ms ABIGAIL BOYD: Which is the Paris Agreement.

The Hon. CATHERINE CUSACK: Point of order: Can I just hear the answer to that question?

The CHAIR: I do not think she was interrupting too much, but if you could continue, just to get the response.

Mr KELLY: You made the point that in essence us and the Minerals Council are the only two that talk about responsibility. I just want to make the point to you—

Ms ABIGAIL BOYD: In this context of planning.

Mr KELLY: I want to make the point to you that Ross Garnaut in this concept of emissions and scope 3 talks about responsibility. I think lots of people talk about responsibility and I think that is an important place to consider it. The reality is really simple: the export coal market in Australia is still growing. Why would we transition away from an industry to do with scope 3 emissions when the reality is what we are accountable for for the people in New South Wales is scope 1 and 2?

Ms ABIGAIL BOYD: There are lots of reasons, but I think that is a different discussion to whether the accounting framework for emissions globally has anything to do with the decision made in Rocky Hill or anything to do with the decisions made looking at relevant considerations for the local environment. They are two separate things, and that is what the department points out, that is what the evidence this morning pointed out. Is there any other basis for your argument?

Mr COLLEY: Respectfully, I disagree with those assessments. I have read the Rocky Hill decision, I have read the Wambo decision—I do not have them with me. I did not read the Bylong decision. This argument about the difference between responsibility and consideration I think is a sophistry, that in practice responsibility is being assigned.

Ms ABIGAIL BOYD: We could argue over semantics. Finally, before I hand over to my colleagues, you mentioned before to my colleague the Hon. Adam Searle that you are not aware of any mine that was rejected wholly on the basis of the emissions concern. Is that right?

Mr COLLEY: Correct.

Ms ABIGAIL BOYD: Yet on page three of your submission you say "coalmine developments have been rejected wholly or in part because of greenhouse gas emissions". Did you want to amend that submission?

Mr COLLEY: I will amend that to be "in part".

The CHAIR: I have a quick question before I hand over to the Government. You said in your opening statement that there would be an expectation that greenhouse gas emissions will be considered more in the future because you "can see where things are going". What do you mean by you can see where things are going?

Mr COLLEY: I am talking about the commentary that I have read about the Rocky Hill decision and how it went around the world and many commentators say that mines in Australia have been rejected in part because of their greenhouse gas emissions. I think it is a logical step in evolution to say that whilst no mines will have been rejected solely on the basis of their emissions, it is quite possible that further court cases will result in the priority that greenhouse gas emissions are moving further up and they are becoming the primary decision. I specifically refer to scope 3. Mines should be accountable for their scope l and scope 2 emissions.

The Hon. BEN FRANKLIN: Could I take you to the final page of your submission and the fact that you are concerned that the bill may not achieve its intention? Could you unpack that in a more substantial way, about what specifically you are concerned about in the bill that is not going to achieve the intention that you want in terms of not having scope 3 emissions being considered? And also what specifically you think could be done to improve the bill, from your perspective, in order to achieve the outcome that you would like to see?

Mr COLLEY: That last page of our submission has a footnote or a reference to the opinion from Allens. In terms of unpacking it I would say look at what the Allens' opinion says. That is what we are referring to. That says that prohibiting the imposition of a condition with respect to scope 3 emissions may result in a mine being simply rejected on the basis of scope 3 emissions because a condition was not able to be imposed. So that is the concern from Allens. In my testimony I made reference to other commentary in more recent days about unintended consequences. I do not have a solution. We do not have a drafted solution that fixes the problem. We do not have a parliamentary legislation drafting team. We do have plenty of lawyers, but they are not of this type. Our lawyers all spend their time working on wages and conditions issues for coalminers.

The Hon. BEN FRANKLIN: Your fundamental and basic argument is that whatever legislation ends up coming before the Parliament and is passed by the Parliament, your position is that you do not want scope 3 emissions to be considered when approval is given?

Mr COLLEY: Correct.

The Hon. ADAM SEARLE: I do not want to put words in your mouth but you have got a concern, which you have expressed on that last page, that the bill in its current form might actually create more uncertainty for the industry. Is that right?

Mr COLLEY: Yes.

The Hon. CATHERINE CUSACK: Can I ask Mr Kelly to continue what he was saying in relation to Mr Garnaut's analysis of responsibility internationally?

Mr KELLY: As Mr Colley has already said, we are firmly of the belief that scope 1 and scope 2 emissions should be considered in the planning process. We do not agree with scope 3. Mr Garnaut, like us, believes that responsibility for emissions from the burning of coal in this particular case belong to the nation from which they burn them. That is consistent with our submission, it is consistent with our opening remarks, it is consistent with our answers to the questions.

The Hon. CATHERINE CUSACK: Why does he argue that?

Mr KELLY: Because that is what the Paris Agreement says.

The Hon. CATHERINE CUSACK: So under the Paris Agreement we are not required to be responsible for those emissions?

Mr KELLY: No. Scope 3 emissions are someone else's scope 1 and 2, which ultimately is why we believe that Australia should be responsible for Australian emissions. In the New South Wales planning world we

should be looking at the New South Wales planning instruments that ensure that we do look at those matters as well as the other obvious matters that are important—the economics associated with the project and to the wider community, the environmental law that needs to be applied, and the various other tests and standards that need to be done.

The Hon. SHAYNE MALLARD: You say in your submission quite strongly, "Further they are sabotaging the international carbon accounting framework." Do you want to expand upon that?

Mr COLLEY: I will look after that. The Paris Agreement and the United Nations Framework Convention on Climate Change rely on the methodology developed and put forward by the Intergovernmental Panel on Climate Change as a greenhouse gas accounting methodology. It requires that all parties to the Paris Agreement are required to account for their emissions using that basis. That is the emissions that they are responsible for. They can engage in cooperative action—I think it is under article 6—where you engage in action to voluntarily and cooperatively with other countries reduce emissions in the other country. But that must be done with the consent of both parties.

In the decisions that I have seen no attention is given to the issue of seeking consent for this action to seek to reduce emissions in Japan or China or Taiwan or Korea; it is a unilateral regulation that is sought to be imposed. So the cooperative action mechanism of the Paris Agreement does not apply in this circumstance. We think that the Paris Agreement would never have been achieved if there were any efforts to seek to make one country accountable for emissions in other countries.

The Hon. SHAYNE MALLARD: You use the word "sabotage". That is a strong word. I was thinking it is double accounting, like it would, in effect, nullify the accounting system. You are saying this actually undermines or white-ants the agreement.

Mr COLLEY: It is a strong term but I used it advisedly. It is not just double accounting, it can be triple and quadruple accounting. We had the example of Japanese cars on Australian roads. The emissions from Japanese cars on Australian roads have scope 3 emissions of Japanese car makers, but they are also scope 3 emissions of the Arab oil-producing country. They are also the scope 3 emissions of the Indian or Singaporean oil refinery that refined it. You have multiple accounting for scope 3 emissions under that scenario. It was an unworkable situation with international negotiations, which is why it was not done.

Ms ABIGAIL BOYD: Are scope 2 emissions someone else's scope 1 emissions?

The Hon. ADAM SEARLE: No.

The CHAIR: Order!

Ms ABIGAIL BOYD: Sorry, just explain to me the scope—

Mr COLLEY: Scope 2 emissions are from power producers or the providers of heat energy—which does not exist in the Australian context; it does exist in European countries—provided to the entity to carry out the operations at that site.

Ms ABIGAIL BOYD: So it is the energy that a mine would use in order to do its operations?

Mr COLLEY: Yes.

Ms ABIGAIL BOYD: Presumably that energy comes from someone else having accounted for scope 1 emissions somewhere else? Scope 2 emissions are someone else's scope 1 emissions.

Mr COLLEY: But at the national level it is all scope 1 emissions, basically, is one way to look at it. They are all activities that take place in Australia. But energy does form a unique cross-cutting issue for emissions, which is why the international architecture reflects that. It is why the existing—I do mention the existing disclosure standards for emissions have scope 1 and scope 2, but they are to do with the activities of the business at its sites.

The Hon. ADAM SEARLE: It is case, is it not, that scope 3 emissions, while they include emissions overseas, also partially include emissions in Australia? Scope 1 is from the direct activities being engaged in—say, the mining activity; scope 2 are indirect emissions from electricity being purchased, so involved in production; and scope 3 emissions are basically all of the other emissions, including transportation and all the other, as you say, other people's scope 1 and scope 2 emissions—and they can occur anywhere, both here and overseas. They are useful concepts but they are not in neat categories. They are not all separated.

Mr COLLEY: That is true. I suppose we are particularly focused on the scope 3 emissions that are happening in other countries. We accept that State and Federal regulators seeking to address Australia's emissions will be taking into account the scope 3 emissions that occur within Australia—scope 3 emissions that occur from businesses within Australia conducting activities. If there are third parties using the products of those businesses in Australia, they will form part of the emissions of Australia. We do have a responsibility to reduce those emissions.

The CHAIR: Complicated, isn't it. That is the end of our time for questions in this session. Thank you very much for appearing.

(The witnesses withdrew.)

(Short adjournment)

STEPHEN GALILEE, Chief Executive Officer, NSW Minerals Council, affirmed and examined

ANDREW ABBEY, Policy Director, NSW Minerals Council, affirmed and examined

The CHAIR: Welcome to the next session of our inquiry. Would either of you like to begin by making a short opening statement?

Mr GALILEE: Yes, thank you. The Minerals Council welcomes the opportunity to provide a submission and appear before the Committee here today. We acknowledge and appreciate the important work that this Committee does. Without going into the detail of who we are and what we do—that is well established through our submission—I would just state at the outset that Mr Abbey is our policy specialist on these matters. If there are some technical questions from time to time I may defer to him to assist the Committee's deliberations on those issues.

The NSW Minerals Council supports the principle of what the New South Wales Government is seeking to achieve through this bill. The New South Wales Government has made it clear that it believes it is not sensible or practical, nor the intent of the Environmental Planning and Assessment Act 1979, the EP&A Act, to control impacts generated by actions undertaken in other countries and that these environmental impacts are under the control of others and subject to the environmental assessment processes of those countries. This is the New South Wales Government's stated policy principle and we agree with it. It is therefore logical and in our view non-controversial that the New South Wales Government would seek to formalise its policy position through this bill.

We agree with the New South Wales Government that the EP&A Act should rightly be focused on impacts that are generated in New South Wales, where those impacts can be controlled and managed by the applicant under the relevant New South Wales legislation, regulation and policies. Likewise, we agree with the New South Wales Government that downstream emissions should be the legal and environmental responsibility of the country in which they are generated or created, or the source of the emissions including any environmental impact considerations. The NSW Minerals Council and its member companies support the Paris Agreement and it supports Australia's efforts to meet and beat the nationally determined contribution targets that Australia has committed to. The approach the New South Wales Government is seeking through this bill is entirely consistent with the accounting framework that underpins the Paris Agreement and forms the basis upon which Paris Agreement signatories signed up to their own nationally determined commitments.

The NSW Minerals Council agrees with the principle of the New South Wales Government's policy approach on these matters and it supports the Government's efforts to formalise this through the legislation and regulation. However, it does have some reservations about the bill in its current form. The bill in its current form fails to clarify and give effect to the New South Wales Government's policy position and principles consistent with established and agreed emissions accounting frameworks, including the Paris Agreement, that emissions generated in other countries are the responsibility of those countries and should not form the basis for refusal or conditional approval of New South Wales projects under the EP&A Act.

New South Wales projects already undergo some of the most rigorous environmental assessment in the world, including in relation to their emissions, and this will remain the case under these changes. However, overseas-generated emissions are the primary responsibility of other countries through established emissions accounting protocols and the planning assessment processes of those countries. New South Wales environmental impact assessments and planning assessments should focus on impacts generated in New South Wales, not impacts generated in other countries that cannot be reasonably managed or mitigated by the applicant.

The climate change discussion and need for clarifying policy around greenhouse gas emissions is obviously very important. Our industry takes a responsible and measured approach to these issues. However, we need to make sure that we do not lose sight of what the New South Wales Government is actually trying to achieve through this bill: namely, that simply clarifying the New South Wales EP&A Act is focused on evaluation and management of impacts generated in New South Wales and not those impacts that are generated outside of Australia, which are managed by other countries.

The Hon. ADAM SEARLE: Thank you, Mr Galilee and Mr Abbey, for coming today. Just to unpack some of your observations, the NSW Minerals Council and its members support the Paris framework and think New South Wales policies and actions should be consistent with that. Laving aside the issue of whether United Wambo condition is enforceable—and I accept that there are technical issues with that—by seeking to, I guess,

clarify to whom the resource could be sold and limiting that to Paris accord or like countries, does that not make New South Wales decision-making consistent in reinforcing that Paris accord framework?

Mr GALILEE: Firstly, I do not think you can put to one side whether or not the condition is actually legal or enforceable, because that is a very important legal principle when it comes to these matters. In relation to your question, it was the New South Wales Government itself that made it clear, or attempted to make it clear, through the advice that it provided to the Independent Planning Commission panel in that case that there was no policy that would require that condition to be imposed at a New South Wales or, indeed, at a Commonwealth level. That was the stated position of the New South Wales Government. That policy position was disregarded by the Independent Planning Commission panel, and that condition was imposed. This bill is simply seeking to ensure that the Government of the day is able to ensure that its policies are part of that assessment process and not ignored, in our view.

Mr ABBEY: In addition, part of the Minister's second reading speech for the introduction of the bill also talked about seeking clarification from the Commonwealth Government on the issue. We support that. If those rules change or that confirms who you can or cannot trade with, that is a different story. But at the moment, there is no clarification on that issue.

The Hon. ADAM SEARLE: On that, the Government's submission to this inquiry said that it had received a response from the Commonwealth in mid-December. Are you aware of what that response was?

Mr ABBEY: No.

Mr GALILEE: Was there a Government submission?

Mr ABBEY: We did not see a Government submission.

Mr GALILEE: We would be interested.

The Hon. ADAM SEARLE: I do not think it is a secret.

Mr ABBEY: We have not seen it.

The Hon. ADAM SEARLE: We will put a pin in that and come back to it.

Mr ABBEY: We are not aware of what the Commonwealth—

Mr GALILEE: Was it the Department of Planning submission?

The Hon. ADAM SEARLE: It was.

The Hon. PENNY SHARPE: Correspondence.

The Hon. ADAM SEARLE: Correspondence from the department.

Mr GALILEE: That has not been put up online yet; I checked it.

Mr ABBEY: We have not seen the Commonwealth response.

The Hon. ADAM SEARLE: My copy says "Department submission". In relation to your concern about whether or not greenhouse gases or scope 3 emissions should be taken into account in deciding to refuse or approve a mining project, your position is that those considerations should not be able to inform a refusal. Is that correct?

Mr GALILEE: Yes.

The Hon. ADAM SEARLE: It is your understanding that this bill actually does not change that or does not interact with that issue at all?

Mr ABBEY: Yes.

Mr GALILEE: Yes. As I said earlier, we have some issues in relation to the bill in its current form and whether or not it achieves the effect that we believe the Government is attending to achieve, consistent with the stated policy principles from the Jim Betts letter and from other public comments that have been made by various government Ministers throughout the course of these issues. So we do have some suggestions. We have highlighted some of those deficiencies in our submission and we have made some suggestions to the Government and to others on how the bill could potentially be improved to ensure that it is more consistent with the Government's stated policy objectives as we understand it. We are expecting to be part of those discussions as the bill moves through the Parliament at some stage.

The Hon. ADAM SEARLE: Would you accept the proposition that different parts of the Government have articulated different rationales about what it is doing? It is not entirely clear that all of the Government has the same objective.

Mr GALILEE: That would be an assessment for others to make, potentially those from the shadow ministry rather than us.

The Hon. ADAM SEARLE: You have also highlighted the concern that your organisation and your members have that, far from clarifying and improving what you see as the regulatory landscape, this bill might potentially lead to a greater risk of refusals.

Mr GALILEE: There is a possibility, based on the advice that we have seen, that that could happen. There are various opinions on the impact of that. Given some of the experiences of our member companies and our industry on these issues over the past 12 to 18 months, there is a tendency to take a worst-case scenario view and a very extreme precautionary approach in relation to how these matters of law could be interpreted by planning assessment processes. There is that view that has been put to us through our member companies and through some of the advice that we have seen that that is possible. There are other members who believe that the legislation is at least an attempt to clarify and send a clarification on the policy intent of the Government. There are obviously different views that have been expressed to the Committee about the impact of the bill in other ways.

The Hon. ADAM SEARLE: But your organisation has come to the view—perhaps on a precautionary basis—that, on balance, the bill might actually make things worse for the industry.

Mr ABBEY: In the sense that if a project could not get over the line because you cannot impose a condition on it relating to scope 3 or downstream emissions, the view may be formed that you subsequently cannot approve the project. So, yes, the logic is that it flows that there is a greater risk.

The Hon. ADAM SEARLE: We will come to that. Mr Galilee, I am not being critical but you used the phrase "impacts generated in New South Wales" a number of times. You were saying that, properly, the planning system should be concerned with environmental or greenhouse gas impacts generated in New South Wales.

Mr GALILEE: That is the Government's proposition through the territorial limits bill, as we understand it.

The Hon. ADAM SEARLE: I understand that. But the bill, as I read it—and we have had evidence to this effect—also would impact the imposition of conditions designed to minimise or address environmental or greenhouse gas impacts in New South Wales resulting from a project but impacted by the burning of the fossil fuel overseas. So, for example, in considering whether or not a mine or a gas field or whatever it is should be approved, if the evidence was it is going to generate X amount of greenhouse gases—whether they are burnt in Australia or in China or anywhere else—the burning of that resource would have a certain impact in New South Wales. If the approving body accepted that argument or if that was the evidence, and then thought, "To minimise or address that risk, we would want to develop a condition," because it would rest potentially on the burning of the resource overseas, this bill would prohibit the development of a condition to minimise or address that risk. So it would stop the addressing of a risk in New South Wales, albeit the causation of that risk would be external. It would not be a risk generated in New South Wales except insofar as the ultimate source of the risk was the project.

Mr GALILEE: I will make two observations in relation to that. Firstly, those matters are part of the planning department's quite rigorous assessment in relation to emissions, including downstream emissions now. They make a recommendation based on the impact of emissions and other impacts and benefits, so to speak. Secondly, I doubt that condition would be enforceable or legal under the Newbury test as you describe it, as is the case with, potentially, the United Wambo condition. That is, as we understand it, an issue the Government is seeking to address through this bill: that there will not be conditions placed on projects that are unenforceable, that do not pass the Newbury test, so to speak, and that are potentially challengeable by proponents, for example.

The Hon. ADAM SEARLE: But getting to that point, if those were the risks on the evidence before the assessing body that might be enlivened by the project, and because of this legislation you could not have that condition, you could reach a result where, to take a precautionary approach, the consent authority might not give consent.

Mr ABBEY: As I understand it, it appears that others think it is an unintended consequence, and it may well be. I think in our submission or previous letters to the Premier and the planning Minister and the like, we noted that we had not seen the legislation. It was not an approach we necessarily would have taken. But in terms of whether that unintended consequence is real or not, I think it is an issue for the Government to resolve.

The Hon. ADAM SEARLE: The concerns that your industry has had are really around the extractive industries and the way they are assessed in the planning system. This bill is not limited to the extractive industries and it would seem to have an application to the planning system generally. Is that something that you have any view about?

Mr GALILEE: In our view, that is a matter for the Government, which drafted the bill.

Mr ABBEY: As a matter of the principle of who takes legal and environmental responsibility for the impacts, we agree with the principle.

The Hon. ADAM SEARLE: The second issue is that the bill talks about "impacts", not environmental impacts or impacts from greenhouse gases—it does not define the term "impacts". Are you comfortable with that approach, or do you think that it is unduly wide or do you not have a view of that aspect of the bill?

Mr ABBEY: Once again, it is wide, and I know there has been a lot of commentary about it. The fact that it is not defined possibly opens it up to wide interpretation. Once again, we have a different approach, or a different preferred approach. But no, we do not have a strong view. It would probably make sense from a certainty perspective to narrow the definition of what the impacts are or what they would not include.

The Hon. PENNY SHARPE: Can I ask how many Ministers you have met with in relation to the development of this bill?

Mr GALILEE: None in relation to the development of the bill.

The Hon. PENNY SHARPE: In relation to scope 3 emissions and the inclusion of conditions through the IPC?

Mr GALILEE: From recollection we would have met with the former planning Minister just before caretaker period before the May 2019 election.

The Hon. BEN FRANKLIN: March.

Mr GALILEE: March, sorry. I was thinking about the Federal election, not State. We met with the current planning Minister—I think we may have met with him twice on this over that 12-month period. We met with the Deputy Premier once on this and I think that was a joint meeting with the CFMEU to discuss a range of matters, including this. We met with Minister Kean to discuss a range of issues, including this, when the Government was re-elected. We have had one meeting with the Premier to discuss a range of issues on our planning concerns over that period of time and this was discussed briefly as well. From memory those would be the meetings that we had over that 12- to 14-month period.

The Hon. PENNY SHARPE: Thank you, I appreciate that. In New South Wales and across Australia over the past four months what we have experienced is unprecedented, as everyone accepts. There is an incredible amount of community concern in a way that has not been present previously. I think you would agree with that. There is a lot of discussion about dealing with these matters in a different way than how we have previously dealt with them. If we had had this meeting four months ago I think it would have been quite a different discussion than we are having now. Do you accept that there is a need for the way in which we previously dealt with these matter to change?

Mr GALILEE: This bill is going to introduce some important changes and we support those changes. Essentially, it will make sure that the planning and assessment framework here in New South Wales is consistent with globally accepted emissions accounting frameworks and we support that. The alternative is something that would start unwinding global emissions accounting frameworks and some of the international agreements that are in place to reduce emissions globally. It is certainly a different situation now than it was 12 months ago; there is no doubt about that. There is nothing inconsistent with this bill and Australia meeting and beating its emissions reduction commitments. There is nothing inconsistent with this bill and New South Wales reducing its emissions, or Australia reducing its emissions or any of our export partners reducing their emissions. How those countries meet their own nationally determined contributions [NDCs] or reduce their own emissions—they can do that in a variety of ways and it is not for us to tell them how they will meet those targets.

They can meet their own targets using more of our coal, less of our coal, more of our gas, less of our gas, alternative energy sources or a range of other measures. This bill is not inconsistent with any of that, in our view. It is introducing some consistency to the way that these matters are addressed.

The Hon. PENNY SHARPE: It is not fundamentally changing the way in which we deal with climate change that is here and upon us, though?

Mr GALILEE: Absolutely not.

Ms ABIGAIL BOYD: Just in relation to those meetings that you held with various Ministers, did you meet with Minister Kean on 23 July?

Mr ABBEY: I do not know. We definitely met with Minister Kean.

Ms ABIGAIL BOYD: Around July?

The Hon. SHAYNE MALLARD: It will be in his public diary.

Ms ABIGAIL BOYD: His public diary says that he met with you on 23 July.

The Hon. SHAYNE MALLARD: Then everyone accepts that.

Mr ABBEY: Then that is the case, yes.

Ms ABIGAIL BOYD: Did you discuss United Wambo and the potential condition being imposed on that?

Mr GALILEE: Possibly, but my recollection of this is that all the documents and briefing papers that we provided to Ministers during these meetings have been requested under the GIPAA and are available, so you probably already have that in your office. The reality is that there was a re-election of the Government, a change of Ministers and, as a result of that, we sought introductory meetings with a range of Ministers in their new portfolios to discuss matters that were relevant to the industry, which are now—and we always expected they would be—publicly available briefing papers on those matters. I cannot remember exactly what was in those briefing papers, but I would expect that that would have been in there. Maybe not necessarily the United Wambo matter.

Mr ABBEY: I do not know when the United Wambo draft condition got put on the IPC website but that was roughly the point when we were aware of it. If that meeting occurred before the United Wambo condition, we would not have discussed it with him.

Ms ABIGAIL BOYD: When did you become aware of the United Wambo condition?

Mr ABBEY: When it was posted on the IPC website.

Ms ABIGAIL BOYD: Do you know how Glencore and Peabody came to be aware of that condition?

Mr ABBEY: No.

Mr GALILEE: No.

Ms ABIGAIL BOYD: The day after you met with Minister Kean, Glencore and Peabody wrote to the IPC asking about that condition. Did you pass on any information to Glencore or Peabody after that meeting?

Mr GALILEE: No.

Mr ABBEY: No, not about that.

Ms ABIGAIL BOYD: Looking at your submission, I believe—and correct me if I am wrong—that the foundation of your argument is around this Paris Agreement and the accounting. Are you aware of the department's initial response to that argument?

Mr ABBEY: Yes.

Ms ABIGAIL BOYD: Do you agree with them that it is a bit of a furphy?

Mr ABBEY: The basis of our submission is that:

> Any State-based policy and regulatory framework should seek to complement and contribute to the national effort to meeting Australia's emissions reduction pledges under the Paris Agreement. State governments and their agencies should ensure the current approval and regulatory frameworks are efficient and effective and not do introduce measures that undermine or conflict with the agreed national framework.

On that approach, we accept the accounting framework is not necessarily a direct consideration under the EP&A Act. What we have always sought from day one is that the Government put in place policies that align with the Paris Agreement capping framework.

Ms ABIGAIL BOYD: Do you understand that the Paris Agreement is a bare minimum, not a hard limit? It seems to me your argument is that you view New South Wales Government as somehow being constrained in all things to do with climate by its obligations under the Paris Agreement.

Mr ABBEY: In terms of countries identifying their NDCs, yes, it is a bare minimum within their own jurisdictions.

Ms ABIGAIL BOYD: Do you understand that the decisions that were made, for example, in the Rocky Hill decision, were related to the impact of cumulative global emissions on the local environment and were not concerned with other countries' emissions from a scope 3 perspective?

Mr ABBEY: Having read the judgement from the Land and Environment Court I understand the construction of the argument, yes.

Ms ABIGAIL BOYD: If we acknowledge that, then we acknowledge that the considerations of climate change being taken into account under the Act are quite distinct from the obligations of New South Wales under the Paris Agreement.

Mr GALILEE: Well, New South Wales does not have any obligations under the agreement—they are not a signatory of the agreement.

Ms ABIGAIL BOYD: Fine, obviously. So New South Wales's policy framework to abide by the Paris Agreement.

Mr ABBEY: Yes.

Mr GALILEE: So you saying that the New South Wales Government should ignore the Paris Agreement and do their own thing?

Ms ABIGAIL BOYD: No, I am saying that that is one aspect of what we do in relation to climate. What the IPC were looking at were the local impacts to the local environment of increased global emissions.

Mr GALILEE: Well, that was the Land and Environment Court, not the IPC.

Ms ABIGAIL BOYD: Sorry. But it is the same in both situations. Whether it is the court or the IPC, they are looking at the considerations of the local environment caused by global emissions growing globally as a distinct issue from whether we are concerned about accounting under the Paris framework. That is basically what the department said in its response to your argument, as well.

Mr GALILEE: My understanding of that judgement was that those scopes or issues were not a factor in the refusal, and that is stated in the judgement. They were written into the judgement afterwards.

Ms ABIGAIL BOYD: How is that then relevant to your only argument in relation to needing this bill?

Mr GALILEE: Well, it is the Government's bill.

Ms ABIGAIL BOYD: Your argument, and what you have been lobbying and the argument you took to them on 12 June, is that they needed to change this legislation because you believed that it was somehow making a mockery of the Paris Agreement.

Mr ABBEY: I go back to the central tenet of our submission is the Government needs to put in place policy. There was no policy that that Land and Environment Court judgement relied on, it was not clear. Similarly the United Wambo decision, the Government actually wrote to the Independent Planning Commission to say there is no policy basis to do what you are intending or proposing to do. So we are seeking clarity on the policy to align with the Paris Agreement accounting frameworks.

Mr GALILEE: We have also been seeking policy clarity from the Government on these measures more generally and we note that Minister Kean has made some public statements about an interim emissions target, I think, that they are working on. There was an announcement in relation to an energy policy last week. We would like to think that some of those policy outcomes are going to help fill the gap which is there at the moment, which is going to help provide some direction in relation to how these matters are treated in the future. Those framework issues that we are seeking as far as we understand it are still under development.

Ms ABIGAIL BOYD: But again, emissions targets are a very separate thing to a consideration of how increasing global warming impacts on the local environment and the health of people in the community.

Mr GALILEE: Well, if New South Wales has emissions targets I assume they will focus on scope 1 and scope 2 emissions and not scope 3 emissions for New South Wales generated overseas. I would assume that the New South Wales Government would do that.

Ms ABIGAIL BOYD: Unfortunately global warming does not stop at the border.

Mr GALILEE: But the NDCs do and the international accounting frameworks do.

Ms ABIGAIL BOYD: And again that is why it is not relevant.

Mr GALILEE: National governments stop at national borders.

The Hon. CATHERINE CUSACK: Point of order: It is about asking questions, not about arguing with witnesses.

The CHAIR: I think it is a reasonably health level of banter between both the witness and the member, but I remind both to listen to each other and not speak over each other, for the purposes of Hansard.

Ms ABIGAIL BOYD: Again, we are not looking at the accounting framework of the Paris Agreement, we are looking at the impact on a local environment from the impacts of global warming that are caused by cumulative growth in emissions. That is what they are taking into account, a very different thing to whether or not we are meeting our emissions targets and our international obligations.

Mr GALILEE: I do not think we are disagreeing with you.

Mr ABBEY: No, we agree. But just to add to that, or to nuance it, the coal or the gas that is dug up out of the ground here, there is a consideration of the greenhouse gas emissions associated with digging it up. When it goes somewhere else it gets burnt and creates power or energy or whatever, there is an assessment or consideration of the greenhouse gas emissions there of scope 1 emissions. Our argument is quite simple, we will take care and address our greenhouse gas emissions within our own borders. In other countries at the source where the emissions are generated, will take care of their emissions, within whatever policy framework, environmental settings, Paris Agreement, consistency, etcetera.

Ms ABIGAIL BOYD: And from the local level, when you are looking at the impact of those overall emissions, you are looking at every single little increase in emissions having a very serious additional impact on the local environment and the people. So when the IPC or the court is working out whether or not something is of relevant consideration to the environment, it is not concerned with whether or not other countries are meeting their obligations with whatever is happening, the Paris Agreement does not even begin to go far enough in addressing the impacts locally. So that is what the Government's department was saying when they said that you had conflated obligations under international and national accounting frameworks with the assessment of impacts associated with projects under the Environmental Planning and Assessment Act. They are two distinct things.

Mr ABBEY: Just to clarify, that department's briefing note, as I understand it, was in response to our original briefing note to Minister Stokes which our range maybe 12, 15, 18, you probably got a copy of the briefing note, policy considerations, one of which arguably was maybe not as accurate as we would have liked it, but nonetheless. And the principle is still the same, from an environmental impact accounting perspective, our clear position is take care of the emissions that happen within our own borders and others take care of their emissions within their own legal frameworks, within their borders and our view is the Government needs to clarify that position within the Environment Planning and Assessment Act so there is direct consistency with the Paris Agreement accounting framework.

Mr GALILEE: As outlined by the Jim Betts letter.

The Hon. MARK PEARSON: Does the NSW Minerals Council support this bill of amendment?

Mr GALILEE: We would like to see some further changes to—

The Hon. MARK PEARSON: Can you answer the question? Is the position of the NSW Minerals Council to support—

Mr GALILEE: If this legislation went through we would support it, but we believe that it could be improved.

The Hon. MARK PEARSON: In your submission you say that the general requirement to consider greenhouse gas emissions is not removed by this amendment. You also say that the proposed bill does not change the existing effect of the clause. So why would one support the bill?

Mr GALILEE: I think that is what the Minister said in his second reading speech.

The Hon. MARK PEARSON: This is in your submission.

Mr ABBEY: We do say it as well.

The Hon. MARK PEARSON: So why are you here? Why are you supporting it? Why do you have that position? If what you are saying here is correct, where it still could be the case that a court might say, well, we are going to take into consideration, we are not compelled to, but we still will because of the evidence before us, and the same thing could happen. Why are you supporting this amendment if you are saying there really is no difference?

Mr ABBEY: In correspondence once the bill was put into the House, which we did not see beforehand, we clarified to the Premier, the Minister and the Deputy Premier through correspondence of our concerns with the limitations of the bill based on our industry's concerns. But in terms of the bill itself, it is a good first step in terms of starting to go towards clarifying those principles of who accounts for what under the Environmental Planning and Assessment Act and an environmental impact assessment under the Environmental Planning and Assessment Act. But we agree with you, there still is that risk. And we articulated that to the Premier, the Deputy Premier and the Minister for Planning, there is a risk that under section 4.15, the public interest test, the courts could still refuse a project and that risk, as I said to the Hon. Adam Searle, has been increased because they have removed the ability for mitigation measures through conditions of consent.

The Hon. MARK PEARSON: Just going to the Paris summit, do you understand what that actually is? Not the Paris summit but the whole idea of a summit being places in the world to discuss this issue, from members, countries all around the world?

Mr ABBEY: I would be lying if I said I am an expert on it, but I am happy to be informed.

The Hon. MARK PEARSON: But does it not set the spirit of consideration of everybody else, every other country and what we are doing in the world? That is what the spirit of the Paris summit is about, an overarching, global consideration of what we are all doing. So, therefore does not the judgement that was made in the court on that day to talk about the likely consequences of that coal being extracted from the earth and where it may end up and burn, does that not reflect the spirit and principle of the Paris summit, and all those summits before?

Mr ABBEY: I guess it is a question of who is setting the policy. Is it the New South Wales Government, or is it the New South Wales judicial system? We accepted the Rocky Hill court case got made, and that is fine, done and dusted. But, our view is the Government needs to come back and have a look at Government policy and clarify how greenhouse gas emissions are dealt with under the New South Wales planning system.

The Hon. MARK PEARSON: It was very clear in the legislation already.

The CHAIR: Order! We have Government question time.

Mr GALILEE: Can I add to that though, in relation to that judgement?

The CHAIR: Quickly.

Mr GALILEE: That judgement established an alternative emissions accounting framework outside of accepted global accounting frameworks. It essentially created a fantasy league football next to the National Rugby League premiership in relation to emissions.

The Hon. MARK PEARSON: An amazing analogy.

Mr GALILEE: It is terrific, your team gets two goes. You either accept the Paris Agreement framework and what has been signed up and everyone has agreed to, or you create this alternative out here which would be nice to have. At the moment, this is what everyone signed up to, this is what Governments are setting their policies to. There will be discussion at the next summit in whatever form it may be about whether those targets that have been signed up to are enough, whether they need to be increased. Governments will make those considerations and we will all have to operate within those frameworks when that happens. For the time being the framework as signed up by everyone is the legally binding NDCs. Rather than the spirit of it there is the letter of it that in the end we have to follow.

The Hon. MARK PEARSON: The legislation has spirit.

The CHAIR: Order! Over to questions from the Government.

The Hon. BEN FRANKLIN: Thank you both for being here today. I do not know if you have been following the evidence that has been given today but there have been quite a number of references to the Minerals Council.

Mr GALILEE: I am shocked.

The Hon. BEN FRANKLIN: Indeed. And quite a lot of people and organisations blaming you for, as far as I can see—

The Hon. ADAM SEARLE: Or crediting.

The Hon. BEN FRANKLIN: —a whole range of climate crimes and denialism. So it is quite a pleasant surprise to see at the back of your submission your climate change, energy and emissions policy where you acknowledge in black and white "that sustained global action is required to reduce the risks of human-induced climate change" and that you agree with "participation in global agreements such as the Paris Agreement" and so on. I think that that is important but my first question is: When the rubber meets the road, what do you do in terms of talking to your constituent organisations and companies about what they need to do in terms of their environmental responsibility and how do you oversee that?

Mr GALILEE: That policy position was driven by our member companies and it was an attempt to provide a united position in relation to these issues across an industry which has a range of different views across different companies and indeed within our member companies themselves from time to time. It is important to understand from a Minerals Council and New South Wales mining industry perspective that we are broader than the coal industry. The New South Wales coal industry is about 70 per cent of our membership and about three-quarters of those are thermal coal producers. The balance of those are coking coal producers mainly based in the Illawarra. The rest of our members and some of our larger member companies are operating in the metals and minerals mining space. They are focused on these issues as well.

They see a broad range of energy policy initiatives and energy generation sources as part of the future for them too. They are seeing opportunities there in relation to gold and copper mining, nickel-cobalt mining, lithium, silver, zinc, lead. The biggest greenfields mining project in the New South Wales planning system right now that actually has received its approvals is a nickel-cobalt mine west of Parkes that will produce the metals that are needed for battery manufacture. Our gold and copper miners also see the future with electric vehicles and the expectations of demand for electric vehicles driving a doubling in copper demand over the next 10 or 20 years or so. So we have a broad view on these matters.

Some of our coal members companies in New South Wales like Glencore, for example—Glencore mines coal in New South Wales. It is probably the biggest coalminer in New South Wales but it is also the world's biggest lithium miner too. These global mining houses have a very broad, mature and responsible approach. Glencore announced its coal production cap. BHP has announced its various initiatives in relation to its production and the way it will operate. This is happening across the sector and our sector in New South Wales is broader than the coal industry. So we have a broad approach to these issues and we have sought as an industry to provide a united joint position on these matters which will guide our advocacy and the policy positions that we take going forward.

The Hon. BEN FRANKLIN: Thank you, Mr Galilee. It has been contended that the Minerals Council is an opponent of renewable energy. Could you comment on that?

Mr GALILEE: That is completely false. As I have just outlined, many of our member companies are in that space.

The Hon. PENNY SHARPE: No-one today.

The Hon. ADAM SEARLE: Not today—not in this inquiry.

The Hon. SHAYNE MALLARD: It has been now.

The Hon. PENNY SHARPE: That has not been stated today.

The Hon. BEN FRANKLIN: There has been broad latitude given to a generic discussion about this and we have had through this inquiry a number of allegations made about the Minerals Council in terms of the impact that they have had on climate. What I am trying to do is to give the Minerals Council an opportunity to show the level of concern, care and responsibility that it has in this issue and some of the its other initiatives. I do not think that is an unreasonable thing to do.

The CHAIR: I think that it was important to clarify for the record, though, that that was not evidence received today, which I think is what the Opposition was talking about.

Mr GALILEE: I am very pleased to hear that.

The Hon. SHAYNE MALLARD: They are accused of a lot of other things.

Mr GALILEE: I am sure I will read the *Hansard* and find out. We have worked very closely on those matters over the last few years or so in conjunction with the former energy Minister, Don Harwin, who to his great credit developed in response to some industry work a minerals strategy for New South Wales that was released in February last year. It was a very good document that outlined opportunities in New South Wales in that metals, energy and strategic metals sector. It provided a range of measures that the industry and the Government were going to undertake together to help identify and promote the exploration and hopefully development of those metal for the future. This is a big opportunity for New South Wales. From an industry perspective we have natural advantages in some of those traditional minerals like coal and we have some very strong emerging opportunities in these new and emerging markets too, along with some of the best gold and copper operations in the world. So, as I said, we have a broad position on these issues. We are often portrayed as simply pro-coal but that is simply not the case.

The Hon. SHAYNE MALLARD: It has been implied by some people today, both witnesses and members of the Committee, that you had a strong hand in this legislation. But I read in your submission that you have some concerns around the legislation. On page five of your submission you mention limitations of the bill. I would like you to unpack those concerns. You did touch on one of them before but there are four I can see. I give you the opportunity to unpack those concerns for the Committee.

Mr GALILEE: Mr Abbey might want to go through the technical side of those, because there is the EP&A Act amendment and the SEPP issues.

Mr ABBEY: Yes. With the EP&A Act amendment the primary issue is that the current legislation is focused on not being able to impose conditions of development consent. It does not address the issue of evaluation. As has been mentioned—and I think it has been discussed—it is quite broad. In terms of using greenhouse gas emissions as one element and applying the policy to it, for your project you cannot impose a condition on it relating to its emissions that may be generated in another country. Our concern is that the assessment authority may choose not to approve a project because it does not have the option of imposing a condition on it. Consistent with the principle of what that condition is doing, we would like to clarify that the same logic should apply to the evaluation of the greenhouse gas emissions that occur or are generated in other countries.

The Hon. SHAYNE MALLARD: Just to clarify, you are suggesting that because this legislation proposes to prohibit a condition extraterritorial—

Mr ABBEY: That is right.

The Hon. SHAYNE MALLARD: —because they cannot do that, the assessment person would be concerned about that. They may just refuse it because they cannot do a condition.

Mr ABBEY: That is the risk.

The Hon. SHAYNE MALLARD: The solution to that is to say you cannot refuse it based on—

Mr ABBEY: Based on emissions that are dealt with—

The Hon. SHAYNE MALLARD: International emissions.

Mr ABBEY: Exactly. That is the EP& A space. With the mining SEPP the key concern based on our legal advice was the removal of "(including downstream emissions)" from clause 14 (2) still leaves greenhouse gas emissions to be taken into consideration as part of the assessment. Downstream emissions are still greenhouse gas emissions. So it has not really addressed the issue. There is still the openness of the assessment to take into account downstream gas emissions.

The Hon. SHAYNE MALLARD: "Downstream" being overseas?

Mr ABBEY: Being emissions that are generated in other countries.

Mr GALILEE: That one in particular could be very easily amended to, in our view, give effect to what the Government is intending there by making it specifically excluding those emissions rather than just removing that section completely from under the amendment. These are various options that we have provided to the Government for consideration in our engagement with the Minister. Obviously through the deliberations that the

bill will be subject to we will see what happens in relation to that. We have met with the Opposition on that. We have met with various crossbenchers on that as well. Trying to provide some information and some options in relation to that is something we will do over the next little while.

Mr ABBEY: Just to contextualise the legal advice that we had and the original position, it was more contained to the mining SEPP or the mining industry or State significant development in particular, whereas the legislation or the bill that is before the House is, as has been discussed, more broad and all-encompassing.

The Hon. SHAYNE MALLARD: To be clear, you contend that the consent authority can still refuse a development on the basis of greenhouse gas or climate change considerations within New South Wales?

Mr GALILEE: It is technically possible, legally, that that could occur, bearing in mind also that while it is still the case, this submission was prepared before the Productivity Commissioner completed his review of the Independent Planning Commission and made the recommendations that were released recently and that the Government has accepted. If implemented properly in accordance with the recommendations that were made and the report findings, that risk could potentially be minimised under the framework that the Productivity Commissioner has outlined that should be followed for assessment, going forward.

As I said earlier on, there will be people in our industry who have gone through this process and have got to the end of it and found that they have not received an approval—despite the recommendations and various processes—who are burnt by it and will adopt a worst-case scenario outlook on these things. We plan for the worst but hope for the best on planning matters at the moment. The way that the Government will seek to implement the recommendations of the Productivity Commissioner will potentially have a bearing on the way that could happen in the future.

The Hon. SHAYNE MALLARD: Thank you for that.

The Hon. CATHERINE CUSACK: I have a question about whether or not you consider the bill to be retrospective. The Government's submission says the proposed legislative change will not apply to development consents granted before it commences: It will apply to pending development applications and modification applications that have not yet been determined. Do you agree with that?

Mr GALILEE: It is our understanding that the bill is not retrospective.

Mr ABBEY: That was made clear in, I think, Minister Stokes's second reading speech. We have not got any legal advice as to whether it is or is not retrospective, but on face value we understand it not to be.

The CHAIR: Our time for questions has expired. Thank you very much for appearing.

(**The witnesses withdrew.**)

MARCUS RAY, Group Deputy Secretary, Planning and Assessment, Department of Planning, Industry and Environment, affirmed and examined

The CHAIR: Welcome, Mr Ray. Do you have an opening statement?

Mr RAY: I have a brief opening statement. The Environmental Planning and Assessment Amendment (Territorial Limits) Bill 2019 clarifies how planning approvals and assessments treat impacts occurring outside the territorial limits of New South Wales and Australia. This includes how downstream greenhouse gas emissions—obviously also known as scope 3—are treated in the assessment and grant of development consents under the Act. This is, obviously, particularly significant in the case of mining, petroleum production and extractive industries.

The NSW Land and Environment Court's decision on the Rocky Hill project noted that scope 3 emissions can be taken to into account in determining whether or not to grant a development consent. That consideration of the court was consistent with earlier approaches by the court, stretching back from the Anvil Hill case. The Independent Planning Commission granted the development consent for the United Wambo open-cut mine at the end of August 2019. The development consent was subject to a condition seeking to limit the export of coal to countries that are signatories to the Paris Agreement or have equivalent climate change policies. The Minister for Planning and Public Spaces wrote to the Commonwealth Government seeking guidance on how scope 3 emissions should be dealt with in the New South Wales planning system. A reply was received from the Commonwealth Government on 16 December 2019. I hand that letter up to the Committee.

The CHAIR: Thank you very much.

Mr RAY: The situation with Wambo highlights the broader jurisdictional issue within the New South Wales planning legislation, which does not expressly deal with conditions relating to the extraterritorial impacts of development. The bill therefore clarifies those territorial limitations and identifies conditions that would have no effect if they were part of a development consent. The approach in the bill is consistent with the constitutional constraints placed on the New South Wales power to regulate international trade by the Commonwealth Constitution. The approach is also consistent with the broad legal principles articulated by the High Court of Australia over some period of time in that a provision should be read as confined to what is within the ability of the law of New South Wales to affect or control.

The proposed amendments will not affect the way in which a development application is evaluated by a consent authority, which will still be required to fully consider the impacts of the proposed development. The consent authority will not be prevented from determining the outcome of a development consent that either justifies or contributes to a decision to either approve a development, approve a development with conditions or refuse a development application.

The CHAIR: Thank you very much, Mr Ray. The Opposition will now ask questions.

The Hon. ADAM SEARLE: Thank you, Mr Ray. I know you have handed up the response from the Commonwealth. However, will you outline for the Committee's benefit what you understand to be the substance of the Commonwealth's response?

Mr RAY: Essentially, the focus of the Commonwealth's response is that:

> Emissions resulting from overseas actions—

which is, obviously, the burning of the coal exported from New South Wales—

> are already managed through relevant legislative frameworks by the countries where those actions are occurring.

And:

> Any requirement to consider scope three emissions within a … state jurisdiction—

and impose conditions—I suppose that follows from it—

> is inconsistent with long-accepted international carbon accounting principles and Australia's international commitments.

I will not read the entire letter. It goes on more in that vein. I will go to the second page, third-last paragraph:

> In its recent review of the National Greenhouse and Energy Reporting scheme—
>
> … the Climate Change Authority considered a requirement to report scope three emissions. The Authority concluded that the challenges and burden of reporting scope three emissions outweigh any benefits, because the accurate estimation of scope three

emissions associated with specific economic activity is inherently complex and uncertain, involving many value chains across multiple economies.

The Hon. ADAM SEARLE: Thanks for that. In relation to the stated objective of the legislation, you have outlined it as being concerned to ensure that the New South Wales planning system does not seek to have any kind of extraterritorial effect and to concern itself, essentially, with what occurs in New South Wales. Is that a correct understanding?

Mr RAY: In relation to the conditioning power.

The Hon. ADAM SEARLE: The conditioning power. In relation to the Rocky Hill case, the department accepts that that decision did not hinge on greenhouse gas assessments or scope 3 downstream emissions—it was a factor but it was not the pivotal reasoning.

Mr RAY: No. The reasoning of the judge—that particular mining proposal was at first recommended for refusal by the department and refused by the Independent Planning Commission mainly on the social impact grounds of the proximity of the mine to rural residential development around Gloucester. When the court considered that in the rehearing brought forward by the applicant mining company, the issue of greenhouse gas emissions or scope 3 emissions was raised and the judge agreed with both the department and the IPC that the social impacts on that rural residential subdivision were sufficient to justify a refusal. It also said that the impacts of the scope 3 emissions were another reason for justifying the refusal.

The Hon. ADAM SEARLE: And it is concerns about those latter matters that have animated concerns from the industry in relation to the Rocky Hill decision. You understand that to be the case?

Mr RAY: Yes.

The Hon. ADAM SEARLE: But it is the case that this bill does not prevent the planning and assessment process from determining an application on the basis of scope 3 greenhouse gas emissions and a future consent authority could—in the appropriate case—refuse consent on those basis? That is not impacted by this legislation?

Mr RAY: Yes. That is my understanding of the legislation. I would characterise the legislation as legislation in response to the Independent Planning Commission's decision to put the condition of consent on the Wambo development consent.

The Hon. ADAM SEARLE: So the legislation is concerned with the United Wambo matter rather Rocky Hill?

Mr RAY: Yes. Rather than Rocky Hill. That would be my view.

The Hon. ADAM SEARLE: In relation to the United Wambo matter, as I understand it the condition in that case sought to restrict the sale of the resource to a country that had signed up to the Paris Agreement or had a similar framework. As I understand it, it required a best endeavours approach from both the applicant and there was a role, I think, for the secretary of planning.

Mr RAY: Yes.

The Hon. ADAM SEARLE: Leaving aside concerns about enforceability, is it not the case that that condition sought to reinforce the New South Wales Government policy of supporting the Paris Agreement?

The Hon. SHAYNE MALLARD: Sticking our nose into another country's affairs.

The Hon. ADAM SEARLE: Well, I will come to that.

Mr RAY: Really that is within the minds of the commissioners at the Independent Planning Commission as to what they thought they were doing and whether it was consistent broadly with the policies of the State and Commonwealth governments. I do not think I could really make that leap because I was not part of those discussions. What I can say is that the condition was clearly focused on being able to trace, if you like, where the coal went to ensure that the coal went to countries that had signed the Paris Agreement or countries that had similar commitments.

The Hon. ADAM SEARLE: But it sought, if you like, to control what the proponent did. It did not seek to lay down policy for other countries to follow?

Mr RAY: No. It did not purport to seek that other countries should follow a particular course of action.

The Hon. ADAM SEARLE: So on one view it did not seek to have an extraterritorial effect, it sought to influence what happened here in New South Wales?

Mr RAY: Considering it deals with the export of the coal, I would not concede that. It goes beyond New South Wales borders, beyond Australia.

The Hon. ADAM SEARLE: Given the concerns that have arisen around the mining and extractive industries, are you able to tell the Committee why this bill is not limited to those industries? Why it seems to apply to the planning system more generally?

Mr RAY: What I would say in relation to that is that there is a limit to the reach of the planning system. Both in relation to the Commonwealth's power to regulate trade and export under the constitution and also in the practical ability of the New South Wales Parliament to actually influence or control how matters are done outside of New South Wales.

The Hon. ADAM SEARLE: But my question is really directed to this bill. It is not limited to changing the assessment—

Mr RAY: No. Sorry. It could apply in the same way to other matters where the products of developments in New South Wales are exported. There seems to be good reason for that to be a consistent approach not just for mining, petroleum and extractive industries.

The Hon. ADAM SEARLE: The term "impact" in the bill also is not defined—it is not limited—to environmental impacts or impacts in relation to greenhouse gases or downstream emissions. Given the stated concerns that have given rise to the legislation are you able to tell us why there is no definition of "impact"?

Mr RAY: The concept of "impact" has been in the Environmental Planning and Assessment Act since its introduction in 1979.

The Hon. ADAM SEARLE: It has a very wide meaning does it not?

Mr RAY: It has a very wide meaning and it is well understood. It is not a new term. It has been managed by practitioners—both planning practitioners, environmental assessment practitioners and legal practitioners—within the act for the last 40-odd years. It is not a novel term.

The Hon. ADAM SEARLE: No. That is absolutely the case. Its inclusion in this amendment bill then would seem to lead the bill, in my view, to have a much wider impact than was outlined in the Minister's second reading speech as the intention of the legislation.

Mr RAY: What I would say in relation to that if we come back to the two components of the legislation that are really the subject of today's discussion. The first component is the assessment or the consideration of applications and the second being the power to condition those applications. The fundamental provision that relates to the assessment of every application—which I think is now 4.15, it used to be 79C, before that it was section 90—always talked about impacts. Then the power to condition that flows from that in, I think, 4.17 and some of the other provisions now, relates to the conditioning of impacts. It seems to me that if the issue at hand is the question about the power to condition, it is logical that the same words be used.

The Hon. ADAM SEARLE: I understand but if the stated objective of the Government in the bill is to make sure that the planning system really does not deal with scope 3 or downstream emissions in assessing mining applications—particularly in relation to greenhouse gases—the legislation is not confined to those matters, it is expressed in much more broad terms.

Mr RAY: No. The legislation is not confined to those matters. It is expressed in much more broad terms for the same policy rationale that I have spoken about already which is the inability to, well first of all the Commonwealth constitutional issue in relation to trade and commerce—external trade and commerce—and secondly, our ability to enforce or control conditions of that nature outside the borders of New South Wales.

The Hon. ADAM SEARLE: Sure. But the use of the broad terms in this bill means, if enacted, this bill will have a much more profound impact than is outlined in the Minister's second reading speech.

The Hon. SHAYNE MALLARD: That is just good housekeeping.

Mr RAY: What I would say is that it will have a consistent impact in relation to all matters where there is export of products from New South Wales developments.

The Hon. ADAM SEARLE: Leaving aside what happens overseas, it would also prohibit the development and imposition of a condition on a proposal in terms of the impacts in New South Wales. So for example, if the evidence was a particular mining proposal, when you burned that resource—wherever it was burnt, here or overseas—would have a certain impact on the climate here in New South Wales in terms of greenhouse

gases. Because it might be burned overseas the planning authorities will no longer have the ability to develop or impose a condition to protect the New South Wales environment.

Mr RAY: In relation to the scope 3 gases that are produced overseas, yes, that is the case.

The Hon. ADAM SEARLE: Even if the ultimate source of those greenhouse gases is a mine here in New South Wales?

Mr RAY: Yes, and the fact that they have actually occurred overseas.

Ms ABIGAIL BOYD: Mr Ray, thank you for your appearance and for the briefing that was written on 12 June. I understand that you signed off on that briefing as the final approver?

Mr RAY: I did.

Ms ABIGAIL BOYD: In that briefing you talked about the argument of the NSW Minerals Council in relation to conflating the national and international accounting frameworks with the assessment of impacts under the EPA. Do you stand by your comment about that argument?

Mr RAY: Can you take me to that reference?

The CHAIR: Are you aware of what the document is?

Ms ABIGAIL BOYD: It is the briefing—

Mr RAY: Yes, I do have a copy of that document.

Ms ABIGAIL BOYD: It is at the very beginning of the document on attachment A. It is in the first two bullet points under "Background".

Mr RAY: Yes, I stand by that comment.

Ms ABIGAIL BOYD: You will have to forgive me; I have only just reached this letter from Minister Taylor. At the end of that letter he concludes with something about the requirements on Australian businesses to report any scope 3 emissions and duplicating existing obligations. I do not know what he was asked, but to me the entire letter seems largely irrelevant to the current discussion?

Mr RAY: I cannot offer an opinion on that.

Ms ABIGAIL BOYD: Have you read the letter?

Mr RAY: I have read the letter, yes.

Ms ABIGAIL BOYD: Is there anything in there that you—

Mr RAY: When you say the "current discussion" what do you mean?

Ms ABIGAIL BOYD: Is there anything in that letter that would make you think that your comments in the briefing were no longer correct?

Mr RAY: You think they may not be correct?

Ms ABIGAIL BOYD: If the comments in the background section of your briefing—the notes we just talked about, which you said you stood by—are correct and the discussion around international or national accounting frameworks is largely irrelevant, this letter, based on that framework, would also be largely irrelevant.

Mr RAY: Let me just say that I do not necessarily draw the same inferences as you on that.

Ms ABIGAIL BOYD: Is there any other aspect of your briefing from 12 June that you have changed your mind on?

Mr RAY: Could you direct me to the parts of the briefing you are talking about? That would be very helpful.

Ms ABIGAIL BOYD: Absolutely. That is fair. In relation to the issue of companies having to provide "accounting for and reporting on indirect downstream GHG emissions."

Mr RAY: What page is that on?

Ms ABIGAIL BOYD: It is the last bullet point on page 3.

Mr RAY: Of the attachment?

The Hon. BEN FRANKLIN: At the top it says page 15.

Mr RAY: Sorry, I do not have that.

Ms ABIGAIL BOYD: It is page 3 or 4 of your attachment.

Mr RAY: Under "Issue 3: Implications of LEC Rocky Hill"?

Ms ABIGAIL BOYD: That is right. The last bullet point on that page says, "We do not think the provision of that information would be a significant regulatory burden."

Mr RAY: Yes. I do not have any reason to change that.

Ms ABIGAIL BOYD: In the first bullet point on the next page you say, "Any response to the NSW MC's position is unlikely to involve legislative amendments."

Mr RAY: What I will say is that this briefing was prepared following the Rocky Hill case and before the imposition of the condition on Wambo.

Ms ABIGAIL BOYD: Okay. So primarily it deals with schedule 2, but not schedule 1?

Mr RAY: Yes.

Ms ABIGAIL BOYD: That is useful to know. Let us be frank. My question is why, despite the briefing given on 12 June for that meeting, do we now have a bill in front of us that seems to go against, in large part, the advice of the department on 12 June?

Mr RAY: The first thing I will say is that I was not present at the meeting for which the briefing note was prepared. I do not know what the broad discussions were. The second thing I will say is that the bill is a response to the Wambo condition; it is not a response to Rocky Hill. In relation to that, I will explain that clearly, having further considered the matter after the imposition of the condition in relation to Wambo, a view became apparent that perhaps the amendment was appropriate. If we look back at when the provision was originally put in to the mining SEPP, the whole concept of considering scope 3 emissions—which arose from the Gray case—was novel. At that point it was important to signal that there was a particular component of greenhouse gas emissions that should be considered that previously had not been considered. Now, after many years of consideration and assessment reports and information being provided by mining companies about scope 1, 2 and 3 greenhouse gas emissions, a view was formed that it did not need to be called out because it was a regular occurrence that all greenhouse gas emissions were considered. That was a matter of course in the department's assessment reports, the IPC's decision making and the Land and Environment Court.

Ms ABIGAIL BOYD: With regard to the view that you do not need to explicitly reference greenhouse gas emissions in order to—

Mr RAY: Scope 3 emissions.

Ms ABIGAIL BOYD: Sorry, scope 3 emissions. With regard to the view that you do not need to explicitly reference scope 3 greenhouse gas emissions in order for the IPC or other decision makers to be able to consider them anyway, what do you make of the EDO's evidence this morning that taking this action to explicitly remove that provision, especially in the context of the Minerals Council's campaign on this, would send a regulatory chill and make the IPC feel that it might be subject to legal action from mining companies?

Mr RAY: I cannot comment on what drove the Environmental Defenders Office to talk about the change in those terms, but I think it is very clear that there is no change to the consideration of scope 3 emissions through this change to the mining SEPP. Scope 1, scope 2 and scope 3 all have to be considered. If the bill passes the department will still be asking mining companies to provide the evidence about the impacts of scope 1, 2 and 3 emissions—all greenhouse gas emissions—and would be preparing an assessment report that included an assessment of those issues. I presume the Independent Planning Commission would be considering all types of greenhouse gas emissions also.

Ms ABIGAIL BOYD: In that case, if we were to put a note in the bill underneath the amendment to say, "For the avoidance of doubt, this does not prevent the consideration of scope 3 emissions", would that still be within the department and Government's purpose?

Mr RAY: The advice to me is that that would be a legally correct statement.

Ms ABIGAIL BOYD: Finally, are you aware of how Glencore and Peabody came to know about the United Wambo condition that the IPC was considering?

Mr RAY: Look, I am not aware of the circumstances. No.

Ms ABIGAIL BOYD: When the IPC asked the department for its advice or its views on imposing that condition, would that have been done under confidentiality or some sort of implied confidentiality?

Mr RAY: Not that I am aware of.

Ms ABIGAIL BOYD: So anyone who knew about that would have been free to tell Glencore and Peabody?

Mr RAY: I do not recall or I am not aware of the circumstances in which—I do not know, just offhand, how they became aware of it. I really don't think that I could venture a view about that unless I knew in more detail what the circumstances were.

The Hon. BEN FRANKLIN: I just have one question, which is about the potential constitutional constraints on regulating international trade by the State. Do you have further comments about that and can you shed any light on that issue?

Mr RAY: Just that it is very clear that the power to regulate international trade is clearly given to the Commonwealth. The nature of the condition in the Wambo case was about how coal is treated after it leaves New South Wales and leaves Australia. So it seems to me that that is clearly a matter that the Commonwealth had very detailed legislation on. It is also a matter that the Commonwealth can regulate by its interactions with foreign governments. New South Wales doesn't have that role—doesn't have that capacity to engage with foreign governments. Therefore, the idea of New South Wales being able to enforce requirements is just—it is not within our ability to do that.

The Hon. BEN FRANKLIN: So does that evidence mean that we have no choice but to legislate to ensure that this is unable to occur, or that there is some sort of room for manoeuvring here?

Mr RAY: What I would say to that is that this area is very disputed and people have passionate views about it. I respect very much the passionate views on both sides of the argument about this, but there are limits to what the planning system can do—practical limits, legal limits—in individual cases. Dealing with the export of a product from a New South Wales development where New South Wales law cannot reach does seem to me to be a step too far.

The Hon. BEN FRANKLIN: My final question is that there have been some concerns over the legislation, firstly from the CFMEU and the Minerals Council, suggesting that they have concerns about it and that it should be amended. The EDO has said that we should be dumping it altogether. But, if not, then they have suggested amendments as well. Do you have comments to make about any of the three of those suggestions in terms of the amendments that they have suggested?

Mr RAY: Not really. I mean, ultimately, it will be a matter for government. Obviously, government will be very interested and consider the Committee's report or the reports from the Committee. But, ultimately, it is a matter for government to make a decision on that. If we are asked for advice on those, following the issue of the report or reports from the Committee, then we will provide that advice. But, at this stage, it's not for me to have a view about that.

The Hon. SHAYNE MALLARD: Mr Ray, I don't have many questions either, but I just wanted to make it very clear. We heard from a number of witnesses earlier today that the proposed bill, they argue, will remove the ability of assessment bodies to consider the impact of emissions, both domestically and internationally. I made a point that that is not the opinion of the Government.

Mr RAY: No.

The Hon. SHAYNE MALLARD: Do you want to expertly address that?

Mr RAY: I agree with your statement that there is nothing in the bill that will inhibit the assessment of greenhouse gas—the advice to me is that there is nothing in the bill that will inhibit the assessment of greenhouse gas emissions, whether they are scope 1, 2 or 3.

The Hon. SHAYNE MALLARD: And conditions can be placed upon the domestic—

Mr RAY: And conditions can be placed upon scope 1 and scope 2 greenhouse gases.

The Hon. SHAYNE MALLARD: Within the activity within the State?

Mr RAY: Within the activity within the State and in accordance with the detailed provisions for conditioning under the Act. The Act prescribes, particularly in relation to mining proposals, a very detailed—it's very detailed as to what you can condition and what you can't condition and how you must condition. So there is a very detailed regime in relation to mining and other proposals in what we call part 4 of the Act. Obviously it must meet all of those requirements to be a valid condition.

The Hon. SHAYNE MALLARD: I have asked the question of others before and no-one knew of any of it. Have there been any other New South Wales approvals that have put extraterritorial conditions on development applications?

Mr RAY: Look, as far as I am aware, none have been brought to my attention that are analogous to the Wambo case, or the case in Wambo. I can't say that there aren't because, obviously, there are many consent authorities in the New South Wales planning system—128 councils—and I do not know what has gone on there. So, there may be, but none have been brought to my attention that I would consider analogous to the Wambo.

The Hon. SHAYNE MALLARD: I think we know how councils are so I understand your caution. That is all I have got to ask.

The Hon. CATHERINE CUSACK: The Environmental Defenders Office essentially argued that there has been no change in the law at all for a very long period. Do you agree with that, or did the court ruling change the law, in your opinion?

Mr RAY: Obviously, since the Gray case, which is also called Anvil Hill—and that, I think, is from 2007—there has clearly been a requirement to consider the scope 3 emissions and those emissions have been considered in development applications throughout New South Wales. In the case of Rocky Hill, what I would say is the approach taken in Rocky Hill was consistent with those previous decisions in that scope 3 emissions were a key consideration. But, obviously, for the first time, those scope 3 emissions became a contributory factor to a refusal of a development application. So that is something that had not happened before in the previous 12 years that scope 3 emissions had been considered. To that extent, that component of it was a new advance, but it was in a tradition that had been going for 12 years.

The Hon. CATHERINE CUSACK: So why is this bill necessary?

Mr RAY: This bill is necessary because of the decision of the Independent Planning Commission to impose the condition in Wambo, not in relation to Rocky Hill.

The Hon. CATHERINE CUSACK: I am not a solicitor, but isn't that a change in terms of common law?

Mr RAY: In Wambo, that was the first time that I am aware a condition of this nature was sought to be imposed and would effectively regulate, and require the department to regulate, the export of the product of a development that was approved in New South Wales. Then we go back to the question of the constitutional position which gives the powers to regulate international trade to the Commonwealth and the practical issues of the ability of New South Wales courts to enforce regulation where a component of that may actually take place overseas.

The Hon. CATHERINE CUSACK: So it was a development condition that the department did not feel able to implement?

Mr RAY: The department will do its best to implement any condition that is imposed. There was clearly a view that there were limits—as I have already said—to the ability of the planning system to be able to regulate things that happen outside of New South Wales. The Government obviously made a decision to introduce the legislation.

The Hon. CATHERINE CUSACK: What was the role of the secretary under the ruling?

Mr RAY: The role of the secretary was to approve a detailed export management plan to set out protocols to require the applicant to use measures to ensure that coal extracted from the development that is exported from Australia is only exported to certain countries—those countries being the ones that have signed the Paris Agreement or have similar commitments.

The Hon. CATHERINE CUSACK: Is there a skills set in the department to implement that?

Mr RAY: Not with regard to overseas trade. There are also the practical difficulties in ensuring the extent of that regulation and how it is kept in place.

The Hon. CATHERINE CUSACK: Can I characterise this as a new activity that had come out of a court ruling?

Mr RAY: Yes.

The Hon. CATHERINE CUSACK: Is that what triggered a consideration of the bill?

Mr RAY: Yes. We have never been asked by anyone to do this before and it is certainly a highly unusual condition.

The Hon. CATHERINE CUSACK: Did the momentum for this bill come from within the department, from the Minerals Council or from politicians?

Mr RAY: I think it would have come from a range of source.

The Hon. PENNY SHARPE: That is a very diplomatic answer, Mr Ray.

The Hon. CATHERINE CUSACK: I am trying to understand the situation. Clearly the department sat down, had a cup of tea and said, "Wow, this is new. Should we be doing this?"

Mr RAY: Obviously the matter went to Cabinet and it was a Cabinet decision to introduce the bill.

The Hon. CATHERINE CUSACK: Is that consent condition being complied with?

Mr RAY: The advice I have received today is that the mining company has not yet provided the export management plan. The advice I have is that it feels that it is having difficulties complying with the terms of the condition. That is where the status of it is at the moment.

The Hon. CATHERINE CUSACK: Is that something that might be appealed or has everything moved on from there?

Mr RAY: I would have to check, but I think the appeal rights last for about six months. That would be towards the end of this month or early next month, depending on the notification of the actual development consent.

The Hon. CATHERINE CUSACK: The bill before the Parliament is really designed to be a solution to that difficulty, is it not?

Mr RAY: Yes.

The Hon. PENNY SHARPE: But it is not retrospective. We have just been told that the bill is not retrospective.

Mr RAY: Yes.

The Hon. PENNY SHARPE: How does that work.

Mr RAY: It is not retrospective.

The Hon. PENNY SHARPE: So it does not apply to that case?

Mr RAY: No, it does not apply to that case. Obviously the mining company and the department will endeavour to comply with that condition.

The Hon. ADAM SEARLE: Just to be clear, the bill does not respond in any way to the concerns of the Minerals Council about the role of greenhouse gas considerations in the approval process?

Mr RAY: Just to be very clear, the bill only deals with the power to impose a very limited set of conditions and does not affect the consideration of scope 3 greenhouse gas emissions in the assessment of mining projects, or other projects where scope 3 greenhouse gases may occur.

The CHAIR: Along with the letter that you tabled today from the Hon. Angus Taylor, MP, would you also be able to provide the Committee with the original letter from the planning Minister, Rob Stokes, dated 11 September 2019, that Mr Taylor's letter refers to? It would be good to be clear about what was requested.

Mr RAY: Yes, I could do that.

The CHAIR: Second, in response to a question asked by my colleague Ms Boyd you said your department had internal discussions in July about the fact that the IPC had asked you for advice about the scope 3 conditions. A GIPAA request has revealed that there were discussions internally about that. Does it concern you

that somehow Glencore and Peabody found out about those conditions? Knowing that that happened, did you ask any questions within your department about how Glencore and Peabody found out that information?

Mr RAY: What I would say is that it has been common practice—and I think it has been good practice—for draft conditions to be consulted with applicants. That is a procedure that the department has undertaken for many years and it is a procedure that is endorsed. We asked councils to consider doing that in a best practice guide that was published by the department for councils in 2017 or 2018. I am not absolutely 100 per cent aware of the circumstances, but it ultimately may well be that someone in the department did consult with those companies. But I can assure you that if it had been made clear to them that those discussions were confidential, I doubt very much that they would have done that.

Ms ABIGAIL BOYD: There is clearly a difference—presumably—between the ordinary course of consulting on conditions and the IPC writing to the department to say, "Hey, we are doing something a bit unusual; what do you think of this?" They are two very different situations.

Mr RAY: I would not necessarily agree with that. There are lots of circumstances. Generally it is the department's role to assist the IPC in the drafting of conditions because the department has particular skills in relation to that and can identify whether conditions have been drafted in a way that achieves the desired results and are easy to administer. Sometimes when the department is not consulted on conditions, they may not have that ability. Going forward, one of the key recommendations of the IPC review is for an enhanced memorandum of understanding for administrative arrangements with the IPC and the department. That would be a good opportunity for us to clarify the practices for when we are engaged at the behest of the IPC to draft conditions around whether those conditions should be held confidentially or whether we are at liberty to consult the applicant. I think we should certainly clarify that.

The CHAIR: Thank you very much, Mr Ray. We are well and truly out of time this afternoon. That concludes our hearings for the day.

(The witness withdrew.)

The Committee adjourned at 17:04.