

# Public Consultation on the draft Climate Change Policy and draft Action Plan 2022- 2025

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Doctors for the Environment Australia (DEA) is an independent, self-funded, non-government organisation of medical doctors in all Australian states and territories.

DEA's work is based on the premise that humans need a future with clean air and water, healthy soils capable of producing nutritious food, a stable climate, and a complex, diverse and interconnected humanity whose needs are met in a sustainable way. We are therefore interested in environmental protection and restoration to promote human health and social stability.

DEA's work is supported by a distinguished Advisory Committee of scientific experts whose knowledge of medical and public health issues is fully contemporary. Our members work across all specialties in community, hospital, and private practices.

## Submission

DEA welcomes the development of new climate change environmental quality objectives, guidelines, and policy by the NSW EPA, in recognition of its duty under the POEA act. We would like to acknowledge, and believe that the EPA should also acknowledge, the important public service done by the group Bushfire Survivors for Climate Action in establishing the legal basis and requirement of this duty as set out in the judgement *Bushfire Survivors for Climate Action Incorporated v Environment Protection Authority* [2021] NSWLEC 92. The NSW EPA now has a clear requirement and opportunity to be more active in the area of climate change.

Climate change is the greatest threat to public health in the 21<sup>st</sup> century, through direct effects such as deaths during heat waves, secondary effects such as extreme weather and fires, and tertiary effects such as wars and mass migration. While Australia is a small part of a global problem, we must do more than an equal share of mitigation efforts so as to consolidate rather than fragment global decarbonisation efforts.

The EPA draft policy document illustrates the range of responses the EPA takes to environmental and health issues in Figure 1 (page 12).<sup>1</sup> On one side of the diagram are "influence" "listen" and "educate" while on the other side are the more rigorous actions to "require" "monitor" and "enforce". The EPA actions on climate policy to date have been a few web pages and some general statements but very little in the way of enforcement. To quote the LEC judgement *None of the documents on which the EPA sought to rely is an instrument for the purposes of s 9(1)(a) to ensure the protection of the environment from climate change.*

The proposed new policy has three pillars of planning/ mitigation / adaptation which are a clear structure for this work. Of the six dot points listed for mitigation one of them covers an enforceable action, for example, placing greenhouse gas emission limits on licenses, while all the others are about understanding, educating and encouraging. We are concerned that the education and engagement may not work unless it is backed up by a clear enforceable and measurable regulatory requirement.

The EPA will need to develop new expertise and employ extra staff to set and enforce license limits for GHG emissions. The complexity of enforcement is much greater than for a carbon price mechanism which would leave industry free to set their own emissions levels to minimise the carbon price they pay. NSW has legislation in the Load Based Licensing system that could be used to implement a carbon price, which we think would be a more effective policy pathway, but the current policy draft ignores this option.

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<sup>1</sup>[https://hdp-au-prod-app-nswepa-yoursay-files.s3.ap-southeast-2.amazonaws.com/5316/6253/3253/EPA\\_Climate\\_Change\\_Policy.pdf](https://hdp-au-prod-app-nswepa-yoursay-files.s3.ap-southeast-2.amazonaws.com/5316/6253/3253/EPA_Climate_Change_Policy.pdf)

(Figure 1 page 12)

## Governance structure (Pillar One)

DEA is concerned that the NSW EPA has in the past exhibited what looks to us as regulatory capture, in which the regulator is too close to industry and makes decisions that disregard a broader community perspective as illustrated in the following three examples.

Example 1: In the case of the Vales Point power station air pollution licenses, the POEO regulation of 2010 required that old plant operating under class 2 licenses would have to upgrade to class 5 standards by 2012. The scientific understanding of the health effects and long-range transport of air pollution from the burning of coal had developed since Vales Point B began operations in 1978, and the intent of the regulations was to bring old plant up to modern standards. The EPA however accepted industry's flawed analysis of the pollution and health effects to grant serial 5-year exemptions so that as of 2022 the license does still not require compliance with class 5 conditions.

Example 2: The NSW EPA recognised the high levels of diesel exhaust pollution from railway locomotives which unlike road vehicles were not covered by any standards. A set of draft standards were developed and went through a process of community consultation in 2020. In affected communities' considerable numbers of community members gave up their time to attend meetings and give considered input to this process, and the resultant plan was a good balance between on the one hand requiring modern emissions limits and on the other giving industry a full decade to bring old locomotives up to standard. These changes were scuttled at the last minute by interference from the rail transport industry.

Example 3: In the 1990s the NSW government developed a sophisticated system to impose pollution fees on industry that could make them responsible for the external costs imposed on the community by environmental harm. Known as the Load Based Licensing system it specifies fees payable per Kg of pollutant for 17 substances released to water and 12 released to air and has been in operation since 1999. It could have been used to create economic incentives for cleaner production but in the face of industry pressure the fees have always been so low that licensees just pay the fee rather than improve production methods. In a 2014 review of LBL by BDA Group, commissioned by the EPA the fee per Kg for particulate matter pm10 for instance is less than 1% of the damage cost from independent estimates.<sup>2</sup> The intention was an economically efficient mechanism to incentivise cleaner production, but the implementation was ineffective.

These examples show the difficulty the NSW EPA must stand up to industry pressure, so the design of the climate policy and implementation should include organisational structures to ensure maintenance of a broad community perspective and avoidance of regulatory capture. We propose the appointment of two representatives from the environmental NGO sector to the board of the EPA, such as persons nominated by the Nature Conservation Council of NSW. It may also be appropriate to include NGO representation at other level committees within the EPA. This is an important provision to guard against excessive industry influence on decision makers and EPA staff. The Climate Change Policy and the Action Plan are full of terms such as "feasible" "appropriate" and "reasonable" which might look very different depending on who is in the room when decisions are being made.

The environmental NGO sector includes many people with technical expertise and deep understanding of and commitment to environmental issues who could bring valuable skills to EPA governance. The draft climate policy table B1<sup>3</sup> of principles guiding the EPA response to climate change includes "collaborative" and mentions young people, Aboriginal people, the regulated community etc but has an obvious blind spot for the NGO sector which could be its greatest

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<sup>2</sup><https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/licensing/lbl/load-based-licensing-bda-group-comparative-review.pdf?la=en&hash=BBCBB6245A4D0B8C284C63C85ACDD02150F19A35> (Table 2.7, page 31)

<sup>3</sup>[https://hdp-au-prod-app-nswepa-yoursay-files.s3.ap-southeast-2.amazonaws.com/5316/6253/3253/EPA\\_Climate\\_Change\\_Policy.pdf](https://hdp-au-prod-app-nswepa-yoursay-files.s3.ap-southeast-2.amazonaws.com/5316/6253/3253/EPA_Climate_Change_Policy.pdf) (TableB1, Page 31)

collaborator in this work. Similarly, a health representative could be considered given that the mission of the EPA is to “reduce pollution and waste, protect human health and prevent degradation of the environment”.

### **Where GHG emissions are released.**

The NSW EPA climate policy recognises the serious threat posed by climate change. Effective policy response must recognise that GHG emissions are damaging the climate no matter from which point of the globe they are released. When NSW coal is burned overseas the accounting conventions allocate those emissions to the annual emissions of a foreign country, but this does not alter the fact that mining the coal in NSW has worsened climate change.

Once the carbon has been mined it will eventually be burned and released to the atmosphere, so the accounting convention of scope1/scope2/scope3 emissions does not remove the environmental implications of continuing to approve new coal mines. DEA’s interpretation of this is informed by the judgement of Justice Preston of the Land & Environment Court in the Rocky Hill case. NSW could get to zero emissions this decade yet still suffer severe climate change harms from NSW coal burned overseas.

### **Mitigation Actions (Pillar Two)**

New Action 7: We agree with the approach of setting GHG pathways for each industry sector, and that the annual reductions across sectors need not be equal but they do all need to reach zero by 2050. In practice this means that if it starts in 2023 the slowest sector needs to reduce by 3.7% of current emissions for each of the next 27 years but some sectors can move faster. The sector approach will have to define how new entrants are managed. Will a new entrant be given a new emissions license or expected to keep the sector within the decline pathway by replacing an existing polluter?

New Action 9: We see that placing GHG emission limits on licenses as the key mitigation measure in this action plan. Without enforceable regulatory limits the engagement by industry is likely to be superficial. The EPA should set greenhouse gas emission limits for all licenses under the POEO Act. These license limits should be for premises with Scope 1 emissions over 10,000 tonnes per year, up to 100,000 tonnes per year beyond which operations are covered by the Federal Safeguards mechanism. GHG emissions limits must be informed by sector specific reduction pathways and be in place by 2024. Operators unable to reduce emissions should be allowed to offset by purchasing ACCUs but only once that system has been reformed to ensure integrity.

The rationale for limiting this to scope 1 emissions (emissions on site) only is that scope 2 emissions (mostly electricity use) will be generally covered by the safeguard mechanism, and scope 3 emissions will be too complex to determine for many medium sized operations.

Developing license limits and reduction pathways will be as complex as designing the federal safeguards mechanism, with all the attendant issues of how to treat new market entrants and competing methods between absolute values and emission intensity values. The action plan disappointingly covers hardly any of this detail. Setting GHG limits on licenses that are reasonable and feasible will require detailed understanding of all regulated operations that will be a large job requiring many extra EPA staff with specialised skills.

Many regulated industries will push back against new license conditions when they are required to do their share of emissions reductions. It would be a much simpler, fairer, and more efficient process to impose a fee per tonne of GHG released and leave it to industry to determine how this is done. The job of ensuring measurement and reporting integrity would still fall to the EPA but is a much simpler task. The Load Based Licensing system is an existing mechanism for this.

While DEA supports the intention to address GHG emissions from operations below the threshold of the federal safeguard mechanism, a pollution fee approach would be preferable and more effective.

The fee would be uniform across the state and set at approximately the marginal cost of abatement in key industries so as to reward technological innovation that lowers carbon intensity of production. As other states are watching NSW developments, they may be convinced to introduce a similar fee.

### **New mitigation actions not yet in the action plan**

The installation of reticulated gas distribution in greenfield suburbs causes health, environmental and economic harm and should be stopped. Installation of gas has been a standard part of creating new suburbs, along with electricity and water services and while it made sense in the 20<sup>th</sup> century it is no longer justified as all domestic uses of gas have better alternatives. Leaving out the gas pipes and meters reduces costs by many thousands of dollars per block, saving money for purchasers of new homes.

Gas stoves and space heaters release combustion products nitrogen dioxide and formaldehyde that trigger respiratory disease, and if not properly maintained can cause carbon monoxide poisoning. There is not a feasible pathway to decarbonise the gas supply as there is for the electricity supply. The EPA should lead policy development within the NSW government to change the archaic practice of supplying fossil gas to every urban household.

The proposal to burn native forest biomass to generate energy should be ruled out by the NSW climate policy. The proposition that biomass from native forests can be burned to produce carbon neutral energy is untrue. While individual trees regrow in 50 years the carbon in a forest builds up over 100 years, well beyond the time scale at which the climate crisis can be averted. The EPA should use its role in regulation of forestry management to deny wood to energy proposals from gaining access to native forests.

### **Adaptation (Pillar Three)**

Develop policies and actions to make the urban environment safer during heat waves. Heatwaves can be deadly for people with chronic disease, for outdoor workers, and for the homeless. As doctors we are starting to include heat wave emergency actions in chronic disease management plans. The urban heat island effect is greater in economically disadvantaged parts of western Sydney.

In January 2020 Penrith reached 48.9 degrees C a full 12 degrees above normal human body temperature. This temperature can be fatal. People with chronic disease, the elderly, or those on certain medications are more at risk. A heatwave with a power blackout is especially dangerous as air conditioning fails and people become stranded in multi-story buildings. This has occurred during recent heatwaves a risk as ageing coal and gas generators become unreliable in hot weather.

The Action Plan describes EPA emergency responses to fire and flood but should be expanded to include heat wave emergencies. Heatwave harm can be reduced through building cooler urban landscapes with less heat absorbing surfaces, more tree cover, and better urban design. Although these principles seem obvious, new suburbs in western Sydney are still being built with mostly dark and heat absorbing roof materials. For such preventive measures the EPA role is to advise, research, and educate as it does not have carriage of urban planning.