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NSW EPA Draft Climate Change Policy and Action Plan

NSW Minerals Council Submission – November 2022

Introduction

The NSW Minerals Council (NSWMC) is the peak industry association representing the NSW minerals industry.

NSWMC supports a measured transition to a net-zero emissions global economy and Australia's participation in global agreements, including the United Nations Framework Convention on Climate Change. NSWMC supports the NSW Government's target of reaching net-zero emissions by 2050.

NSWMC welcomes the release of the Draft *EPA Climate Change Policy* and Draft *Climate Change Action Plan 2022-25* (draft documents) and supports the EPA's intention to *"step into the regulatory space in a way that is deliberate, systematic, well-informed and properly paced."*

This is a sensible approach that could help address what has at times been an ad-hoc and uncoordinated approach to climate change policy issues in NSW.

The mining industry is progressing many of the actions proposed by the EPA

The draft documents add to a broad framework of existing climate change policies, reporting frameworks and actions at the international, national and state levels, both voluntary and mandatory.

The mining industry participates in many of these existing frameworks and has developed significant expertise in climate change risk management and emissions abatement, which are areas of focus in the EPA's draft documents. Some examples of these existing actions include:

- Undertaking climate change risk assessments – an increasing number of NSW mining companies are reporting against voluntary climate risk frameworks, such as the taskforce for climate related financial disclosures (TCFD). The application of this framework assesses and publicly reports on both the transition and physical risks of climate change to businesses.
- Researching and implementing emissions abatement – across the industry, mining companies are assessing their emissions reduction pathways based on the specific nature of their businesses, emissions profiles and the likely development of commercially viable abatement technology over time. The NSW mining industry has a strong track record of research, development and deployment of energy efficiency and low emissions technology at mine sites, for example:
    - Fugitive emissions – there is more than 20 years of research effort on coal mine fugitive emissions abatement through the industry-funded body ACARP. The implementation of fugitive emissions abatement across the industry has contributed to a 38% reduction in fugitive emissions in NSW since 2005.
    - Diesel emissions – the industry has a demonstrated history of adopting better performing diesel equipment over time and delivering ongoing improvements in fuel efficiency, which in turn

reduces emissions. Trials of zero emission alternatives to diesel equipment, such as battery electric, hydrogen fuel cell and hybrid technologies are being undertaken across the global mining industry, including in NSW, with outcomes being shared through collaborative industry partnerships.

  - Electricity use – an increasing number of companies are sourcing zero emission electricity through the construction of renewables, power purchase agreements with renewable energy suppliers, or by purchasing and retiring offsets.

- Setting emissions reduction targets – an increasing number of mining companies are establishing emission reduction targets that are broadly consistent with the NSW Government's targets, noting that like many industries, further technological development is required before some step-change abatement measures can be widely deployed on a commercial basis. Many companies are publicly reporting on their progress against these targets.

Given the significant level of industry experience and expertise across climate policy frameworks and emissions abatement technology, the industry can constructively contribute throughout the EPA's staged approach to its climate policy development.

The draft policy sits within the context of broader NSW Government policy on mining

NSWMC notes that the EPA's climate change policy will sit alongside other NSW Government strategic policies that are relevant to the NSW mining industry. Some notable examples include:

- NSW Net Zero Plan[1] – The Net Zero Plan states that *"Mining will continue to be an important part of the economy into the future and it is important that the State's action on climate change does not undermine those businesses and the jobs and communities they support."*
- NSW Government Strategic Statement on Coal Exploration and Mining[2] - this policy states that the NSW Government will *"recognise existing industry investment by continuing to consider responsible applications to extend the life of current coal mines, and by streamlining the process for exploring new areas and areas adjacent to current mining operations to deliver a better economic return to NSW"* and will also *"consider releasing a limited number of new areas for coal exploration."*
- NSW Minerals Strategy[3] and NSW Critical Minerals and High Tech Metals Strategy[4] – these policies recognise the significant growth potential in the NSW metals sector, their role in a range low emission and renewable energy technologies, and outline a range of actions to attract investment in mineral exploration and mining projects, as well as downstream processing.

The NSW Government's policy framework recognises the important contribution of mining to the state's economy and the objective to facilitate ongoing responsible growth in the industry.

[1] https://www.energy.nsw.gov.au/sites/default/files/2022-08/net-zero-plan-2020-2030-200057.pdf
[2] https://www.resourcesandgeoscience.nsw.gov.au/__data/assets/pdf_file/0004/1236973/Strategic-Statement-on-Coal-Exploration-and-Mining-in-NSW.pdf
[3] https://www.regional.nsw.gov.au/__data/assets/pdf_file/0007/852505/NSW-Minerals-Strategy-2019-02.pdf
[4] https://www.nsw.gov.au/sites/default/files/2021-11/NSW%20Critical%20Minerals%20and%20High%20Tech%20Metals%20Strategy.pdf

Recommendations

1. Deliver on commitments to complement existing initiatives and avoid duplication

The EPA's proposed actions are wide ranging and have the potential to add significantly to the administrative burden on licence holders through a whole new system of management plans, reporting requirements and licence conditions.

As highlighted earlier in this submission, there is a wide range of existing climate change policies, reporting frameworks and actions at the international, national and state levels, both voluntary and mandatory. There is considerable overlap between the actions proposed by the EPA and this existing range of initiatives.

The draft documents acknowledge this potential overlap, and indicate the EPA's intent to complement existing actions rather than duplicate them. Despite these assurances, the industry is wary of the risk of multiple and overlapping requirements to developed as the EPA moves to implement its proposed actions.

Some of the EPA's proposed actions where there is the potential for duplication are summarised below:

- **New action 2(b) Progressively require and support our licensees to prepare, implement and report on Climate Change Mitigation and Adaptation Plans** – as the draft documents note, *"some of our regulated community already have similar types of plans in place, such as greenhouse gas management plans (required by DPE Planning for some significant developments), or statements about an organisation's exposure to climate-related risks (known as TCFD Statements). Our guideline will recognise these types of plans and statements to avoid duplication and help our licensees to identify any gaps."* This statement applies to many mining operations, which have been leaders in the adoption of TCFD reporting and are also subject to climate change-related development consent conditions.
- **New actions 7 and 9:**
    - **7 – Develop a series of greenhouse gas emission reduction targets and related pathways for key industry sectors we license, to help guide our regulatory effort**
    - **9 – Progressively place greenhouse gas emission limits and other requirements on licences for key industry sectors**

  As the draft documents note, the proposed implementation of emissions reductions targets and related licence conditions has similarities to the proposed reforms to the Commonwealth's safeguard mechanism. NSWMC acknowledges that EPA proposes to complement, rather than duplicate, these reforms, as well as any other actions being taken under the NSW Net Zero Plan. The progression of this action should await the final outcomes of the Commonwealth's safeguard mechanism.

Recommendations

- Work with industry to determine how existing industry initiatives, policy frameworks and reporting mechanisms could satisfy the EPA's requirements, with the objective of minimising duplication and re-reporting of existing information. Examples could include:
    - Exempting facilities covered by the safeguard mechanism from additional emissions reductions requirements at the NSW level.
    - Adopting to as great an extent as possible existing climate change mitigation and adaptation reporting frameworks, rather than developing niche NSW requirements.

2. Strengthen measures to coordinate climate change actions across the NSW Government

NSWMC has recently dealt with five different parts of the NSW Government bureaucracy on climate change issues, with a significant amount of overlap in the nature of the discussions. There are multiple initiatives underway across multiple agencies and in some cases an apparent lack of coordination.

With multiple agencies having a role to play in climate change policy and programs, including several agencies with regulatory powers (e.g. both the Department of Planning and the EPA), it is important that the NSW Government establishes appropriate internal governance mechanisms to deliver an integrated, whole of government approach.

Some examples of the need for coordination are highlighted below:

- **New action 2(a) Survey our licensees so we understand the climate change actions they are undertaking** – NSWMC has been approached with information requests from multiple NSW Government agencies on climate change related issues. While most of these requests have been informal, we are also aware of a potential formal request that appears to be very similar to the EPA's proposed survey of licensees. It would be an unnecessary burden on companies to provide similar information twice to the NSW Government. There should be a coordinated approach on actions such as this.
- **New action 2(c) Partner with DPE to seek to ensure climate change is being adequately addressed by proponents of activities we'll regulate, and that approvals contain appropriate conditions** – a range of agencies already comment on climate change issues in the development assessment process. For example, the DPE Net Zero Modelling Team comments on proponents' greenhouse gas emissions modelling and mitigation assessments. NSWMC acknowledges that the EPA proposes to 'partner with DPE' on this action, and it will be important to have a clear whole-of-government framework for the consideration of climate change issues in development assessments.

Recommendations

- Establish appropriate internal governance arrangements within the NSW Government to deliver a coordinated approach to climate change activities and industry engagement.
- Develop whole-of-government guidelines that set out the overarching framework for climate change policy and programs across the NSW Government to provide a predictable and consistent approach on climate change policy issues, including:
    - The roles and responsibilities of different agencies
    - The assessment requirements for development applications
    - The interaction of development consents and Environment Protection Licence

3. Remove the prescriptive requirement to adopt Tier 4 diesel equipment at coal mines

The proposed action to mandate the purchase of Tier 4 diesel equipment at coal mines from 2023 is prescriptive, contrasts with the EPA's outcomes-based regulatory approach and may have unintended consequences from a climate perspective. NSWMC makes the following observations:

- The overall climate benefits of Tier 4 engines are unclear – The US EPA standards apply limits to air pollutants such as particulate matter. The industry's extensive discussions with the EPA on non-road diesel emissions standards have always been in the context of local and regional air pollution. The Tier 4 standards do not apply any limits on greenhouse gas emissions and there is no certainty about the climate benefits of Tier 4 engines. Other factors such as reduced payload from AdBlue infrastructure also needs to be considered.
- The limited experience with Tier 4 heavy mining equipment in NSW indicates there may be a decrease in fuel efficiency – operators of Tier 4 equipment have experienced shorter periods between refuelling their Tier 4 equipment compared to existing equipment. While investigations are ongoing as to the cause, a decrease in fuel efficiency is one potential factor. It is unclear whether the decrease in short lived climate pollutants from Tier 4 engines would offset the potential decrease in fuel efficiency.
- The availability of Tier 4 heavy mining equipment is uncertain – there is a wide range of machines, manufacturers, and models of heavy mining equipment. The development and availability of Tier 4 heavy mining equipment has significantly lagged smaller equipment and given the absence of Australian national standards, Tier 4 equipment is absent from the Australian market for some models. It is unclear whether all mining equipment from all suppliers will be available with Tier 4 engines from next year. There is also a need to ensure that noise attenuation solutions that are required in some mines' approval conditions can be delivered with the equipment, which will require custom engineering solutions given noise attenuation requirements are largely unique to NSW.
- The proposed rule pre-empts the ongoing work to establish nationally consistent emission standards – the logical and appropriate regulatory target for emissions standards are the equipment manufacturers, with regulation applied at the national level. There is an ongoing process at the Commonwealth level to deliver nationally consistent regulation in this space. The proposed EPA action is at odds with the EPA's intent to minimise duplication. Creating niche NSW regulatory standards will create a bespoke market that will increase costs.
- Other measures could deliver better outcomes – There is a range of measures that have the potential to reduce greenhouse gas emissions from diesel equipment, with other potential options including alternative fuels and fuel additives. An outcomes based regulatory approach would not prescribe the 'best' solution. Mandating the adoption of Tier 4 engines could divert resources from other measures that could deliver better emissions abatement outcomes. The reforms to the safeguard mechanism will drive covered facilities to identify and adopt the most efficient abatement measures across their operations.
- The timing of the proposed action requires further discussion – the draft documents state that the requirement will be imposed 'by 2023'. Procurement decisions on significant capital outlays such as a new haul truck fleet take more than six months of planning and a further 1-2 years to deliver. The lead times for any new requirements will need to be revised to reflect realistic planning horizons.

From a climate perspective, the industry has a strong commercial driver to continually improve fuel efficiency, reduce fuel costs and simultaneously reduce carbon emissions. The industry has a proven track record of adopting better performing equipment over time, recalibrating engines to deliver optimal efficiency and embedding fuel efficiency considerations into mine planning.

The industry is open to adopting Tier 4 equipment where it is available and delivers the required performance, productivity and environmental outcomes, as well as looking at alternative options and technology to reduce emissions.

Recommendations

- The appropriateness of Tier 4 equipment should be considered on a case by case basis, taking into account factors such as costs, availability, emissions performance and productivity/reliability, as well as alternative abatement options and technology to achieve the desired regulatory outcomes.
- This reforms to the safeguard mechanism will drive covered facilities to identify and implement the most efficient abatement opportunities. Prescribing Tier 4 equipment is an additional layer of regulation that is unnecessary from a greenhouse gas perspective.
- Further consultation with the industry is needed to refine the EPA's proposed requirements around the purchase of Tier 4 equipment to ensure a practical approach that delivers the intended outcomes.

4. Integrate and align the proposed emission reduction targets and licence conditions with existing policy and regulatory settings

New actions 7 and 9 relate to the establishment of greenhouse gas emission reduction targets for key industry sectors, and the implementation of greenhouse gas emission limits on individual licensees.

NSWMC acknowledges that the EPA intends to undertake these actions in a staged approach, following industry consultation, and to complement rather than duplicate other actions at the NSW and Commonwealth levels.

The draft documents also acknowledge that not all sectors of the NSW economy will reduce their emissions at the same rate, and that it is NSW Government policy that the NSW 2030 target is not to be considered in the assessment or determination of development and infrastructure under the *Environmental Planning and Assessment Act 1979*.

Generally speaking, the approach proposed in the draft documents is sensible.

There is limited reference to the retrospective application of the proposed actions to existing development consents. There is a risk of inconsistencies in cases where conditions pertaining to greenhouse gas emissions have already been included in a development consent and the EPA also seeks to regulate. Clarity is sought in this regard.

NSWMC notes that emissions profiles and abatement pathways can vary significantly between mine sites due to a range of factors such as mine type (underground vs open cut; coal vs metals), geology, mine plan and connection to the National Electricity Market. The relevance of industry-level emission reduction targets to individual sites may be limited.

Recommendations

- Given the proposed reforms to the Commonwealth's safeguard mechanism, which will rachet down emissions at covered facilities over time, facilities covered by the safeguard mechanism should be exempt from any additional emissions-related conditions at the state level.
- Projects that are not covered by the safeguard mechanism will in many cases still have NSW development consent conditions that relate to greenhouse gas emissions, including conditions that require ongoing review and implementation of best practice emission reduction measures. This is a practical approach that considers developments in abatement technology over time. The EPA should seek to align with these arrangements.

- Given that NSW is forecast to achieve its 2030 target under current policy settings, and that the NSW Government's policy is that the 2030 target is not to be considered in the planning assessment process, it would be inconsistent to implement conditions on EPLs relating to the period leading up to 2030.
- Scope 2 electricity emissions should not be a focus of the EPA. As the EPA acknowledges in its draft documents, there are existing NSW Government policies directed at emissions in the electricity sector, such as the NSW Electricity Infrastructure Roadmap. Layering additional requirements on licence holders relating to Scope 2 emissions is unnecessary. Similarly, Scope 3 emissions lie outside the accounting responsibilities of the NSW Government and should not be captured within NSW regulatory framework.
- The use of credible carbon offsets will be an important part of delivering on the NSW Government's emission reduction objectives, particularly in the later stages of decarbonisation or if emissions reductions are imposed where there are no technically and commercially viable abatement technologies. The NSW Government should work with the Commonwealth Government to better leverage the co-benefits of carbon and biodiversity offsets.

5. Ensure the proposed survey of licensees is appropriately targeted

New action 2(a) includes a proposed survey of the EPA's licensees so that the EPA understands the climate change actions they are undertaking.

NSWMC appreciates that this is part of the process the EPA is undertaking to build its capacity and understanding of existing industry practices before proceeding with more substantial regulatory measures.

While this approach is sensible, there is the potential for poorly crafted surveys to impose a significant burden on licensees. The EPA should consult with the industry to ensure any proposed information requests are appropriately targeted and deliver relevant and valuable information to help guide next steps.

As noted earlier in this submission, NSWMC is aware that similar information requests are being planned within the NSW Government. Coordination across government agencies is needed to avoid repeated requests.

Recommendations

- The EPA should consult with industry to shape any surveys or information requests to ensure they are appropriately targeted and do not create unnecessary workloads on licensees.
- The EPA should consider steps to minimise potential burden of surveys on licence holders, including initial industry workshops to gather information and allowing survey responses to be provided at the corporate level, rather than the individual facility level.
- NSW Government agencies should coordinate any surveys to avoid repeated requests.

NSW Minerals Council

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