

Dear EPA

1. It would be scandalous for the NSW EPA to put additional burden on NSW pig farmers while allowing importers to bring pig meat into NSW, without also imposing these reporting burdens on the importers. In case this is not already known by the EPA - about 70% of the ham and bacon eaten in NSW is from overseas. If importers do not yet have EPA licences, then the NSW EPA should assess the Scope 1-3 emissions of importers and require them to get a licence. Their emission burden will be higher than their Australian based equivalent. Until then EPA should leave NSW pig farmers alone.
2. The following is an extract from the **Bushfire Survivors for Climate Action Inc v Environmental Protection Authority (2021)**

...these include those identified by Gibbs J in Buck v Bavone (1976) 135 CLR 110 at 118; [1976] HCA 24 "In all such cases the authority must act in good faith; it cannot act merely arbitrarily or capriciously. Moreover, a person affected will obtain relief from the courts if he can show that the authority has misdirected itself in law or that it has failed to consider matters that it was required to consider or has taken irrelevant matters into account. Even if none of these things can be established, the courts will interfere if the decision reached by the authority appears so unreasonable that no reasonable authority could properly have arrived at it."

For the NSW EPA to disadvantage NSW pork farmers compared to pork farmers from overseas whose product creates more emissions, would fall into this category.

A further extract from the case notes "the pollutants of yesteryear, with their concomitant threats to the environment and risks to human health, may no longer be the pollutants of today, which pose different threats to the environment and different risks to human health. The environmental quality objectives, guidelines and policies that s 9(1)(a) would have required be developed to ensure environment protection from the pollutants of yesteryear may not be the environmental quality objectives, guidelines and policies that s 9(1)(a) now requires to be developed to ensure environment protection from the pollutants of today..."

What is required to perform the duty in s 9(1)(a), therefore, will evolve over time and place in response to the changes in the threats to the environment. This may make it difficult to describe definitively what the duty requires at any particular time or place, because it requires identification of the current threats to the environment. Nevertheless, it should always be possible to identify the current threats that are of greater magnitude and greater impact. This means that, at a minimum, the duty under s 9(1)(a) will require the development of environmental quality objectives, guidelines and policies to ensure the protection of the environment from threats of greater magnitude and greater impact.

Again for, the NSW EPA to disadvantage NSW pork farmers, just because they are a licensee with the NSW EPA, without considering the greater scope 2 and 3 emissions produced in importing pork products from overseas, would fall into the category of a breach of the duty

to develop environmental quality objectives, guidelines and policies to ensure the protection of the environment from threats of *greater magnitude and greater impact*.

3. The EPA state that that they have a statutory duty to protect the environment from the threat of climate change. If the EPA acts to increase the cost of production and regulatory burden on pork producers in NSW, without consideration or comparison with emitters from out of state, who produce the same product, then NSW ends up with more product from out of NSW that is more emission burdened. If the EPA acts to increase emissions in this way it would be a breach of the EPA's duty.

By way of example, if the cost of production and regulatory burden on a pig farmer in NSW is high and this product is replaced with pork grown in Canada, the pork consumed in NSW will still be the same amount of pork, but the emissions will be higher and this will be as a direct and foreseeable result of the NSW EPA actions. This will be a breach of their duty.

4. Therefore the NSW EPA needs to consider and compare data from other jurisdictions, both national and international, as well as in NSW. And only place compliance burdens on NSW products that have greater emission burden than equivalent products produced in other jurisdictions.
5. Ultimately, climate change is not a state based issue and NSW EPA action in this area is a waste of our time and government money.
6. By the same argument if NSW EPA increases cost of production and regulatory burden on proteins that are licensed and intensive but not those that are un-licensed and extensive, without consideration that most licenced, intensively produced proteins have a lower emission burden, then again the NSW EPA will be in breach of their duty of care to protect the environment from climate change – this time by favouring and giving advantage to proteins that have greater emissions.

By way of example, if the cost of production and regulatory burden on a pig farmer in NSW is high and this product is replaced with beef grown in Queensland, the amount of meat consumed in NSW will still be the same but the emissions from the beef will be higher than the pork would have been, and this will be as a direct and foreseeable result of the NSW EPA actions. This will be a breach of their duty.

7. Additionally, this would create a further breach of the EPA's competitive neutrality obligations under the *Fair Trading Act 1987* and the *Competition and Consumer Act 2010* (CCA) with regard to the application of anti-competition and consumer laws.
8. The NSW EPA say they do not want to increase regulatory burden and don't want NSW businesses to have to duplicate information but the proposal is for us to report the same or similar information to additional government agencies. Why would the NSW EPA not just get the information from the other government agencies?
9. Why has the NSW EPA not chosen the same reporting threshold for NGERS (50kilotonnes)? Why did the NSW EPA choose 25 kilotonnes? Is this just an arbitrary or capricious choice so as to one-up the other states and federal reporting? If the EPA is genuine in not wanting to increase regulatory burden, then why not chose the same threshold?
10. There is nothing in the consultation draft about population control. This is an essential part of protecting the environment from the threat of climate change, and the EPA should have a view on population control in NSW (both within NSW and globally). Failure to consider this is a serious breach of their duty.

11. Finally Windridge Farms is far too small to be reporting these kinds of emissions. No one else requires this information from us, and we don't have, nor do we even have access to, the information needed to meaningfully report this information.

Regards

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