



New South Wales

Environmental Planning and Assessment Amendment (Addressing Climate Change) Bill 2017

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

The following Bills are cognate with this Bill:

Local Government Amendment (Climate Change) Bill 2017

Preservation of Trees and Public Open Space (Miscellaneous Legislation Amendment) Bill 2017

Overview of Bill

The object of this Bill is to ensure that climate change is taken into consideration when environmental planning instruments are made and when applications for development consent or approval are assessed.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 **Amendment of Environmental Planning and Assessment Act 1979 No 203**

Schedule 1 [1] inserts definitions of *climate change* and *greenhouse gas emissions*, terms used in the proposed provisions.

Schedule 1 [2] includes in the objects of the *Environmental Planning and Assessment Act 1979* the object of ensuring that the development of land is consistent with the reduction of greenhouse gas emissions and of the impact of climate change.

Schedule 1 [3] requires a person, public authority or other body, when exercising functions under the Act, to consider the implications of the proposal for climate change. In particular, the person, public authority or body is required to consider the need for all planning decisions and environmental planning instruments to be consistent with State and Federal commitments to limit global warming, the need to protect the site and adjoining areas from the likely impact of climate change and that any actions that reduce or prevent greenhouse gas emissions are the preferred form of adaptation to climate change.

Schedule 1 [4] requires the Minister to consider the implications of a proposed State environmental planning policy for climate change before recommending to the Governor that the policy be made and requires the Minister (or the Minister's delegate) and the Greater Sydney Commission to consider the implications of any proposed local environmental plan for climate change before making the plan.

Schedule 1 [5]–[7] specify the matters relating to climate change (including ways to minimise the cumulative lifetime greenhouse gas emissions from development or an activity):

- (a) that a consent authority is required to consider when determining a development application (under Part 4 of the Act), and
- (b) that a determining authority is required to consider when considering whether to approve an activity (under Part 5 of the Act), and
- (c) that the Minister is required to consider when considering whether to approve the carrying out of State significant infrastructure (under Part 5.1 of the Act).

Schedule 1 [8] inserts a power to make regulations establishing a standardised assessment process for determining whether proposed low-impact residential, commercial and agricultural development adequately minimises the cumulative lifetime greenhouse gas emissions from the development site, or the process for determining the implications for climate change in the course of preparing or making environmental planning instruments or assessing proposed development, activities or State significant infrastructure.

Schedule 2 Amendment of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007

Schedule 2 requires that, when assessing applications for fossil fuel extraction under the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*, consideration is given to the impact of the development on the global atmosphere, in particular the impact of greenhouse gas emissions from the burning (whether in Australia or outside Australia) of fossil fuels recovered in the course of the development.



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New South Wales

Environmental Planning and Assessment Amendment (Addressing Climate Change) Bill 2017

No. , 2017

A Bill for

An Act to amend the *Environmental Planning and Assessment Act 1979* to ensure that climate change is taken into consideration when making environmental planning instruments or assessing development; and for other purposes.

See also the *Local Government Amendment (Climate Change) Bill 2017* and the *Preservation of Trees and Public Open Space (Miscellaneous Legislation Amendment) Bill 2017*.

The Legislature of New South Wales enacts:

1

1 Name of Act

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This Act is the *Environmental Planning and Assessment Amendment (Addressing Climate Change) Act 2017*.

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2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Environmental Planning and Assessment Act 1979 No 203	1
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[1] Section 4 Definitions		3
Insert in alphabetical order in section 4 (1):		4
<i>climate change</i> means a change of climate over an extended period, typically decades or longer, which is caused by human activity or natural climate variability.		5
<i>greenhouse gas emissions</i> means emissions of carbon dioxide, methane, nitrous oxide, sulphur hexafluoride, a hydrofluorocarbon gas, a perfluorocarbon gas or any other gas prescribed by the regulations for the purposes of this definition.		6
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[2] Section 5 Objects		12
Insert at the end of section 5 (c):		13
, and		14
(d) to ensure that the development of land is consistent with the reduction of greenhouse gas emissions and reducing the impact of climate change.		15
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[3] Section 5BA		17
Insert after section 5B:		18
5BA Planning authorities and others to have regard to climate change		19
(1) Each person, public authority or other body with functions under this Act must, when exercising those functions, have regard to the implications of its actions for climate change.		20
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(2) In particular, a person, public authority or body exercising functions under this Act must:		23
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(a) consider the need for all planning decisions and environmental planning instruments to be consistent with commitments made by the State and by the Commonwealth to limit the increase in global warming to no more than 1.5 degrees Celsius above pre-industrial levels, and		25
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(b) consider the need to protect the site of the relevant development, or the land the subject of an environmental planning instrument, and adjoining areas, from the likely impact of climate change, and		29
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(c) give preference to any adaptation to climate change that involves the reduction or prevention of greenhouse gas emissions (since there are limits to adaptation and response-driven adaptation is unlikely to be enough to address the urgency of climate change).		32
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[4] Section 24A		36
Insert after section 24:		37
24A Persons who make or prepare environmental planning instruments to have regard to climate change		38
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(1) The Minister must not recommend to the Governor the making of a State environmental planning policy unless the Minister has considered the implications of the proposed policy for climate change.		40
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(2)	The Minister, a delegate of the Minister, or the Greater Sydney Commission must, when preparing and making a local environmental plan, consider the implications of the plan for climate change.	1 2 3
(3)	In particular, the Minister, delegate or Commission must:	4
(a)	consider the need for all planning decisions and environmental planning instruments to be consistent with commitments made by the State and by the Commonwealth to limit the increase in global warming to no more than 1.5 degrees Celsius above pre-industrial levels, and	5 6 7 8
(b)	consider the need to protect the site of the relevant development, or the land the subject of an environmental planning instrument, and adjoining areas, from the likely impact of climate change, and	9 10 11
(c)	give preference to any adaptation to climate change that involves the reduction or prevention of greenhouse gas emissions.	12 13
[5]	Section 79C Evaluation	14
	Insert after section 79C (1) (b):	15
(b1)	whether the proposed development adequately minimises the cumulative lifetime greenhouse gas emissions from the development site, including:	16 17 18
(i)	by assessing all aspects of the development including associated demolition or vegetation clearing and the construction materials used, and	19 20 21
(ii)	by ensuring that all emissions associated with ongoing occupation are quantified and taken into account in evaluating the emissions intensity of the proposal, and	22 23 24
(iii)	in the case of low-impact residential, commercial or agricultural development—by complying with any standardised assessment process required by the regulations,	25 26 27
[6]	Section 111 Duty to consider environmental impact, including climate change implications	28 29
	Insert after section 111 (1):	30
(1A)	Without limiting subsection (1), a determining authority shall consider:	31
(a)	the effect of an activity on climate change, and	32
(b)	in particular, whether the proposed activity adequately minimises the cumulative lifetime greenhouse gas emissions from the site of the activity, including:	33 34 35
(i)	by assessing all aspects of the activity including associated demolition or vegetation clearing and the construction materials used, and	36 37 38
(ii)	by ensuring that all emissions associated with ongoing occupation are quantified and taken into account in evaluating the emissions intensity of the proposal, and	39 40 41
(iii)	in the case of an activity that involves low-impact residential, commercial or agricultural development—by complying with any standardised assessment process required by the regulations.	42 43 44

[7] Section 115ZB Giving of approval by Minister to carry out project	1
Insert after section 115ZB (2):	2
(2A) The Minister, when deciding whether or not to approve the carrying out of State significant infrastructure, must consider whether the proposed State significant infrastructure adequately minimises the cumulative lifetime greenhouse gas emissions from the site, including:	3
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(a) by assessing all aspects of the development including associated demolition or vegetation clearing and the construction materials used, and	7
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(b) by ensuring that all emissions associated with ongoing occupation are quantified and taken into account in evaluating the emissions intensity of the proposal.	10
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[8] Section 157 Regulations	13
Insert at the end of section 157 (1) (g):	14
, or	15
(h) a standardised assessment process for determining whether proposed low-impact residential, commercial and agricultural development adequately minimises the cumulative lifetime greenhouse gas emissions from the development site, or	16
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(i) the process for determining the implications for climate change in the course of preparing or making environmental planning instruments or assessing proposed development, activities or State significant infrastructure.	20
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Schedule 2	Amendment of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007	1
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		3
[1] Clause 14 Natural resource management and environmental management		4
Insert after clause 14 (1):		5
(1A) Before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider the impact of the development on the global atmosphere, in particular the impact of greenhouse gas emissions from the burning (whether in Australia or outside Australia) of fossil fuels recovered in the course of the development.		6 7 8 9 10
[2] Clause 14 (2)		11
Omit the subclause. Insert instead:		12
(2) Without limiting subclauses (1) and (1A), in determining a development application for development for the purposes of mining, petroleum production or extractive industry, the consent authority must:		13 14 15
(a) make an assessment of the greenhouse gas emissions (including downstream emissions) of the development, having regard to any applicable State or national policies, programs or guidelines concerning greenhouse gas emissions, and		16 17 18 19
(b) have regard to the targets specified in the most recent report of the Intergovernmental Panel on Climate Change, and the steps needed to ensure that those targets are not exceeded and that global warming remains less than 1.5–2 degrees Celsius above pre-industrial levels.		20 21 22 23