

Too much hot air?

Human rights and Australia's gas and coal exports

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1. Introduction

Compared to much of the world, Australia has a fairly straightforward decarbonisation task ahead of it. It will not be cheap and, no doubt, it will be complex, but the transition has definitely begun. Australia is a country with comparatively small domestic greenhouse gas (GHG) emissions (on a global scale), very high levels of economic and human development and abundant sources of renewable energy and key transition minerals, making it well placed to benefit from the economic opportunities ahead.

However, it is also the world's largest exporter of liquid natural gas (LNG) and of coal (by volume).¹ The GHG emissions released from these products when combusted are referred to as Australia's 'scope 3 emissions'. Scope 3 is an industry-coined term which refers to all the indirect emissions occurring in an entity's value chain, both upstream and downstream (e.g. emissions resulting from the combustion of products sold). Applied to the country context, Australia's scope 3 emissions include all the emissions resulting from exported LNG and coal combusted outside its borders. On 2019 figures, Australia's scope 3 emissions from its fossil fuel exports constitute at least 3.6 percent of global annual emissions and are continuing to grow as the volume of these exports increases.²

This leads to three vital considerations for Australia in implementing July's UN General Assembly resolution recognising the right to a clean, healthy and sustainable environment.³ First, the part played by Australia's scope 3 emissions in driving climate change needs to be fully explored and documented, as do the reasons these emissions are in large part Australia's responsibility. Secondly, the projected physical impacts of climate change in Australia are dire, as are the consequential impacts on human rights here and in the wider Pacific region. Thirdly, there are steps that Australia must take regarding these exports if it wants to meet its human rights law obligations and commitments, including on the right to a healthy environment.

¹ Tom Swann, [High Carbon From a Land Down Under](#), The Australia Institute, 2019, at 1.

² Climate Analytics, [Evaluating the significance of Australia's global fossil fuel carbon footprint](#), 2019, at 2.

³ UN General Assembly, Resolution, adopted 28 July 2022, [A/RES/76/300](#).

2. Australia's scope 3 emissions and the matter of responsibility

Australia is the world's largest exporter of LNG and of coal (by volume). If it were in OPEC, Australia would have the second biggest carbon exports (by CO₂ potential), behind only Saudi Arabia and equal to nearly a quarter of the entire oil production of the OPEC countries.⁴ The emissions from these exports are additional to, and wholly eclipse, Australia's domestic emissions.⁵ Nor does production appear to be slowing. As of October 2021, there were 114 new coal and gas projects in the pipeline,⁶ with production being mostly for export. Climate Analytics has estimated that, if current government and industry projections for fossil fuel exports were realised, in just 7 years' time around 13 percent of global CO₂e emissions would be attributable to Australian fossil fuels, principally from coal.⁷ It is unlikely, however, that all 114 pipeline projects will proceed as planned, in light of growing fossil fuel divesting trends observed across the financial sector.

Australia's pursuit of fossil fuel production for export does stop at the project pipeline. Just four weeks after Australia voted in support of the UNGA resolution on the right to a healthy environment, the Federal Minister, Madeleine King, announced the release of more than 46,000 square kilometres of Australian offshore waters for new oil and gas exploration.⁸

The Australian federal government's response has been to argue that the Paris Agreement does not require States Parties to take responsibility for their scope 3 emissions as a matter of NDC accounting. In the international legal context, this is true. There is currently no international framework geared towards constraining the production of fossil fuels or requiring accounting for the emissions from their export. However, other commitments within the Paris Agreement, through their normative force, do give rise to obligations for States Parties, of which Australia is one, to take a fair share of responsibility.

First, the principles of equity and Common But Differentiated Responsibilities and Respective Capabilities (CBDR-RC) in Article 2, on which the Paris Agreement is premised, require advanced economies, like Australia's, to take the lead in decarbonising.⁹ This extends beyond providing financial resources for Least Developed Countries (LDCs) to decarbonise. The principle must be understood within the wider context of the remaining global carbon budget, which does not support a high-income country like Australia depleting the limited budget through thermal coal exports to similarly high-income countries like Japan and South Korea. For example, any remaining metallurgical coal production should be saved for LDCs, such as Mozambique, which has large reserves and tiny historical emissions.

Secondly, the Paris Agreement commitment to pursue efforts to limit the global temperature increase to 1.5 degrees implies that everything which is reasonably within Australia's power to do should be done. At the very least, this should include a credible, ambitious and science-based plan for phasing out its gas and coal exports. For a country which is the world's largest LNG and coal exporter, responsibility

⁴ Swann, note 1, at 38.

⁵ Swann, note 1, at 20.

⁶ Office of the Chief Economist, '[2021 Resources and Major Energy Projects Report](#)', Australian Government Department of Industry, Science, Energy and Resources, at 8, Table 1.2.

⁷ Climate Analytics, note 2, at 4 and 22: 'Because CO₂ emissions need to be decreasing under a Paris Agreement compatible scenario, each tonne of CO₂ that Australia places in the international market will take a greater share of the allowed emissions in each subsequent year.'

⁸ Minister for Industry and Northern Australia, '[New petroleum acreage to provide energy security](#)', 24 August 2022.

⁹ Paris Agreement, Article 2(2).

does not simply stop at the Newcastle or Darwin loading ports. Committing to the Paris temperature goals means that the Government cannot hide behind arguments that it is simply responding to demand which would exist whether or not *Australia* supplied the fuel. Climate policy and action must address supply as well as demand. Pulling back supply pulls back dedicated infrastructure, redirects capital to low carbon alternatives, reduces stranded assets,¹⁰ and puts pressure on demand-side, importing countries to accelerate their own transitions.

3. Projected impacts of climate change on human rights in Australia

Australia as a country is highly vulnerable to the physical impacts of climate change, with many geographical characteristics - including large areas of arid, or semi-arid land - which leave it highly exposed to the potentially devastating impacts of a changing climate where it is unable to effectively transition.

The physical impacts specific to Australia are set out in Chapter 11, '[Australasia](#)', of the 2022 IPCC Working Group II report. The chapter identified the major trends for Australia as:

- (a) Heat: More hot days and heatwaves, increased drought frequency and more extreme fire weather days, decline in agricultural production and water shortage.
- (b) Rain: More rainfall in the North and less winter and spring rainfall in the South, with increased heavy rainfall intensity and more severe cyclones.
- (c) Seas: Sea level rise, loss of land area to inundation and loss of fisheries.

There will also be individual extreme weather events, like the 2019-2020 Black Summer fires, and 'the current 1-in-100 year flood in Australia could occur several times a year'.¹¹

The IPCC's forecasting is echoed by similar warnings in the 2021 State of the Environment Report of the profound effects of climate change on the environment and human society. The Report warns that climate change and other environmental stressors will not only impact Australia's physical environment, but also present major impacts to human wellbeing, including various social and environmental health determinants such as air quality, access to safe drinking water and nutrition, and secure shelter. Indigenous peoples in particular will be disproportionately affected by these impacts, given their close connection to Country.¹²

These predictions make it abundantly clear that Australia has a huge task ahead of it to respect, protect, promote and fulfil human rights within its territory and to mitigate against these major climate trends and extreme events. It is evident that Australia will experience cascading and overlapping assaults on the wide range of human rights identified by the UN High Commissioner for Human Rights: to life, food, water and sanitation, health and housing, as well as to the rights of particularly vulnerable groups – including people with disability, children and Indigenous peoples.¹³

¹⁰ ['The Production Gap report', 2021.](#)

¹¹ IPCC Working Group II report, *Impacts, Adaptation and Vulnerability*, Chapter 11, 'Australasia', at 1636.

¹² B. Trewin, D. Morgan-Bulled and S. Cooper, [Australia State of the Environment report](#), Australian Government Department of Agriculture, Water and the Environment, 2021.

¹³ UN High Commissioner for Human Rights, '[Understanding Human Rights and Climate Change](#)', 2015.

The urgency of the response required and current technological barriers mean that it is not feasible to rely on the future development and scaling of carbon capture and storage technologies as forming a significant component of Australia's decarbonisation pathway. Australia can only minimise the impending assault which climate science is predicting through bringing down emissions, and this must include the large volume of emissions resulting from its fossil fuel exports. Australia has the power to make its climate-related human rights situation measurably less dire, both domestically and further abroad, and particularly for its Pacific Island neighbours.

4. Australia must take action to bring down its domestic and scope 3 emissions

For Australia to meet its human rights responsibilities it must take drastic action to bring down its scope 3 emissions from gas exports, as well as emissions occurring within its borders. Promisingly, Australia is already on the path to bring its domestic emissions down. In September, the Labor Government's Climate Change Bill 2022 passed through the Senate, codifying emissions reduction targets for the first time in Australia's history, requiring domestic emissions to reduce by 43% by 2030 (compared to 2005 levels) and reaching net-zero emissions by 2050. The final week of September also confirmed that Australia's transition to renewables is well underway, with the most coal dependent state (Queensland) announcing the closure of all its coal generators by 2035¹⁴ and AGL Energy, Australia's biggest emitter,¹⁵ to close its massive Loy Yang A coal generator early. Bolstering these efforts, the NSW state government recently launched 'the biggest energy transition plan ever undertaken in Australia.'¹⁶

However, Australia's scope 3 emissions from its fossil fuel exports remain unaddressed. While there may be different pathways for phasing out its thermal coal, metallurgical coal (for steelmaking) and LNG exports, Australia must have a credible, detailed, ambitious and science-based plan to do exactly this as soon as feasibly possible.

Australia must also take every step reasonably available to encourage and engage with other fossil fuel exporting countries to take similar action. Globally, the production of fossil fuels is still increasing, indicating that domestic decarbonisation efforts, while reducing demand, are not putting a brake on fossil fuel supply. Change can only come about through international cooperation to reduce production as well as consumption.¹⁷

Additionally, greater transparency as to the scope and scale of emissions resulting from Australia's coal and gas products is needed to complement a credible phase out plan. The current lack of scope 3 reporting across the private sector stonewalls public access to information regarding the true scale of Australia's contribution to the climate crisis. Australia must align itself with wider trends across advanced economies by introducing mandatory due diligence standards and ensuring that entities with the most significant influence and investment in coal and gas exports fully disclose their scope 3 emissions. These requirements should also ensure these entities have a science-based plan to ensure their business strategy adequately considers climate-related risks, and is compatible with the transition to a sustainable

¹⁴ Media Statement, Queensland Cabinet, 28 Sept 2022 <https://statements.qld.gov.au/statements/96233>.

¹⁵ AGL, '[Climate Transition Action Plan](#)' Sept 2022, at 4.

¹⁶ See S Vorrath, '[NSW hits go on Australia's biggest shift to renewables from coal](#)', *RenewEconomy*, 4 October 2022.

¹⁷ '[The Production Gap](#)' report, 2021.

economy, including with the Paris Agreement's aim to limit warming to 1.5°C. Company directors should also be subject to a legal duty to oversee and integrate the plans.¹⁸

On the human rights front, one critical action is to undertake a comprehensive human rights impact study across multiple climate, regulatory and response scenarios. This must include the scenario in which Australia rapidly phases out those exports and takes every step reasonably available to it to encourage other Paris Agreement Parties to do the same, as this scenario is most compatible with its human rights law obligations. Without this specific scenario analysis, Australia cannot assess the extent to which its scope 3 emissions will worsen the climate and human rights impacts ahead, nor whether the benefits of its domestic mitigation and adaptation actions will be counteracted by the temperature rise triggered by those emissions from its exports. Both these considerations are of material importance, given that, as climate scientists have warned, every fraction of a degree of warming will raise climate impacts exponentially.¹⁹

There have been many instances in the past few years of human rights law providing a legal foothold to pressure Governments, through litigation, to take swift and ambitious action to bring down emissions and hasten the transition, but it is a long game. Very recently, the majority of the UN Human Rights Committee in [*Daniel Billy and Others v Australia*](#) (the Torres Strait 8) case declined to address the inconsistency between Australia's commitment to the Paris Agreement temperature goals and its thermal coal exports, despite the plaintiffs' request for it to do so.

More optimistically, the plaintiffs in [*Greenpeace Nordic Association v Minister for Petroleum and Energy*](#) have filed a case in the European Court of Human Rights against the Norwegian government. They argue that issuing new oil and gas exploration licences in the Barents Sea will allow new fossil fuels to market from 2035 and beyond, in violation of the plaintiffs' rights to life, and to respect for private life and family life and home, under the European Convention.

5. Conclusion

Meeting the Paris Agreement's temperature goals requires emissions to peak as soon as possible and rapidly decline thereafter. The climate action landscape in Australia has taken a decidedly positive turn in recent months, putting Australia on a steadier path to decarbonise its economy in the coming decades. However, failing to consider the scope 3 emissions embodied in Australia's fossil fuel exports fails to consider the reality of Australia's global contribution to climate change and the consequential and potentially devastating human rights impacts. Only once Australia confronts the facts in its outsized contribution to climate change, both domestically and globally, can it take meaningful action to effectively manage and meet its Paris Agreement commitments and human rights law obligations, including respecting and promoting the right to a healthy environment.

¹⁸ See, for example, the European Commission's '[Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive](#)', (EU) 2019/1937, 23/2/22.

¹⁹ Climate Analytics, [The Paris Agreement 1.5°C Temperature Goal](#).