

ATTACHMENT 4

Expert Report on the Workforce Transition Implications of the proposed Dendrobium Mine Extension Project– SSI - 33143123

Dr Liam Phelan

School of Environmental and Life Sciences, University of Newcastle

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Context

This report is provided in response to an expert brief provided to me by the Environmental Defenders Office (EDO) acting on behalf of Protect Our Water Catchment Inc., and dated 25 May 2022. The EDO has engaged me to provide independent expert advice in relation to workforce transition associated with the proposed Dendrobium Mine Extension Project.

I have read the Expert Witness Code of Conduct contained in Schedule 7 of the Uniform Civil Procedure Rules 2005, and agree to be bound by it.

My qualifications are as follows:

- Senior Lecturer, School of Environmental and Life Sciences, University of Newcastle, Australia
- Adjunct Lecturer, Krieger School of Arts and Sciences, Johns Hopkins University, United States
- Senior Fellow, Earth System Governance
- PhD in Environment and Geography, Macquarie University, Australia
- Author of more than 30 peer reviewed journal articles and other publications.

Scope

In this report I address several issues raised by review of the Project's assessment documentation. These relate to: (i) the adequacy or otherwise of the assessment's consideration of potential external factors such as the climate policy context and the Project's ability to provide employment in the Illawarra region in the longer term, (ii) the likely social consequences for the current workforce in the Illawarra region, (iii) the compatibility or otherwise of the project with social and environmental sustainability of the Illawarra region, and (iv) wider relevant matters.

Introduction

There is little prospect of the proposed Project creating any jobs of any longevity. Instead, approval of the Project is highly risky to job creation – locally and further afield – and would likely have the perverse outcome of limiting the Illawarra's prospects for a just and orderly transition away from coal mining to sustainable local employment. The socio-economic transition away from fossil fuels is upon us. Late, given the extent to which we have already changed the climate – but welcome all the same, for there is no plausible scenario in which we can persist in burning fossil fuels. Recognition of this ecological reality is evident in commitments already made by Australia and other states, including in the Paris Agreement (UNFCCC, 2015), to drive greenhouse gas emissions rapidly to net zero. The challenge is profound. We are at a point now where more of the same is not helpful. In fact, more of

the same is counterproductive for achieving sustainable employment in the Illawarra over any meaningful timeframe. It is unfortunate the Project's assessment documentation is constrained in a way that excludes consideration of the wider policy context in which the Project is being proposed.

Since the beginning of the Industrial Revolution in the mid-eighteenth century, societies have increasingly organised their economies on the basis of continued exponential increases in fossil fuel consumption, beginning with coal, and with oil and gas later also becoming significant. Coal has also been central to steel production. Fossil fuel consumption has, therefore, been at the centre of increasing economic activity for around 250 years now – a short period in human history, but long enough to have become established as an assumption in contemporary public policymaking.

However, continued and increasing consumption of fossil fuels is the primary cause of climate change (IPCC, 2022), a globally coherent phenomenon that threatens life as we know it. By 'life as we know it', I mean a planet whose basic functioning and natural systems continue in ways that are both familiar to us, and relatively stable.

And that presents a challenging paradox: continuity of life as we know it – flourishing in a planetary environment that is familiar, and relatively stable, is at stake, and that continuity can only be achieved through profound change to the way we organise ourselves socio-economically (Phelan, Henderson-Sellers & Taplin, 2013).

Increases in the frequency and intensity of extreme weather events are only one example of increased planetary system instability caused by climate change, and so their utility for representing the full scale of climate change's current and future impacts is limited. However, they serve well as an example because they are easily conceptualised and their impacts are easily perceived. To illustrate with reference to catastrophic flooding earlier this year in northern New South Wales and south-eastern Queensland, former Prime Minister Scott Morrison was quoted in the media at the time saying that "we are dealing with a different climate to the one we [sic] are dealing with before... Australia is getting hard to live in because of these disasters" (in Giannini, 2022).

The NSW government notes that climate change is making extreme weather events more severe (Adapt NSW, 2022). And extreme weather events come at financial cost. Nationally, the costs of extreme weather events are expected to increase markedly, from \$38b annually in 2021 to between \$74-94 billion by 2060 (reflecting low and high emissions scenarios, Deloitte, 2021).¹

And that's the paradox of meeting the climate change challenge: continuity of life as we know it – familiar, and relatively stable – is at stake, but maintaining that continuity requires profound change in the way we organise ourselves socio-economically.

¹ Other drivers for increased costs are increases in population and real estate values; however, the key role of climate change is evident in the range of values spanning low and high emissions scenarios.

The Paris Agreement, and accelerating movement in the wider policy context

In recent years, and at accelerating pace, the wider climate and energy policy context has been changing markedly. In this section I review the wider policy context in which the project is proposed. The policy context comprises international, national and state scales, and government and private sector actors.

The Project's environmental assessment provides a review of the likely impact on the Project of key external climate policy contexts such as current pledges made by Australia, its key trading partners and other states under the Paris Agreement (Appendix R). The Paris Agreement commits signatories to:

Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change (UNFCCC, 2015).

To achieve this policy goal, Australia is required to drive down emissions rapidly, to zero net emissions. Australia's major trading partners are similarly required to drive down emissions rapidly. One way or another, coal mining in Australia will be wound down rapidly; there is no realistic scenario in which Australia increases rather than winds down its capacity to mine coal, whether for use in Australia or elsewhere.

Climate policy in Australia has presented as a seemingly intractable challenge over several decades. Nevertheless, in recent years, the pace of change in climate policy, at federal and state level has accelerated.

Federally, and in marked contrast to recent history, major political parties are now expressing bipartisan support for emissions reductions. Minor parties and newly elected independents support even stronger and more rapid reductions. Australia has for more than two decades been a prominent laggard in international climate negotiations, and so this shift at the federal level is significant. The bi-partisan commitment federally begins to bring Australian climate policy into alignment with other member states of the Organisation for Economic Cooperation and Development (OECD, i.e., the group of industrialised countries).

At state level, the New South Wales government has a net zero emissions strategy and is implementing measures to support workers and communities in coal mining areas to transition away from coal mining and coal fired power production. One example is the NSW Government announcing earlier this year a package to create 3,700 new jobs in clean energy sector in the wake of the announced early closure of the coal-fired Eraring Power Station at Lake Macquarie. The state has announced it will invest \$250m over five years to create a further 500 jobs in local manufacturing of components for the renewables sector such as wind towers, electrolyzers and batteries. The state has also announced it will spend \$300m over 10 years to create 500 more jobs through expanding the state's clean manufacturing base – in particular the green hydrogen industry.

While governments have carriage of public policy formally, the private sector also plays a role in climate governance, i.e., the sum of all the processes and interactions through laws, norms, power and language that influence climate outcomes. The role of key actors in two industries warrant careful attention. The first is the coal industry itself. Major mining houses, such as BHP Billiton and Rio Tinto are exiting the coal mining industry, as they pursue efforts to decarbonise their businesses. The second is the financial sector. In recent years both banks and insurers have begun to limit their engagement with the coal industry. One example is banks in recent years beginning to refuse finance for new coal developments, such as Australia's 'big four' lenders (and others internationally), refusing to provide finance for Adani's coal developments in the Galilee Basin, Queensland. Another example is increasing numbers of major insurers internationally (e.g. Swiss Re, Munich Re, AXA, Allianz) withdrawing investments in the coal industry, as well as refusing to underwrite new coal infrastructure.

In short, the wider state, national and international policy context in which coal mining in the Illawarra region is changing, and at an accelerating rate. The local context is changing too. The Project's Social Impact Assessment (Appendix K to the Project's documentation) recognises the region as historically being a coal mining and steelmaking region. And yet, even in steelmaking, recognising steelmaking is a significant source of greenhouse gas emissions, major players are seeking to effect a transition away from fossil fuels (McKinsey & Company, 2020). One local example is the pursuit by BlueScope Steel and the University of Wollongong of ways to decarbonise steelmaking at Port Kembla (UOW, 2022).

The review of climate policy provided at Appendix R argues that expanded capacity to mine coal at Dendrobium is legal. However, in the context of commitments to emissions reductions, choosing to markedly increase emissions through burning coal from Dendrobium would require cuts in emissions by other parties across New South Wales and the wider Australian economy.

My considered opinion is that while the Project proposes to extend production at Dendrobium through 2041, this will not materialise in practice because the climate governance context in which the mine operates, through both the formal policy context and the actions of key private sector players, is highly unlikely to remain conducive for coal mining through the proposed life span of continued operations at the mine. As such, and despite the Project's assessment claiming otherwise, there is no real prospect of the mine offering continuing employment opportunities. As discussed below, extending the coal mining at Dendrobium will instead have the perverse outcome of inhibiting the achievement of desirable employment outcomes through the transition away from fossil fuels in the Illawarra.

Just transition in practice in the Illawarra

Just as exponential increases in fossil fuel consumption have been central to increasing economic activity more generally over 250 years, coal mining and steelmaking have been central economic activities in the Illawarra region for many generations.

Planning and executing a shift away from coal mining is therefore a significant and substantial challenge. The COVID pandemic provides a recent example of the value of planning. In Australia, as elsewhere, effective planning and subsequent execution led to rates of mortality and morbidity that were lower than what was achieved where planning and execution were either absent or ineffective.

The concept of just transition is helpful in planning and executing a shift away from coal mining (Evans and Phelan, 2016). A just transition is one where workers and communities that have been strongly dependent on fossil fuel exploitation are not left behind through the transition of a workforce from the coal industry to alternative employment offering good jobs and dignity of work.

The approach is widely recognised. For example, the 2015 Paris Agreement notes “the imperative of a just transition” for affected workforces, with “the creation of decent work and quality jobs” to replace those lost through shifting away from fossil fuels (UNFCCC, 2015).

The NSW state government also recognises change is coming and has in recent months announced \$25 million a year for its Royalties for Rejuvenation Fund. The fund is intended to “ensure coal mining communities have the support they need to develop other industries in the long-term”.

The practical implementation of just transition is a live consideration in mining communities in New South Wales, other states in Australia, and internationally. Experiences and learnings from communities that are further advanced in the transition away from fossil fuels are illustrative. For example, communities in the Hunter Valley – another region in New South Wales with a long and rich history of coal mining, identified three priorities as being key to a just transition away from coal:

1. the need for a local coordinating authority
2. funding for a “flagship” job-creation project, and
3. more resources for technical and vocational education.

I briefly introduce each of these priorities here for two reasons. The first is to provide a tangible example of what the transition away from fossil fuels entails, and what that transition implies for sustainable employment in a policy context driving to zero net emissions.

The second reason is to illustrate through example the paucity of the analysis provided by the Project’s assessment documentation in relation to employment futures in the Illawarra. The assessment documentation does not engage meaningfully with the wider changing policy context, proceeding instead with only passing reference to the profound socio-economic shifts climate change is driving, particularly in emissions-intensive industries, such as coal mining and steelmaking. This limitation is unfortunate, because the impending impacts of climate change on employment in the Illawarra are significant. The limitations of the assessment documentation are perhaps also shared by the review process, which is tasked with reacting to a proposed development; in fact, a more generative approach would be to proactively plan the Illawarra’s transition away from fossil fuels.

With that said, here are three priorities for effecting a just transition away from fossil fuels, as generated by communities in the Hunter. It is reasonable to expect that communities in other regions might, given the opportunity, generate a similar prioritisation.

1. Establish a local coordinating authority

Local coordination is important to ensure solutions reflect a community's needs, skills and opportunities. This means those who work for the authority know the region and are in touch with the stakeholders from industry, government, education and community organisations to identify local strengths and competitive advantages. A local authority can also coordinate with other authorities to ensure fossil fuel communities are not competing against each other by pursuing job creation in the same new industries.

Note that the Illawarra is not the only region globally, or even in Australia, that will transition away from fossil fuels. This both underscores the urgency of transition in the Illawarra and suggests that models for just transition practice may be available for reference. The Latrobe Valley Authority, established in 2016, provides an example of a local coordinating authority. The Victorian state government established the Latrobe Valley Authority in 2016, following the unexpected announcement of the closure of the Hazelwood power station in 2017. Beginning with \$270 million in funding, the authority is headquartered in Morwell, in the heart of the Latrobe Valley's coal-mining industry.

2. Fund flagship job-creation projects

Flagship projects give tangible direction to the transition and create hope for the future. A flagship project provides an anchor point, or a fulcrum point, around which other industries and businesses can coalesce.

Again, an example from elsewhere in Australia is illustrative. In the coal-mining community of Collie in Western Australia, industry, government and university researchers working together on a project to make 'Collicrete', a more sustainable form of concrete made from fly-ash, a waste product from the burning of coal by the local coal-fired power stations.

3. Expand vocational training

Retraining is crucial to new industries to flourish, and for workers to find new jobs. Shortages of skilled and experienced staff are hampering development in renewable energy industries (CEC, 2020). Research for the Clean Energy Council (CEC, 2020) recommended the vocational educational system needs reviewing, because "existing training systems are not meeting industry needs".

Looking forwards not backwards, because transition is upon us

Socio-economic transition away from coal is upon us. Recognising the extent to which the climate is already changed (IPCC, 2022), and therefore, the urgency now needed in shifting away from fossil fuels in order to meet Paris Agreement commitments noted earlier, the transition is late, but welcome all the same, for there is no plausible scenario in which we persist in burning fossil fuels AND life as we know it continues. This is a major challenge that requires substantial planning and engagement across communities, industries and

government. That planning and engagement is already underway, as evidenced through the NSW state government establishing the Royalties for Rejuvenation Fund, and through work by civil society groups (e.g. Hunter Renewal and the Hunter Jobs Alliance (2022) in the Hunter Valley) to engage workers, unions, employers and communities in ongoing public discussion towards shaping the region's transition.

We are at a point now where more of the same is not helpful for employment in the Illawarra. The proposed expansion of the Dendrobium mine is at odds with the transition away from fossil fuels facing the Illawarra.

In my considered opinion, approval of the Dendrobium proposal will serve to undermine the Illawarra's transition away from fossil fuels. It would do so by holding out a false hope that there is a future for coal industry jobs in the Illawarra. The Illawarra's future will build on the skills and expertise that have been established over generations of coal mining, and steelmaking, but it will transcend coal. That forward-looking focus is essential for effectively planning and executing a just transition in the Illawarra.

A wider view for the Minister

If the Minister may allow themselves a wider view, the cost – in jobs – of the Project should also be considered. The focus on the proposal's impact on jobs (an estimated 100 jobs in the construction phase, and 50 additional 'ongoing' jobs) is unhelpfully limited, and is in fact one-sided: the assessment focusses only on the limited number of jobs the proposal would create, without reference to the limiting impact of climate change on employment.

The proposal will necessarily accelerate climate change, and climate change impacts are increasingly disruptive across employment in multiple sectors, and across Australia. Jobs in reef tourism in Queensland, for example, are threatened by climate change, through increased prevalence of coral bleaching making the Great Barrier Reef a less attractive tourist destination. In a very real sense, proposed jobs in coal mining in the Illawarra would undermine existing and future jobs in other industries across New South Wales and other states.

The impacts of climate change on employment will be felt across all industry sectors, and the costs of climate change on future employment in Australia have already been calculated. Last year the Federal Court accepted evidence provided to it on the future financial cost of climate change to young people (Mallon, 2021). Evidence was provided in the context of a bid by a group of Australian teenagers seeking to prevent then federal environment minister Sussan Ley from approving an extension of Whitehaven's Vickery coal mine near Gunnedah. The children were unsuccessful in their bid to constrain the Minister's actions, but the evidence was accepted by both the federal government's legal team and the judge, and its uncontested reception represents an important shift. The financial impacts of climate change are no longer a vague future loss – they are now a tangible, quantifiable harm (Phelan & Svenson, 2021).

Costs were calculated in three areas: reductions in property wealth, loss of earnings, and health impacts. In relation to loss of earnings, partial, conservative calculations were

applied to the period 2040 to 2060, when the applicants would be aged between 20 and 58 years. This part of the analysis focused on how climate change would affect a young person's ability to work.

On hot days, the body must expend extra energy dissipating heat (usually by sweating). As noted by the International Labour Organisation (ILO, 2016), exposure to these conditions for extended periods is risky, and to endure them people must drink water and take regular breaks, leading to lower productivity.

Rising temperatures under climate change will increase the number of days where the ability to work outside safely will be hampered. The analysis found around 30% of today's children will work in climate-vulnerable jobs, such as agriculture and construction.

People in these jobs will be less productive, and the cost to employers will eventually be passed to employees through lower wages, leading to an estimated loss of about A\$75,000 over a young person's working life.

Climate change and associated extreme weather will also disrupt the infrastructure businesses rely on, such as electricity, telecommunications and transport. Again, these productivity losses will eventually be reflected in employee wages. Repeated extreme weather damage to business continuity will lead to an estimated average A\$25,000 annual loss per person over the working life of a child today.

Climate change will also deliver generalised impacts to the economy. The analysis here was also partial, focussing only on agricultural and labour productivity, and drawing on existing research to estimate losses of about A\$60,000 per person over their lifetimes.

In summary, partial, conservative calculations found today's children will forego between A\$125,000 and A\$245,000 each due to the climate impacts noted above, with the most likely cost at around A\$170,000 for each child. However, the Project's assessment makes no mention of the wider loss of earnings to which the Project will contribute. My considered opinion is that the value of the small number of time-limited jobs the Project would create is far outweighed by the ongoing drag on future earnings in Australia attributable to climate change.

Conclusion

There is no real prospect of the mine offering continuing employment opportunities. Planning for continued coal extraction in the Illawarra region effectively means planning to leave behind the workforce dependent on coal industry jobs, and their communities.

In contrast, just transition initiatives already underway offer examples to the Illawarra region of opportunities for sustainable and ongoing employment. In the same way that it is prudent to prepare for inevitable bushfires and other climate-implicated weather hazards, it is essential for the Illawarra region to prepare for life beyond coal.

The aim of a just transition is to recognise the Illawarra's existing strengths, build on them, and ensure no one is left behind. Climate change is a globally coherent phenomenon, and so looking beyond the region, there is a clear connection between the coal mined in the Illawarra, and climate change impacts manifest elsewhere across Australia and beyond. In my opinion, a just transition here in the Illawarra also means the Illawarra taking responsibility for the global impact of coal mined there.

Seeking now to expand coal mining capacity in the Illawarra through the Project, in effect, is to choose more of the same, and by so doing, leaves the local workforce and their communities vulnerable to an increasingly uncertain future. Negative impacts will be felt further afield too, as the Project contributes to climate change's limiting effect on employment and earnings more widely.

References

- Adapt NSW. 2022. Climate change impact on storms and floods. NSW Department of Planning and Environment Department. Accessible at <https://www.climatechange.environment.nsw.gov.au/storms-and-floods>.
- Clean Energy Council. 2020. Clean Energy at Work. Clean Energy Council. Accessible at <https://assets.cleanenergycouncil.org.au/documents/resources/reports/Clean-Energy-at-Work/Clean-Energy-at-Work-The-Clean-Energy-Council.pdf>.
- Deloitte [Deloitte Access Economics]. 2021. Special report: Update to the economic costs of natural disasters in Australia. Accessible at <http://australianbusinessroundtable.com.au/assets/documents/Special%20report%3A%20Update%20to%20the%20economic%20costs%20of%20natural%20disasters%20in%20Australia/Special%20report%20Update%20to%20the%20economic%20costs%20of%20natural%20disasters%20in%20Australia.pdf>.
- Evans, G., & Phelan, L. 2016. Transition to a post-carbon society: Linking environmental justice and just transition discourses. *Energy Policy*. Vol.99, pp.329-339.
- Giannini, D. 2022. Australia harder to live in, PM admits. *The Newcastle Herald*. 9 March. Accessible at <https://www.newcastleherald.com.au/story/7652213/australia-harder-to-live-in-pm-admits/>.
- ILO (International Labour Organisation). 2016. Climate Change and Labour: Impacts of Heat in the Workplace. Accessible at https://www.ilo.org/global/topics/green-jobs/publications/WCMS_476194/lang--en/index.htm.
- IPCC, 2022: Summary for Policymakers [H.-O. Pörtner, D.C. Roberts, E.S. Poloczanska, K. Mintenbeck, M. Tignor, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem (eds.)]. In: *Climate Change 2022: Impacts, Adaptation, and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [H.-O. Pörtner, D.C. Roberts, M. Tignor, E.S. Poloczanska, K. Mintenbeck, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem, B. Rama (eds.)]. Cambridge University Press. In Press. Accessible at https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_SummaryForPolicymakers.pdf.
- Hunter Renewal and Hunter Jobs Alliance. 2021. Future-Proofing the Hunter: Voices from our Community. Accessible at <https://www.hunterjobsalliance.org.au/publications>.

- Mallon, K. 2021. Independent Expert Report by Dr Karl Mallon. Accessible at <https://equitygenerationlawyers.com/wp/wp-content/uploads/2021/05/201209-Expert-report-of-Dr-Mallon.pdf>.
- McKinsey & Company. 2020. Decarbonization challenge for steel. Accessible at <https://www.mckinsey.com/industries/metals-and-mining/our-insights/decarbonization-challenge-for-steel>.
- Phelan, L. and Svenson, J. 2021. Climate change will cost a young Australian up to \$245,000 over their lifetime, court case reveals. *The Conversation*. 27 May. Accessible at <https://theconversation.com/climate-change-will-cost-a-young-australian-up-to-245-000-over-their-lifetime-court-case-reveals-161175>.
- Phelan, L., Henderson-Sellers, A., & Taplin, R. (2013). The political economy of addressing the climate crisis in the Earth system: Undermining perverse resilience. *New Political Economy*, 18(2), 198–226. Accessible at <https://doi.org/10.1080/13563467.2012.678820>.
- UNFCCC (United Nations Framework Convention on Climate Change). 2015. *Paris Agreement*. Accessible at https://unfccc.int/sites/default/files/english_paris_agreement.pdf.
- UOW [University of Wollongong]. 2022. Partnership to explore low emissions steel production technologies at Port Kembla (media release). Accessible at <https://www.uow.edu.au/media/2022/partnership-to-explore-low-emissions-steel-production-technologies-at-port-kembla.php>.

Appendix

Hunter Renewal and Hunter Jobs Alliance. 2021. Future-Proofing the Hunter: Voices from our Community. Accessible at <https://www.hunterjobsalliance.org.au/publications>.



Future-proofing the Hunter

Voices from our community

A REPORT PREPARED BY HUNTER RENEWAL & HUNTER JOBS ALLIANCE

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We have to understand the pace of change that will occur in the makeup of industry in the Hunter Valley over at least the next ten years, and plan for, and reposition ourselves to take advantage of these changes.

I'm excited that with our highly skilled, innovative and diverse labour force, we can attract new business to our region – business types perhaps we haven't even thought of yet, and so make the Hunter Region a place known for things other than just coal mining.

We have done this before – compare us now to how the region was when it was reliant on the BHP operation. We already have the experience and expertise to transition to a new and exciting future.

Lake Macquarie resident (survey)



HUNTER Renewal

This report was put together by Hunter Renewal and Hunter Jobs Alliance. The views contained have been collated from community workshops and an online survey and do not necessarily represent the views of either organisation. © 2021

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Executive summary

In May 2021 then-Deputy Premier John Barilaro announced that New South Wales would establish a Royalties for Rejuvenation Fund and statutory Hunter Expert Panel to fund and oversee diversification and assist the region's adjustment to changing coal markets. This is a welcome development for the Hunter.

Between August and October 2021, Hunter Renewal and the Hunter Jobs Alliance convened five workshops complemented by an online survey to gather community input, ideas and priorities for this new body and funds. This report collates and distills the priorities and concerns of ordinary people and workers around the Hunter region.

Our engagement with people of the region shows that, overwhelmingly, people understand and accept that change is coming and that leadership by government, informed and directed by local knowledge, is necessary to weather that change.

Participants in the workshops and survey reflect the range of interests and perspectives of locals, including workers in sectors that will be affected by structural change in the coal industry, people working in social services, education and health, people invested in community organisations and from a range of socio-economic backgrounds and a variety of life experiences. What they had in common was a willingness to engage in the work of making a positive future for the people and communities of the Hunter region.

"I worked in mining for 15 years so I know what's happening. Many of the services companies have been planning for years. They have already started to do the work."

Muswellbrook workshop participant

The most common issues of concern were job security, protection of the environment and climate change, and the urgency of transition planning. More broadly, participants in our workshops highlighted existing challenges and fears: housing affordability and homelessness, the importance of public and accessible vocational education, existing inequality, and environmental problems such as air pollution and land degradation.

We asked participants to discuss and rank 22 ideas and recommendations from work already undertaken to consider the challenge of diversification in the region. Of these ideas, ten priorities emerged. The top three were:

1. A local authority to coordinate and fund job creation and community support
2. Fund flagship projects that create jobs
3. Expand TAFE and vocational education.

These top three priorities reflect overriding community needs and concerns: locally-driven coordination and community support, job-creation, education and skill-building. The remaining seven priorities focus on practical skills and initiatives to sustain local economies, business and people's adaptability:

4. Market the Hunter to attract investment
5. Start community-owned energy networks
6. Build pilot projects for new industries
7. Create rules for mining and power companies to protect workers
8. Free training for mine and power station workers moving into new roles
9. A long term fund for land and water management after mine rehabilitation
10. Grants and training for local businesses to diversify.

The process found people understand the challenges facing the Hunter region and want planning and action to address these challenges that are equitable and community-driven. They are ready and willing to take part in the work of the Hunter Expert Panel and Royalties for Rejuvenation program.

The feedback is abundantly clear. This process and report demonstrate people's desire to have a seat at the table to collaboratively plan for the region's future.

An aerial photograph showing a coastal city with a dense urban area on a hill overlooking a large body of water. In the foreground, there is a port area with several large industrial buildings, a shipyard, and a large cargo ship docked at a pier. The water is a deep blue-green color.

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We have great engineering, ports, power, and logistics all available in the Hunter. It's just about how to transition the workforce across. There are big opportunities and I'm impressed with the momentum.

Muswellbrook workshop participant

Introduction

In late 2021, Hunter Renewal and the Hunter Jobs Alliance convened five workshops and an online survey to gather input and ideas from the community about the priorities for the soon to be established Hunter Expert Panel and Royalties for Rejuvenation Fund.

Participants joined from Wonnarua, Awabakal, Darkinjung and Worimi country, in Cessnock, Singleton, Muswellbrook, Maitland, and Lake Macquarie LGAs, and the survey allowed input from Hunter residents more broadly. In all 314 people from across the region have contributed to this report.

Background to the workshops and survey

Hunter Renewal is a community outreach project established in 2017 to speak with people in the region about economic diversification and their priorities for the future. The Hunter Jobs Alliance is a coalition of thirteen local and statewide unions and environmental advocacy groups in the Hunter working together for new sustainable economic opportunity for workers and the broader community.

The Voices of the Hunter Valley workshops were conceived to give ordinary Hunter people a chance to have a say. The purpose of the workshops was two-fold:

- Gather community priorities and perspectives to inform decisions about Royalties for Rejuvenation Fund and the Hunter Expert Panel;
- Ensure the community has access to information and opportunities to be involved in transition planning.

Due to COVID the workshops were conducted online, targeted to communities in the region most impacted by changes to traditional industries: Cessnock, Singleton, Muswellbrook, Maitland, and Lake Macquarie. Invitations were sent to supporters of Hunter Renewal, to members of Hunter Jobs Alliance affiliates, and to community organisations and small businesses in the local areas of focus. Registration was open to all, and the events were also promoted on Hunter Renewal and Hunter Jobs Alliance websites and Facebook. The online survey mirrored the workshop activities and was promoted more widely in the Hunter region.

Participants

Of the 314 unique participants 111 took part in one of the five workshop and 203 completed the survey. Participants included people involved in local organisations like Rotary, PCYC and the CWA, church and charity groups, business owners and business and investment advocates, people who work in social services, housing services, drug rehabilitation or caring support, workers from power stations and mines, health and education, manufacturing and mining services, young people, retirees, professionals, government representatives and rural landholders.

Process

To design the workshops and survey, facilitators considered 30 reports and plans addressing the Hunter's future planning and diversification. From these reports, 155 separate ideas were drawn, and then distilled into 22 key proposals in four broad categories:

- Planning and coordination;
- Growing and diversifying the economy;
- Supporting the community through change;
- Supporting workers through change.

Workshop and survey participants chose their top priorities for transition initiatives from this set of proposals. A table showing the full list is on page 27. Background information was provided to help respondents make informed decisions. They were also given the opportunity to add their own ideas.

WHAT WE HEARD

“Keeping the community informed regularly as to what is happening is key. If the community is not behind it and they haven’t heard about it then it will fail.”

Singleton workshop participant

“I was born and bred in Singleton and worked in the power station for the last 40 years. I have kids and grandkids in the Hunter area. The coal is going to stop flowing, thermal coal power is going to stop being generated so I want to set the future up for my future generations. There’s a lot going on in the power industry at the moment, and people are pretty scared about what the future holds for them.”

Cessnock workshop participant

“It is important to have this talk about transition as one about opportunity rather than what is stopping us, because people are worried about losing their jobs and their whole culture. For so many in the Valley it is about what they do, what their grandparents did, and it’s about putting food on the table. It’s culture. We need to change with respect and dignity.”

Maitland workshop participant

Thank you!

There are a great number of people who have contributed to this report, most importantly the participants of the workshops and those who took the time to fill out the survey. Thank you for your time, candour and dedication. We would like to especially thank Kimberley Crofts, PhD candidate at UTS, for help in designing and running the process; our volunteer facilitators from each of the workshops: Jai Allison, Janet Murray, Allan Evans, Pete Coughlan, Jo Lynch, Courtney Eckert, Jo McNeil, Callan Lawrence and Steve O’Brien; and our volunteer callers, data analysts, scribes and writers Rod Anderson, Martin Scurrah, Joy Nason, and Lucas Kennedy.

Next steps

Hunter Renewal and the Hunter Jobs Alliance will provide this report to the NSW Government to provide insight into the community’s views about the priorities of the Hunter Expert Panel and Royalties for Rejuvenation Fund. We intend to engage proactively in these processes, and continue engaging with our members and supporters and the broader community to ensure ordinary people have a seat at the table.

Top concerns

We asked people to tell us what concerned them about the region's future. Here's what they told us*.

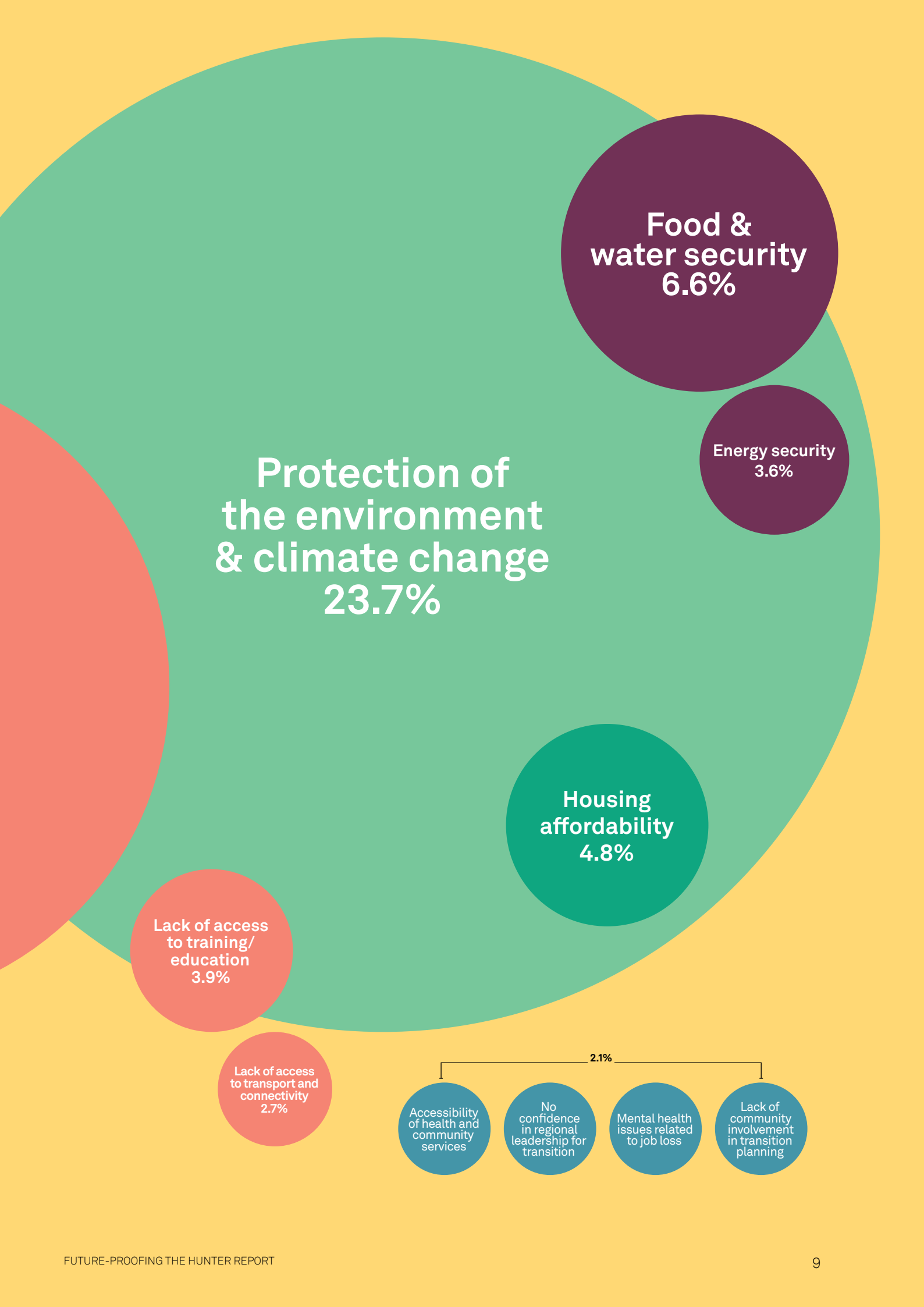
**Economic futures
beyond mining
11.4%**

**Welfare
of future
generations
6.3%**

**Job security
15.3%**

**Urgency of
transition planning
13.5%**

*Percentages indicate weighting within the top fourteen concerns.





A local authority
is urgent in my mind...
Coordination is key,
there is an appetite and
support for it from a
majority of stakeholders.

Cessnock workshop participant

Top priorities

The following emerged as the top priorities among the 314 people who took part in the workshops and the survey.

17%

A local authority to coordinate and fund job creation and community support

14.9%

Fund flagship projects that create jobs in new industries

13.9%

Expand TAFE and vocational education

8.4%

Market the Hunter to attract investment

8.4%

Start community-owned energy networks

8.1%

Build pilot projects for new industries

7.9%

Create rules for mining and power companies to protect workers

7.5%

Free training courses for mine and power station workers moving into new roles

7.2%

A long term fund for land and water management after mine rehabilitation

6.7%

Grants and training for local businesses to diversify

CATEGORIES

- PLANNING & COORDINATION
- BUSINESS & INDUSTRY
- SUPPORTING WORKERS
- SUPPORTING COMMUNITY

Percentages indicate weighting within the top ten, not the 22 concepts used across the workshop and survey. Please see table on page 27 for a list of all 22 concepts.

A local authority to coordinate and fund job creation and community support

There is wide support for a Hunter Valley Authority to set out a clear roadmap for how we will deal with change.

A local coordinating authority is essential

Along with some concern about losing out in transition, there is excitement around the opportunities that change brings. If the process is thoughtfully planned, it will allow the community to feel secure, involved and optimistic.

Participants recognised that someone needs to coordinate the many moving parts of our economy, to ensure the Hunter can take best advantage of opportunities that arise. For example when new industries open their gates, we need to ensure local people are ready to step into these jobs. A transition authority could coordinate with training organisations to develop and deliver relevant training programs to prepare the local workforce in the right timeframe.

Input from all sectors of local communities will be essential to guide the transition process. This will generate a wide range of ideas and facilitate excitement about the region's future. The survey and workshops themselves have demonstrated that people want to be involved.

In June 2021, the Hunter Jobs Alliance proposed a model for a statutory Hunter Valley Authority. The authority should be tasked with delivering a defined set of functions in collaboration with other agencies, programs and stakeholders. More information can be found on the Hunter Jobs Alliance website.

Scepticism about effective, efficient, and equitable transition

People made it clear that a transition done right means nobody is left behind. Optimistic participants noted that these changes are an opportunity to create an inclusive and sustainable regional economy and society.

There is doubt that \$25 million per year is sufficient to undertake the task at hand. In the Maitland workshop one person said “\$25 million is not a lot of money. How are they going to fund all the things that need

to be done in the Hunter community?” Numerous participants suggested the initial funds be used to develop a plan and get things going, but a substantial commitment of more funding is needed.

While government leadership is essential, there is wariness of corruption, bureaucracy and waste. Transparency, genuine and diverse community involvement, and accountability mechanisms will offset these concerns.

Coordination among stakeholders is essential

Coordination by a transition authority should aim to ensure diverse interests and aspirations are included, not just local elites. As a workshop participant from Muswellbrook said: “You need local participation, and a government body to coordinate. Everything then can flow from this”.

A clear process for community engagement with the authority should be established. Participants felt that transition initiatives depend on community involvement. The region's interdependencies can only be properly understood with representatives from a diverse range of groups.

For example we found some Hunter residents are impatient and feel we may be missing opportunities to diversify the region's economy and move towards renewable energy. One workshop participant said: “We should be starting on planning for decarbonising industry. We have the overlay of climate change and we have to do something about it everywhere, we have to start thinking about it now”.

Others, have concerns about what switching to renewables will mean for heavy industry: “I am an electrician at Tomago Aluminium and wonder if there is going to be enough base load power to keep the smelter running when the coal powered power stations shutdown.”

A local authority needs to be immersed in the community to understand and properly balance different perspectives. Participants could see that the process is complex, and an authority needs to be grounded in the needs and concerns of community to best match real opportunities with the resources and reality on the ground.

WHAT WE HEARD

“If we don’t have adequate planning as we transition out of fossil fuels there is a very real prospect that some people will be left high and dry, not just people who work in the fossil fuel industry, it’ll be entire communities.”

Cessnock workshop participant

“The most important thing is involving the local community in designing the transition. Unless you take the locals with you on the journey, so that they own the changes, it will not be successful.”

Lake Macquarie workshop participant

“Collaboration is important...people who work in industries that pollute need to know that we care about them. We need to include them.”

Singleton workshop participant

“We have to step out of our way to make sure that First Nations people are more involved in [transition planning].”

Singleton workshop participant



IN THE SPOTLIGHT

The Latrobe Valley Authority

In 2017, the Hazelwood power station in the Latrobe Valley Victoria closed, and hundreds of workers lost their jobs. The Latrobe Valley Authority (LVA) was established with an immediate focus on support for workers, incentives for businesses to employ more people, and investments in community facilities and events.

As the LVA was established in reaction to the closure of Hazelwood, the opportunity to plan ahead of time was missed. The LVA has since been working to increase workers and employers' skill base in growth sectors. Along with initiatives to build business capability, maximise local procurement, competitive advantage, and improve the sustainability of community organisations, the LVA is focused on leveraging infrastructure investment to create employment in the region's growth industries of the future.

Fund flagship projects that create jobs

People strongly support public funding of flagship projects, to provide jobs for local people and demonstrate opportunities in new industries.

Job creation with tangible projects needs to be a priority

With the scheduled closure of four power stations over the next 14 years and a projected contraction of jobs in mining over time, workshop participants were eager to talk about how people in the Hunter will make a living in the future.

There is a fear that leaving the future to the market will create uncertainty and instability in the economy and people's lives. In Lake Macquarie, we heard: *"The decline in the thermal coal sector could happen much more quickly than imagined due to investors and financiers seeking green investments. This risks seeing a gap between the loss of resources-related jobs and those from emergent industries"*.

Putting public funds towards new industries was a very popular idea. People saw a need to be proactive, to fund projects that will stabilise employment, the economy and demonstrate the region is open for business.

Excited for the possibilities, but need to find the best fit

People are excited to shape the Hunter economy in a new direction. Widespread support for renewable energy comes with the hope it can bring local manufacturing jobs in industries such as electric vehicles, batteries and wind turbines. Other growth opportunities consistently identified included adventure tourism, wine and agriculture, retirement communities and environmental conservation and mine rehabilitation.

Whatever the possible projects that may exist, people saw the importance of choosing carefully. Projects to fund would make best use of the existing workforce skills. Hence, a skills audit and workforce development planning is seen as necessary to effectively assess potential projects.

A strong preference for local, sustainable businesses

People preferred that funding for business or industry go to home-grown, local ventures, rather than outside companies. This is because locally-owned businesses are seen to be more attuned to the needs of the community. With all the opportunities in clean technology, people also had a strong preference that the industry be focused on sustainability.

WHAT WE HEARD

"A flagship project is very important to fund because it lifts morale, but it has to be carefully chosen: a project that other industries can cluster around, one that uses and further develops the skills of the existing workforce, and one that engages with existing local businesses, small and large."

Maitland workshop participant

"We could do much better than having companies from overseas reaping the benefits. Instead we could have locally-owned and innovative industries that could really provide a renaissance [for the Hunter]."

Cessnock workshop participant

"There could be jobs in manufacturing related to fly ash for people who work in or live near power stations, and ideally people would be re-trained if they wanted to accept a job in the coal ash manufacturing reuse plant — they wouldn't have to move away."

Cessnock workshop participant



ABOVE: Drayton coal mine, coal ash dams, and Bayswater power station in the background.

IN THE SPOTLIGHT

Manufacturing structural lightweight aggregate from legacy coal ash

Reusing the coal ash held in dumps at the four Hunter coal-fired power stations opens new possibilities. The ash dredged out of these dams can be manufactured into structural lightweight aggregate (man-made sand and gravel) for use in the production of lightweight structural-grade concrete. The mechanical and chemical processes of 'cleaning' the ash allows for the cost-effective manufacturing of a range of other specialised products for road construction.

This product mix allows the manufacturers to empty the Hunter ash dams over two decades, enough time to develop the manufacturing processes further. Subsequently, other waste products like glass, tyres or plastics can take the place of coal ash.

Economic modelling based on an existing business case has shown that manufacturing structural lightweight aggregate at the five operating ash dams in NSW (four of which are in the Hunter) can create some 3,000 permanent full-time jobs. The manufacturing processes involve technologies and equipment that are common in mining, which means that the workforce to operate these new factories is readily available in the Hunter, including the many small and large businesses in the supply chain and the maintenance structure for the equipment.

In addition, structural lightweight aggregate can give the cluster of factories that produce precast concrete products in the Lower Hunter a competitive edge, because they can offer lightweight products of equal strength.

Expand TAFE and vocational education

To prepare us for a new economic future, participants strongly supported expanding TAFE and vocational education. As a beloved public institution, TAFE is the favoured body for delivery. Planning is necessary to ensure people have access to the courses they'll need as the economy changes.

Increase funding and courses

At every workshop around the region, TAFE was seen as the key institution for preparing workers and the community as a whole for the challenges ahead. There is great concern about TAFE budget cuts and the closing of Scone TAFE, and what this means for our ability to adapt to a new economic environment. People felt that resources should be restored to TAFE to expand opportunities more generally and to develop trained persons for a more diversified economy. In addition to preparing workers for roles in new industries, a strong TAFE could help address skills and workforce shortages in certain sectors such as the care economy.

Public education to address disadvantage

One reason TAFE was so strongly supported is that it is seen as a key way to address disadvantage in the region. There is a sentiment that moving towards private training institutions results in a greater user-pays culture in education and unequal opportunity.

Planning so that the courses meet our changing needs

There was an acknowledgement that if we want local people employed in new industries, training will need to begin before new industries and economic activities are in place. This requires advanced planning and coordination between high schools, TAFE, regional authorities, business and others. TAFE and training institutions need to know in advance what the likely new jobs will be so that it can design courses, recruit teachers, and prepare resources to develop the skills that will contribute to new opportunities.

WHAT WE HEARD

"Training is something that is fundamental to this process. Training and TAFE is the backbone to help people get into a new industry. The whole training, and retraining aspect is essential to the success of a transition. It is problematic when funding keeps getting cut. They are doing the best they can with a shrinking budget."

Lake Macquarie workshop participant

"We have a slight problem in expanding TAFE in the next three years if we don't know where employment is heading."

Singleton workshop participant

"With Scone TAFE shut down, our young people have to travel to Muswellbrook to do courses and, with few public transport options, this is an equity issue... If you don't have a car you can't get to TAFE. People with disabilities are even more disadvantaged."

Singleton workshop participant

"If we don't provide this type of facility for people to become educated in new skills it means employers may bring new people into the area and our existing workforce will be on the scrap heap because we haven't provided for their future."

Lake Macquarie workshop participant

IN THE SPOTLIGHT

The challenge of finding skilled staff

A key finding from the 2020 *Clean Energy at Work* report from the Clean Energy Council was that renewable energy developers and installers are facing difficulties in recruiting skilled and experienced staff.

“There is a high demand for electrical and grid engineers, and construction managers across wind and large solar projects, with developers finding recruitment for these roles challenging. In the last 12 months, two thirds of renewable energy companies that tried to recruit a construction manager had medium to high difficulty (it took more than five weeks to find a suitable candidate).

In the wind sector, there are certain unique occupations that are only occasionally needed but are nevertheless critical to the construction phase. Examples are crane drivers and specialised truck drivers for wind turbines. It can take two years to train in wind farm transportation and the driver may then seek ongoing work in another industry. As operation and maintenance of wind farms becomes an increasingly important role there will also be heightened demand for blade technicians, yet these are already hard to source.

The study also confirmed anecdotal evidence that most small-scale solar businesses face difficulties in recruiting accredited solar designers, electricians, electrical trade assistants and roofers, especially in regional areas, yet these are in high demand. Under some scenarios this demand will see a steady increase” (Clean Energy Council, 2020).



PRIORITY #4

Market the Hunter to attract investment

People supported the idea of a marketing program for potential investors in the region. It could provide information on available incentives, land availability, demonstration projects, workforce skills and advice on navigating the planning system.

Attracting investment to the Hunter

People agreed that if we are to build a new economic future, we will need to attract new investment in the Hunter. To take best advantage of interest in the region, people saw the value in a one-stop-shop, where potential investors can be welcomed, get the full picture on the many advantages of establishing themselves in the Hunter, have their questions answered, and obtain practical advice on liaising with local and state government processes.

Local collaboration is crucial

Participants were clear on the need to not waste public money on merely advertising the region. Further, marketing the Hunter should not mean offering the region, its people and resources for exploitation by outsiders but rather highlighting the region's development potential in cooperation with locals.

WHAT WE HEARD

"If this is about marketing the resources we have here, and what the Hunter has above other regions, then it's good. If it's just 'come to the Hunter' then not so good."

Muswellbrook workshop participant

"We need funding to encourage and entice new enterprises to come to town."

Muswellbrook workshop participant

"This would shift emphasis from what Singleton has been to what it could be."

Singleton workshop participant

PRIORITY #5

Start community-owned energy networks

People supported the idea of community-owned energy initiatives as a way to lessen the risks of increasing electricity prices and to keep the economic benefits of energy production in local communities.

Enthusiasm for renewable energy

There is enthusiasm in the community for producing renewable energy, demonstrated by the popularity of solar panels. However, the ability of some people to participate in this energy revolution is limited by inequality: not everyone owns a roof that they can put a solar panel on. Grants and training to establish community-owned energy networks allows everyone in the community to support renewable energy and reap its cost savings.

Community cohesion and morale building

People noted that the benefits of community-owned energy networks reach beyond the benefits to the environment or the hip pocket. In taking initiative and control over their own energy needs and production, people feel empowered. People in the workshops noted that process of working together to establish a project would build community cohesion and morale. For those reasons, it can help make communities more resilient in the face of changing and uncertain economic times.

WHAT WE HEARD

"Community-owned energy networks are a really exciting initiative and I would love to see something like this in Maitland and put my spare cash to it, and to get involved."

Maitland workshop participant

"The community can get together and decide where it goes, and get the benefit from it, not like an outside company coming in."

Singleton workshop participant

"Community-owned energy networks allow people to work together in community groups to solve their own green energy solutions."

Lake Macquarie workshop participant



ABOVE: Solar farm and sheep (Gabelglesia, Creative Commons).

IN THE SPOTLIGHT

Goulburn Community Energy Co-operative

In Goulburn, locals have established the Goulburn Community Energy Co-operative. The project was kickstarted with \$2 million from local investors, matched by a grant from the NSW State Government. Capital raising continues and they are opening up investing to outside parties. The co-op is building a solar farm on 2.2 hectares of industrial land.

The solar farm will consist of 4,000 panels generating 1.8Mw which is sufficient to generate power to around 450 homes,

and backed up by a 400 kW battery to store energy and sell when the price is right.

Electricity from the solar farm will be sold back to the grid, with profits split three ways: into dividends, a sinking fund for panel repairs and maintenance, and a fund to pay for electricity bills for Goulburn's disadvantaged people. Construction of the solar farm by Komo Energy commenced in early 2021 and its anticipated completion date will be late 2021.

PRIORITY #6

Build pilot projects for new industries

Provide the means for local businesses to partner with innovation experts so that they can test their ideas.

Supporting new industries is essential to diversify the Hunter economy

People are nervous about where new jobs are going to come from in the Hunter, and see the benefit of government support to test new industries. If successful, these industries could be a part of a new diversified economy, and provide much needed employment to local people.

Support for a system of innovation and research across the Hunter

There was strong support for ensuring that locals have access to the best research institutions and innovation experts such as CSIRO and the University of Newcastle should they wish to start a pilot project. People also stressed the importance of supporting linkages between different research institutions, businesses, and local people with ideas.

WHAT WE HEARD

“You have to be able to test the waters to see what works. This is one way to incentivise new industries. What are the opportunities for local businesses that may not have been able to start something yet as they don’t have the funding?”

Singleton workshop participant

“My son has a start-up business which will thrive if this region starts investing in the industries of the future. I look forward to my grandchildren having exciting jobs in the new economy.”

Newcastle resident (survey)

“The industry and business community should work closely with university and CSIRO researchers to get local breakthroughs commercialised and manufactured in the Hunter. An industry hub where related businesses can collaborate and share resources could help.” Cessnock resident (survey)

PRIORITY #7

Create rules for mining and power companies to protect workers

People agreed on the necessity to set clear expectations of companies undertaking large scale closures in the Hunter. These would include things like minimum notice, comprehensive redundancy packages, counselling, and a duty to assist with retraining.

Can’t let companies ‘cut and run’

People in the Hunter have a high awareness that large-scale closures can be disastrous for workers and communities, especially if poorly-planned. Workers deserve their entitlements and decent notice so they can make the right choices in their interests. Strict and clear rules to which companies must adhere would reduce anxiety for affected workers. Additionally when these expectations are set, companies can also plan for them.

Funding redundancies is a mining company responsibility

While people were enthusiastic about the availability of coal royalty money to spend on the region they were adamant that it should not be used to fund basic entitlements. Further, it was felt that companies undergoing closures should also fund retraining, and other worker support such as financial and career advice and counselling.

Distrust of government

While agreeing that it was a good idea in theory to set clear expectations of big companies, some participants were deeply sceptical that government would enforce any rules on private business, especially such a big and powerful business as mining.

WHAT WE HEARD

“As long as business knows what the tariffs are they can plan for it, trouble is in Australia companies get away with murder. In other countries it’s not a problem - these are the rules, this is what you have to do. They factor it into their plans, end of story. Here the community has to demand it forcefully.”

Lake Macquarie workshop participant

“The companies aren’t offering redundancies but just telling workers to take a job interstate. I don’t think many will move, they’ve already got their lives set up.”

Muswellbrook workshop participant

“As a community we can demand this. And they should provide new training for people before their jobs end.”

Lake Macquarie workshop participant

PRIORITY #8

Free training for mine and power station workers moving into new roles

To support mine and power station workers through change, participants agreed they should be provided with free courses to help bridge their skills to new roles.

Retraining and re-skilling the Hunter workforce is crucial

Anticipated job losses in mining and energy means some workers will have to find a new way to make a living. It is important these workers are supported through this change. Some, such as electricians, will be able to walk out of jobs in the mines to jobs in other industries. There are others who need substantial retraining to be able to adapt. Courses offered and available to workers needing new jobs should be directly relevant to future employment.

Companies have a responsibility to the region and their employees

Companies have made a lot of money from the Hunter and its people: if closures are planned, funding for retraining should be part of redundancy packages. To assist worker transition, retraining can start before workers are made redundant. Companies should be flexible in allowing workers to attend courses while still employed.

Relevant and high quality training/courses need to be available

Planning and coordination is required to ensure that the right courses are available to the right people at the right time. Workers need to trust that if they take the time to retrain, they will have all the skills required to qualify for new roles in emerging industries.

WHAT WE HEARD

“There is a lack of understanding of how transferable the skills of mining are. I work in the mines and I can only move to central Queensland. If everyone moves then this whole transition is null and void. There will be no one here. We need support for identifying transferable skills.”

Singleton workshop participant

“I’m a miner. Change is coming. Mining companies and unions need to do more to re-educate and reskill. Employees have the time and money if given appropriate avenues.”

Lake Macquarie resident (survey)



IN THE SPOTLIGHT

HCB Solar

In 1948, Michael Haggerston’s grandfather started an electrical business that is still trading in Boolaroo. Michael has taken up the mantle along with his son, Logan, in creating HCB Solar. Michael had this to say about the opportunities for the solar industry in the Hunter region:

“We’ve seen the solar industry grow and grow since 2008. Being at the forefront of the solar sector in the Hunter and working nationally we recognise the opportunities that exist in the Hunter to embrace renewables.”

HCB Solar, under the company name WS Farm, is developing a solar education facility in the Williamstown area close to Newcastle Airport. We see this as a positive start to educate companies that are in the renewable sector to learn in a controlled environment on how to install products before they enter the field. We have had a positive approach from six international companies.

We are committed to seeing this succeed and with government assistance this could grow to be the hub of solar training on the east coast. HCB Solar is well aware of the public’s positive attitude towards renewables and believes up and coming generations will be even stronger.

The Hunter is well positioned to take advantage of the rapid growth of solar and batteries within our region. The future is very positive and we are looking forward to bringing new companies to the Hunter Valley.”



ABOVE: Wambo 3 coal mine near Singleton.

PRIORITY #9

A long term fund for land and water management after mine rehabilitation

Participants saw restoring and protecting environmental resources as highly important and essential to maximise resilience and productivity. People supported putting money aside for environmental monitoring and management, including towards new uses for our natural resources.

Rehabilitation is the mining companies' responsibility

People felt strongly that mine site rehabilitation should not come from public funds. Damaged areas should be restored to the level where it's possible to use the land for new cultural and/or economic activities.

Indigenous-led initiatives to look after natural resources

Managing land and water long term means employing people to look after those natural resources. There was a recognition that First Nations' knowledge would assist greatly with safeguarding the local environment, and support for relevant Indigenous-led initiatives that would look after resources while providing employment for local people.

Many potential uses of former mining lands

Participants wanted to see the imaginative transformation of old mine sites for uses that create and add value while conserving the environment. They suggested sites be used for wildlife restoration, wetlands, botanical gardens, recreation and tourism, or agriculture.

WHAT WE HEARD

"It is important that we support Aboriginal-led business and make sure they are included in this sort of planning, we are on their country and so that should underpin everything that we do."

Cessnock workshop participant

"The only issue with funding land and water rehabilitation is that I don't want there to be a perception by the coal mines that rehabilitating the land is not their job. It is a great idea that just needs to be implemented carefully." Newcastle resident (survey)

"We should aim for clever rehabilitation of mining damage and pollution; so many jobs can be based around protecting and caring for the place we live in." Lake Macquarie resident (survey)

PRIORITY #10

Grants and training for local businesses to diversify

The future of many small and medium enterprises in the Hunter is tied up with the future of coal mining. To protect existing jobs and to create new ones, participants saw the need for local businesses to develop a diversified business model, supported by grants and training.

Education and training for businesses to help with diversification

Existing businesses need to be resilient if they are to survive an uncertain economic future. Many do not have the knowledge of how to do this. Education and training for these businesses is an important part of the picture, to ensure they succeed and are able to continue to employ Hunter people.

Create the conditions for small businesses to grow

Small business is seen as an important part of the employment puzzle in the Hunter, and there is support for grants to help existing small businesses and startups. There was support for a boost for Aboriginal-led business, and developing entrepreneurial abilities in local people.

WHAT WE HEARD

"You are better to spend money on the businesses already here rather than trying to get new businesses to come here."

Muswellbrook workshop participant

"It's not going to be one great big thing that comes to our rescue. With the right amount of government support we can stimulate job creation through small businesses."

Muswellbrook workshop participant

"I was born in Muswellbrook. Before the coal mines there were little industries everywhere, maybe we have to get back to that."

Muswellbrook workshop participant

"80% of business headquarters are located where the founders live ... it's about creating the environment that makes people want to create a business, if they live in Cessnock they will create that business in Cessnock."

Cessnock workshop participant



IN THE SPOTLIGHT

Ampcontrol

"Ampcontrol is Australia's largest privately-owned electrical engineering company leading advanced global manufacturing of award-winning innovations, products, solutions and services to the resources, infrastructure and energy sectors. Ampcontrol works with its customers, employees and community in the evolving industrial landscape to make a meaningful and sustainable improvement to people's lives around the world."

As the world adjusts to the global pandemic with a renewed focus on sovereign manufacturing and a carbon reduced future, our new strategic plan aims to strengthen our position as one of Australia's leading advanced manufacturers of renewable energy solutions. Ampcontrol's modelling of the power generation sector several years ago identified the need to diversify our revenue sources. Interestingly our move to expand from a substantially coal-based revenue base has opened opportunities in areas we had not previously considered. As a result, thermal coal will be less than 20% of our revenue."

Ampcontrol is investing heavily in research and development in the renewable energy space with over 25 dedicated R&D engineers employed through a collaborative partnership with The University of Newcastle. There is an immense benefit of industry and government bodies uniting, bringing great minds, capabilities and ingenuity together for the benefit and sustainability of our community and economy, and all done right here in Australia. The immense skill and expertise that we have in the Hunter Region form a platform for a sustainable large employment sector that can be a long term powerhouse for New South Wales."

**Rod Henderson, Managing Director & CEO,
Ampcontrol**

“

If we get this right, the entire region could benefit on so many levels and lead the way as a sustainable and prosperous region, which could be an example for other regions worldwide.

Newcastle survey participant





Other issues people raised

We collated over 1,200 comments from Hunter region people in the workshops and survey about what is important to them. These comments didn't solely focus on the nominated priorities. Below is a snapshot of other regional priorities.

Environment & Climate

"We want to see a thriving future for our future generations. We are all concerned about what we will be leaving for them. We talk about this a lot [among friends]." Cessnock workshop participant

Change is needed to avoid the worst of climate change. This includes rising temperatures, biodiversity loss, water restrictions. Any transition process will need to take into account the likely impacts of climate change and include measures to strengthen resilience.

Air quality and pollution from mining and its impact on the health of humans and livestock. There is an expectation that as the mines and power plants close air quality will improve and there will be less danger from pollution of Lake Macquarie.

Concern for habitat destruction due to housing development. Some people are excited at the prospect of a growing Hunter. Others feel there is a need to regulate housing developments to avoid suburban sprawl, habitat destruction and loss, by promoting affordable and sustainable, high-density housing.

Health, Care & Community Services

People are concerned about inadequate health services. Given the uncertainties associated with transition and change, plus the disruption from lost jobs, changes in demand for businesses and the impacts of climate change will all generate stress and anxiety and generate mental health issues.

Energy justice. Allowing wide access for people to be able to take advantage of new renewable energy alternatives like solar power will mean green alternatives are not confined to the wealthy.

Concern that job losses related to an unplanned transition will put pressure on under-funded community groups. Unplanned transition will make problems like homelessness worse, putting more pressure on community organisations and non-profits. These organisations need increased funding to support a fair transition and to ensure that nobody is left behind.

Housing Affordability

Access to affordable housing is an issue, especially in areas where high wages have driven up rents. Building more affordable and sustainable housing is essential, but must not create further problems through poor insulation and inability to access renewable energy.

Homelessness. There is already widespread homelessness in some communities in the region. This has been exacerbated by treechangers and people with good mining jobs pushing up housing prices. This creates a steep gap between the haves and have-nots in the community. Unless something is done in advance to address this situation, the closure of coal mines and power plants will increase the homelessness problem.

Transport and Connectivity

Improving infrastructure to attract and grow new industries. While the existing rail, road and port infrastructure provide a good basis for developing the region, especially for manufacturing, it needs to be upgraded. This should be funded out of existing or expanded government budgets, not from the royalties fund.

Transport infrastructure to increase equity and access to employment and training opportunities.

An upgraded public transport system to connect the towns of the Hunter is needed, in combination with facilities for active transport (e.g. cycling and walking) to access jobs and services.

Arts & Culture

Engage artists to tell the story of change. There is interest in supporting artistic activities and arts projects that tell the story of the Hunter's history and future, and portray who we are and what we represent. This is a way to support the arts industry that has suffered greatly under COVID.

IDEAS PRESENTED IN THE WORKSHOPS & SURVEY



Energy-Intensive Industries

A range of views exist on the energy transition path for existing heavy industry. Whilst some feel excited about sectors like aluminium smelting switching to renewable energy, workers in the industry are concerned about whether this is even practicable or might result in job losses. In any case participants recognised it would require large investment, and therefore had reservations about such funding coming from the \$25 million Royalties for Rejuvenation fund.

Support for development of new, decarbonised industries. New jobs should be “clean and green”, providing healthy and sustainable livelihoods across the region.

Other Industries

There's general support for the development of manufacturing businesses in the Hunter that can be sustainable and competitive.

Tourism should be supported because the region has a rich history ideal for Indigenous and heritage tourism, and beautiful natural resources ideal for ecotourism and the wine industry. This requires investment, but also training and advice about how to develop sustainable tourism initiatives.

Agriculture. There is a strong interest in diversifying agricultural and livestock activities through innovative and competitive activities that preserve biodiversity, sustainability and resilience, and contribute to regional food security.

Local priorities

Cessnock

In Cessnock, there is stress and concern about social, environmental and economic pressures already present in the community, and about vulnerable or disadvantaged groups. Participants shared a sense of the inevitability of change and anxiety about the future.

“There’s so much fear about losing jobs.”

“My main concern is that people slip through the cracks. Even though the Hunter Valley is the most beautiful place to live in the world, we have people who are hungry, homeless and without a lot of hope.”

“Getting counselling, advice, and support makes a huge difference because people can start to re-envision their lives.”

“The Hunter is more than just coal mining—tourism is a major industry—but there is a lot of infrastructure that is still needed to support that, for example transport.”

Singleton

In Singleton, there is profound concern about how the community and economy will manage coming change. Yet, there is also enthusiasm to get going, and a strong desire for enabling the community to collaborate with government at the state and local level on this work. There was a strong focus on skills. Both the need for free and expanded vocational education, and for research into and recognition of the skills base already present in the mining industry. The mining workforce needs targeted programs centred on transferable skills and the practicalities of job-shift.

“There needs to be better coordination, but it should come from the community, through council, and then up to government for support.”

“We want to drag the wages and conditions up to what is paid in the mining industry. People say that it is great that we are looking after people in the care sector, but we won’t attract people from mining into the care sector without investment.”

“If we’re making grants to community organisations, vulnerable groups should be prioritised and Aboriginal groups especially.”

Muswellbrook

In Muswellbrook there was concern about the real challenge of wages and how people working in mining would be assisted to maintain their levels of income. People are confused about transition—wary of the terminology—and uncertain about what jobs may be coming and how much they will pay. Reskilling and vocational education were a top priority and participants reflected on the importance of using the skills already strongly present in the region.

Supporting existing businesses should take priority over attracting new business from outside, and small local business over large multinationals. Grants or incentives for business attraction won’t work unless there is the physical and social infrastructure present to support new opportunities, particularly internet, transport, education and health.

“You want to give what is already in your community a leg-up first and then see what else is out there.”

“To create compelling and enticing activities for developing new land uses or enterprise to town you have to have good infrastructure — internet, transport, training, health.”

“The mining workforce will need to have wages that are equal to what they have now or they will leave [the region].”

“[We need] some type of priority for those who are looking for jobs, prioritising people who have lost jobs in the local mines to get the jobs that are around.”

Maitland

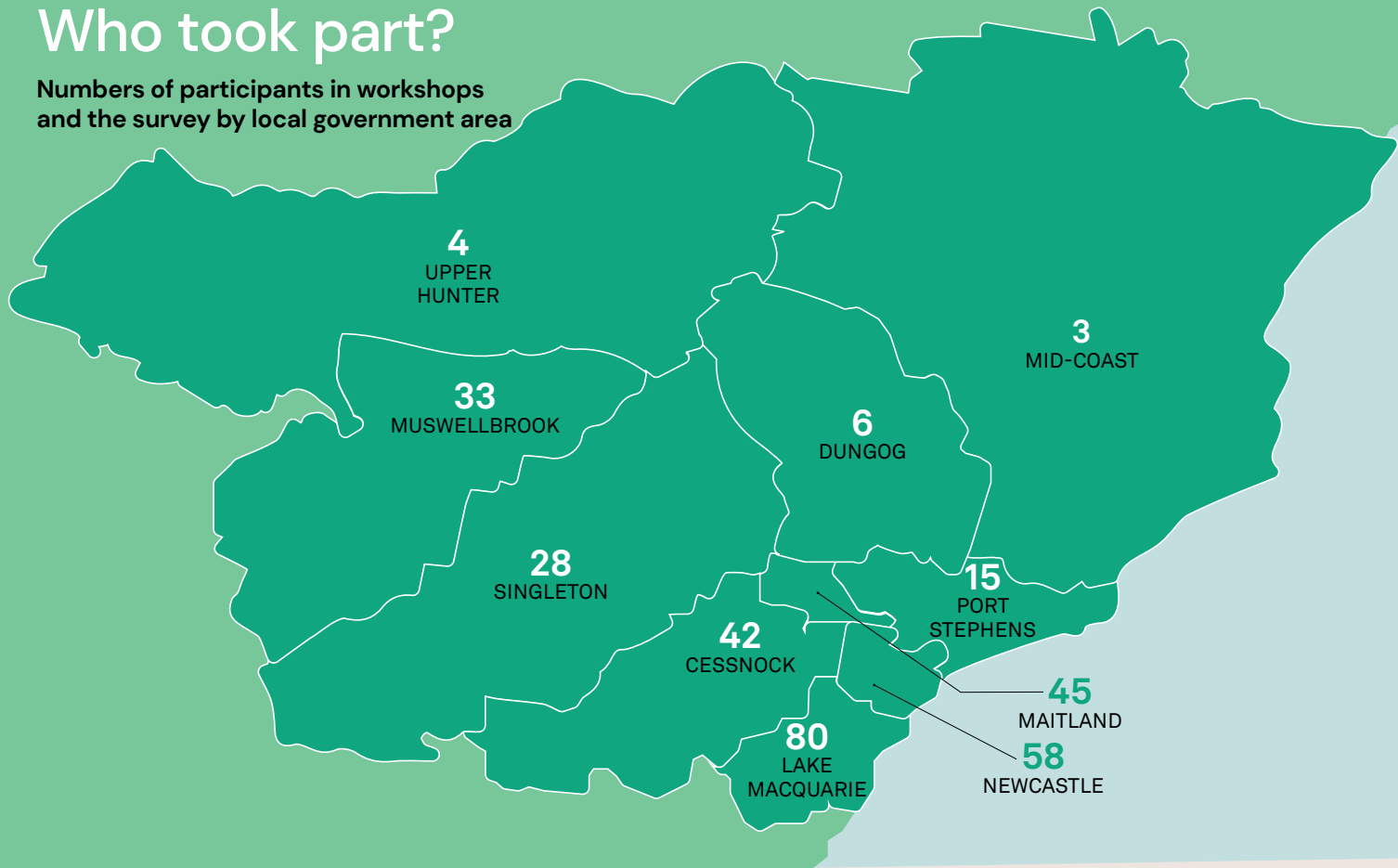
In Maitland, problems with housing affordability and homelessness were raised again, as was the underfunding of TAFE and the need for public transport. Regarding the region’s future, there was a shared sense that it was possible to manage change positively, but scepticism that this would happen.

Maitland people felt workers facing redundancy need support not just with training and job opportunities, but socially, financially and personally. The first thing people working in mining needed to see was job creation, and there was no reason why diversification should be seen as undermining the mining industry.

“I am worried about the political aspects of transition and how we can make it less about conflict and more about ideas.”

Who took part?

Numbers of participants in workshops and the survey by local government area



“My recall from BHP closure was that those who took up counselling benefited from it. This assists people through the path of moving from one employer to another, or to take up the opportunity to retire.”

“First there needs to be jobs. There cannot be advice if there are no jobs to go to. Governments are very happy to create another advisory industry and then there is nothing left for the workers. It needs to come later in the process.”

“I get to see some of the adults who have lost their jobs and we often can’t meet their health needs because we don’t have the staff.”

“Yes, the mines are wrecking our land but I get to benefit from the resources that they provide us every day.”

Lake Macquarie

In Lake Macquarie, participants expressed a sense that the area was lagging, with housing, vocational education and the arts already under-funded. There was sentiment, too, that the region is behind in transition planning and preparation, and there was a passionate desire to get to work on this. Many participants were aware of the “shovel-ready” potential of re-using coal ash from the dumps where it is stored at Eraring and Vales Point power stations. People with experience of the “boom and bust” of

the resources sector, closure of the steel works, and restructuring in electricity generation had clear ideas about the need for coordination, planning and support to help individual workers and the broader community prepare and respond to changes.

“There’s been a lot of dishonesty pointed toward the coal miners, they need honesty ... I’m worried that coal companies will walk away and leave us with bloody great holes to deal with.”

“I worked for TAFE for 27 years. Driving between Newcastle, Muswellbrook and Scone and over those years I saw a lot changes in the coal industry and how that affected all the other business and the kinds of people that could live in Muswellbrook because of the changes in air quality, and the cost of rents.”

“I come from a family that has strong mining connections but I now work for a domestic violence charity and I see how inequality of opportunity through all different regions and how it impacts families for generations.”

“We don’t have to have boom and bust: it can be handled differently if there are rules for companies that they have to form pools of employment, perhaps with other companies, so that people can be moved to different jobs within the region.”

What else we heard

"The poor state of the environment in the Hunter, in view of the climate crisis, leaves the region vulnerable to the huge economic costs that will be incurred by natural disaster. Improving the quality of biodiversity in hand with renewable technologies is a major priority."

Maitland resident (survey)

"In terms of what is the most immediate and urgent issue, it's workers being put off and not even getting their entitlements. Everything else comes behind that. Yes it's nice to have financial counselling, but it doesn't help a hell of a lot if you haven't been given redundancy pay. You're scrambling to put food on the table, pay your mortgage or rent."

Lake Macquarie workshop participant

"Women must be equally represented in all planning groups."

Cessnock resident (survey)

"Planning for a fair transition to a better society. This should always be the objective."

Lake Macquarie resident (survey)

"Free vocational training for displaced workers removes the threat of no job and gives people opportunities to embrace change."

Lake Macquarie resident (survey)

"We need access and equity, community at all levels, government and non-government involvement, as well as input from community groups."

Lake Macquarie workshop participant

"It starts from where we are. Building on what we have is important."

Singleton workshop participant

"If all the local authority is doing is reacting to government-led priorities then it is a little bit limiting. The government also needs to listen to the local authority and act on that. It needs to be a two-way flow."

Muswellbrook workshop participant

"We need a co-ordinated approach to industrial development and skills requirements to ensure we can attract and foster the new industries which will prosper as we move towards net zero emissions."

Lake Macquarie resident (survey)

"I'm worried if we do as we have always done, we are signing our grandchildren into a world of heat, food scarcity and terrible air, and a greater division between the wealthy and the poor."

Lake Macquarie resident (survey)

"We need to economically and socially leverage our unique advantages – proximity to existing large power infrastructure for new battery manufacturing and battery power stations, huge potential renewable energy sources, a port, potentially sustainable farming and forestry in carbon capture and organic food."

Newcastle resident (survey)

"My daughter owns a business in both Scone and Muswellbrook and I am concerned that there will not be industries/population for her business to be viable."

Muswellbrook resident (survey)

"I hope there can be funding for renewable and other projects so that workers can re-skill and participate. Keep local people working towards something for their own, and their community's future."

Maitland resident (survey)

"If workers can commence vocational education now they would be supported psychologically because they could see the pathway to future prospects."

Maitland workshop participant

"As a young person, I personally have great concerns about the trajectory of climate change and the lack of reasonable action taken by those who could make the biggest difference ... the Hunter absolutely has the potential to pioneer in the energy sector with a green perspective. Australia, as it lends the keys to young people, is going to live or die from how it deals with the real, physical problems of climate change."

Maitland resident (survey)

"There is a lot here about opening up land for new enterprises and industries. A lot of the land surrounding the mines is natural habitat and we need to assess and consider the habitat avenues. We have ignored these things for so long. We need to consider the long-term effects on the environment from opening up all this land."

Lake Macquarie workshop participant

"With a boom in the landcare industry I could find better opportunities for better paying jobs to support myself and my future family."

Newcastle resident (survey)

"Analysis is clear that what works is when companies, the community, and the government come together to plan and that this plan is executed."

Maitland workshop participant





Environmental Defenders Office

25 May 2022

Dr Liam Phelan
School of Environmental and Life Sciences
University of Newcastle
University Drive
Callaghan NSW 2308

By email: liam.phelan@newcastle.edu.au

CONFIDENTIAL AND PRIVILEGED

Dear Dr Phelan

Brief to Expert – Dendrobium Mine Extension Project SSI – 33143123

1. We act for Protect Our Water Catchment (**POWC**) in relation to the proposed [Dendrobium Mine Extension Project \(SSI - 33143123\)](#) (**Project**) by Illawarra Coal Holdings Pty Ltd (**Applicant**), a subsidiary of South32 Limited.
2. The Project is an extension of the Applicant's existing underground coal mine located around 8 km west of Wollongong in the Southern Coalfield of New South Wales (**NSW**). The Applicant is seeking development consent to extract up to 5.2 million tonnes per annum (Mtpa) of ROM coal, through underground mining operations within Area 5 (location of the Project) until approximately 2035, in extending the life of Dendrobium Mine until 2041. The Project is a redesign of the Applicant's previous Significant State Development (**SSD**) application ([Dendrobium Extension Project, SSD 8194](#)).
3. Our client intends to make a submission on the Project, which is currently being publicly exhibited, to ensure the decision-maker has independent expert advice on the Project.
4. We seek to engage you on behalf of our client to review the environmental impact statement (**EIS**) for the Project and prepare an independent expert report in relation to your area of expertise, workforce transition, in accordance with the *Uniform Civil Procedure Rules 2005* (UCPR) and the Expert Witness Code of Conduct.

T +61 2 9262 6989

E sydney@edo.org.au

W edo.org.au

Suite 8.02, Level 8, 6 O'Connell Street Sydney, NSW 2000
ABN: 72002 880 864

Background

5. On 5 February 2021, the Applicant's SSD application ([Dendrobium Extension Project, SSD 8194](#)) for the Project was refused by the Independent Planning Commission (**IPC**). The Applicant appealed the IPC's decision, which is currently the subject of a judicial review proceedings in the Land and Environment Court of New South Wales.
6. On or around December 2021, the Applicant submitted a [scoping report](#) for the re-designed SSD Project in support of the application for the Project to be assessed as 'State significant infrastructure' (**SSI**).
7. On 2 December 2021, the Project was declared SSI by the Minister for Planning and Public Spaces.
8. On 23 December 2021, the Department of Planning, Industry and Environment (now the Department of Planning and Environment) issued the Planning Secretary's environmental assessment requirements (SEARs) for the Project.
9. On 4 May 2022, the Project application, EIS and accompanying documents were placed on public exhibition.

Purpose of your expert report

10. We note as a preliminary matter that our primary purpose in briefing you to prepare your report is to provide independent expert advice in your area of expertise. We do not ask you to be an advocate for our client/s. You are requested to prepare an independent report that is clear and well-written.
11. In this respect, we draw your attention to Part 31 Division 2 of the *Uniform Civil Procedure Rules 2005* (NSW) (**UCPR**) and the Expert Witness Code of Conduct (**Code of Conduct**) which govern the use of expert evidence in NSW Courts (**attached**). The SSI public exhibition process is not a Court proceeding; however, we are of the view that the same Code of Conduct should be adhered to in this instance.
12. In particular, clause 2 of the Code of Conduct states that:

"An expert witness is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceedings or other person retaining the expert witness, to assist the court impartially on matters relevant to the area of expertise of the witness."
13. Your expert report must contain an acknowledgment that you have read the Expert Witness Code of Conduct and that you agree to be bound by it.
14. Your expert report will be used as evidence in chief of your professional opinion. Information of which you believe the decision maker should be aware must be contained in your expert report.

15. In providing your opinion to the decision maker you must set out all the assumptions upon which the opinion is based. This may include, for example, facts observed as a result of fieldwork or 'assumed' facts based on a body of scientific opinion. If the latter, you should provide references which demonstrate the existence of that body of opinion.
16. Your expert report must also set out the process of reasoning which you have undertaken in order to arrive at your conclusions. It is insufficient for an expert report to simply state your opinion or conclusion reached without an explanation as to how this was arrived at. The purpose of providing such assumptions and reasoning is to enable the decision maker and experts engaged by other parties to make an assessment as to the soundness of your opinion.

Overview of work requested

17. We request that you undertake the following work:
 - a. review the documents listed below;
 - b. prepare a written expert report that addresses the issues identified below ('Issues to address in your expert report'); and
 - c. ensure that the work is prepared in accordance with independent expert advice as indicated above.

Documents

18. We enclose the Code of Conduct and Part 31 Division 2 of the UCPR.
19. If you have previously reviewed relevant EIS documents for the previous SSD application (Dendrobium Extension Project, SSD 8194) you may wish to review your previous expert advice.
20. Full Project documentation is available at the following website:
 - a) NSW Government Planning Portal: <https://www.planningportal.nsw.gov.au/major-projects/projects/dendrobium-mine-extension-project-0>
21. The following documents relating to the Project are provided for your particular consideration:
Environmental Impact Statement
Executive Summary,
<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSI-33143123%2120220427T061031.074%20GMT>
Section 1 – Introduction,
<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSI-33143123%2120220427T061031.900%20GMT>
Section 4 – Project Description,
<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSI-33143123%2120220429T025120.565%20GMT>, p. 4-42 to 4-43

Section 6 – Engagement,

<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSI-33143123%2120220427T061037.116%20GMT>

Section 7 – Environmental Assessment,

<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSI-33143123%2120220427T061037.452%20GMT>

Section 8 – Justification of the Project,

<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSI-33143123%2120220427T061039.685%20GMT> pp. 8-9 to 8-10, p. 8-15 & p. 8-27

Att 6 – Relevant Strategic Planning Documents,

<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSI-33143123%2120220427T061040.995%20GMT>

Att 11 – Consideration of Alternatives,

<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSI-33143123%2120220427T061041.870%20GMT>

Att 13 – Capital Investment Value Report,

<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSI-33143123%2120220427T061042.438%20GMT>

Att 14 – Community Information,

<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSI-33143123%2120220427T061042.758%20GMT>

Appendix L – Economic Assessment,

<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSI-33143123%2120220427T061049.212%20GMT>

22. You are not limited to the above documents, if there is other material relevant to your expert report, you may wish to refer to this material.

Issues to address in your expert report

23. We ask that your report addresses the following issues in regard to any impacts arising as a result of the Project:
- a. In your opinion, has the environmental assessment adequately considered the potential impacts of external factors, such as current pledges under the Paris Agreement, on the Project's ability to provide employment in the Illawarra region in the longer term? Please provide reasoning for your answer.
 - b. If, in your opinion, the environmental assessment has not adequately considered external factors, what are the likely social consequences for the current workforce and the Illawarra region?
 - c. In your opinion, is the Project, as proposed, compatible with environmental and social sustainability in the Illawarra region?
 - d. Provide any further observations or opinions which you consider to be relevant.
24. We request that you provide us with a draft of your report for review before finalising it. We emphasise that the purpose of this is not to influence the conclusions or recommendations

you make but to ensure that the language and expression of the report is clear and complies with the formal legal requirements of an expert report.

Key dates

25. The Project application, EIS and accompanying documents are on public exhibition from Wednesday 4 May 2022 until 14 June 2022.
26. We kindly request a draft of your expert advice by no later than **Monday 6 June 2022**.
27. Please provide your final expert advice by no later than **Thursday 9 June 2022**.

Duty of confidentiality

28. Please treat your work as strictly confidential, unless authorised otherwise by us. Please mark all documents prepared for the purposes of this brief as “Privileged & Confidential”.

Fees and Terms

29. Thank-you for agreeing to provide your advice in this matter on a pro bono basis, EDO relies on experts such as you to assist in matters with very little financial compensation.
30. Please note the following terms:
 - a. your work will only be used by EDO to relation to this matter;
 - b. Either EDO or our client may choose to make your expert advice publicly available. Any public release of your report may result in disclosure of any works in your report over which you may claim copyright;
 - c. EDO will take all reasonable steps to prevent your work being used for purposes other than that mentioned above, but we accept no responsibility for the actions of third parties;
 - d. regardless of the above points, EDO may choose not to use your work; and
 - e. you will not be covered by the EDO’s insurance while undertaking the above tasks.
31. If you would like to discuss this brief further, please contact Jayme Cooper via email jayme.cooper@edo.org.au (cc: matthew.floro@edo.org.au and edward.butler@edo.org.au).

We are grateful for your assistance in this matter.

Yours sincerely,

Environmental Defenders Office

A handwritten signature in black ink, appearing to read 'Jayme Cooper', with a stylized, flowing script.

Jayme Cooper

Solicitor

Reference number: s 3326

Uniform Civil Procedure Rules 2005

Current version for 1 December 2021 to date (accessed 25 May 2022 at 13:36)

Schedule 7

Schedule 7 Expert witness code of conduct

(Rule 31.23)

1 Application of code

This code of conduct applies to any expert witness engaged or appointed—

- (a) to provide an expert's report for use as evidence in proceedings or proposed proceedings, or
- (b) to give opinion evidence in proceedings or proposed proceedings.

2 General duties to the Court

An expert witness is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceedings or other person retaining the expert witness, to assist the court impartially on matters relevant to the area of expertise of the witness.

3 Content of report

Every report prepared by an expert witness for use in court must clearly state the opinion or opinions of the expert and must state, specify or provide—

- (a) the name and address of the expert, and
- (b) an acknowledgement that the expert has read this code and agrees to be bound by it, and
- (c) the qualifications of the expert to prepare the report, and
- (d) the assumptions and material facts on which each opinion expressed in the report is based (a letter of instructions may be annexed), and
- (e) the reasons for and any literature or other materials utilised in support of each such opinion, and
- (f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise, and
- (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications, and
- (h) the extent to which any opinion which the expert has expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person, and
- (i) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report), and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the court, and
- (j) any qualification of an opinion expressed in the report without which the report is or may be incomplete or inaccurate, and

(k) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason, and

(l) where the report is lengthy or complex, a brief summary of the report at the beginning of the report.

4 Supplementary report following change of opinion

(1) Where an expert witness has provided to a party (or that party's legal representative) a report for use in court, and the expert thereafter changes his or her opinion on a material matter, the expert must forthwith provide to the party (or that party's legal representative) a supplementary report which must state, specify or provide the information referred to in clause 3(a), (d), (e), (g), (h), (i), (j), (k) and (l), and if applicable, clause 3(f).

(2) In any subsequent report (whether prepared in accordance with subclause (1) or not), the expert may refer to material contained in the earlier report without repeating it.

5 Duty to comply with the court's directions

If directed to do so by the court, an expert witness must—

(a) confer with any other expert witness, and

(b) provide the court with a joint report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing, and

(c) abide in a timely way by any direction of the court.

6 Conferences of experts

Each expert witness must—

(a) exercise his or her independent judgment in relation to every conference in which the expert participates pursuant to a direction of the court and in relation to each report thereafter provided, and must not act on any instruction or request to withhold or avoid agreement, and

(b) endeavour to reach agreement with the other expert witness (or witnesses) on any issue in dispute between them, or failing agreement, endeavour to identify and clarify the basis of disagreement on the issues which are in dispute.

Uniform Civil Procedure Rules 2005

Current version for 1 December 2021 to date (accessed 25 May 2022 at 13:36)

[Part 31](#) > Division 2

Division 2 Provisions applicable to expert evidence generally

Note—

The provisions of this Division replace those of former Divisions 2 and 3, as in force immediately before 8 December 2006. The numbering of the individual provisions of this Division varies considerably from that of the provisions of the former Divisions. The following Table identifies the new rules corresponding to former rules 31.17–31.35.

Table

Former rule	New rule
Rule 31.17	Rule 31.18
Rule 31.18	Rule 31.28
Rule 31.18A	Rule 31.29
Rule 31.19	Rule 31.30
Rule 31.20	Rule 31.31
Rule 31.21	Rule 31.32
Rule 31.22	Rule 31.33
Rule 31.23	Rule 31.27
Rule 31.24	Rule 31.34
Rule 31.25	Rules 31.24 and 31.26
Rule 31.26	Rule 31.35
Rule 31.27	Rule 31.36
Rule 31.28	Rule 31.18
Rule 31.29	Rule 31.46
Rule 31.30	Rule 31.23
Rule 31.31	Rule 31.49
Rule 31.32	Rule 31.51
Rule 31.33	Rule 31.52
Rule 31.34	Rule 31.53
Rule 31.35	Rule 31.54

Subdivision 1 Preliminary

31.17 Main purposes of Division (cf Queensland *Uniform Civil Procedure Rules 1999*, rule 423; United Kingdom *Civil Procedure Rules 1998*, rule 35.1)

The main purposes of this Division are as follows—

- (a) to ensure that the court has control over the giving of expert evidence,
- (b) to restrict expert evidence in proceedings to that which is reasonably required to resolve the proceedings,
- (c) to avoid unnecessary costs associated with parties to proceedings retaining different experts,
- (d) if it is practicable to do so without compromising the interests of justice, to enable expert evidence to be given on an issue in proceedings by a single expert engaged by the parties or appointed by the court,
- (e) if it is necessary to do so to ensure a fair trial of proceedings, to allow for more than one expert (but no more than are necessary) to give evidence on an issue in the proceedings,
- (f) to declare the duty of an expert witness in relation to the court and the parties to proceedings.

31.18 Definitions (cf SCR Part 36, rules 13A and 13C; DCR Part 28, rule 8; LCR Part 23, rule 1D)

In this Division—

court-appointed expert means an expert appointed pursuant to rule 31.46.

expert, in relation to any issue, means a person who has such knowledge or experience of, or in connection with, that issue, or issues of the character of that issue, that his or her opinion on that issue would be admissible in evidence.

expert witness means an expert engaged or appointed for the purpose of—

- (a) providing an expert's report for use as evidence in proceedings or proposed proceedings, or
- (b) giving opinion evidence in proceedings or proposed proceedings.

expert's report means a written statement by an expert (whether or not an expert witness in the proceedings concerned) that sets out the expert's opinion and the facts, and assumptions of fact, on which the opinion is based.

hospital report means a written statement concerning a patient, made by or on behalf of a hospital, that the party serving the statement intends to adduce in evidence in chief at the trial.

parties' single expert means an expert engaged pursuant to rule 31.37.

Subdivision 2 Expert witnesses generally

31.19 Parties to seek directions before calling expert witnesses

- (1) Any party—
 - (a) intending to adduce expert evidence at trial, or
 - (b) to whom it becomes apparent that he or she, or any other party, may adduce expert evidence at trial,must promptly seek directions from the court in that regard.
- (2) Directions under this rule may be sought at any directions hearing or case management conference or, if no such hearing or conference has been fixed or is imminent, by notice of motion or pursuant to liberty to restore.
- (3) Unless the court otherwise orders, expert evidence may not be adduced at trial—
 - (a) unless directions have been sought in accordance with this rule, and
 - (b) if any such directions have been given by the court, otherwise than in accordance with those directions.
- (4) This rule does not apply to proceedings with respect to a professional negligence claim.

31.20 Court may give directions regarding expert witnesses

- (1) Without limiting its other powers to give directions, the court may at any time give such directions as it considers appropriate in relation to the use of expert evidence in proceedings.
- (2) Directions under this rule may include any of the following—
 - (a) a direction as to the time for service of experts' reports,
 - (b) a direction that expert evidence may not be adduced on a specified issue,
 - (c) a direction that expert evidence may not be adduced on a specified issue except by leave of the court,
 - (d) a direction that expert evidence may be adduced on specified issues only,
 - (e) a direction limiting the number of expert witnesses who may be called to give evidence on a specified issue,
 - (f) a direction providing for the engagement and instruction of a parties' single expert in relation to a specified issue,
 - (g) a direction providing for the appointment and instruction of a court-appointed expert in relation to a specified issue,
 - (h) a direction requiring experts in relation to the same issue to confer, either before or after preparing experts' reports in relation to a specified issue,
 - (i) any other direction that may assist an expert in the exercise of the expert's functions,
 - (j) a direction that an expert who has prepared more than one expert's report in relation to any proceedings is to prepare a single report that reflects his or her evidence in chief.

31.21 Expert evidence in chief to be given by way of experts' reports

Unless the court otherwise orders, an expert witness's evidence in chief must be given by the tender of one or more expert's reports.

31.22 Expert witness to provide details of contingency fees or deferred payment schemes

- (1) A person who is engaged as an expert witness in relation to any proceedings must include information as to any arrangements under which—
 - (a) the charging of fees or costs by the expert witness is contingent on the outcome of the proceedings, or
 - (b) the payment of any fees or costs to the expert witness is to be deferred,in, or in an annexure to, any report that he or she prepares for the purposes of the proceedings.
- (2) If a report referred to in subrule (1) indicates the existence of any such arrangements, the court may direct disclosure of the terms of the engagement (including as to fees and costs).

31.23 Code of conduct (cf SCR Part 39, rule 2; DCR Part 28A, rule 2; LCR Part 38B, rule 2)

- (1) An expert witness must comply with the code of conduct set out in Schedule 7.
- (2) As soon as practicable after an expert witness is engaged or appointed—
 - (a) in the case of an expert witness engaged by one or more parties, the engaging parties, or one of them as they may agree, or
 - (b) in the case of an expert witness appointed by the court, such of the affected parties as the court may direct, must provide the expert witness with a copy of the code of conduct.

- (3) Unless the court otherwise orders, an expert's report may not be admitted in evidence unless the report contains an acknowledgment by the expert witness by whom it was prepared that he or she has read the code of conduct and agrees to be bound by it.
- (4) Unless the court otherwise orders, oral evidence may not be received from an expert witness unless the court is satisfied that the expert witness has acknowledged, whether in an expert's report prepared in relation to the proceedings or otherwise in relation to the proceedings, that he or she has read the code of conduct and agrees to be bound by it.

31.24 Conference between expert witnesses (cf SCR Part 36, rule 13CA; DCR Part 28, rule 9D; LCR Part 23, rule 1E)

- (1) The court may direct expert witnesses—
 - (a) to confer, either generally or in relation to specified matters, and
 - (b) to endeavour to reach agreement on any matters in issue, and
 - (c) to prepare a joint report, specifying matters agreed and matters not agreed and reasons for any disagreement, and
 - (d) to base any joint report on specified facts or assumptions of fact,and may do so at any time, whether before or after the expert witnesses have furnished their experts' reports.
- (2) The court may direct that a conference be held—
 - (a) with or without the attendance of the parties affected or their legal representatives, or
 - (b) with or without the attendance of the parties affected or their legal representatives, at the option of the parties, or
 - (c) with or without the attendance of a facilitator (that is, a person who is independent of the parties and who may or may not be an expert in relation to the matters in issue).
- (3) An expert witness so directed may apply to the court for further directions to assist the expert witness in the performance of his or her functions in any respect.
- (4) Any such application must be made by sending a written request for directions to the court, specifying the matter in relation to which directions are sought.
- (5) An expert witness who makes such an application must send a copy of the request to the other expert witnesses and to the parties affected.
- (6) Unless the parties affected agree, the content of the conference between the expert witnesses must not be referred to at any hearing.

31.25 Instructions to expert witnesses where conference ordered before report furnished

If a direction to confer is given under rule 31.24(1)(a) before the expert witnesses have furnished their reports, the court may give directions as to—

- (a) the issues to be dealt with in a joint report by the expert witnesses, and
- (b) the facts, and assumptions of fact, on which the report is to be based,

including a direction that the parties affected must endeavour to agree on the instructions to be provided to the expert witnesses.

31.26 Joint report arising from conference between expert witnesses (cf SCR Part 36, rule 13CA; DCR Part 28, rule 9D; LCR Part 23, rule 1E)

- (1) This rule applies if expert witnesses prepare a joint report as referred to in rule 31.24(1)(c).
- (2) The joint report must specify matters agreed and matters not agreed and the reasons for any disagreement.
- (3) The joint report may be tendered at the trial as evidence of any matters agreed.
- (4) In relation to any matters not agreed, the joint report may be used or tendered at the trial only in accordance with the rules of evidence and the practices of the court.
- (5) Except by leave of the court, a party affected may not adduce evidence from any other expert witness on the issues dealt with in the joint report.

Subdivision 3 Experts' reports and expert evidence

31.27 Experts' reports (cf SCR Part 36, rule 13C; DCR Part 28, rule 9C; LCR Part 23, rule 1D)

- (1) An expert's report must (in the body of the report or in an annexure to it) include the following—
 - (a) the expert's qualifications as an expert on the issue the subject of the report,
 - (b) the facts, and assumptions of fact, on which the opinions in the report are based (a letter of instructions may be annexed),
 - (c) the expert's reasons for each opinion expressed,
 - (d) if applicable, that a particular issue falls outside the expert's field of expertise,
 - (e) any literature or other materials utilised in support of the opinions,
 - (f) any examinations, tests or other investigations on which the expert has relied, including details of the qualifications of the person who carried them out,
 - (g) in the case of a report that is lengthy or complex, a brief summary of the report (to be located at the beginning of the report).
- (2) If an expert witness who prepares an expert's report believes that it may be incomplete or inaccurate without some qualification, the qualification must be stated in the report.
- (3) If an expert witness considers that his or her opinion is not a concluded opinion because of insufficient research or insufficient data or for any other reason, this must be stated when the opinion is expressed.
- (4) If an expert witness changes his or her opinion on a material matter after providing an expert's report to the party engaging him or her (or that party's legal representative), the expert witness must forthwith provide the engaging party (or that party's legal representative) with a supplementary report to that effect containing such of the information referred to in subrule (1) as is appropriate.

31.28 Disclosure of experts' reports and hospital reports (cf SCR Part 36, rule 13A; DCR Part 28, rule 8; LCR Part 23, rule 3)

- (1) Each party must serve experts' reports and hospital reports on each other active party—
 - (a) in accordance with any order of the court, or
 - (b) if no such order is in force, in accordance with any relevant practice note, or
 - (c) if no such order or practice note is in force, not later than 28 days before the date of the hearing at which the report is to be used.
- (2) An application to the court for an order under subrule (1) (other than an order solely for abridgment or extension of time) may be made without serving notice of motion.

- (3) Except by leave of the court, or by consent of the parties—
- (a) an expert's report or hospital report is not admissible unless it has been served in accordance with this rule, and
 - (b) without limiting paragraph (a), an expert's report or hospital report, when tendered under section 63, 64 or 69 of the [Evidence Act 1995](#), is not admissible unless it has been served in accordance with this rule, and
 - (c) the oral expert evidence in chief of any expert is not admissible unless an expert's report or hospital report served in accordance with this rule contains the substance of the matters sought to be adduced in evidence.
- (4) Leave is not to be given as referred to in subrule (3) unless the court is satisfied—
- (a) that there are exceptional circumstances that warrant the granting of leave, or
 - (b) that the report concerned merely updates an earlier version of a report that has been served in accordance with subrule (1).

31.29 Admissibility of expert's report (cf SCR Part 36, rule 13B)

- (1) If an expert's report is served in accordance with rule 31.28 or in accordance with an order of the court, the report is admissible—
- (a) as evidence of the expert's opinion, and
 - (b) if the expert's direct oral evidence of a fact on which the opinion was based would be admissible, as evidence of that fact,
- without further evidence, oral or otherwise.
- (2) Unless the court otherwise orders, a party may require the attendance for cross-examination of the expert by whom the report was prepared by notice served on the party by whom the report was served.
- (3) Unless the court otherwise orders, such a requirement may not be made later than—
- (a) in the case of proceedings for which the court has fixed a date for trial, 35 days before the date so fixed, or
 - (b) in any other case, 7 days before the date on which the court fixes a date for trial.
- (4) The parties may not by consent abridge the time fixed by or under subrule (3).
- (5) If the expert's attendance for cross-examination is required under subrule (2), the report may not be tendered under section 63, 64 or 69 of the [Evidence Act 1995](#) or otherwise used unless the expert attends or is dead or the court grants leave to use it.
- (6) The party using the report may re-examine the expert if the expert attends for cross-examination pursuant to a requirement under subrule (2).
- (7) This rule does not apply to proceedings in the District Court or the Local Court or to proceedings on a trial with a jury.

31.30 Admissibility of expert's report in District Court and Local Court (cf DCR Part 28, rule 9; LCR Part 23, rule 2)

- (1) This rule applies to proceedings in the District Court or the Local Court.
- (2) If an expert's report is served in accordance with rule 31.28 or in accordance with an order of the court, the report is admissible—
- (a) as evidence of the expert's opinion, and

- (b) if the expert's direct oral evidence of a fact on which the opinion was based would be admissible, as evidence of that fact,

without further evidence, oral or otherwise.

(3) Unless the court orders otherwise—

- (a) it is the responsibility of the party requiring the attendance for cross-examination of the expert by whom an expert's report has been prepared to procure that attendance, and
- (b) the party requiring the expert's attendance must notify the expert at least 28 days before the date on which attendance is required.

(4) Except for the purpose of determining any liability for conduct money or witness expenses, an expert does not become the witness for the party requiring his or her attendance merely because his or her attendance at court has been procured by that party.

(5) A party who requires the attendance of a person as referred to in subrule (2)—

- (a) must inform all other parties to the proceedings that the party has done so at least 28 days before the date fixed for hearing, and
- (b) must pay to the person whose attendance is required (whether before or after the attendance) an amount sufficient to meet the person's reasonable expenses (including any standby fees) in complying with the requirement.

(6) If the attendance of an expert is required under subrule (2), the report may not be tendered under section 63, 64 or 69 of the [Evidence Act 1995](#) or otherwise used unless the expert attends or is dead or the court grants leave to use it.

(7) The party using an expert's report may re-examine an expert who attends for cross-examination under a requirement under subrule (2).

(8) This rule does not apply to proceedings on a trial with a jury.

31.31 Fees for medical expert for compliance with subpoena (cf SCR Part 36, rule 13BA)

- (1) If a subpoena is served on a medical expert who is to give evidence of medical matters but is not called as a witness, the expert is, unless the court orders otherwise, entitled to be paid, in addition to any other amount payable to the expert, the amount specified in item 2 of Schedule 3.
- (2) The amount payable under subrule (1) must be paid to the expert by the issuing party within 28 days after the date for the expert's attendance.
- (3) A party that requires an expert's attendance under rule 31.29(2), but subsequently revokes it, must pay to the issuing party any amount paid by the issuing party under subrule (2), but otherwise such an amount is not recoverable by the issuing party from any other party unless the court so orders.
- (4) In this rule, *issuing party* means the party at whose request a subpoena is issued.

31.32 Service of subpoena on medical expert (cf SCR Part 36, rule 13BB)

- (1) Service of a subpoena on a medical expert may be effected, at any place at which the expert's practice is carried on, by handing it over to a person who is apparently engaged in the practice (whether as an employee or otherwise) and is apparently of or above the age of 16 years.
- (2) If a person refuses to accept a subpoena when it is handed over, the subpoena may be served by putting it down in the person's presence after he or she has been told of its nature.

- (3) If a subpoena requires a medical expert to attend court on a specified date for the purpose of giving evidence on medical matters, it must be served on the expert not later than 21 days before the date so specified unless the court orders otherwise.
- (4) The parties may not by consent abridge the time fixed by or under subrule (3).

31.33 Subpoena requiring production of medical records (cf SCR Part 36, rule 13BC)

- (1) A subpoena for production may require a medical expert to produce medical records or copies of them.
- (2) A person is not required to comply with a subpoena for production referred to in subrule (1) unless the amount specified in item 3 of Schedule 3 is paid or tendered to the person at the time of service of the subpoena or a reasonable time before the date on which production is required.
- (3) Rule 33.6 (Compliance with subpoena) does not apply to a subpoena to which subrule (1) applies.
- (4) Rule 33.7 (Production otherwise than on attendance) applies to the photocopies in the same way as it applies to the records.
- (5) If, after service of a subpoena for production referred to in subrule (1), the party who requested the issue of the subpoena requires production of the original medical records without the option of producing copies of them, the party must request the issue of, and serve, another subpoena requiring production of the original medical records.

31.34 Supplementary reports by expert witness (cf SCR Part 36, rule 13C; DCR Part 28, rule 9C; LCR Part 23, rule 1D)

- (1) If an expert witness provides a supplementary report to the party by whom he or she has been engaged, neither the engaging party nor any other party having the same interest as the engaging party may use—
 - (a) the supplementary report, or
 - (b) any earlier report affected by the supplementary report,unless all of those reports have been served on all parties affected.
- (2) For the purposes of this rule, *supplementary report*, in relation to an earlier report provided by an expert witness, includes any report by the expert witness that indicates that he or she has changed his or her opinion on a material matter expressed in the earlier report.
- (3) This rule does not apply to a report prepared by a court-appointed expert.

31.35 Opinion evidence by expert witnesses (cf [Federal Court Rules](#), Order 34A, rule 3)

In any proceedings in which two or more parties call expert witnesses to give opinion evidence about the same issue or similar issues, or indicate to the court an intention to call expert witnesses for that purpose, the court may give any one or more of the following directions—

- (a) a direction that, at trial—
 - (i) the expert witnesses give evidence after all factual evidence relevant to the issue or issues concerned, or such evidence as may be specified by the court, has been adduced, or
 - (ii) the expert witnesses give evidence at any stage of the trial, whether before or after the plaintiff has closed his or her case, or
 - (iii) each party intending to call one or more expert witnesses close that party's case in relation to the issue or issues concerned, subject only to adducing evidence of the expert witnesses later in the trial,
- (b) a direction that, after all factual evidence relevant to the issue, or such evidence as may be specified by the court, has been adduced, each expert witness file an affidavit or statement indicating—

- (i) whether the expert witness adheres to any opinion earlier given, or
- (ii) whether, in the light of any such evidence, the expert witness wishes to modify any opinion earlier given,
- (c) a direction that the expert witnesses—
 - (i) be sworn one immediately after another (so as to be capable of making statements, and being examined and cross-examined, in accordance with paragraphs (d), (e), (f), (g) and (h)), and
 - (ii) when giving evidence, occupy a position in the courtroom (not necessarily the witness box) that is appropriate to the giving of evidence,
- (d) a direction that each expert witness give an oral exposition of his or her opinion, or opinions, on the issue or issues concerned,
- (e) a direction that each expert witness give his or her opinion about the opinion or opinions given by another expert witness,
- (f) a direction that each expert witness be cross-examined in a particular manner or sequence,
- (g) a direction that cross-examination or re-examination of the expert witnesses giving evidence in the circumstances referred to in paragraph (c) be conducted—
 - (i) by completing the cross-examination or re-examination of one expert witness before starting the cross-examination or re-examination of another, or
 - (ii) by putting to each expert witness, in turn, each issue relevant to one matter or issue at a time, until the cross-examination or re-examination of all of the expert witnesses is complete,
- (h) a direction that any expert witness giving evidence in the circumstances referred to in paragraph (c) be permitted to ask questions of any other expert witness together with whom he or she is giving evidence as so referred to,
- (i) such other directions as to the giving of evidence in the circumstances referred to in paragraph (c) as the court thinks fit.

31.36 Service of experts' reports in professional negligence claims (cf SCR Part 14C, rules 1 and 6; DCR Part 28, rule 9B)

- (1) Unless the court orders otherwise, a person commencing a professional negligence claim (other than a claim against a legal practitioner) must file and serve, with the statement of claim commencing the professional negligence claim, an expert's report that includes an opinion supporting—
 - (a) the breach of duty of care, or contractual obligation, alleged against each person sued for professional negligence, and
 - (b) the general nature and extent of damage alleged (including death, injury or other loss or harm and prognosis, as the case may require), and
 - (c) the causal relationship alleged between such breach of duty or obligation and the damage alleged.
- (2) In the case of a professional negligence claim against a legal practitioner, the court may order the plaintiff to file and serve an expert's report or experts' reports supporting the claim.
- (3) If a party fails to comply with subrule (1) or (2), the court may by order made on the application of a party or of its own motion dismiss the whole or any part of the proceedings, as may be appropriate.
- (4) Without limiting subrule (1) or (2), the court may, on the application of any of the parties, give directions as to the expert evidence to be adduced at trial.
- (5) Directions under subrule (4) may be sought at any directions hearing or case management conference or by notice of motion.

- (6) Unless the court otherwise orders, no party may adduce any expert evidence at trial unless the evidence—
- (a) has been filed and served under subrule (1) or (2), or
 - (b) has been served pursuant to directions given under subrule (4).

Subdivision 4 Parties' single experts

31.37 Selection and engagement

- (1) If an issue for an expert arises in any proceedings, the court may, at any stage of the proceedings, order that an expert be engaged jointly by the parties affected.
- (2) A parties' single expert is to be selected by agreement between the parties affected or, failing agreement, by, or in accordance with the directions of, the court.
- (3) A person may not be engaged as a parties' single expert unless he or she consents to the engagement.
- (4) If any party affected knows that a person is under consideration for engagement as a parties' single expert—
 - (a) the party affected must not, prior to the engagement, communicate with the person for the purpose of eliciting the person's opinion as to the issue or issues concerned, and
 - (b) if the party affected has previously communicated with the person for that purpose, he or she must notify the other parties affected as to the substance of those communications.

31.38 Instructions to parties' single expert

- (1) The parties affected must endeavour to agree on written instructions to be provided to the parties' single expert concerning the issues arising for the expert's opinion and concerning the facts, and assumptions of fact, on which the report is to be based.
- (2) If the parties affected cannot so agree, they must seek directions from the court.

31.39 Parties' single expert may apply to court for directions

- (1) The parties' single expert may apply to the court for directions to assist the expert in the performance of the expert's functions in any respect.
- (2) Any such application must be made by sending a written request for directions to the court, specifying the matter in relation to which directions are sought.
- (3) A parties' single expert who makes such an application must send a copy of the request to the parties affected.

31.40 Parties' single expert's report to be sent to parties

- (1) The parties' single expert must send a signed copy of his or her report to each of the parties affected.
- (2) Each copy must be sent on the same day and must be endorsed with the date on which it is sent.

31.41 Parties may seek clarification of report

- (1) Within 14 days after the parties' single expert's report is sent to the parties affected, and before the report is tendered in evidence, a party affected may, by notice in writing sent to the expert, seek clarification of any aspect of the report.
- (2) Unless the court orders otherwise, a party affected may send no more than one such notice.
- (3) Unless the court orders otherwise, the notice must be in the form of questions, no more than 10 in number.
- (4) The party sending the notice must, on the same day as it is sent to the parties' single expert, send a copy of it to each of the other parties affected.

- (5) Each notice sent under this rule must be endorsed with the date on which it is sent.
- (6) Within 28 days after the notice is sent, the parties' single expert must send a signed copy of his or her response to the notice to each of the parties affected.

31.42 Tender of reports and of answers to questions

- (1) Subject to rule 31.23(3) and unless the court orders otherwise, the parties' single expert's report may be tendered in evidence by any of the parties affected.
- (2) Unless the court orders otherwise, any or all of the parties' single expert's answers in response to a request for clarification under rule 31.41 may be tendered in evidence by any of the parties affected.

31.43 Cross-examination of parties' single expert

Any party affected may cross-examine a parties' single expert, and the expert must attend court for examination or cross-examination if so requested on reasonable notice by a party affected.

31.44 Prohibition of other expert evidence

Except by leave of the court, a party to proceedings may not adduce evidence of any other expert on any issue arising in proceedings if a parties' single expert has been engaged under this Division in relation to that issue.

31.45 Remuneration of parties' single expert

- (1) The remuneration of a parties' single expert is to be fixed by agreement between the parties affected and the expert or, failing agreement, by, or in accordance with the directions of, the court.
- (2) Subject to subrule (3), the parties affected are jointly and severally liable to a parties' single expert for his or her remuneration.
- (3) The court may direct when and by whom a parties' single expert is to be paid.
- (4) Subrules (2) and (3) do not affect the powers of the court as to costs.

Subdivision 5 Court-appointed experts

31.46 Selection and appointment (cf SCR Part 39, rule 1; DCR Part 28A, rule 1; LCR Part 38B, rule 1)

- (1) If an issue for an expert arises in any proceedings the court may, at any stage of the proceedings—
 - (a) appoint an expert to inquire into and report on the issue, and
 - (b) authorise the expert to inquire into and report on any facts relevant to the inquiry, and
 - (c) direct the expert to make a further or supplemental report or inquiry and report, and
 - (d) give such instructions (including instructions concerning any examination, inspection, experiment or test) as the court thinks fit relating to any inquiry or report of the expert or give directions concerning the giving of such instructions.
- (2) The court may appoint as a court-appointed expert a person selected by the parties affected, a person selected by the court or a person selected in a manner directed by the court.
- (3) A person must not be appointed as a court-appointed expert unless he or she consents to the appointment.
- (4) If any party affected knows that a person is under consideration for appointment as a court-appointed expert—
 - (a) the party affected must not, prior to the appointment, communicate with the person for the purpose of eliciting the person's opinion as to the issue or issues concerned, and

- (b) if the party affected has previously communicated with the person for that purpose, he or she must notify the court as to the substance of those communications.

31.47 Instructions to court-appointed expert

The court may give directions as to—

- (a) the issues to be dealt with in a report by a court-appointed expert, and
- (b) the facts, and assumptions of fact, on which the report is to be based,

including a direction that the parties affected must endeavour to agree on the instructions to be provided to the expert.

31.48 Court-appointed expert may apply to court for directions

- (1) A court-appointed expert may apply to the court for directions to assist the expert in the performance of the expert's functions in any respect.
- (2) Any such application must be made by sending a written request for directions to the court, specifying the matter in relation to which directions are sought.
- (3) A court-appointed expert who makes such an application must send a copy of the request to the parties affected.

31.49 Court-appointed expert's report to be sent to registrar (cf SCR Part 39, rule 3; DCR Part 28A, rule 3; LCR Part 38B, rule 3)

- (1) The court-appointed expert must send his or her report to the registrar, and a copy of the report to each party affected.
- (2) Subject to rule 31.23(3) and unless the court orders otherwise, a report that has been received by the registrar is taken to be in evidence in any hearing concerning a matter to which it relates.
- (3) A court-appointed expert who, after sending a report to the registrar, changes his or her opinion on a material matter must forthwith provide the registrar with a supplementary report to that effect.

31.50 Parties may seek clarification of court-appointed expert's report

Any party affected may apply to the court for leave to seek clarification of any aspect of the court-appointed expert's report.

31.51 Cross-examination of court-appointed expert (cf SCR Part 39, rule 4; DCR Part 28A, rule 4; LCR Part 38B, rule 4)

Any party affected may cross-examine a court-appointed expert, and the expert must attend court for examination or cross-examination if so requested on reasonable notice by a party affected.

31.52 Prohibition of other expert evidence (cf SCR Part 39, rule 6; DCR Part 28A, rule 6; LCR Part 38B, rule 6)

Except by leave of the court, a party to proceedings may not adduce evidence of any expert on any issue arising in proceedings if a court-appointed expert has been appointed under this Division in relation to that issue.

31.53 Remuneration of court-appointed expert (cf SCR Part 39, rule 5; DCR Part 28A, rule 5; LCR Part 38B, rule 5)

- (1) The remuneration of a court-appointed expert is to be fixed by agreement between the parties affected and the expert or, failing agreement, by, or in accordance with the directions of, the court.
- (2) Subject to subrule (3), the parties affected are jointly and severally liable to a court-appointed witness for his or her remuneration.
- (3) The court may direct when and by whom a court-appointed expert is to be paid.

- (4) Subrules (2) and (3) do not affect the powers of the court as to costs.

31.54 Assistance to court by other persons (cf SCR Part 39, rule 7; DCR Part 28A, rule 7; LCR Part 38B, rule 7)

- (1) In any proceedings, the court may obtain the assistance of any person specially qualified to advise on any matter arising in the proceedings and may act on the adviser's opinion.
- (2) Rule 31.53 applies to and in respect of a person referred to in subrule (1) in the same way as it applies to and in respect of a court-appointed witness.
- (3) This rule does not apply to proceedings in the Admiralty List of the Supreme Court or to proceedings that are tried before a jury.