

The Senate

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Environment and  
Communications Legislation  
Committee

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Safeguard Mechanism (Crediting)  
Amendment Bill 2022 [Provisions]

March 2023

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# Abbreviations and acronyms

|                               |   |
|-------------------------------|---|
| ACCR                          | Australasian Centre for Corporate Responsibility  |
| ACCUs                         | Australian Carbon Credit Units  |
| ACF                           | Australian Conservation Foundation  |
| Ai Group                      | Australian Industry Group   |
| AIGN                          | Australian Industry Greenhouse Network  |
| ANREU Act                     | <i>Australian National Registry of Emissions Units Act 2011</i>   |
| ANU-UNSW ERF<br>research team | Australian National University and the University of New<br>South Wales, Canberra Emissions Reduction Fund research<br>team |
| AWU                           | Australian Workers' Union   |
| BCA                           | Business Council of Australia   |
| The bill                      | Safeguard Mechanism (Crediting) Amendment Bill 2022   |
| CAIC                          | Carbon Abatement Integrity Committee  |
| CANA                          | Climate Action Network Australia  |
| CBAM                          | carbon border adjustment mechanisms   |
| CC Act                        | <i>Climate Change Act 2022</i>  |
| CCS                           | Carbon Capture and Storage  |
| CER                           | Clean Energy Regulator  |
| CER Act                       | <i>Clean Energy Regulator Act 2011</i>  |
| CFI Act                       | <i>Carbon Credits (Carbon Farming Initiative) Act 2011</i>  |
| Chubb Review                  | Independent review of carbon credits undertaken by Professor<br>Ian Chubb   |
| Climate Council               | Climate Council of Australia  |
| CMI                           | Carbon Market Institute   |
| DEA                           | Doctors for the Environment Australia   |
| The Department                | The Department of Climate Change, Energy, the Environment<br>and Water  |
| EDO                           | Environmental Defenders Office  |
| EITEs                         | emissions-intensive, trade-exposed businesses   |
| ERAC                          | Emissions Reduction Assurance Committee   |
| ERF                           | Emissions Reduction Fund  |
| EU                            | European Union  |
| HIR                           | Human Induced Regeneration  |
| ICCPR                         | International Covenant on Civil and Political Rights  |
| IEA                           | International Energy Agency   |
| IGCC                          | Investor Group on Climate Change  |
| IPA                           | Institute of Public Affairs   |

|                      |  |
|----------------------|--|
| King Review          | Expert panel report on low-cost abatement opportunities to provide incentives for industry to reduce emissions, led by Mr Grant King |
| LGA                  | Lock the Gate Alliance   |
| MCA                  | Minerals Council of Australia  |
| MEU                  | Mining and Energy Union  |
| MtCO <sub>2</sub> -e | million tonnes of carbon dioxide equivalent  |
| NDC                  | Nationally Determined Contribution   |
| NELA                 | National Environmental Law Association   |
| NGER Act             | <i>National Greenhouse and Energy Reporting Act 2007</i>   |
| NGER scheme          | National Greenhouse and Energy Reporting scheme  |
| PRF                  | Powering the Regions Fund  |
| Safeguard Rules      | National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015   |
| SEC                  | Smart Energy Council   |
| SMCs                 | Safeguard Mechanism Credits  |
| tCO <sub>2</sub> -e  | tonne of carbon dioxide equivalent   |
| UNFCCC               | United Nations Framework Convention on Climate Change  |



# List of Recommendations

## Recommendation 1

2.130 The committee recommends that the Government and Clean Energy Regulator prioritise the implementation of the Chubb Review, including in relation to landfill gas, human induced regeneration methods and avoided deforestation.

## Recommendation 2

2.135 The committee recommends that the bill be amended to require the publication of carbon estimation areas of eligible offsets projects as recommended by the Chubb Review.

## Recommendation 3

2.146 The committee recommends that the review into carbon leakage incorporates consideration of how a carbon border adjustment mechanism could complement reform of the Safeguard Mechanism.

## Recommendation 4

3.52 The committee recommends that the Australian Government continues to monitor the impact of new entrants on the delivery of the Safeguard Mechanism's share of Australia's emissions reduction targets, and reports to Parliament on progress through the Annual Climate Change Statement.

## Recommendation 5

3.97 The committee recommends that the Senate pass the bill.



# Chapter 1

## Introduction

- 1.1 On 1 December 2022, the Senate referred the provisions of the Safeguard Mechanism (Crediting) Amendment Bill 2022 (the bill) to the Environment and Communications Legislation Committee (the committee) for inquiry and report by 2 March 2023.<sup>1</sup> Subsequently, the committee sought an extension to 6 March 2023.<sup>2</sup>
- 1.2 The reform of the Safeguard Mechanism proposed in the bill is part of a wider suite of measures designed to reduce Australia's greenhouse gas emissions and, in doing so, contribute to Australia's climate change mitigation commitments.<sup>3</sup> Australia has these commitments as a signatory to the 2015 Paris Agreement, as well as enshrined in domestic legislation in the *Climate Change Act 2022* (CC Act).<sup>4</sup>

### Background to the bill

- 1.3 Before considering the provisions of the bill, some contextual information should be provided on Australia's obligations to reduce emissions, and the role of the Safeguard Mechanism (and other related policies) in achieving these obligations.

#### *Australia's international and domestic emissions obligations*

- 1.4 Australia is a signatory to the Paris Agreement, under which countries are taking action to reduce global greenhouse gas emissions to address climate change and to limit global warming levels to well below 2, and preferably 1.5 degrees Celsius compared to pre-industrial levels.<sup>5</sup>
- 1.5 Participants are required to set out their emissions reduction ambitions in a Nationally Determined Contribution (NDC), which is communicated to the United Nations Framework Convention on Climate Change (UNFCCC). On 16 June 2022, the Australian Government committed to a new, more ambitious

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<sup>1</sup> *Journals of the Senate*, No. 27, 1 December 2022, pp. 805–807.

<sup>2</sup> Senate Environment and Communications Legislation Committee, [Progress Report](#), 20 February 2023 (accessed 20 February 2023).

<sup>3</sup> A reduction in national greenhouse gas emissions of 43 per cent below 2005 levels by 2030 and net zero by 2050.

<sup>4</sup> *Safeguard Mechanism (Crediting) Amendment Bill 2022*, [Explanatory Memorandum](#) (Explanatory Memorandum), p. 1.

<sup>5</sup> Explanatory Memorandum, p. 1. Also see the United Nations, [Paris Agreement](#) (accessed 15 February 2023).

NDC, which commits to reduce national emissions to 43 per cent below 2005 levels by 2030.<sup>6</sup>

- 1.6 The Government has also reaffirmed Australia's commitment to achieve the Paris goal of achieving net zero by 2050, which was legislated in late 2022 in the CC Act.<sup>7</sup>
- 1.7 On 23 October 2022, Australia committed to the Global Methane Pledge, a voluntary commitment by 122 countries to work collectively to reduce global methane emissions across all sectors by at least 30 per cent below 2020 levels by 2030.<sup>8</sup>

### *The Safeguard Mechanism*

- 1.8 The Safeguard Mechanism was introduced by the former Coalition Government in 2016. It was a central component of the Emissions Reduction Fund (ERF), which was in turn a key element of the former Government's emissions reduction strategy. The primary features of the ERF were:
  - a voluntary carbon crediting scheme, where participating emitters could earn an Australian Carbon Credit Unit (ACCU) for every tonne of carbon dioxide equivalent (tCO<sub>2</sub>-e) of emissions stored or avoided by a project;<sup>9</sup>
  - a process administered by the Clean Energy Regulator (CER or the Regulator), in which participants could use ACCUs to generate income, selling them to the Australian Government through a carbon abatement contract, or to companies and other private buyers in the secondary market, as well as to offset their own emissions;<sup>10</sup> and
  - the Safeguard Mechanism.
- 1.9 Under the Safeguard Mechanism, the Regulator sets emissions baselines for 'designated large facilities' (facilities) that emit more than 100 000 tCO<sub>2</sub>-e per annum, which cannot be exceeded by participating facilities. This limit includes Scope 1 emissions (i.e. direct emissions)—apart from some exceptions such as the electricity generators (which have their own sectoral baseline)—and not Scope 2 and 3 emissions (respectively indirect emissions from

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<sup>6</sup> Explanatory Memorandum, p. 1.

<sup>7</sup> Explanatory Memorandum, p. 1.

<sup>8</sup> The Hon Chris Bowen MP, Minister for Climate Change and Energy, [Australia joins Global Methane Pledge](#), Media Release, 23 October 2022 (accessed 28 February 2023).

<sup>9</sup> See the Department of Climate Change, Energy, the Environment and Water (the Department), [Emissions Reduction Fund](#) (accessed 15 February 2023).

<sup>10</sup> Clean Energy Regulator, [Emissions Reduction Fund: How does it work](#) (accessed 15 February 2023).

consumption of energy products such as fossil fuels, and emissions generated in the wider economy).<sup>11</sup>

1.10 Facilities covered by the Safeguard Mechanism include fossil fuel operations (such as gas extraction sites, liquified natural gas processing plants and coalmines), steelworks, aluminium smelters, cement producers, chemical manufacturers, major transport companies and airlines.<sup>12</sup>

1.11 The CER is the Commonwealth agency responsible for administering the National Greenhouse and Energy Reporting scheme (NGER scheme, outlined below) and the Safeguard Mechanism. It states that:

Under the safeguard mechanism, facilities are given a baseline which is the reference point against which net-emissions levels will be assessed. Net-emissions are the covered emissions from the operation of the facility plus any Australian carbon credit units (ACCUs) issued in relation to abatement activities occurring at the facility, minus any ACCUs surrendered for the facility, for that year. Facilities must keep their net emissions at or below their baseline.<sup>13</sup>

1.12 Currently, the Safeguard Mechanism covers around 215 facilities, which collectively produce 137 million tCO<sub>2</sub>-e, or 28 per cent of Australia's total emissions.<sup>14</sup>

1.13 Some commentators have observed that the Safeguard Mechanism settings put in place by the former Government allowed too much 'headroom' in the baseline levels for covered facilities, and consequently, overall emissions from industrial facilities have increased rather than decreased. For example, recent Parliamentary Library analysis suggests that the current Safeguard Mechanism settings have not achieved the stated goals:

The Safeguard Mechanism was intended to ensure that the emissions reductions purchased through the ERF were not displaced by significant increases in emissions elsewhere in the economy.

However, the Safeguard Mechanism has been allowed to operate in a manner such that the emissions of covered facilities have increased in accordance with 'business-as-usual'. It has essentially operated as an

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<sup>11</sup> Clean Energy Regulator, [Greenhouse gases and energy](#) (accessed 15 February 2023). Exceptions are set by Section 7 of the Safeguard Rule. See, Dr Emily Gibson, Safeguard Mechanism (Crediting) Amendment Bill 2022, [Bills Digest No. 48, 2022-23](#), 31 January 2023, Parliamentary Library, Canberra, 2023 (SGM Bills Digest), p. 7.

<sup>12</sup> Clean Energy Regulator, [Safeguard facility reported emissions 2020-21](#) (accessed 18 February 2023).

<sup>13</sup> Clean Energy Regulator, [The Safeguard Mechanism](#) (accessed 15 February 2023).

<sup>14</sup> The Department's submission states the mechanism covers around 215 facilities at present, *Submission 8*, p. 2. In the 2020-21 reporting year, 212 facilities were covered, according to the Clean Energy Regulator, [Safeguard facility reported emissions for 2020-21 now available](#) (accessed 26 February 2023).

additional reporting mechanism, rather than requiring covered facilities to reduce operational emissions. More specifically, the emissions of covered facilities have increased by 7% since the commencement of the Safeguard Mechanism in 2016.<sup>15</sup>

1.14 Without adjustment to the Safeguard Mechanism settings, the Parliamentary Library notes that emissions from large facilities are projected to increase further by 2030, to 151 million tonnes of carbon dioxide equivalent (MtCO<sub>2</sub>-e); an increase of 13.3 per cent on 2016–17 levels.<sup>16</sup>

1.15 During the 2022 election campaign, the then-Labor Opposition committed to a suite of reforms in its Powering Australia policy, including to:

Adopt the Business Council of Australia’s recommendation for facilities already covered by the Government’s Safeguard Mechanism that emissions be reduced gradually and predictably over time, to support international competitiveness and economic growth—consistent with industry’s own commitment to net zero by 2050.<sup>17</sup>

1.16 The Government’s reforms, of which the bill is one component, aim to build on the existing Safeguard Mechanism to reduce industrial sector emissions. Under the proposed reforms ‘safeguard facilities will deliver a proportional share of the national [43 per cent] 2030 target’.<sup>18</sup> As a consequence the Department of Climate Change, Energy, the Environment and Water (the Department) has indicated that:

...net emissions covered by the Safeguard [will] fall from a projected 143 million tonnes in 2022-23 before the reforms start [in July 2023] to no more than 100 million tonnes by 2030... The reformed Safeguard Mechanism is expected to deliver [on aggregate] an estimated 205 million tonnes of abatement by the end of the decade.<sup>19</sup>

1.17 The Department noted that many Safeguard Mechanism facilities have already committed to equivalent or more ambitious long-term emissions reductions than Australia’s climate targets. As a result, the Department submitted that:

The Safeguard reforms will provide a supportive policy framework for industry to meet these commitments, with the right signals to drive investments in emissions reductions, and flexibility so that businesses find the lowest cost abatement, wherever it occurs.<sup>20</sup>

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<sup>15</sup> SGM Bills Digest, pp. 7–8.

<sup>16</sup> SGM Bills Digest, pp. 7–8.

<sup>17</sup> Australian Labor Party, [Powering Australia: Labor’s plan to create jobs, cut power bills and reduce emissions by boosting renewable energy](#), (accessed 20 February 2023).

<sup>18</sup> The Department, [Safeguard Mechanism Reforms: Position Paper](#), January 2023, p. 2 (accessed 26 February 2023).

<sup>19</sup> The Department, *Safeguard Mechanism Reforms: Position Paper*, January 2023, p. 2.

<sup>20</sup> The Department, *Submission 8*, p. 2.

1.18 It should also be noted that, although the current Safeguard Mechanism arrangements can set baselines for emissions, they cannot create tradeable credits that incentivise covered facilities to reduce emissions below their baselines.<sup>21</sup>

1.19 Further details on the proposed Safeguard Mechanism reforms are set out below.

### **Provisions of the bill**

1.20 As mentioned earlier, the bill is one component of the broader Safeguard Mechanism reforms, which would:

- amend the *National Greenhouse and Energy Reporting Act 2007* (NGER Act) to clarify that an object of the Act is for a net decline in emissions from large facilities and require the Minister to be satisfied that the safeguard rules are consistent with the objects of the Act;
- enable the creation of Safeguard Mechanism Credit Units (SMCs), a new type of prescribed and tradeable carbon unit; and
- convert the Safeguard Mechanism from being essentially an emissions reporting mechanism for industry, to a system that incentivises ‘facilities to generate tradable credits where their emissions are below their baseline’.<sup>22</sup>

1.21 The bill would enable:

- the proposed crediting element of reforms announced by the Government on 10 January 2023, noting that the NGER Act already contains rule-making powers that would allow the proposed baseline decline rates to be implemented;<sup>23</sup> and
- a Safeguard crediting mechanism, that extends the proposal contained in the former Government’s August 2021 discussion paper to be implemented by legislative rules (noting that the ambition for the Safeguard Mechanism remains the subject of disallowable legislative rules, as discussed below).<sup>24</sup>

1.22 The Explanatory Memorandum sums up the bill’s provisions as follows:

The proposed changes include reducing Safeguard Mechanism baselines and enabling Safeguard facilities that stay below their baselines to generate tradable credits, known as Safeguard Mechanism Credits or SMCs. The purpose of the Bill is to enable the crediting element of the reforms.

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<sup>21</sup> Explanatory Memorandum, pp. 1–2.

<sup>22</sup> The Department, *Safeguard Mechanism Reforms Position Paper*, January 2023, p. 29.

<sup>23</sup> *National Greenhouse and Energy Reporting Act 2007* (NGER Act), s.22XS, and Explanatory Memorandum, p. 23.

<sup>24</sup> Former Department of Industry, Science, Energy and Resources, [Safeguard Crediting Mechanism: discussion paper](#), August 2021 (accessed 26 February 2023).

The Bill will amend the *National Greenhouse and Energy Reporting Act 2007* (NGER Act) and *Australian National Registry of Emissions Units Act 2011* (ANREU Act) to establish the framework for creating SMCs, covering how credits are issued, purchased, and included in Australia's National Registry of Emissions Units. These credits each correspond to a tonne carbon dioxide equivalent of emissions (or difference in emissions compared to a facility's baseline) and can be traded and used by other facilities to reduce their net emissions.<sup>25</sup>

- 1.23 SMCs will be able to be traded, and/or used by facilities to comply with their emissions baseline, in the same way as the current ACCUs.<sup>26</sup>
- 1.24 The bill also would make amendments to the role and powers of the CER, including:
- an anti-avoidance mechanism to determine that a facility is covered by the Safeguard Mechanism, where the CER is of a view that the enterprise has been structured in a way to avoid coming within the scope of the Safeguard Mechanism;<sup>27</sup>
  - enabling legislative rules to allow regular publication of information by the CER about ACCUs and SMCs unit holdings and the holders of relevant accounts, to ensure consistency across different types of carbon credit units, and for market transparency, as well as for the appropriate treatment of this information;<sup>28</sup> and
  - enabling legislative rules to prevent the CER from entering carbon abatement contracts that would reduce covered emissions of Safeguard Mechanism facilities, and ensure the CER considers the Safeguard Mechanism when assessing the regulatory additionality of proposed offsets projects.<sup>29</sup>

#### *Further detail on Safeguard Mechanism reforms contained in rules*

- 1.25 The bill would amend relevant Acts to enable the crediting element of the reforms, while leaving other details—such as baseline decline rates, limits on banking, and treatment of new entrants—to be set out by the Minister in subordinate regulations (rules). The Explanatory Memorandum states that 'consultation will be undertaken in developing or amending any such legislative rules, and the usual disallowance processes apply'.<sup>30</sup>

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<sup>25</sup> Explanatory Memorandum, p. 1.

<sup>26</sup> Explanatory Memorandum, p. 1.

<sup>27</sup> Explanatory Memorandum, p. 26.

<sup>28</sup> Explanatory Memorandum, pp. 35 and 37–40.

<sup>29</sup> Explanatory Memorandum, p. 40.

<sup>30</sup> Explanatory Memorandum, p. 2.



1.26 The Government is currently consulting on a Position Paper and a series of draft rules released in January 2023 (discussed below).<sup>31</sup> When taken as a package, the reforms set out in the bill, the Position Paper, and the draft regulations would establish an emissions management framework where:

- facilities will be able to surrender SMCs, as an alternative to or in addition to ACCUs, as prescribed carbon units
- facilities will be moved to production-adjusted baselines using site-specific emissions intensity values, with a transition to industry average emissions intensity values by 2030; no other types of baselines will be available
- eligible facilities, who have hard-to-abate emissions but a credible plan to reduce emissions, would be able to access extended multi-year monitoring periods of up to 5 years (but not past 2030)
- facilities will be able to borrow up to 10 per cent of their baseline in SMCs through to 2030
- facilities will continue to be able to purchase ACCUs, including from the Government with a capped price of \$75/tonne (adjusted for inflation).<sup>32</sup>

1.27 A key element of the Safeguard Mechanism reforms—the framework for declining facility baselines—is contained in the proposed changes to the National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015 (Safeguard Rules).<sup>33</sup> The Department explained that the Safeguard Rules set out the detail of the crediting framework:

The Bill provides for subordinate legislation to detail the crediting framework such as application processes, the number of SMCs to issue, how that number is worked out, conditions that may be imposed, and audit requirements. This structure is necessary because the crediting framework is closely linked to the technical details of how Safeguard baselines are determined, which are also set out by the Safeguard Rules.<sup>34</sup>

## Previous relevant reviews and consultation

1.28 This section sets out some recent reviews and consultation undertaken by the Government that provide context for the bill, namely the:

- expert panel report on low-cost abatement opportunities to provide incentives for industry to reduce emissions, led by Mr Grant King, released in May 2020 (King Review);

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<sup>31</sup> The Department, *Safeguard Mechanism Reforms: Position Paper*, January 2023.

<sup>32</sup> As summarised in the SGM Bills Digest, p. 20. See also later in this chapter for a more detailed outline of this consultation.

<sup>33</sup> [National Greenhouse and Energy Reporting \(Safeguard Mechanism\) Rule 2023 Exposure Draft](#), (accessed 2 March 2023).

<sup>34</sup> The Department, *Submission 8*, p. 3.

- independent review of carbon credits undertaken by Professor Ian Chubb, which reported to Government December 2022, and publicly released in January 2023, (Chubb Review);
- Safeguard Mechanism Reforms Consultation Paper (August 2022) and exposure draft of the bill currently under consideration, as well as the Draft Carbon Credits (Carbon Farming Initiative) Amendment (Safeguard Facility Eligibility Requirements) Rules 2022 (October 2022); and
- Safeguard Mechanism Reforms Position Paper and draft regulations and rules (January 2023).

### *The King Review*

1.29 In October 2019, the former Coalition Government appointed an expert panel to provide advice to the then-Minister for Energy and Emissions Reduction, the Hon Angus Taylor MP, on:

...how to incentivise low cost abatement opportunities from across the economy, with a focus on the industrial, manufacturing, transport and agriculture sectors, and energy efficiency.<sup>35</sup>

1.30 One of the recommendations of the King Review was the establishment of a crediting arrangement to incentivise emissions reductions below the Safeguard Mechanism baselines, which the panel noted had wide support from business stakeholders.<sup>36</sup> The former Government agreed to this proposal, stating:

The Government agrees that establishing a low-emissions technology deployment incentive scheme to reduce emissions from Safeguard-covered facilities would help realise abatement opportunities that are not being accessed by the ERF.

As noted by the Panel, substantial consultation will be required with industry on how to best implement such a scheme and maximise co-investment.

In this context, the Government will undertake further consultation with affected businesses and other stakeholders on the detailed design and implementation arrangements.<sup>37</sup>

1.31 As noted above, the former Government embarked on consultation process on a below-baseline crediting scheme in August 2021.<sup>38</sup> This included foreshadowing legislative change as follows:

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<sup>35</sup> Former Department of Industry, Science, Energy and Resources, [Report of the expert panel examining additional sources of low cost abatement](#), 14 February 2020, p. 6 (accessed 26 February 2023).

<sup>36</sup> Former Department of Industry, Science, Energy and Resources, [Report of the expert panel examining additional sources of low cost abatement](#), 14 February 2020, 14 February 2020, p. 6

<sup>37</sup> The Hon Angus Taylor MP, Minister for Energy and Emissions Reduction, [Australian Government response to the Final Report of the Expert Panel examining additional sources of low-cost abatement \('the King Review'\)](#), May 2020, p. 8 (accessed 26 February 2023).

Some enabling changes to primary legislation will be needed to implement the crediting mechanism, confer property rights and enable appropriate tax treatment of SMCs (consistent with arrangements for other units, including Australian Carbon Credit Units). The NGER Act and the *Australian National Registry of Emissions Units Act 2011* will be amended to provide for the issue of credits, with details about how this would work being provided in subordinate legislation.<sup>39</sup>

1.32 These changes were cast as necessary to enable a below-baseline crediting arrangement for emissions reduction under a reformed Safeguard Mechanism:

Legislative changes are necessary to allow for the creation of a new form of credit, to be a 'safeguard mechanism credit unit' and for the existing legal architecture for credits to be applied to this new unit type. The details of the Safeguard Crediting Mechanism would then be built into legislative rules. The NGER Act could be amended so that these legislative rules could provide for the issuance of credits to persons with a Registry account and who are registered under that Act. The rules would deal with issues such as Regulator determinations relating to crediting and any relevant application requirements. The NGER Act amendments would allow for the rules to determine the use of credit units to reduce Safeguard net emissions and relevant limits on this (if any). Relinquishment powers for false or misleading information or reporting would be available, similar to the [*Carbon Credits (Carbon Farming Initiative) Act 2011*]. The Regulator's general information gathering power would include the crediting provisions to ensure it has necessary enforcement information for the scheme. The *Australian National Registry of Emissions Units Act 2011* could be amended to establish relevant ownership and transfer of the units, equivalent to existing unit types. Information about holdings and cancellations of safeguard mechanism credit units would be published, consistent with other unit types. Further details of this would be in legislative rules under that Act.<sup>40</sup>

1.33 Although this consultation process concluded in October 2021, the former Government did not introduce a Safeguard Mechanism crediting mechanism prior to the May 2022 election.

1.34 Following the election in 2022, the Labor Government accepted the substance of this recommendation, including by introducing the bill currently being considered.

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<sup>38</sup> Former Department of Industry, Science, Energy and Resources, [Safeguard Crediting Mechanism: discussion paper](#), August 2021.

<sup>39</sup> Former Department of Industry, Science, Energy and Resources, [Safeguard Crediting Mechanism: discussion paper](#), August 2021, p. 4. Emphasis omitted.

<sup>40</sup> Former Department of Industry, Science, Energy and Resources, [Safeguard Crediting Mechanism: discussion paper](#), August 2021, p. 20.

*Independent Review of Australian Carbon Credit Units (Chubb Review)*

1.35 On 1 July 2022, the Minister for Climate Change and Energy, the Hon Chris Bowen MP announced that an independent panel would review the integrity of the ACCU scheme, to be led by the former Chief Scientist Professor Ian Chubb .

1.36 The Chubb Review received over 200 submissions, 162 of which have been published.<sup>41</sup> It also ‘consulted widely across stakeholders involved in or with an interest in the ACCU scheme’, and conducted meetings with representatives of various sectors, including government agencies, state and territory governments, business, industry, agriculture, environmental, academia and research, and First Nations.<sup>42</sup>

1.37 The review provided its report to Government in mid-December 2022, and this was released publicly on 9 January 2023. The key finding of the Chubb Review was:

...that the ACCU scheme arrangements are essentially sound, incorporating mechanisms for regular review and improvement, and recommends a number of changes to clarify governance, improve transparency, facilitate positive project outcomes and co-benefits, and enhance confidence in the integrity and effectiveness of the scheme.<sup>43</sup>

1.38 The review made 16 recommendations to enhance the governance and transparency of the ACCU scheme, including:

- separating the multiple roles of the CER and increased transparency of administrative rulings;
- re-establishing the Emissions Reduction Assurance Committee (ERAC) as the Carbon Abatement Integrity Committee (CAIC), with changes in its governance and function, and a six-month review by the Climate Change Authority to determine whether the CAIC should instead be a statutory authority;
- amending the *Carbon Credits (Carbon Farming Initiative) Act 2011* (CFI Act) to:
  - maximise transparency, data access and data sharing; and
  - remove conditional registration of projects on Native Title lands prior to obtaining consent;
- establishing ‘proponent-led’ method development, including provision for ‘modular’ methods;

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<sup>41</sup> Information about the Chubb Review, including its report, submissions received and associated documents can be found at [dcceew.gov.au/climate-change/emissions-reduction/independent-review-accus](https://dcceew.gov.au/climate-change/emissions-reduction/independent-review-accus) (accessed 15 February 2023).

<sup>42</sup> Independent Review of Australian Carbon Credits (Chubb Review), *Final Report*, Appendix 4, December 2022, pp. 35–36.

<sup>43</sup> Chubb Review, Final Report, p. 2.

- clearly defining the Offsets Integrity Standards, including a refocusing of the ‘newness’ requirement;
- introducing a scheme-level buffer (mandatory cancellation of a percentage of ACCUs generated under the scheme);
- modifying two abatement methods and ceasing the ‘avoided deforestation’ method; and
- requiring accreditation and regulation of carbon service providers.<sup>44</sup>

1.39 The Government published its response on 9 January 2023, accepting in principle all 16 Chubb Review recommendations, and committing to consult and work with all stakeholders on both the development of legislation and its implementation.<sup>45</sup>

### *Safeguard Mechanism Reforms consultation paper (August 2022)*

1.40 In August 2022, the Department released a consultation paper and three explanatory fact sheets on proposed reforms to the Safeguard Mechanism.

1.41 The consultation process sought stakeholder comment on possible crediting arrangements (and other reform proposals). Submissions were open until 20 September 2022 and over 240 submissions were received, with all non-confidential submissions published on the Department’s website.<sup>46</sup>

1.42 Following this initial engagement:

An exposure draft of the Bill was open to public consultation from 10 October 2022 to 28 October 2022. Submissions from over 50 businesses, industry groups and individuals were received during the consultation period and all non-confidential submissions were published on the Department’s website.<sup>47</sup>

1.43 In its analysis of the bill, the Parliamentary Library summarised the key points of the consultation paper as follows:

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<sup>44</sup> SGM Bills Digest, p. 12. On methods, alongside the recommendation to not allow new projects to be registered under the avoided deforestation method, the Chubb Review recommended: that administration arrangements for the existing Human Induced Regeneration (HIR) method should ensure that all HIR projects conform to its [the method’s] current intent: ‘that it is reasonable to expect that the project area will become native forest, attain forest cover, and permanently store carbon as a direct result of project management actions’; that landfill gas methods and crediting extensions should incorporate upward sloping baselines, as well as early review of existing projects and adjustment of baselines on a voluntary basis. No comment was made on Carbon Capture and Storage (CCS), but it was noted that it has only been deployed in limited ways globally. See Chubb Review, Final Report, p. ix–x.

<sup>45</sup> Australian Government, [Government Response to the Independent Review of Australian Carbon Credits](#), 9 January 2023 (accessed 5 February 2023).

<sup>46</sup> Explanatory Memorandum, p. 2.

<sup>47</sup> Explanatory Memorandum, p. 2.

The 2022 consultation paper set out options for setting and reducing baselines in a predictable and gradual way, with possible rates of decline between 3.5 and 6 per cent per year through to 2030 and further decline rates to be set in 5-year blocks aligned with updates to Australia's NDC. The paper canvasses a range of issues, including:

- the Safeguard Mechanism's share of the national abatement task (exclusive of the sectoral baseline for electricity generation facilities)
- the setting of baselines to achieve an equitable distribution of costs and benefits, including consideration of a fixed (absolute) versus production-adjusted (intensity) framework, the removal of 'headroom', and the setting of baselines for existing—and new—facilities
- the creation of tradeable Safeguard Mechanism credits, and consideration of international offsets
- treatment for emissions-intensive, trade-exposed businesses (EITEs)
- availability of multi-year monitoring periods, in light of variation in availability of emissions reduction technologies.<sup>48</sup>

1.44 The Explanatory Memorandum notes the bill currently under consideration incorporates stakeholder comment on the exposure draft:

In response to submissions on the exposure draft, the bill now includes an amendment to the objects of the NGER Act, and requires the Minister to be satisfied that the safeguard rules are consistent with the objects of the Act. The bill will add to the second object of the Act a reference to ensuring that the aggregate net covered emissions from the operation of facilities covered by the Safeguard Mechanism decline...

Under the NGER Act, an excess emissions situation occurs if the net emissions of a facility covered by the Safeguard Mechanism exceeds its baseline, and there is a duty to ensure that an excess emissions situation does not exist. In response to feedback that the penalty for an excess emissions situation should reflect the impact on the climate, the bill now includes provisions that will base penalties for an excess emissions situation on both the size of the excess emissions situation and the number of days in which the excess emissions situation exists.

The exposure draft Bill provided for publication of holdings of ACCUs and SMCs in Registry accounts. Some submissions raised concerns about this provision. To address these concerns, the bill has been updated so that legislative rules can provide for publication. This will allow for further consultation, to ensure the final settings provide for increased transparency while appropriately addressing matters raised by stakeholders.<sup>49</sup>

1.45 The consultation paper observed that many of the details of the reformed Safeguard Mechanism would be set out in subordinate legislation, including baseline setting and baseline decline rates. Additionally, it noted that

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<sup>48</sup> As summarised in the SGM Bills Digest, p. 10.

<sup>49</sup> Explanatory Memorandum, pp. 2–3.

‘[p]rimary legislative changes will be needed to implement crediting and related changes’.<sup>50</sup> Further, it commented:

Feedback on a more detailed design proposal accompanied by proposed changes to the Safeguard Mechanism Rule will be sought later this year [2022] following feedback on this paper. We will then progress the changes to the Safeguard Mechanism Rule in the first quarter of 2023. Primary legislative changes focused on the crediting aspects of the design would be progressed in parallel.

This is a tight timeframe, but strong institutional arrangements are already in place and businesses are well prepared for the change which was part of the Powering Australia policy announced in December 2021. Safeguard Mechanism facilities have over a decade’s experience measuring and reporting their emissions, a clear understanding of their climate profile and risks, and many are already working towards climate targets of their own.<sup>51</sup>

### *Carbon Credit Rules and the Safeguard Mechanism Reforms: Position Paper (January 2023)*

1.46 On 10 January 2023, the Government released a Position Paper on the Safeguard Mechanism reforms for consultation, alongside draft legislative instruments.<sup>52</sup> The Position Paper states that the Government intends to finalise the Safeguard Mechanism reforms by April 2023, with legislative reforms and rules to commence by 1 July 2023, including the Government’s proposed approach on:

- the Safeguard Mechanism’s share of the national emissions reduction target
- setting baselines for existing and new facilities, including the rate of decline
- arrangements for issuing and using Safeguard Mechanism Credits [as provided for in the bill]
- access to flexible compliance arrangements. These include access to credits, offsets, banking and borrowing arrangements, multi-year monitoring periods and a cost containment measure
- tailored treatment of emissions-intensive, trade-exposed facilities.<sup>53</sup>

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<sup>50</sup> The Department, *Safeguard Mechanism Reforms: Consultation Paper*, August 2022, p. 6.

<sup>51</sup> The Department, *Safeguard Mechanism Reforms: Consultation Paper*, August 2022, p. 6.

<sup>52</sup> These instruments are: Australian National Registry of Emissions Units Rules 2023; Carbon Credits (Carbon Farming Initiative) Amendment (No. 2) Rules 2023; National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023 (draft Safeguard Mechanism Amendment Rules); and Safeguard Mechanism Legislation Amendment (2023 Measures No 1) Regulations 2023. The Position Paper and all instruments are available on the [departmental website](#). This also includes information on the Carbon Credits (Carbon Farming Initiative) Amendment (No.1 Rules 2023), which were made by the Minister on 9 January 2023 to come into effect on 12 January 2023. (accessed 15 February 2023).

<sup>53</sup> The Department, [Safeguard Mechanism reform: Consultation on proposed design](#), January 2023.



1.47 Feedback on the proposed design, draft amendments to the Safeguard Rule and related draft regulations closed on 24 February 2023.

## Human rights

1.48 The Explanatory Memorandum states that ‘the amendments in the Bill will primarily regulate entities or corporations, which are not covered by human rights treaties, rather than individuals’.<sup>54</sup> However, the Explanatory Memorandum acknowledges that the bill ‘engages, or may engage’ the following human rights:

- the right to privacy under Article 17 of the International Covenant on Civil and Political Rights (ICCPR); and
- the right to freedom of expression under Article 19 of the ICCPR.<sup>55</sup>

1.49 On the right to privacy, the Explanatory Memorandum notes that relevant changes would build upon existing provisions in the *Clean Energy Regulator Act 2011* (CER Act), and would provide a ‘lawful basis for obtaining, storing and sharing personal information appropriately’ and that this is ‘reasonable and proportionate to administering the schemes’. Additionally, it states that the existing secrecy provisions of the CER Act do not authorise release of personal information, and ‘this restriction will be maintained by the bill to ensure privacy of information is adequately protected’.<sup>56</sup>

1.50 On the right to freedom of expression, the Explanatory Memorandum states:

The restrictions are considered compatible with the purpose of protecting the rights or reputations of others under Article 19(3) of the ICCPR because they are reasonable, necessary and proportionate to promote the integrity of audits carried out under the NGER Act, ensure businesses’ commercial-in-confidence information is sufficiently protected and are consistent with other existing restrictions under the NGER Act and CER Act. Further, individual auditors impacted by these provisions participate in the scheme voluntarily, and operate in a profession where maintaining commercial confidentiality is a matter of standard practice.<sup>57</sup>

## Other committee consideration

1.51 The Senate Standing Committee for the Scrutiny of Bills [Scrutiny Committee] considered the bill, and raised several concerns, including that the bill:

...is characterised by the inclusion of ‘framework provisions’ which contain only the broad principles of a legislative scheme and rely heavily on delegated legislation to determine the scheme’s scope and operation. The [Scrutiny] committee has longstanding concerns with framework

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<sup>54</sup> Explanatory Memorandum, p. 5.

<sup>55</sup> Explanatory Memorandum, p. 5.

<sup>56</sup> Explanatory Memorandum, p. 6.

<sup>57</sup> Explanatory Memorandum, p. 7.



provisions because they considerably limit the ability of Parliament to have an appropriate oversight over new legislative schemes.<sup>58</sup>

- 1.52 The Scrutiny Committee acknowledged that ‘it is sometimes appropriate to include certain administrative and technical matters within delegated legislation, particularly when establishing new, or substantially altered, legislative schemes’. However, it highlighted some matters that it considered could be included in the bill’s scope:

For example, it is unclear to the [Scrutiny] committee why an individual’s right to review of a decision under proposed section 22XNA could not be set out within the bill.

The committee does not disagree with the view expressed in the Explanatory Memorandum that it may be appropriate to include details of the crediting framework within delegated legislation. However, the committee is concerned that much of the crediting framework itself is being left to the rules. Requirements relating to review rights, the basic elements of application processes, the value of an SMC, limits or guidance on the issuing of SMCs, guidance in relation to surrendering SMCs and other fundamental aspects of the scheme are more appropriately characterised as part of the crediting framework and, as such, the committee is of the view that it may be more appropriate to include these details within the bill.

The committee also takes this opportunity to note that consistency with existing legislation is not a sufficient justification for including significant matters within delegated legislation.<sup>59</sup>

- 1.53 The Scrutiny Committee sought the Minister’s advice on these issues, which has not been published at the time of writing.
- 1.54 The Parliamentary Joint Committee on Human Rights made no comment on the bill.<sup>60</sup>

### **Financial impact of the bill**

- 1.55 The Explanatory Memorandum notes that the bill ‘has no financial impact on the Australian Government Budget’. Further, it states that any financial impacts coming from delegated legislation made under the bill’s provisions would be outlined in the relevant explanatory statement.<sup>61</sup>

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<sup>58</sup> Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 1 of 2023*, 8 February 2023, pp. 46–47.

<sup>59</sup> Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 1 of 2023*, 8 February 2023, pp. 46–47.

<sup>60</sup> Parliamentary Joint Committee on Human Rights, [Human rights scrutiny report: Report 1 of 2023](#), 8 February 2023, p. 6 (accessed 2 February 2023).

<sup>61</sup> Explanatory Memorandum, p. 2.

## **Conduct of the inquiry**

- 1.56 In accordance with its usual practice, the committee advertised the inquiry on its website and wrote to relevant organisations inviting submissions by 25 January 2023.
- 1.57 The committee published 34 submissions, which are listed at Appendix 1 and are available on the committee's website on the [committee's website](#).
- 1.58 The committee also held two public hearings on 27 and 28 February 2023 in Canberra and via videoconference. A list of witnesses who gave evidence at the hearings is available at Appendix 2.

## **Structure of the report**

- 1.59 This report comprises three chapters:
- Chapter 1 provides background information relating to the bill and outlines the bill's key purposes, as well as the administration of the inquiry;
  - Chapter 2 discusses the evidence received on the broader Safeguard Mechanism reforms, as well as the committee's views and recommendations; and
  - Chapter 3 looks at the issues raised in evidence on the provisions of the bill, and sets out the committee's view and recommendations.

## **Note on references**

- 1.60 In this report, references to the *Committee Hansard* are to the proof (uncorrected) transcripts. Page numbers may vary between the proof and the official transcripts.

## **Acknowledgement**

- 1.61 The committee would like to thank those individuals, institutions and organisations that contributed to the inquiry, particularly given the inquiry's short timeframe.

## Chapter 2

# Broader reforms to the Safeguard Mechanism

- 2.1 This chapter outlines key issues raised by inquiry participants about the proposed package of broader reforms to the Safeguard Mechanism. The next chapter considers submissions relating directly to the Safeguard Mechanism (Crediting) Amendment Bill 2022 (the bill).
- 2.2 First, this chapter summarises the general support expressed in evidence for the proposed reforms to the Safeguard Mechanism. It then highlights matters raised by stakeholders on the proposed reforms, including:
- opposition to the reforms;
  - concerns about the broader Safeguard Mechanism reforms; and
  - the role of subordinate legislation and discretionary powers in the scheme.
- 2.3 It should be noted that a significant proportion of the evidence received by the committee pertains to the broader Safeguard Mechanism reforms, rather than the specific provisions of the bill relating to crediting arrangements.
- 2.4 The committee considered it important to address the general comments made by stakeholders on the broader reforms in this chapter, before considering comments made on the specific provisions of the bill in the next.

### General support for the Safeguard Mechanism reforms

- 2.5 The committee received submissions from industry and business organisations, environmental advocacy groups, policy think tanks, academics and the relevant policy agency and regulators.
- 2.6 Stakeholders noted that the bill is part of a suite of measures designed to reform the operation of the Safeguard Mechanism.
- 2.7 Many stakeholders were broadly supportive of the reforms' aim of contributing to Australia's efforts to reduce emissions, while providing certainty to business and industry.<sup>1</sup>

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<sup>1</sup> See, for example: Australian Conservation Foundation (ACF), *Submission 2*, p. 2; Doctors for the Environment Australia (DEA), *Submission 4*, p. 2; Environmental Defenders Office (EDO), *Submission 5*, p. 3; Minerals Council of Australia (MCA), *Submission 6*, p. 1; National Environmental Law Association (NELA), *Submission 10*, pp. 1–2; Orica, *Submission 11*, pp. 2 and 5; Business Council of Australia (BCA), *Submission 12*, p. 1; Farmers for Climate Action, *Submission 13*, p. 1; Climate Action Network Australia (CANA), *Submission 17*, p. 1; Carbon Market Institute (CMI), *Submission 20*, p. 3; bp Australia (bp), *Submission 21*, p. 1; Australian Workers' Union and Mining and Energy Union (AWU and MEU), *Submission 22*, p. 5; Australian Industry Greenhouse Network (AIGN), *Submission 23*, p. 2; Smart Energy Council (SEC), *Submission 24*, p. 1; Lock the Gate Alliance (LGA), *Submission 25*, p. 8; LMS Energy, *Submission 26*, p. 1.

- 2.8 The Department of Climate Change, Energy, the Environment and Water (the Department) acknowledged that subordinate legislation will determine key features of the operation of the Safeguard Mechanism, such as the baseline decline rate and treatment of new entrants, and outlined that consultation has been ongoing through position papers and draft regulations.<sup>2</sup>
- 2.9 Stakeholders from business, industry and the resources sectors were generally positive about the proposed reforms to the Safeguard Mechanism. The Business Council of Australia (BCA) argued that more effective coordination of Australia's existing climate framework is 'the best way to move forward and make progress towards decarbonisation'. The BCA stated that reforming the Safeguard Mechanism would help businesses reduce emissions and 'maintain competitiveness as the global economy decarbonises'. The BCA explained the Safeguard Mechanism provides 'a much needed plan' for reducing industrial emissions to 2030 and a 'policy foundation' for reductions through to 2050.<sup>3</sup>
- 2.10 The Minerals Council of Australia (MCA) submitted the mining industry 'recognises the need to reduce emissions globally, nationally and at the sites and facilities driving Australia's resources industry'. It noted its continued constructive engagement in consultation around the proposed changes to the Safeguard Mechanism, as well as its support for the bill:
- ...the MCA supports crediting and trading from the commencement of the scheme. Crediting and trading is a vital component of the proposed changes and ultimate scheme design.<sup>4</sup>
- 2.11 The Australian Industry Greenhouse Network (AIGN)—a network of industry associations and individual businesses, including some heavy emitters—stated that it 'supports the amendment bill in principle'. AIGN saw the bill as taking 'an important step' in Australia's transition to a net zero economy by 'enabling the strict use of credible carbon offsets' and helping facilities transition.<sup>5</sup>
- 2.12 Orica, a company that owns Safeguard Mechanism-liable facilities, also supported the general intent of the reforms, and the bill specifically.<sup>6</sup> Similarly, bp Australia (bp) commented that a 'market-based policy' is the 'most effective and efficient way to reduce greenhouse gas emissions'. According to bp, the

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<sup>2</sup> The draft Rules were released on 10 January 2023, enabling them to be considered alongside the introduction of the bill currently under consideration. The draft subordinate legislation is available on the Department of Climate Change, Energy, the Environment and Water (the Department) [website](#). See also chapter 1 of this report, and the submission made by the Department, *Submission 8*, p. 3.

<sup>3</sup> BCA, *Submission 12*, p. 1. See also evidence provided by Ms Jennifer Westacott, Chief Executive of the BCA, *Committee Hansard*, 28 February 2023, pp. 33–34.

<sup>4</sup> MCA, *Submission 6*, p. 1.

<sup>5</sup> AIGN, *Submission 23*, p. 2.

<sup>6</sup> Orica, *Submission 11*, p. 2.

reforms would ‘provide incentives for large emitters to reduce their emissions in support of Australia’s emission reduction targets and the goals of the Paris Agreement’.<sup>7</sup>

- 2.13 Independent member-based organisation, the Carbon Market Institute (CMI) supported the bill as part of a ‘broader ecosystem of public policy and private sector drivers to invest in at-point decarbonisation’. It saw an enhanced Safeguard Mechanism as a key opportunity for driving industrial decarbonisation in an efficient and orderly manner:

Properly calibrated, a market-based design will allow the enhanced Safeguard Mechanism to balance the compliance driver of declining baselines with incentives to invest in at-point decarbonisation, as well as sufficient flexibility so that liable entities can manage compliance obligations over time. For example, investments in decarbonising production processes often have significant lead times. While waiting for upgrades to come online, a market-based design allows facilities to meet declining baselines and support the national abatement task by purchasing carbon credits. This market flexibility is particularly important for hard-to-abate sectors who have little alternative in the short to medium term, while technology and financial hurdles present barriers to reducing emissions at source.<sup>8</sup>

- 2.14 Several environmental organisations and others noted that there is a pressing need for governments to reduce emissions to address global climate change, and supported the reforms in this regard. The Australian Conservation Foundation (ACF) for instance ‘welcomed the current Commonwealth government’s commitment to make the Safeguard Mechanism an effective policy to reduce emissions from Australia’s biggest polluters in the industrial sector’. The ACF maintained that the Safeguard Mechanism ‘has the potential to drive real, lasting emissions reduction, stimulate investment in new technological solutions and make Australian industry more competitive in a low carbon global economy’.<sup>9</sup>
- 2.15 The National Environmental Law Association (NELA) commented that an enhanced Safeguard Mechanism is a ‘pragmatic and durable way of reducing emissions across a range of industrial, manufacturing and resource sectors’. NELA concluded that Safeguard Mechanism Credit Units (SMCs) are ‘a useful market-based incentive for emissions reduction’. However, NELA’s support for the bill was ‘subject to revision upon the commencement of the Safeguard Rules consultation’.<sup>10</sup>

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<sup>7</sup> bp, *Submission 21*, p. 1.

<sup>8</sup> CMI, *Submission 20*, p. 3.

<sup>9</sup> ACF, *Submission 2*, p. 2.

<sup>10</sup> NELA, *Submission 10*, pp. 1–2.

- 2.16 Climate Action Network Australia (CANA) saw strengthening the Safeguard Mechanism as ‘essential in achieving the emissions reductions needed’ to reach Australia’s Paris Agreement targets. It submitted that the bill provides ‘an important opportunity’ to ‘prioritise genuine emissions reduction’.<sup>11</sup>
- 2.17 The Australian Workers’ Union and Mining and Energy Union (AWU and MEU) expressed support for the ‘policy priority of addressing climate change, and support the Government’s proposed reforms of the Safeguard Mechanism (including the Bill)’. Praising the ‘broad consultation’ processes undertaken, the unions said the revamped Safeguard Mechanism will be ‘the most substantial energy policy faced by heavy industry since the now-repealed Carbon Pollution Reduction Scheme’.<sup>12</sup>
- 2.18 Concerns raised by industrial, environmental and other organisations, including proposals for strengthening the broader reforms and the bill, are discussed later in this chapter, as well as in chapter 3.

### **Opposition to the broader Safeguard Mechanism reforms**

- 2.19 Although most stakeholders were supportive of the reforms, some stakeholders opposed both the bill and the broader reforms to the Safeguard Mechanism. Critics on one side of this opposition suggested the revised framework would damage Australia’s economic interests by placing too great a burden on the industry and energy sectors. On the other side, it was suggested that the reformed Safeguard Mechanism would not be sufficiently robust to ensure participants actually reduce carbon emissions. Both these perspectives are detailed below.
- 2.20 The Institute of Public Affairs (IPA) opposed the bill, and advocated for the wholesale repeal of the Safeguard Mechanism. Additionally, it argued for the repeal of the *Climate Change Act 2022* in its entirety—‘which would have the effect of repealing Australia’s commitment to net zero emissions by 2050’.<sup>13</sup>
- 2.21 The IPA argued that the Safeguard Mechanism disproportionately affects regionally-based companies, risking job losses in regional areas, and that emissions reduction regulation increases the ‘regulatory burden’ on industries critical to ‘Australia’s self-reliance in a time of regional instability and geographical uncertainty’.<sup>14</sup>
- 2.22 Conversely, the Australia Institute submitted that the revised Safeguard Mechanism would protect the interests of large emitters and would not reduce emissions effectively. In relation to the bill, it argued that:

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<sup>11</sup> CANA, *Submission 17*, p. 1.

<sup>12</sup> AWU and MEU, *Submission 22*, p. 5.

<sup>13</sup> Institute of Public Affairs (IPA), *Submission 16*, pp. 1–2.

<sup>14</sup> IPA, *Submission 16*, pp. 1–2.

...focusing on technocratic details of the Safeguard Mechanism distracts from the fundamental issue that the Government has failed to provide evidence of how the Safeguard Mechanism will reduce emissions meaningfully and manage the overwhelming emissions from new entrants to the scheme. SMCs also risk providing a perverse incentive for existing high-polluting facilities to stay operating for longer than they may otherwise.<sup>15</sup>

2.23 Doctors for the Environment Australia (DEA) and the Lock the Gate Alliance (LGA) considered that the current reforms may not go far enough. While both organisations supported reform to the Safeguard Mechanism, they expressed concern that the current reforms will not go far enough to drive down Australia's emissions effectively.<sup>16</sup>

### **Specific concerns about the Safeguard Mechanism reforms**

2.24 Despite broad support for strengthening the Safeguard Mechanism and introducing tradeable SMCs, a number of concerns were raised about the package of reforms.

2.25 Various submitters noted issues with the detail and/or operation of the proposed reforms, while also seeing them as 'a step in the right direction'.<sup>17</sup> Concerns in evidence related to:

- the 'strength' or 'ambition' of the reforms;
- the effectiveness and integrity of offsets;
- new entrants to the scheme, including coal and gas projects, and potential coverage issues;
- methane emissions; and
- matters raised by industry and affected businesses.

#### *Strength of the Safeguard Mechanism*

2.26 A number of submitters were concerned that the proposed reforms to the Safeguard Mechanism do not go far enough. For instance, the Australasian Centre for Corporate Responsibility (ACCR) argued that fixing the Safeguard Mechanism is 'critical but insufficient'. To play a role in 'meaningfully' reducing emissions from Australia's top emitters, the 'ambition' of the Safeguard Mechanism must be increased 'to align with the efforts of the rest of Australia's economy'.<sup>18</sup>

2.27 The ACCR noted that, since 2005, Scope 1 industrial emissions (direct emissions) have increased while other parts of the economy have progressively

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<sup>15</sup> The Australia Institute, *Submission 18*, p. 1.

<sup>16</sup> DEA, *Submission 4*, p. 2; LGA, *Submission 25*, p. 1.

<sup>17</sup> See for instance: Smart Energy Council, *Submission 24*, p. 1.

<sup>18</sup> Australian Centre for Corporate Responsibility (ACCR), *Submission 7*, p. 2.

‘decarbonised’.<sup>19</sup> The ACCR argued that the Safeguard Mechanism should ‘be calibrated’ to ensure high emitting industrial facilities ‘catch up’:

To be consistent with Australia’s legislated, economy-wide target, the industrial sector’s fair share of emissions reduction should be a 43% reduction between 2005 and 2030. Based on FY21 emission levels of 137 MtCO<sub>2e</sub>, this would require annual reductions of 10 MtCO<sub>2e</sub>, or 7.3% of FY21 emission levels.<sup>20</sup>

2.28 The Climate Council of Australia (Climate Council) was concerned that the proposed regulations governing the Safeguard Mechanism would allow relevant regulated facilities to use SMCs and Australian Carbon Credit Units (ACCUs) ‘to offset their full baseline liabilities’. Under the proposed settings, the Climate Council argued that there would be ‘no requirement’ for facilities to demonstrate that they have tried to reduce emissions to meet their baselines, ‘before being able to access carbon credits and offsets for the full liability’. This would ‘incentivise’ the biggest emitters to ‘engage in carbon accounting to cover up pollution-as-usual activity as cheaply as possible’, rather than investing in decarbonisation.<sup>21</sup>

2.29 The Environmental Defenders Office (EDO) was concerned that the bill as drafted would allow for the establishment of Rules that would ‘hinder the achievement’ of the bill’s objectives by disincentivising genuine emissions reduction.<sup>22</sup>

2.30 Conversely, the Department maintained that the introduction of SMCs for facilities that are ‘over-performing on their individual emissions limit’ will encourage facilities to maximise ‘low-cost abatement opportunities’, where they are available:

Many businesses that operate facilities covered by the Safeguard Mechanism have made long-term climate commitments that match or surpass Australia’s climate targets. The Safeguard reforms will provide a supportive policy framework for industry to meet these commitments, with the right signals to drive investments in emissions reductions, and flexibility so that businesses find the lowest cost abatement, wherever it occurs.<sup>23</sup>

2.31 The Department maintained that SMCs will not function as ‘carbon offsets’, as they exist within ‘a regulated emissions limit, which constrains the overall

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<sup>19</sup> Scope 1 greenhouse gas emissions are the emissions released to the atmosphere as a direct result of an activity, or series of activities at a facility level. Scope 1 emissions are sometimes referred to as direct emissions. Clean Energy Regulator, [Greenhouse gases and energy](#), 14 October 2022 (accessed 19 February 2023).

<sup>20</sup> ACCR, *Submission 7*, p. 4.

<sup>21</sup> Climate Council of Australia (Climate Council), *Submission 3*, pp. 8–9.

<sup>22</sup> EDO, *Submission 5*, p. 3.

<sup>23</sup> The Department, *Submission 8*, p. 2.



emissions of Safeguard participants'. Within that limit, baselines 'can be calibrated to meet the desired contribution to the 2030 target':

If one facility emits less than their baseline, they can sell a credit to another facility that emits more than its baseline. It is not necessary to know how or why a facility has reduced their emissions, or what its hypothetical business-as-usual emissions would have been.

This is a key benefit of the Safeguard Mechanism compared with an offsets scheme. It has lower administrative costs and risks—because there is no need to assess the 'additionality' of abatement at the project level.<sup>24</sup>

2.32 The Department also highlighted provisions in the bill designed to strengthen the *National Greenhouse and Energy Reporting Act 2007* (NGER Act) by including in the objects of the Act that aggregate emissions of Safeguard Mechanism facilities must 'decline' over time. This new, additional statutory objective would set boundaries for the making and operation of subordinate legislation, including the various methodologies, by which facilities' baselines 'decline predictably and gradually over time', encouraging businesses to find 'the lowest cost abatement'.<sup>25</sup>

### *Effectiveness and integrity of offsets*

2.33 A number of submitters argued that the reformed Safeguard Mechanism would be overly reliant on offsets, resulting in big emitters trading SMCs and purchasing ACCUs with no actual, lasting emissions reduction. Their concerns were two-fold:

- that the Safeguard Mechanism framework would allow 'unlimited' use of offsets, reducing the effectiveness of the Safeguard Mechanism to cut overall emissions; and
- that questions remain around the integrity of some carbon offset projects, which must be properly addressed.

### **Unlimited use of offsets**

2.34 A key feature of the bill is the establishment of SMCs, which would allow Safeguard facilities, to earn, 'bank' or trade SMCs. Under the proposed reforms, Safeguard facilities would be able to use the newly created SMCs—and would continue to have unlimited access to ACCUs—to offset above-baseline emissions.

2.35 Several submitters argued that unlimited access to offsets removes or weakens the incentive for Safeguard facilities to reduce their onsite emissions and risks broader decarbonisation objectives. For instance, the Australia Institute submitted:

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<sup>24</sup> The Department, *Submission 8*, p. 5.

<sup>25</sup> Item 1, Schedule 1 of the Safeguard Mechanism (Crediting) Amendment Bill 2022, as noted in the Department, *Submission 8*, p. 3.

Currently facilities have unconstrained access to offset their excess (above baseline) emissions with ACCUs. Such an approach does nothing to drive decarbonisation and risks undermining the emissions reduction goal as there is strong evidence that most ACCUs do not represent real or additional abatement.<sup>26</sup>

2.36 The ACF argued that ACCUs were ‘intended as a last resort for hard-to-abate industries’, and suggested that the proposed Safeguard Reforms should limit the use of ACCUs to meet facilities’ baseline requirements.<sup>27</sup>

2.37 CANA argued that, rather than being a ‘last resort’ for unavoidable emissions, ACCUs are currently ‘the first and only thing’ many big emitters are doing. It suggested the reforms should establish a ‘hierarchy’ of offsets, requiring facilities to use SMCs first—‘given their higher integrity and more direct equivalence in emissions reduction’—before being allowed to access ACCUs.<sup>28</sup> This suggestion was echoed by other organisations, including the ACF, which said:

...to be successful the Safeguard Mechanism must result in real, lasting, on-site emissions reduction, not rely heavily upon [ACCUs...which may be] used to enable new coal and gas developments that will release enormous amounts of greenhouse pollution for years to come.<sup>29</sup>

2.38 The ACCR noted that, under the now repealed *Clean Energy Act 2011*, offsets were limited to five per cent ‘of a liable entities’ obligation’, and ‘there does not appear to have been any considered rationale for changing this limit’. The ACCR proposed this limit be reinstated as part of the reform process, noting that unlimited access to offsets over the long term ‘allows facilities to invest in high-emissions, long-life equipment that cannot be readily decarbonised later’.<sup>30</sup>

2.39 The Climate Council was concerned that the low price of ACCUs will provide an incentive for the largest emitters to keep buying ACCUs to comply with the new requirements:

With the spot price for ACCUs sitting at approximately \$37 a unit in January 2023, fully offsetting Safeguard Mechanism liabilities with ACCUs would likely be considerably cheaper for facilities than undertaking genuine business transformation, particularly in the short term.<sup>31</sup>

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<sup>26</sup> Australia Institute, *Submission 18*, Attachment 1 (*Safeguarding fossil fuels: Submission to the Safeguard Mechanism Reforms Consultation paper*), p. 4.

<sup>27</sup> ACF, *Submission 2*, p. 2.

<sup>28</sup> CANA, *Submission 17*, p. 2.

<sup>29</sup> ACF, *Submission 2*, p. 2. See also, for example, EDO, *Submission 5*, p. 3.

<sup>30</sup> ACCR, *Submission 7*, pp. 7–8.

<sup>31</sup> Climate Council, *Submission 3*, p. 8.

- 2.40 Ms Polly Hemming, Director of the Climate and Energy Program at the Australia Institute, spoke of the need to place a limit on a crediting system:

I think a quantitative limit or even a qualitative limit would actually drive more decarbonisation, because it just makes offsets less available. That's going to lead to probably the price increasing and scarcity, if we improve the integrity, then that would leave the people that really wanted to buy offsets as where the majority of demand was coming from. I don't understand the mentality behind unfettered offsets, because ultimately the government is not going to be able to meet its 43 per cent reduction target if it just continues to allow that supply to infinitely increase.<sup>32</sup>

- 2.41 Chapter 3 discusses the importance of offsets for business and industry, particularly how the crediting arrangements will assist in the decarbonisation transition, while emissions reduction technology becomes more widely available, affordable and effective.

### **The integrity of offsets**

- 2.42 Some submitters were concerned that the proposed reforms to the Safeguard Mechanism do not address perceived failings with existing ACCU arrangements, including areas identified for improvement by the Independent Review of Australian Carbon Credits led by Professor Ian Chubb (Chubb Review).<sup>33</sup>

- 2.43 Mr Tim Reed, President of the BCA, noted the importance of integrity to the success of the Safeguard Mechanism:

We think that integrity and transparency are fundamental to markets operating effectively and efficiently and serving the community in the way in which they're designed. So, for us, in any new market that forms, there are always periods through which integrity gets lifted and transparency gets lifted, and we are strong supporters of high levels of integrity and transparency.<sup>34</sup>

- 2.44 However, a number of stakeholders felt that the current approach was in need of reform, to ensure both integrity of offset system, and to restore the trust of participants in it.
- 2.45 For example, the Australian National University and the University of New South Wales, Canberra Emissions Reduction Fund (ERF) research team (ANU-UNSW ERF research team) expressed concern that, even after any initial reforms currently being considered, the Safeguard Mechanism would allow 'unfettered access' to ACCUs, despite 'significant unresolved integrity issues with existing offset projects'. Specifically, the team suggested existing offset

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<sup>32</sup> Ms Polly Hemming, Director of the Climate and Energy Program of the Australia Institute, *Committee Hansard*, 27 February 2023, p. 36.

<sup>33</sup> See chapter 1 for a discussion of the Chubb review and its recommendations.

<sup>34</sup> Mr Tim Reed, President, BCA, *Committee Hansard*, 28 February 2023, p. 31.

projects that lacked integrity would continue to be allowed, ‘significantly and adversely’ affecting the ability of the Safeguard Mechanism to reduce Australia’s emissions.<sup>35</sup>

2.46 Members of the ANU-UNSW ERF research team highlighted more specific concerns, particularly on the Human Induced Regeneration (HIR) method, which they explained accounts for approximately 30 per cent of credits used to date, and is forecast to increase to approximately 50 per cent in the next few years. Professor Andrew Macintosh of the Australian National University noted that the ‘vast majority’ of these units do not actually correspond to genuine abatement. It was argued that more transparency around the HIR method, including the release of the carbon estimation areas data that underpin them—as recommended by the Chubb Review—would be an important step in assuring integrity of these credits.<sup>36</sup>

2.47 Similarly, the Australia Institute was sceptical about the value and integrity of certain forms of offsets, arguing that international credits should be excluded, alongside land-based credits, which ‘are often very low-integrity’. On the difference between SMC and ACCU integrity, Dr Richard Denniss noted:

...The idea, for example, that two ACCUs might be required to do the work of one safeguard mechanism credit—or some form of exchange rate—would make a lot of sense. To treat them on parity would be to assume their integrity is similar, and there is no evidence to support that.<sup>37</sup>

2.48 LGA noted that, while the Chubb Review found that the governance of the ACCU framework was ‘essentially sound’, this does not mean that ACCUs are effective, as ‘the science and on-the-ground use of ACCU methods’ was outside the scope of the review.<sup>38</sup> DEA expressed similar concerns:

Many of the activities awarded ACCU certificates have been found to be invalid on the grounds that they did not actually occur, would have occurred anyway, or are not permanent. The recent Chubb review has not fully addressed these concerns. If we cannot be certain of offsets created in Australia, there are even less grounds for confidence in offsets from overseas. Once the validity of Australian ACCU is re-established, they

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<sup>35</sup> Australian National University (ANU) and the University of New South Wales, Canberra (UNSW) Emissions Reduction Fund (ERF) research team (ANU-UNSW ERF research team), *Submission 28*, p. 1.

<sup>36</sup> Professor Andrew Macintosh, ANU-UNSW ERF research team, and Dr Don Butler, Private Capacity, *Committee Hansard*, 27 February 2023, pp. 52–53.

<sup>37</sup> Ms Polly Hemming, Director, Climate and Energy Program, and Dr Richard Denniss, Executive Director, The Australia Institute, *Committee Hansard*, 27 February 2023, p. 38. The committee received evidence on a potential ‘hierarchy’ of credit units that could be used for offsetting emissions, which is discussed in the following chapter.

<sup>38</sup> LGA, *Submission 25*, p. 5.

should be allowed to be used only in a limited capacity—for instance, to offset an aggregate maximum of 1 year’s change.<sup>39</sup>

2.49 A submission from Climate Friendly, a company that provides extension services to support land-based carbon farming and nature repair projects, provided evidence on the ‘critical importance of land sector carbon draw down’. Climate Friendly endorsed the Chubb Review’s main finding that the ACCU arrangements were essentially sound, as well as its recommendations. Climate Friendly also suggested some of the evidence received by the committee on carbon estimation areas did not account for the potential complexity of data and for the ACCU methods, including that:

- carbon estimation areas ‘are not simply lines or boundaries’, but sophisticated data sets that must be used by specialists in spatial data processing; and
- valid assessments of project impact must use consistent datasets, including by source (ie there are differences between CER and publicly available data sets), quality of data and imagery of project areas, consistency across time (not based on a single year), and used in association with other datasets showing human suppression of regeneration and changes in management after the start of a project.<sup>40</sup>

2.50 Carbon Friendly concluded that:

Misinformation around the integrity of human-induced regeneration projects, Australian carbon farming projects generally, and Australian Carbon Credit Units (ACCU), risks derailing crucial efforts to decarbonise the land sector at a time when urgent action is needed to limit climate change and halt catastrophic biodiversity loss.<sup>41</sup>

2.51 Professor Chubb made a submission to the inquiry, which responded to some of the evidence about the Review received at the hearing:

It is important to note that the Panel was not asked to review individual projects. That we did not, I infer, has been represented as either dereliction of our responsibility, or something more base. It was neither. It was out of scope.

Review and administration of individual projects is the role of the Clean Energy Regulator (CER) and its independent auditors. Our Review was not an audit of the CER.

Nevertheless, the Panel had access to confidential data about projects that demonstrate they are administered in a way that should deliver genuine and additional abatement.

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<sup>39</sup> DEA, *Submission 4*, p. 4.

<sup>40</sup> Carbon Friendly, *Submission 32*, pp. 2–3.

<sup>41</sup> Carbon Friendly, *Submission 32*, p. 7.

We also invited the CER to spell out its compliance tools, powers and processes, including the extensive up-front checks for ACCU scheme participants and projects prior to registration.

We noted that the CER can withhold or require relinquishment of credits, require remedial action or revoke projects on a case-by-case basis. ACCU issuance can be adjusted through the life of the project to address any concerns about over-crediting.<sup>42</sup>

- 2.52 Ms Edwina Johnson, the Branch Head of the Safeguard Taskforce for the Department, assured the committee that, even though the work on Chubb Review recommendations was ongoing, the Department considered that the system had integrity:

...we do think the use of ACCUs is an important element of the safeguard mechanism, in terms of providing those options for facilities for which onsite technology may not be available at a particular time. And...the government has accepted the recommendations of the Chubb review in principle and is working to implement those. So, in that light, we're comfortable that a tonne of emission sequestered or avoided in the form of ACCUs is the same as a tonne of onsite abatement in a safeguard facility. So, in that sense, we're comfortable that the entire system has integrity.<sup>43</sup>

- 2.53 Ms Shayleen Thompson, Executive General Manager of the Clean Energy Regulator (CER), outlined more specific actions that had been taken to progress the Chubb Review recommendations:

...the Chubb review did find that the [Human Induced Regeneration] method is sound and meets the offsets integrity standards and, importantly, is administered by a robust regulatory framework. It did recommend some improvements, and I think it's fair to say they are mainly focused on looking at the evidence for implementing the method to make sure that the abatement is robust. So [as other Departmental evidence has stated] we have started the administrative work to implement that Chubb recommendation, and we're developing an approach that will build on our very careful assessment of project registration and the issuance of ACCUs under the method.<sup>44</sup>

- 2.54 The committee notes that a key recommendation of the Chubb Review was aimed at addressing an identified lack of transparency in offsets, particularly the inability to access carbon estimation areas of projects, which are used to calculate the carbon abatement of projects and to issue ACCUs to determine if carbon is actually being stored.<sup>45</sup> Recommendation 4 stated:

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<sup>42</sup> Emeritus Professor Ian Chubb, *Submission 34*, p. 1.

<sup>43</sup> Ms Edwina Johnson, Branch Head, Safeguard Taskforce, the Department, *Committee Hansard*, 28 February 2023, p. 58.

<sup>44</sup> Ms Shayleen Thompson, Executive General Manager, CER, *Committee Hansard*, 28 February 2023, p. 54.

<sup>45</sup> For more detail on the definition and use of carbon estimation areas see the Clean Energy Regulator, [Aggregated carbon estimation area data](#), 5 August 2022 (accessed 22 February 2023).

Provisions in the governing legislation should be amended to maximise transparency, data access and data sharing, while enabling protection of privacy and commercial-in-confidence information, to support greater public trust and confidence in scheme arrangements.

The default should be that data be made public, including carbon estimation areas.<sup>46</sup>

- 2.55 A key finding of the Chubb review was that the existing disclosure constraints do not promote transparency:

Current restrictions on data sharing and disclosure in the scheme's governing legislation go further than required to protect privacy and commercial-in-confidence information, and the blanket nature of these restrictions is undermining transparency, trust and confidence in the scheme.

More transparent data and information sharing arrangements would enable communities and carbon market stakeholders to assess, understand and manage potential project impacts and opportunities more effectively.<sup>47</sup>

- 2.56 Mr David Parker, Chief Executive Officer of the CER, told the committee that he was strongly in favour of releasing data relating to carbon estimation areas, but was limited by legislative constraints:

There is a broad prohibition in the legislation which prevents us disclosing so-called protected information, and that is effectively information provided by project proponents and other participants in the schemes... I have said publicly previously that I think it would be desirable to change that law to allow that information to be put into the public domain [as recommended in the Chubb Review]. The reason for that is that that law is a significant constraint on transparency.<sup>48</sup>

- 2.57 Mr Parker took on notice whether he could provide the carbon estimation areas to the committee.<sup>49</sup>

- 2.58 Following the hearing, Mr Parker confirmed that he had 'sought external legal advice on this matter and can confirm that a request by the committee under Parliamentary privilege does provide a lawful reason for the CER to release information to the Committee.'<sup>50</sup>

- 2.59 Mr Parker noted that CER staff have already commenced compiling the data for the committee. He qualified that, as the task involved a large amount of fine-grained data, it was not possible to complete the compilation and

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<sup>46</sup> Chubb Review, [Executive Summary](#), Recommendation 4.

<sup>47</sup> Chubb Review, [Executive Summary](#), p. 4.

<sup>48</sup> Mr David Parker, Chief Executive Officer, CER, *Committee Hansard*, 28 February 2023, p. 68.

<sup>49</sup> Mr David Parker, Chief Executive Officer, CER, *Committee Hansard*, 28 February 2023, p. 68.

<sup>50</sup> Mr David Parker, Chief Executive Officer, CER, Answers to question on notice from Senator Hanson-Young – 28 February 2023 (received 2 March 2023) p. 1.

checking task by the due date for answers to question on notice of 2 March 2023.<sup>51</sup>

- 2.60 The committee secretariat will liaise with the CER to determine the most effective and timely way to publish the carbon estimation area data. The data will be published on the [committee's website](#).

### *Cost containment measure*

- 2.61 The committee received evidence on the proposed cost containment measure outlined in the Government's January 2023 *Safeguard Mechanism Position Paper*. The measure was described as follows:

The Government will introduce a cost containment measure by selling Government-held ACCUs to give businesses certainty about maximum compliance costs. Any funds received from the sale of ACCUs would be used to support additional decarbonisation. An effective price ceiling would be created by making ACCUs available for purchase by facilities that need them for compliance at \$75 per tonne of CO<sub>2</sub>-e in 2023-24, increasing with the CPI plus 2 per cent each year. The cost containment measure will be reviewed in 2026-27.

Flexible compliance arrangements allow facilities to meet their baselines through a combination of on-site and external emission reductions. We expect that between 2024 and 2030, there could be significant opportunities for on-site emission reductions through incremental efficiency improvements and new large-scale technologies. While there is some uncertainty around technological developments and their associated costs, the pace of technological innovation and adoption is expected to gain momentum to 2030, driven by strong incentives provided by the Safeguard reforms as well as external global drivers.

For the remaining abatement task, a sufficient supply of SMCs and ACCUs is expected to be available to meet Safeguard demand, with Safeguard crediting, existing ACCU projects and new ACCU projects all expected to contribute to a growing, liquid market, supporting price stability.<sup>52</sup>

- 2.62 Professor Macintosh, a member of the ANU-UNSW ERF research team, argued that this system of a capped price could be replaced by a penalty mechanism, which would remove the complexity of the current proposal, as well as financial risk to the Commonwealth should the market drive prices upwards:

Every other scheme that I know of has a simple penalty price, and we've always had it under all the schemes that we've run in Australia. Once you hit that price, you can either surrender ACCUs if you want to, or you can simply pay the penalty price.

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<sup>51</sup> Mr David Parker, Chief Executive Officer, CER, Answers to question on notice from Senator Hanson-Young – 28 February 2023 (received 2 March 2023) p. 1.

<sup>52</sup> The Department, [Safeguard Mechanism Reforms, Position Paper](#), January 2023, pp. 4. See also pp. 39–40.



The beauty of that is that, administratively, it's so simple. But, most importantly, it doesn't expose the Commonwealth to a liability. My big concern about that, from an economic perspective, is that if prices get to \$75 then everybody who's currently under contract to the Commonwealth would have broken.<sup>53</sup>

2.63 Others noted that the \$75 plus CPI plus 2 per cent price was higher than they had forecast. Dr Denniss of the Australia Institute commented that the price seemed 'quite high'.<sup>54</sup>

2.64 Ms Tania Constable of the Minerals Council of Australia (MCA), was positive about the price containment mechanism, which the MCA had advocated for, to give industry certainty and to manage risk effectively.<sup>55</sup> On the price level, she commented that the sector had been working on the assumption for a \$24 figure, and so:

The \$75 is much higher than we thought it was going to be. We were relieved to see a cost containment measure in there. We were very relieved about that. But it is a high price, and we wouldn't like anyone to think that the \$75, plus an escalation that goes out to 2030...is not going to be a big task for the whole minerals industry.<sup>56</sup>

2.65 Some witnesses commented that the proposed approach means the Commonwealth is adopting risks from price volatility, rather than participants.<sup>57</sup>

2.66 Some investor groups expressed unease about the proposed arrangements, as a Commonwealth cost containment measure could distort the market. For instance, Mr John Connor, Chief Executive Officer of the Carbon Market Institute, commented that it's not currently clear what the taxpayer liability may be from this measure, and called for further clarification on the operation

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<sup>53</sup> Professor Andrew Macintosh, ANU-UNSW ERF research team, *Committee Hansard*, 27 February 2023, p. 58.

<sup>54</sup> Dr Richard Denniss, Executive Director, Australia Institute, *Committee Hansard*, 27 February 2023, p. 41.

<sup>55</sup> Ms Tania Constable, Chief Executive Officer, MCA, 28 February 2023, *Committee Hansard*, 27 February 2023, p. 3. See also the Department's evidence that confirmed that business and corporate entities, including the MCA, had sought a cost containment mechanism to give certainty for participants. Ms Edwina Johnson, Branch Head, Safeguard Mechanism Taskforce, The Department, *Estimates Hansard*, 28 February 2023, p. 73.

<sup>56</sup> Ms Tania Constable, Chief Executive Officer, MCA, 28 February 2023, *Committee Hansard*, 27 February 2023, p. 3.

<sup>57</sup> For example: Professor Andrew Macintosh, Australian National University, *Committee Hansard*, 27 February 2023, p. 58.

of the scheme, including the level of ACCUs held by the Government, and how the Government would purchase credit units.<sup>58</sup>

- 2.67 Ms Johnson of the Department emphasised that the proposed measure for cost containment was developed ‘in response to feedback from businesses seeking more certainty about the potential costs’. She continued:

So what is proposed is to give business that certainty that ACCUs will be available at that cost [of \$75 plus CPI and 2 per cent per annum to 2030]. Then the funding received from any sale—which, as I said, is only if needed, and our analysis suggests that there will likely be other ACCUs available at lower costs than that \$75—will be directed to source additional abatement, to ensure that Australia's targets are met.<sup>59</sup>

### *New entrants and coverage of the mechanism*

- 2.68 The Government’s Position Paper notes that without reform, new entrants to the scheme are projected to increase the 2030 abatement task significantly:

In the absence of the reforms, based on Australia’s Emissions Projections 2022, emissions from existing Safeguard facilities are projected to decline to 136 Mt in 2029-30. With new facilities included, Safeguard emissions are projected to grow to 146 Mt in 2029-30.<sup>60</sup>

- 2.69 The Position Paper also sets out the proposed treatment of new industrial facilities with emissions above 100 000 tonne of carbon dioxide equivalent (tCO<sub>2</sub>-e) per annum, including noting that:

New facilities have the opportunity to use the latest technology and build world’s best practice emissions performance into their design. Their baselines would be set at **international best practice**, adapted for an Australian context.<sup>61</sup>

- 2.70 Some stakeholders were concerned that the proposed Safeguard Mechanism reforms do not include sufficiently high standards for high-polluting new entrants, as discussed below. For many this included the sentiment that new coal and gas projects should be prohibited. Others disagreed with this perspective.

- 2.71 It was also argued that new entrants should be held to much higher standards than businesses currently in transition to decarbonise, given improvements in technology and the ability for them to build sustainable models into their planning and development.

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<sup>58</sup> Mr John Connor, Chief Executive Officer, Carbon Market Institute, *Committee Hansard*, 28 February 2023, p. 23.

<sup>59</sup> Ms Edwina Johnson, Branch Head, Safeguard Mechanism Taskforce, The Department, *Committee Hansard*, 28 February 2023, p. 48.

<sup>60</sup> The Department, *Safeguard Mechanism Reforms: Position Paper*, January 2023, p. 50.

<sup>61</sup> The Department, *Safeguard Mechanism Reforms: Position Paper*, January 2023, p. 2. Emphasis in original.

### Conditions for new entrants, including coal and gas projects

2.72 The EDO argued that the bill ‘misses the opportunity to regulate new entrants’, and recommended that facilities joining the Safeguard Mechanism framework after 1 July 2023 ‘may only surrender SMCs for the purpose of reducing their net emissions, with provision for the Minister to make exceptions for hard-to-abate industries such as steel and cement’.<sup>62</sup>

2.73 Some submitters argued that the Safeguard Mechanism should exclude or make abatement costs prohibitive for new fossil fuel projects, particularly coal and gas. For example, the Climate Council focussed on more stringent conditions for new fossil fuel enterprises that may enter the scheme, by requiring that:

Any new coal, oil and gas facilities entering the Safeguard Mechanism after 1 July 2023 will be required to meet their baselines without the use of ACCUs—i.e. using only a combination of best-practice technologies and SMCs.<sup>63</sup>

2.74 It was noted by some submitters that the International Energy Agency (IEA) has made clear that allowing any new coal and gas projects globally is inconsistent with achieving net-zero by 2050.<sup>64</sup>

2.75 In a Safeguard Mechanism context, the Australia Institute noted that allowing new coal and gas projects to participate would potentially increase the burden on other parts of the economy that were already reducing emissions, creating a situation where:

...the carbon budget [under the mechanism] must either be shared amongst a larger number of facilities (forcing steeper and more expensive emissions reduction requirements on existing facilities) or greater emissions reduction efforts will be needed from other sectors of the economy.<sup>65</sup>

2.76 The ACCR noted that the proposed Safeguard Mechanism reform would not sufficiently deter new fossil fuel projects, unless more substantial changes were considered:

Australia needs to consciously manage emissions from fossil fuel projects. A logical first step is to focus on the approval of projects to develop new fossil fuels, which would be ‘new entrants’ in Safeguard Mechanism parlance. While acknowledging that the Safeguard Mechanism has a role

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<sup>62</sup> EDO, *Submission 5*, pp. 3 and 5.

<sup>63</sup> Climate Council, *Submission 3*, pp. 5 and 10. See also similar views expressed by: ACF, *Submission 2*, p. 3; DEA, *Submission 4*, p. 3; ACCR, *Submission 7*, p. 3; and Australia Institute, *Submission 18*, p. 1.

<sup>64</sup> For instance, see EDO, *Submission 5*, p. 7, citing the International Energy Agency (IEA), *Net Zero by 2050: A Roadmap for the Global Energy Sector* (October 2021).

<sup>65</sup> Australia Institute, *Submission 18*, Attachment 1 (*Safeguarding fossil fuels: Submission to the Safeguard Mechanism Reforms Consultation paper*), p. 3.

influencing the business case of a new entrant, it only deals with scope 1 emissions, which are typically a small portion of the lifecycle emissions of a fossil fuel development. As such the Safeguard Mechanism is unlikely to place a significant constraint on fossil fuel new entrants without much more substantial changes than are currently being considered.<sup>66</sup>

- 2.77 Others disagreed with this perspective. For example, the AWU and MEU noted Australia's high quality natural resources could reduce emissions per unit of electricity generated, when compared to the use of products produced by our export competitors. The joint AWU-MEU submission recommended that ACCUs and SMCs 'should be available for use by all safeguard facilities, including fossil fuel facilities' entering the scheme.<sup>67</sup>

### Scope of the mechanism

- 2.78 On coverage, the DEA considered the scheme should be a 'one-way street', in which 'facilities do not leave the scheme when emissions drop below the threshold' of 100 000 tCO<sub>2</sub>-e per annum. Instead, it suggested:

The threshold for new entrants should be lower to avoid gaming. Under current proposals, two adjoining projects each of 90,000 tonnes annual emissions would not be covered by the scheme, so the new entrant threshold should be 25,000 tonnes, and the scheme threshold should decrease each five years to increase coverage across the economy'.<sup>68</sup>

- 2.79 The EDO noted most new entrants would have the advantage of the latest technology and clear legislative guidance as their enterprise is planned, so:

It is therefore reasonable, and equitable, that expectations of emissions reductions by new entrants are higher than of facilities who must restructure existing operations.<sup>69</sup>

- 2.80 The CMI suggested that enterprises that were under the threshold could be allowed to voluntarily opt-in to the scheme, and generate SMCs. It was argued that this could increase SMC supply for hard-to-abate industries, and could 'test the potential for dropping the 100 000 tCO<sub>2</sub>-e threshold for mandatory inclusion in future phases of the enhanced Safeguard Mechanism'.<sup>70</sup>

- 2.81 Dr Denniss of the Australia Institute suggested that the Safeguard Mechanism places no obligations on some easy-to-abate sectors, while applying to more difficult-to-abate sectors:

...the safeguard mechanism really places no obligation on anyone in the transport sector to reduce emissions. There are no obligations to reduce

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<sup>66</sup> ACCR, *Submission 7*, p. 3.

<sup>67</sup> AWU and MEU, *Submission 22*, pp. 6–7.

<sup>68</sup> DEA, *Submission 4*, p. 4.

<sup>69</sup> EDO, *Submission 5*, pp. 11–12. See also ACCR, *Submission 7*, p. 9.

<sup>70</sup> CMI, *Submission 20*, p. 6.

emissions in the electricity sector. There are no obligations in the household sector. These are the easy-to-abate parts of the economy.<sup>71</sup>

### The reserve capacity

2.82 The Government has proposed that a 'reserve' capacity be built into the Safeguard Mechanism, which will apply to all Safeguard Mechanism facilities.

The Position Paper outlines the purpose of this proposal as follows:

The reserve will have the effect of 'holding back' some of the emissions budget to take account of uncertainty about:

- the volume of baselines for new facilities that come on-line before 2030;
- the possibility that production growth is higher than expected at existing facilities; and
- the level of differential decline rates for emissions-intensive, trade exposed facilities...<sup>72</sup>

2.83 Some evidence suggested that this will allow new entrants to come into the scheme and force tighter baselines on existing facilities. For example, LGA's submission argued the reserve capacity meant that:

...existing facilities are required to cut emissions more intensely than they would otherwise because the Government is willing to allow more coal and gas projects to come online.<sup>73</sup>

2.84 It was argued that this could jeopardise the Government's 2030 targets, should a significant number of new entrants emerge. Risk could particularly come from the entry of fossil fuel proponents allowed to enter the scheme, which would increase Australia's net greenhouse gas emissions.<sup>74</sup>

2.85 As a consequence, the task for other sectors already working to reduce emissions could be made more difficult. For example LGA submitted:

Other sectors (like manufacturing, agriculture, healthcare) will be required to shoulder the burden of these increased emissions, despite having a far more important and irreplaceable role in a clean economy than fossil fuels, and far more viable decarbonisation options (fossil fuels being uniquely, unavoidably polluting).<sup>75</sup>

2.86 Ms Alison Reeve, the Deputy Program Director, Energy and Climate Change at the Grattan Institute, highlighted the difficulties of defining a reserve capacity in law. She saw potential benefits to requiring the CER to publish

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<sup>71</sup> Dr Richard Denniss, Executive Director, Australia Institute, *Committee Hansard*, 27 February 2023, p. 35.

<sup>72</sup> The Department, *Safeguard Mechanism Reforms, Position Paper*, January 2023, p. 19.

<sup>73</sup> LGA, *Submission 25*, pp. 3–4.

<sup>74</sup> For example: Australia Institute, *Submission 18*, , Attachment 1 (*Safeguarding fossil fuels: Submission to the Safeguard Mechanism Reforms Consultation paper*), p. 3; LGA, *Submission 25*, pp. 3–4.

<sup>75</sup> LGA, *Submission 25*, p. 4.

certain data for tracking remaining capacity in the system, to ensure transparency in the level of the Safeguard Mechanism reserve:

Given that the reserve is playing several roles—it's covering new projects and it's also providing the concessional baseline to the trade-exposed industries—you might lose some of the flexibility to do arbitrage between those two things if you start defining exactly what the reserve is in law. But you could put down that the regulator has to publish, every year, how much of the safeguard budget has been consumed and how much remains, alongside the information of how much everyone's exactly measured, and then people can take one number off the other and see what the reserve is.<sup>76</sup>

### *Methane emissions*

2.87 Some stakeholders were concerned about Australian levels of methane emission, suggesting it is not sufficiently addressed in proposed Safeguard Mechanism reform.

2.88 Methane is one of the greenhouse gases included within the scope of the NGER Act and in the Paris Agreement.<sup>77</sup> At the hearing, Dr Sabina Assan, a Coal Mine Methane Analyst for energy think tank Ember, outlined why reducing methane emissions is so significant in addressing climate change:

Methane, if we look at it over a 20-year timescale, has around 82 times more global warming impact than CO<sub>2</sub>. It's really one of the gases for which, if we can start targeting it now, we're going to see reductions in global warming or climate change straight away, much faster than CO<sub>2</sub>, which has a lifetime of hundreds of years to decades. We also need to tackle CO<sub>2</sub>, but methane will give us a much faster response.<sup>78</sup>

2.89 According to IEA figures, Australia emitted 5544 kilotons of methane in 2022. While agriculture was the largest source of methane emissions, the energy sector contributed around 40 per cent of that total.<sup>79</sup> Methane makes up 26 per cent of Australia's national emissions inventory.<sup>80</sup>

2.90 According to a recent IEA report, sustained reduction of methane emissions is 'key to limiting near-term global warming and improving air quality'.<sup>81</sup> Additionally, the IEA has found that 'almost all' countries are under-reporting

<sup>76</sup> Ms Alison Reeve, Deputy Program Director, Energy and Climate Change, Grattan Institute, *Committee Hansard*, 27 February 2023, p. 14

<sup>77</sup> Ms Melanie Ford, Acting Head of Emissions Reduction Division, the Department, *Committee Hansard*, 28 February 2023, p. 49.

<sup>78</sup> Dr Sabina Assan, Coal Mine Methane Analyst, Ember, *Committee Hansard*, 27 February 2023, p. 3.

<sup>79</sup> IEA, [Global Methane Tracker](#) (accessed 28 February 2023).

<sup>80</sup> The Department, [Quarterly Update of Australia's National Greenhouse Gas Inventory: September 2022](#), p. 7.

<sup>81</sup> IEA, [Global Methane Tracker](#) (accessed 28 February 2023).

methane emissions by up to 70 per cent. This includes Australia, which IEA data suggests produced 2.23 million tonnes of methane from energy production in 2022, 63 per cent more than estimated by the Department.<sup>82</sup>

2.91 As noted earlier in this report, the Australian Government recently committed to the Global Methane Pledge, so to work collectively with 122 countries to reduce global methane emissions across all sectors by at least 30 per cent below 2020 levels by 2030.<sup>83</sup>

2.92 Nevertheless, a number of stakeholders raised concerns with the current level of Australia's industrial methane emissions, and argued this could be reduced through readily available onsite abatement, without the use of offsets.

2.93 Significant levels of Australia's methane emissions are produced by the coal, gas and oil sector as fugitive emissions. However, it was noted that this sector has generally not implemented methane abatement opportunities. For example, LGA submitted:

Technologies to reduce scope 1 emissions from coal, oil and gas production have been available for years, including capturing ventilation air methane, draining coal seams of methane pre-mining, and rigorous leak detection and repair regimes for oil and gas sites. The fossil fuel industry has mostly failed to implement these technologies in any meaningful way.<sup>84</sup>

2.94 It was noted that these technologies are relatively simple to implement, very accessible and low-cost for industry, and potentially profitable.<sup>85</sup> Consequentially, it was argued that there should be no provisions made for companies to offset methane emissions, in preference to onsite abatement. For example, Mx Reynolds, Ember's Climate Policy Advisor, told the committee:

In terms of policy levers, it's much more feasible to be directly mitigating and reducing methane in coalmines. As has been stated by both the Environmental Defense Fund and Ember in our reports, it is cost effective to mitigate at the source. Offsetting, from a policy perspective, should be the last resort in those very, very difficult to abate sectors. Coalmine methane does not fall into that category in our analysis.<sup>86</sup>

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<sup>82</sup> See the IEA, Global Methane Tracker's Australian data. See also Adam Morton, '[Methane from Australian coal and gas could be 60% higher than estimated](#)', *Guardian Online* (accessed 28 February 2023).

<sup>83</sup> The Hon Chris Bowen MP, Minister for Climate Change and Energy, [Australia joins Global Methane Pledge](#), Media Release, 23 October 2022 (accessed 28 February 2023).

<sup>84</sup> LGA, *Submission 25*, p. 7.

<sup>85</sup> For example: Mr Matt Watson, Vice President, Energy Transition, Environmental Defense Fund *Committee Hansard*, 27 February 2023, p. 4. This is also supported by IEA data for Australia published as part of its [Methane Tracker](#) (accessed 28 February 2023).

<sup>86</sup> Mx Annika Reynolds, Climate Policy Advisor, Ember, *Committee Hansard*, 27 February 2023, p. 5.

2.95 Moreover, it was suggested that offsets were not an effective mechanism to abate methane emissions. Mr Anatoli Launay-Smirnov, Coal Mine Methane Analyst for Ember, stated that:

CO<sub>2</sub> and methane are very different gases. Most offsets are carbon offsets, carbon dioxide offsets, and methane is a completely different gas that behaves differently. It has a much shorter lifetime. Cross-offsetting is meaningless, and you need to physically get rid of methane going into the atmosphere, rather than trying to find a CO<sub>2</sub> project. That [CO<sub>2</sub> abatement] has an impact over hundreds of years, whereas methane has an impact of almost immediately, so we would really advise against offsetting methane.<sup>87</sup>

2.96 Given this, some stakeholders recommended that methane-emitting industries could have a separate intensity target embedded in the reformed Safeguard Mechanism.<sup>88</sup>

2.97 Mr Daniel Zavattiero, General Manager–Climate and Energy for the MCA commented that their members report on methane, and that Australia was one of the few countries that reported on both open cut and underground coal mine emissions.<sup>89</sup> He commented that Australia’s emissions per tonne of coal was relatively low compared to eight key coalmining regions.<sup>90</sup> However, the MCA also conceded that the IEA report had shown discrepancies, and that the industry was attempting to understand the rates and impacts of emissions—as well as working towards development of mitigation technologies.<sup>91</sup>

2.98 The Department told the committee that the collection of methane emissions data is through the National Greenhouse and Energy Reporting scheme, which ‘requires very robust and detailed facility-level emissions estimates to be undertaken by those reporters that meet the threshold’.<sup>92</sup> However,

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<sup>87</sup> Mr Anatoli Launay-Smirnov, Coal Mine Methane Analyst, Ember, *Committee Hansard*, 27 February 2023, p. 5.

<sup>88</sup> For example, Mr Watson of the EDF, and Mr Launay-Simonov and Mx Reynolds of Ember, *Committee Hansard*, 27 February 2023, p. 5.

<sup>89</sup> Noting that underground emissions use point source monitoring, whereas some open cut mines use an emissions factor methodology, i.e. an estimation of emissions rather than direct monitoring (with more than half of open cut mines using a higher order method). See guidelines on methods 2 and 3 in ACARP, [Guidelines for the Implementation of NGER Method 2 or 3 for Open Cut Coal Mine Fugitive GHG Emissions Reporting \(C20005\) and Technical Discussion of the Implementation of NGER Method 2 or 3 for Open Cut Coal Mine Fugitive GHG Emissions Reporting \(C20005A\)](#) (accessed 2 March 2023).

<sup>90</sup> Mr Daniel Zavattiero, General Manager–Climate and Energy, MCA, *Committee Hansard*, 28 February 2023, p. 7.

<sup>91</sup> Mr Daniel Zavattiero, General Manager–Climate and Energy, MCA; and Ms Tania Constable, Chief Executive Officer, MCA, *Committee Hansard*, 28 February 2023, pp. 7–8.

<sup>92</sup> Ms Melanie Ford, Acting Head of Emissions Reduction Division, the Department, *Committee Hansard*, 28 February 2023, p. 49.



Ms Wardlaw of the CER, which holds this data, informed the committee that the legislation stipulating reporting of data also prohibits its disclosure:

There are secrecy provisions that we're covered by, for the data that's collected, which then allow, in specific circumstances, for us to disclose information, which is what we publish annually. Beyond that, we're not able to, without breaching our own data secrecy provisions.<sup>93</sup>

### **Concerns raised by business, industry and resources sectors**

2.99 As discussed earlier in this report, there was broad support for general reform of the Safeguard Mechanism and the bill's provisions across business, industry, and resources sectors. However, there were also a range of concerns raised about the potential effects of the Safeguard Mechanism reforms.

2.100 Some stakeholders highlighted potential difficulties for some businesses to comply with lowered emissions baselines, and advocated for flexibility in compliance arrangements. For example, the BCA noted that some of its constituents would find it challenging to achieve a 'proportional share of Australia's 2030 [Nationally Determined Contribution (NDC) of a 43 per cent reduction on 2005 levels]' and that the:

...inclusion of flexible compliance arrangements—such as the use of Safeguard Mechanism Credits, Australia Carbon Credit Units, Multi Year Monitoring Periods and Banking and Borrowing—is absolutely crucial to providing flexibility and driving least cost abatement across businesses covered by the Safeguard Mechanism (as a group).<sup>94</sup>

2.101 The Australian Aluminium Council noted that some of the sector it represents did not yet have access to developing technologies for emissions reduction, which meant that SMCs would be important for emissions reduction and compliance when the mechanism 'transitions to a declining baseline scheme'.<sup>95</sup>

2.102 It was noted that there was still some uncertainty on the effects of the proposed Safeguard Mechanism reforms from some sectors and companies. For example, the MCA noted there was still some uncertainty for the resources sector without a confirmed crediting and trading system as proposed in the bill, as this was an important component of wider reforms, and much of the relevant detail would be introduced by subordinate regulation.<sup>96</sup>

2.103 Other sectors also suggested there was some uncertainty around the implementation of the proposed reforms. For example, the Australian Forest Products Association, the peak national industry body representing the Australian forest, wood and paper products industry, submitted that its

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<sup>93</sup> Ms Jane Wardlaw, General Manager, CER, *Committee Hansard*, 28 February 2023, p. 50.

<sup>94</sup> BCA, *Submission 12*, p. 1.

<sup>95</sup> Australian Aluminium Council, *Submission 15*, p. 6.

<sup>96</sup> MCA, *Submission 6*, p. 1.

affected members were still unclear what would happen when facilities fell below the 100 000 tCO<sub>2</sub>-e per annum emission threshold. Similarly, it expressed concern over the way in which ACCUs and SMCs would interact, and how increased demand for offsets would affect its members.<sup>97</sup>

2.104 On the potential interaction of the proposed Safeguard Mechanism reforms with business and industry, the Department noted in Senate Estimates that:

Safeguard reforms back in business's existing commitments. Most are already planning for or pricing in the transition to net zero. A broad coalition of business leaders and groups support the reforms, including [the Business Council of Australia (BCA)] and [the Australian Industry Group (Ai Group)]. Around 170 facilities covering over 80 per cent of safeguard facilities are already covered by corporate net zero commitments, and a third of publicly listed companies that own safeguard facilities use an internal carbon price for investment decisions, with over half of these using prices more than \$100 a tonne.

The proposed reforms have been carefully designed to moderate and mitigate cost impacts. The proposed hybrid approach to setting baselines moderates initial scheme impacts while encouraging production to occur where it's least emissions intensive, lowering overall economy-wide costs. There are also compliance options, including borrowing from a future year's baseline, multiyear monitoring periods, and the use of domestic offsets to help safeguard facilities meet their obligations at a lowest cost, and the government's also providing assistance, for example, through the \$600 million [available under the Safeguard Transformation Stream of] the \$1.9 billion Powering the Regions Fund to support decarbonisation activities at those particular facilities for emissions intensive trade exposed facilities.<sup>98</sup>

### *Carbon border adjustments to 'level the playing field'*

2.105 The committee also received evidence on the role of carbon border adjustment mechanisms (CBAM), as used in some jurisdictions such as the EU.<sup>99</sup> It was suggested that the local adoption of a CBAM could potentially 'level the playing field' for Australian business and industry, when competing with overseas entities with less rigorous climate requirements.

2.106 For example, Mr Daniel Walton, the National Secretary of the Australian Workers Union, spoke about 'a carbon border adjustment mechanism being extremely important', in order to make 'sure that there is a level playing field for Australian businesses if and when this legislation goes through'.<sup>100</sup>

<sup>97</sup> Australian Forest Products Association, *Submission 19*, p. 2.

<sup>98</sup> Ms Edwina Johnson, Branch Head, Safeguard Mechanism Taskforce, The Department, *Estimates Hansard*, 13 February 2023, p. 20.

<sup>99</sup> European Commission, [Carbon Border Adjustment Mechanism](#) (accessed 2 March 2023).

<sup>100</sup> Mr Daniel Walton, National Secretary, AWU, *Committee Hansard*, 28 February 2023, p. 27.

2.107 Mr Tennant Reed, the Director, Climate Change and Energy for the AiGroup, supported a CBAM, and endorsed Government consideration:

...while the proposed measures in the safeguard mechanism are quite effective in the near term in addressing risks of carbon leakage—we will need a more sustainable long-term approach to carbon leakage before too many years have elapsed. In our view, that approach could be an Australian carbon border adjustment mechanism. We welcome the fact that the government has committed to taking a look at long-term options, including a CBAM, though they have not committed to do a CBAM at this point.<sup>101</sup>

### *Deemed surrender*

2.108 The committee also heard some concerns from certain business and industry groups about the potential retrospectivity of deemed surrender arrangements contained in existing contracts for Government purchase of ACCUs.<sup>102</sup>

2.109 Orica explained that time-limited deemed surrender settings would enable entities with an approved ERF project and a Carbon Abatement Contract 'to sell ACCUs to the Commonwealth and retain the ability to count the associated emissions reductions towards the achievement of meeting the Safeguard Mechanism baseline'. Arguing that 'it does not constitute double-counting' of emissions reductions, Orica outlined its concerns as follows:

The government in its latest consultation on Safeguard Mechanism reform (released 10 January 2023) has stated an intention to retrospectively grandfather deemed surrender for two years, and then remove it altogether. Orica's contracts for the sale of ACCUs, entered in good faith, are for seven years. It is likely there are only a handful of entities with direct experience with this particular feature of the Scheme and who now find themselves facing retrospective changes.<sup>103</sup>

2.110 Chemistry Australia submitted that *all* registered ERF projects should be grandfathered 'for the entire duration of those contracts' in order to ensure the delivery of emissions reduction at Safeguard facilities.<sup>104</sup>

2.111 Recent departmental evidence at Senate Estimates suggests that deemed surrender was 'the double use of a single ACCU'. It was noted that the proposal canvassed in the January 2023 Position Paper currently being consulted on was to 'allow two years of deemed surrender to allow facilities to

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<sup>101</sup> Mr Tennant Reed, Director, Climate Change and Energy, AiGroup, 27 February 2023, p. 29.

<sup>102</sup> See Orica, *Submission 11*, p. 3; and Chemistry Australia, *Submission 14*, p. 2.

<sup>103</sup> Orica, *Submission 11*, p. 3.

<sup>104</sup> Chemistry Australia, *Submission 14*, p. 2.

readjust their circumstances but to cease the capacity to effectively use those ACCUs twice after two years'.<sup>105</sup> The Department continued:

...we wouldn't accept that that is a retrospective change. It's a prospect in the terms of the proposed arrangements for deemed surrender. The contractual arrangements surrounding Orica's obligations under the carbon abatement contracts are optional contracts, not fixed contracts. We're comfortable that there's nothing in the regulations that is problematic from that perspective. We propose that the two-year grandfathering provides that certainty, in a prospective way, to allow Orica to restructure its arrangements if it wishes to do so.<sup>106</sup>

2.112 The committee also notes that deemed surrender was identified as a problem by the Climate Change Authority in its 2018 Review of the NGER Act, which concluded that the Government should remove it so 'safeguard facilities only benefit once from the [ACCUs] they generate'.<sup>107</sup>

2.113 The phasing out of deemed surrender is subject to legislative rules, and is being considered in the current phase of Safeguard Mechanism reform consultation.<sup>108</sup>

### *Over-reliance on land-based offsets*

2.114 A number of stakeholders brought the committee's attention to concerns about the level of land-based offsets from the agricultural and forestry sectors.

2.115 The National Farmers' Federation noted that the bill would not raise direct concerns for the agricultural businesses or the sector, which do not fall within the current scope of the Safeguard Mechanism. However, it remained concerned about potential competing land uses—that the 'ratcheting' of the Safeguard Mechanism could lead to 'an intensified reliance and demand on [agricultural] offsets'. This could 'impact the ability for food and fibre production' and reduce incentives for large emitters to 'mitigate their emission as a principal response':

A market signal that requires multiples of ACCUs to be established or acquired for each tonne or surplus emission would refocus the need to innovate and mitigate rather than choose the low-cost option, such as

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<sup>105</sup> Ms Edwina Johnson, Branch Head, Safeguard Mechanism Taskforce, The Department, *Estimates Hansard*, 13 February 2023, p. 38.

<sup>106</sup> Ms Edwina Johnson, Branch Head, Safeguard Mechanism Taskforce, The Department, *Estimates Hansard*, 13 February 2023, p. 39.

<sup>107</sup> Climate Change Authority, [Review of the National Greenhouse and Energy Reporting Legislation](#), 21 December 2018, p. 11.

<sup>108</sup> The Department, [Safeguard Mechanism Reforms: Position Paper](#), January 2023 (accessed 21 February 2023), pp. 3 and 33.

vegetative offsets, that may create turbocharged competition for agricultural land.<sup>109</sup>

2.116 Farmers for Climate Action submitted that the proposed reforms do not go far enough to protect farmland from potentially being bought by large emitters to generate carbon offsets, posing a ‘significant risk’ to agricultural production:

Already we are seeing fossil fuel companies buying farmland to plant carbon crops. If this trend continues, it may have a devastating impact on land prices, rural communities and food security.<sup>110</sup>

2.117 Other submitters also noted similar concerns over what could happen if land currently being used for agriculture or landcare, became more sought-after following a potential increased demand for land-based offsets. For example, Mr Alex Hillman, Lead Analyst of the ACCR, told the committee:

What the safeguard mechanism does—as currently proposed, and as has been operating since 2017—is to couple the land sector and the industrial emissions sector and guarantee that reductions happen in one sector or the other. So, when a facility is above its baseline, it can make a choice about whether or not to invest to reduce its own emissions, or it can make a decision to invest in the land sector. We need to repair our land sector. We need to make sure that the carbon that was in that land sector is replaced. We also need to reduce emissions in the industrial sector. So, when the design of the safeguard mechanism allows a company to choose where that is allocated, it guarantees we only deliver one of those benefits, when we actually need both.<sup>111</sup>

2.118 The EDO noted that the proposed reforms would allow facilities to ‘rely completely on the purchase of [ACCUs] to meet greenhouse emissions reductions targets’:

There is a high risk that 70% of ACCUs derived from human-induced regeneration, landfill gas and avoided deforestation (which make up 75% of ACCUs in existence) do not represent real and additional emissions abatement... In any event, carbon offsetting in general is very rarely equivalent to real emissions reduction, for reasons including inherent uncertainties in the quantification of carbon offsets and the problem of permanence (e.g. forest fires can destroy allocated carbon sinks).<sup>112</sup>

2.119 The ACCR proposed that land sector abatement ‘should be reserved to sequester emissions from previous land sector degradation’.<sup>113</sup>

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<sup>109</sup> National Farmers’ Federation, *Submission 1*, p. 2.

<sup>110</sup> Farmers for Climate Action, *Submission 13*, p. 3.

<sup>111</sup> Mr Alex Hillman, Lead Analyst, ACCR, *Committee Hansard*, 27 February 2023, p. 67. Also see ACCR, *Submission 7*, pp. 7–8.

<sup>112</sup> EDO, *Submission 5*, p. 6.

<sup>113</sup> ACCR, *Submission 7*, pp. 7–8.

## Consultation on reforms

- 2.120 Some stakeholders noted the ongoing consultation processes around the proposed Safeguard Mechanism reforms.
- 2.121 It was recognised by some stakeholders that consultation should be ongoing, given that much of the detail of reform would be in regulations and policy, rather than in legislation. Some submitters felt that they already had been given good opportunity to inform the Government's reform agenda.<sup>114</sup>
- 2.122 Some suggested that consultation on Safeguard Mechanism reform could have been more comprehensive. For example, the Australia Institute was critical that the exposure draft for reforms to the Safeguard Mechanism was published before the Chubb review was completed, and before consultation with affected sectors had been finalised.<sup>115</sup>
- 2.123 However, other stakeholders actively welcomed the consultation processes undertaken by the Minister and the Department. The AWU-MEU joint submission suggested that consultation on the development of the bill and broader Safeguard Mechanism reforms was very important, considering their scope:

Each facility and each industry will be affected differently, and our unions are encouraged by the broad consultation that has been undertaken by the Government so far in the development of the bill and associated rules.<sup>116</sup>

## Committee view

- 2.124 This chapter has outlined the evidence received by the committee on the broad Safeguard Mechanism reforms that are currently being developed and consulted on by the Government.
- 2.125 Considering evidence relating to these broad reforms, the committee sees it as appropriate to make some initial recommendations, before considering specific provisions of the bill in greater detail in the following chapter.

### *Integrity of the ACCU system and Chubb Review recommendations*

- 2.126 The committee understands that many stakeholders are concerned about the integrity of certain offset methodologies, and the need to progress the Chubb Review recommendations for the reform of the ACCU system. This review was handed to Government in December 2022, and made public soon after, on 9 January 2023.

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<sup>114</sup> For example: EDO, *Submission 5*, p. 3; MCA, *Submission 6*, p. 1; AWU and MEU, *Submission 22*, p. 5.

<sup>115</sup> Australia Institute, *Submission 18*, Attachment 2 (*Trade with no cap: Submission to draft legislation for Safeguard Mechanism Credits*), p. ix.

<sup>116</sup> AWU and MEU, *Submission 22*, p. 5.

2.127 The Government has accepted in principle all 16 recommendations. Information provided by the Department outlined the work being undertaken to progress the reforms recommended by the review.

2.128 This includes work to improve the integrity of ACCU methods being undertaken by the Department and the CER through the implementation of the Chubb Review recommendation on:

- administering the HIR method with a greater emphasis on transparency, including the CER potentially publishing outcomes of project assessments with relevant privacy and confidentiality provisions;
- the revocation avoided deforestation method, ensuring that no new projects can register under that method; and
- landfill gas method baselines being adjusted 'during the lifetime of the project' with arrangements for early review and voluntary adjustment of baseline of existing projects.<sup>117</sup>

2.129 To ensure these and other reforms to the ACCU framework are embedded prior to the commencement of the Safeguard Mechanism reforms, the committee is of the view the implementation of the Chubb recommendations should be expedited.

### **Recommendation 1**

**2.130 The committee recommends that the Government and Clean Energy Regulator prioritise the implementation of the Chubb Review, including in relation to landfill gas, human induced regeneration methods and avoided deforestation.**

2.131 Recommendation 4 of the Chubb Review found that provisions in governing legislation should be amended to 'maximise transparency, data access and data sharing' (with appropriate protections) to 'support greater public trust and confidence in scheme arrangements.' This included that underlying data for carbon estimation areas should be made public.

2.132 The committee received evidence from academics, market participants and the regulator on the transparency constraints relating to carbon estimation areas for land-based ACCU projects.

2.133 The committee notes that the Government has accepted this Chubb Review recommendation in principle and the Chair of the CER told the committee directly that he strongly supports the release of this carbon estimation data, to provide increased transparency to the system.

2.134 The committee considers that the bill could be amended to expedite reform in this area.

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<sup>117</sup> Chubb Review, [Executive Summary](#), pp. 8–9, Recommendations 8, 9 and 10.

## Recommendation 2

**2.135 The committee recommends that the bill be amended to require the publication of carbon estimation areas of eligible offsets projects as recommended by the Chubb Review.**

### *New entrants*

2.136 The committee received evidence on new entrants to the system, in particular on potential requirements for new entrants, the potential adjustments of baselines, and the reserve capacity.

2.137 Noting that the consultation on the Government's Position Paper has not yet concluded, the committee considers that the Government should seek to further understand the impact of new entrants into the Safeguard Mechanism, and how this affects Australia's potential emissions rates and the achievement of our domestic and international commitments.

2.138 The committee sets out further views and a recommendation on new entrants in chapter 3.

### *Australia's methane emissions*

2.139 The committee notes the International Energy Agency's statement that the sustained reduction of methane emissions is 'key to limiting near-term global warming and improving air quality'.<sup>118</sup>

2.140 Moreover, as a participant in the Global Methane Pledge from October 2022, Australia has committed to working collaboratively internationally to reduce methane emissions by at least 30 per cent below 2020 levels by 2030.<sup>119</sup>

2.141 Questions were raised about the accuracy of Australia's current reported methane emissions, citing the findings of the recent IEA's Global Methane tracker.

2.142 Given the importance of the task and the challenge of our national commitment, the committee considers that the Government should undertake work to better understand the scale of Australia's methane emissions.

### *Carbon border adjustment mechanism*

2.143 Evidence presented to the committee suggested the Government should consider implementing a CBAM to 'level the playing field' for Australian businesses, when competing against overseas companies who do not have as stringent climate requirements to meet.

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<sup>118</sup> IEA, [Global Methane Tracker](#) (accessed 28 February 2023).

<sup>119</sup> The Hon Chris Bowen MP, Minister for Climate Change and Energy, [Australia joins Global Methane Pledge](#), Media Release, 23 October 2022 (accessed 28 February 2023).



2.144 The committee understands that the Government is currently looking into how to best prevent international carbon leakage risks, while maintaining Australia's reputation as a reliable and secure trading partner.<sup>120</sup>

2.145 The committee considers it appropriate that the Government's review explicitly examine the potential benefits and risks of a CBAM, which could potentially complement the proposed reform of the Safeguard Mechanism.

### **Recommendation 3**

**2.146 The committee recommends that the review into carbon leakage incorporates consideration of how a carbon border adjustment mechanism could complement reform of the Safeguard Mechanism.**

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<sup>120</sup> As announced by The Hon Chris Bowen MP, Minister for Climate Change and Energy, [Next steps to safeguard Australian industry and regions in net zero global economy](#), Media Release, 10 January 2023 (accessed 2 February 2023).



## Chapter 3

# Provisions of the bill

- 3.1 Having set out the broader context of the proposed reforms to the Safeguard Mechanism in the previous chapter, this chapter outlines stakeholder views on specific provisions of the Safeguard Mechanism (Crediting) Amendment Bill 2022 (the bill).
- 3.2 Most of the evidence received on specific provisions was from stakeholders who suggested the bill could be improved through a variety of proposed amendments. The following sections consider:
- the use of offsets under the Safeguard Mechanism;
  - amendments to the objects of the *National Greenhouse and Energy Reporting Act 2007* (NGER Act);
  - provisions relating to the coverage of the scheme and the treatment of new entrants;
  - provisions relating to ministerial discretion in Rule-making;
  - grandfathering of deemed surrender;
  - provisions around penalties for excess emissions and providing false or misleading information; and
  - requirements for reporting and transparency.
- 3.3 The chapter concludes with the committee's views on the bill.

### Use of offsets

#### *Unlimited use of Australian Carbon Credit Units*

- 3.4 In line with their view that 'good climate policy should be premised on a mitigation hierarchy', a number of environmental organisations proposed additional provisions to reduce the use of offsets under the Safeguard Mechanism.<sup>1</sup> In relation to the proposed amendments to the NGER Act the Climate Council of Australia (Climate Council) recommended:
- adding an amendment to the NGER Act to require facilities to report on emissions reduced through 'onsite projects', and/or investments and initiatives that will lead to 'genuine emissions reduction in future';
  - adding a requirement for facilities to 'surrender SMCs alongside [Australian Carbon Credit Units (ACCUs)] when doing so for the purpose of reducing net emissions'; and

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<sup>1</sup> Environmental Defenders Office (EDO), *Submission 5*, p. 8.

- 'expressly' including in the legislation that the Minister can use regulation to establish 'the total share of prescribed carbon units able to be surrendered against a facility's obligations'.<sup>2</sup>
- 3.5 These suggested amendments were echoed by other environmental groups.<sup>3</sup> The Climate Council argued these amendments would send 'a clear signal to industry that unlimited use of offsets will not be a permanent feature of the scheme'.<sup>4</sup>
- 3.6 The Australia Institute said placing a limit on the use of ACCUs 'would actually drive more decarbonisation', by making offsets 'less available', and leading to price increases and 'scarcity'. Climate and Energy Program Director, Ms Polly Hemming suggested allowing 'unfettered offsets' under the legislation could ultimately prevent Australia meeting its 43 per cent reduction target.<sup>5</sup>
- 3.7 The Environmental Defenders Office (EDO) said failing to insert 'a clear power' into the Act that would allow the Minister to place a cap on the use of ACCUs would result in a 'business as usual' situation, where 'real abatement' does not happen. The EDO referred to analysis it has conducted of overseas emissions trading schemes and 'the lessons learned in other jurisdictions', noting specifically:
- the use of offsets has been 'banned' in the European Union;
  - offsets were initially 'capped at 4.5 per cent' under the Swiss scheme, then banned from 2020;
  - offsets are now capped in New Zealand;
  - Korea's scheme caps offsets at five per cent, and Mexico's caps offsets at 10 per cent; and
  - the cap under the scheme in California was initially eight per cent, and has been 'ratcheted down to four per cent'.<sup>6</sup>
- 3.8 The EDO went on to state 'the only country' which allows facilities to use offsets to account for 100 per cent of its requirements is Kazakhstan:

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<sup>2</sup> Under Schedule 1, Part 1 of the bill. Climate Council of Australia (Climate Council), *Submission 3*, pp. 5–6.

<sup>3</sup> See the following submissions for similar recommendations: EDO, *Submission 5*, p. 5; National Environmental Law Association (NELA), *Submission 10*, pp. 3–5; Climate Action Network Australia (CANA), *Submission 17*, p. 2; Smart Energy Council, *Submission 24*, pp. 3–4.

<sup>4</sup> Climate Council, *Submission 3*, p. 12.

<sup>5</sup> Ms Polly Hemming, Director, Climate and Energy Program, The Australia Institute, *Committee Hansard*, 27 February 2023, p. 36.

<sup>6</sup> Ms Rachel Walmsley, Head of Policy and Law Reform, Environmental Defenders Office (EDO), *Committee Hansard*, 27 February 2023, pp. 62–63.

Without a ministerial power of some way to limit the use of offsets, we are not aligned with international best practice and, in reality, we're not going to achieve what we need to do domestically.<sup>7</sup>

- 3.9 Asked which other countries have schemes allowing unlimited use of offsets, the Department of Climate Change, Energy, the Environment and Water (the Department) said it understands that the Canadian province of British Columbia does not have a limit, and Alberta 'has a scheme where it has a limit of 60 per cent that it is increasing to 90 per cent'.<sup>8</sup> Provinces not covered by their own schemes apply Canada's federal Output-Based Pricing Scheme. That scheme allowed unlimited use of domestic offsets until 16 February 2023, at which point a new obligation was introduced requiring facilities 'that have an excess emissions situation [to] meet their compliance obligation with a minimum 25 per cent excess emissions payment'. The remainder can be offset.<sup>9</sup>
- 3.10 Ms Suzanne Harter from the Australian Conservation Foundation (ACF) suggested the conversation around the use of ACCUs did not need to be 'binary'; imposing 'strict limits' or allowing 'unfettered access'. The ACF proposed limits could be imposed by sector, or 'set on a percentage basis', or be 'phased in over time'. It was argued that such solutions would actively decrease the use of offsets, while carving out hard-to-abate industries.<sup>10</sup>
- 3.11 As an alternative to requiring facilities to surrender SMCs alongside ACCUs, the Climate Action Network Australia (CANA) recommended the bill be amended to require facilities to use SMCs first (before accessing ACCUs), 'given their higher integrity and more direct equivalence in emissions reduction'.<sup>11</sup>
- 3.12 Similarly, Ms Harter stated a hierarchy of abatement options should be implemented because SMCs are a 'more reliable, more genuine' option than ACCUs. This is because they 'exist within the safeguard' and keep emissions reductions in the scheme. In this way, SMCs provide 'an important signal' to encourage industry to reduce onsite emissions, including by investing in technology. The ACF was, however, concerned that SMCs are 'automatically generated' under the legislation:

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<sup>7</sup> Ms Rachel Walmsley, Head of Policy and Law Reform, EDO, *Committee Hansard*, 27 February 2023, pp. 62–63.

<sup>8</sup> Dr Peter Wood, Acting Manager, Safeguard Taskforce, Department of Climate Change, Energy, the Environment and Water (the Department), *Committee Hansard*, 28 February 2023, p. 70.

<sup>9</sup> The Department – Answers to questions on notice from Senators Hanson-Young and D Pocock – public hearing Canberra, 28 February 2023 (received 2 March 2023), [p. 3].

<sup>10</sup> Ms Suzanne Harter, Climate Change and Energy Policy Adviser, Australian Conservation Foundation (ACF), *Committee Hansard*, 27 February 2023, p. 43.

<sup>11</sup> Climate Action Network Australia (CANA), *Submission 17*, p. 2.

So, if the headroom that currently exists in the production-adjusted baselines isn't totally removed, we do have a bit of an issue there because they'll be generated for abatement that doesn't occur. But philosophically we do support the safeguard mechanism credits being part of the safeguard mechanism.<sup>12</sup>

- 3.13 On this issue, CANA argued a simple mechanism could be constructed which obliges facilities 'to look at the market, track the market for SMCs...before pursuing ACCUs'. Ms Harter added that facilities could be required to report 'steps that have been taken on site' to the Clean Energy Regulator (CER), and the regulator could audit these reports.<sup>13</sup>
- 3.14 The Government's *Safeguard Mechanism Reforms Position Paper* (Position Paper), released in January 2023, confirms that the current arrangements allowing Safeguard facilities to surrender unlimited ACCUs, 'as an alternative to reducing their on-site emissions', will remain unchanged. The position paper states that access to ACCUs allows businesses to achieve the 'lowest cost abatement outside the scheme',<sup>14</sup> and meets the Government's commitment to ensuring businesses have 'a range of options available to [support] scheme efficiency'. While it does not impose any limits on the use of ACCUs, the bill makes it possible for the Minister to make Rules limiting how facilities use ACCUs and SMCs in the future.<sup>15</sup>
- 3.15 The position paper also notes that the arrangements set out in the bill retain flexibility for businesses in how they reduce emissions, which helps to constrain compliance costs, while providing the legislative framework for further reductions in future.<sup>16</sup>
- 3.16 The Department suggested that, despite retaining access to ACCUs, there are:
- ...strong incentives under the Safeguard Mechanism for facilities to undertake emission reductions on-site, and for the industrial sector to decarbonise, even with the ability to surrender ACCUs to meet obligations.<sup>17</sup>
- 3.17 By establishing 'predictable and gradual baseline declines', the Department argued the reforms will incentivise facilities to 'bring forward implementation

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<sup>12</sup> Ms Suzanne Harter, Climate Change and Energy Policy Adviser, ACF, *Committee Hansard*, 27 February 2023, p. 50.

<sup>13</sup> Dr Barry Traill, Director, Solutions for Climate Australia, CANA, *Committee Hansard*, 27 February 2023, p. 48; Ms Suzanne Harter, Climate Change and Energy Policy Adviser, ACF, *Committee Hansard*, 27 February 2023, p. 48.

<sup>14</sup> The Department, [Safeguard Mechanism Reforms Position Paper](#), January 2023, p. 3 (accessed 22 February 2023).

<sup>15</sup> The Department, *Safeguard Mechanism Reforms Position Paper*, January 2023, p. 2.

<sup>16</sup> The Department, *Safeguard Mechanism Reforms Position Paper*, January 2023, p. 4.

<sup>17</sup> The Department, *Submission 8*, p. 5.

of on-site emissions reduction technologies because they know it can provide long-term benefits'.<sup>18</sup> The Department stated that the policy stability created would also make onsite abatement more attractive than ACCUs, which carry additional risks:

When operating within a carbon constraint, exposure to market credit prices represents a potential liability compared to onsite abatement which remains within the facility's control. To manage any expectations of future increases in prices of ACCUs and SMCs, facilities are incentivised to reduce their potential exposure through on-site abatement activities.<sup>19</sup>

- 3.18 The Department was asked if it had commissioned modelling on the likely proportion of abatement that would occur onsite under a reformed Safeguard Mechanism. Officials confirmed that modelling was provided to government,<sup>20</sup> however the Minister for Climate Change and Energy, the Hon Chris Bowen MP, declined to provide it to the committee on the basis that the modelling was prepared to inform cabinet deliberations. The Minister also stated that the disclosure would not be in the public interest 'due to market sensitivities relating to the Government's role as a purchaser of ACCUs':

Providing Government forecasts of ACCU market demand would be a signal to the market, creating the potential risk of significant flow-on effects for the operation of future auctions for Government purchase of ACCUs.<sup>21</sup>

- 3.19 As an alternative, the Department referred the committee to public sources of data, such as RepuTex modelling. Modelling from energy market analysts, RepuTex Energy, released in February 2023, suggests that reforms to the Safeguard Mechanism, along with state and federal low-cost financing programs,<sup>22</sup> will 'accelerate' industrial abatement projects. According to RepuTex's analysis, this has the potential to lead to up to three-quarters of Safeguard facility emissions reductions being delivered through on-site abatement by 2030:

The earlier, larger scale of on-site actions by industry could lead to increased SMC issuance, and weaker demand growth for offsets, with potential for up to three-quarters (74%) of all emissions reductions to be derived from on-site actions by 2030. This is despite industry having

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<sup>18</sup> Government Departments – Answers to written questions on notice from Senator Grogan – 23 February 2023 (received 27 February 2023), p. 1.

<sup>19</sup> Government Departments – Answers to written questions on notice from Senator Grogan – 23 February 2023 (received 27 February 2023), p. 1.

<sup>20</sup> Ms Edwina Johnson, Branch Head, Safeguard Taskforce, the Department, *Committee Hansard*, 28 February 2023, p. 44.

<sup>21</sup> Letter from Minister Bowen to the Committee regarding a PII Claim in relation to the modelled ACCU level under the Safeguard Mechanism reforms, received 1 March 2023, p. 1.

<sup>22</sup> Such as the Safeguard Transformation Stream of the Powering the Regions Fund (PRF).

unfettered access to carbon offsets, with on-site actions favoured as a permanent hedge against ongoing offset costs, and higher forecast offset prices.<sup>23</sup>

3.20 Deputy Secretary of the Department, Ms Jo Evans noted that 'other scenarios' put the likely onsite abatement as being 'somewhat less than [74 per cent]'. However, the Department expects it to be 'somewhere in that range'.<sup>24</sup>

3.21 The Department explained that it has estimated the Safeguard Mechanism reforms will reduce projected emissions from Safeguard covered facilities from a projected 146 Mt CO<sub>2</sub>-e in 2030 to 100 Mt CO<sub>2</sub>-e in 2030. These projections 'assume that 9 Mt CO<sub>2</sub>-e out of the 46 Mt CO<sub>2</sub>-e emissions reduction in 2030 will be met through ACCUs already included in the baseline projection'. In other words, approximately 20 per cent of emissions reduction are expected to be met through offsets in 2030. The department further clarified the projections stating:

The baseline scenario included ACCUs generated from existing offset projects and new projects supported by future auctions under the Powering the Regions Fund. To avoid double counting, the emission projections only included abatement from the reforms to the Safeguard Mechanism that were not already included in the baseline.<sup>25</sup>

3.22 The Minerals Council of Australia (MCA) agreed that the introduction of SMCs will incentivise onsite abatement. However, many facilities in the minerals industry, which makes up around half of all Safeguard facilities, will initially be unable to rely on onsite abatement, as they await technological advancements over the next decade. The MCA suggested that, without access to ACCUs, some facilities would face 'a very steep decline', and may have to close:

The ability to credit facilities in the safeguard bill is a critical tool as well because it incentivises those who are in the safeguard and who have relatively low-cost abatement opportunities to deploy those technologies or to take that action and then potentially sell those to those above the baseline. So it creates the right incentives to lever down the technology emissions reductions that are required.<sup>26</sup>

3.23 The Grattan Institute pointed out that imposing a restriction on the use of ACCUs would put some facilities in an impossible position, as they may not be

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<sup>23</sup> RepuTex Energy, [OUTLOOK: Safeguard reform—Australian carbon offset price, supply and demand outlook](#), 14 February 2023 (accessed 22 February 2023).

<sup>24</sup> Ms Jo Evans, Deputy Secretary, the Department, *Committee Hansard*, 28 February 2023, pp. 78–79.

<sup>25</sup> The Department – Answers to written questions on notice from Senator Grogan – 1 March 2023 (received 2 March 2023), p. 1.

<sup>26</sup> Mr Daniel Zavattiero, General Manager—Climate and Energy, Minerals Council of Australia (MCA), *Committee Hansard*, 28 February 2023, pp. 2–3.



able to achieve emissions reductions without these offsets, and would essentially have to break the law, or close down.<sup>27</sup>

3.24 Professor Andrew Macintosh, a member of the Australian National University and the University of New South Wales, Canberra Emissions Reduction Fund (ERF) research team, maintained that offsets are an 'important' part of the scheme, as many facilities have limited options for onsite abatement. While Professor Macintosh believed a simple 'penalty price' would be more effective, in the absence of that approach, he argued that access to high-quality offsets will be needed; companies will implement energy efficiency measures where they can, but will still have a 'heavy reliance on a penalty price or offsets for an interim period'.<sup>28</sup>

3.25 Mr Tennant Reed, Director of Climate Change and Energy at AiGroup highlighted the challenges ahead for Australian industries in adapting to a 'net zero emissions global economy', saying 'a lot of investment' will be required, with the 'vast bulk' being provided privately, despite government schemes. Business will need to make 'transformative investments' in their facilities across new technology, new production processes, and major capital equipment purchases. The bill would provide 'some degree of confidence' to firms to support them in making these investments. Mr Reed added:

There's a balance to be struck between the amount of detail that goes into a bit of legislation and the amount that goes into regulations, but the strongest guarantee of all for durability is broad political support for an overall policy direction.<sup>29</sup>

3.26 The Business Council of Australia (BCA) maintained that companies understand 'they need to decarbonise as soon as possible'. However, 'technology gaps' mean there is still 'a critical role for credible offsets' in the short to medium term:

The cost of ACCUs [is] forecast to rise over the short to medium term, while the cost of new low emissions technology is expected to fall.

This means the best hedge for a corporate against rising forward ACCU prices, is to invest in the development and deployment of low emission technologies on site.

There is no medium to long game for any business that relies solely on offsets to reduce their carbon footprint, they simply won't be viable.<sup>30</sup>

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<sup>27</sup> Mr Tony Wood, Program Director, Energy and Climate Change, Grattan Institute, *Committee Hansard*, 27 February 2023, p. 14.

<sup>28</sup> Professor Andrew Macintosh, Australian National University, *Committee Hansard*, 27 February 2023, p. 60.

<sup>29</sup> Mr Tennant Reed, Director, Climate Change and Energy, AiGroup, *Committee Hansard*, 27 February 2023, p. 28.

<sup>30</sup> Business Council of Australia (BCA), *Opening Statement*, 28 February 2023, p. 2.

3.27 This assertion was supported by evidence from oil and gas company, INPEX, which told the committee it will need access to ACCUs and/or SMCs for the rest of the decade to 2030, despite 'moving as fast as [it] possibly can with actual decarbonisation'. INPEX maintained that it is 'not planning on just relying on offsets', but will need them in the short to medium term.<sup>31</sup>

3.28 The BCA noted the extensive work that it, and its members, have done over the last two years to outline 'a 7-point climate policy architecture' to support the transition to a net zero economy and said:

Business does not underestimate the difficulty of the emissions reduction task, but policy certainty is crucial.

No one can afford a repeat of the mistakes of the past. The perfect cannot be the enemy of the good; too much is at stake.

Our approach must be gradual, technology neutral, maintain reliability of the energy system and supply feedstock for industry.

If we attempt to push the system too hard and too fast, we risk falling short.<sup>32</sup>

3.29 These sentiments were echoed by the Mr Daniel Walton, National Secretary of the Australian Workers Union (AWU). Mr Walton highlighted the need to balance 'reducing our carbon footprint and also protecting our industries' and protecting Australian jobs. Achieving this will require all industries to have access to offsets and 'access to the pool of funding available to transition':

There are, unfortunately, a lot of myths that float around in this place about how quickly we can make that transition. It isn't going to be overnight; for some industries it will be the best part of a decade. So having reasonable access to credits during that journey is going to be incredibly important.<sup>33</sup>

### *International offsets*

3.30 The Australian Workers' Union and Mining and Energy Union (AWU and MEU) recommended the integrity of offsetting be protected by requiring that 'only domestic credits and offsets...be available for compliance with the safeguard mechanism at the commencement of the reforms'.<sup>34</sup> This proposal was echoed by the Smart Energy Council.<sup>35</sup>

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<sup>31</sup> Mr Cameron McPhie, General Manager, Commercial, INPEX, *Committee Hansard*, 28 February 2023, p. 37.

<sup>32</sup> BCA, *Opening Statement*, 28 February 2023, p. 1.

<sup>33</sup> Mr Daniel Walton, National Secretary of the Australian Workers Union, *Committee Hansard*, 28 February 2023, pp. 27–29.

<sup>34</sup> Australian Workers' Union and Mining and Energy Union (AWU and MEU), *Submission 22*, p. 4.

<sup>35</sup> Smart Energy Council, *Submission 24*, p. 3.

- 3.31 International offsets are not included in the reforms initially, and the Government has stated they will not be available to offset emissions under the scheme. This is because the reforms are designed to 'transform the domestic economy, delivering jobs and enhancing Australia's international competitiveness as the world moves to net zero'. There are also concerns about the integrity of the market for international offsets, and 'details of the rules and accounting issues for cross-border transfers are still being developed'. However, government has signalled that high integrity international offsets may be a feature of the scheme in future, and intends to consult on this issue in 2023.<sup>36</sup>
- 3.32 The Australia Institute observed that the Government is being lobbied heavily by the coal and gas industries to allow international offsets, and said it has 'already started drafting amendments to the legislation'. Ms Hemming referred to 'existing [carbon trading] agreements with Fiji and Papua New Guinea'—the majority of which are from 'forest projects' with questionable integrity—and argued these should be definitively ruled out.<sup>37</sup>

### **Objects of the National Greenhouse and Energy Reporting Act**

- 3.33 Environmental organisations in particular recommended amendments to the bill's proposed insertion of a new object into the NGER Act which would ensure 'aggregate net emissions from the operation of [Safeguard] facilities decline'.<sup>38</sup>
- 3.34 The National Environmental Law Association (NELA) proposed the new object should 'prescribe a rate at which emissions should decline overall', with the rate proscribed to be 'that required to achieve Australia's greenhouse gas emissions reductions targets and move towards the goal of the Paris Agreement'.<sup>39</sup> Australian Projections suggested the wording should be:
- ...aggregate net covered emissions from the operation of designated large facilities decline in line with Australia's international commitments, and the provisions of the *Climate Change Act 2022*.<sup>40</sup>
- 3.35 Rather than limiting the quantum of aggregate emissions decline to the Rules, NELA argued the 2030 emissions reduction target should be included in bill, though noted that:

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<sup>36</sup> The Department, [Safeguard Mechanism Reforms Position Paper](#), January 2023, pp. 33–34 (accessed 22 February 2023).

<sup>37</sup> Ms Polly Hemming, Director, Climate and Energy Program, The Australia Institute, *Committee Hansard*, 27 February 2023, p. 38.

<sup>38</sup> Safeguard Mechanism (Crediting) Amendment Bill 2022, proposed subsection 3(2) and Explanatory Memorandum, p. 10. Emphasis added.

<sup>39</sup> NELA, *Submission 10*, p. 3.

<sup>40</sup> Australian Projections, *Submission 9*, p. 1.

After 2030, the development of the [emissions] decline will have to be done through the rules because the work hasn't been done on that yet. But achieving that 2030 goal could actually be included in the objects of the act now.<sup>41</sup>

- 3.36 The Australian Conservation Foundation (ACF) recommended removing the word 'net', saying:

The removal of 'net' would not preclude the use of carbon credits where necessary (e.g., hard-to-abate industries) but would ensure that ACCUs cannot be relied upon in place of genuine abatement and investment in mitigation technologies.<sup>42</sup>

- 3.37 The Department explained that the bill 'accounts for previous public feedback on an exposure draft', and that the provisions amending the objects of the NGER Act were added in response to that feedback.<sup>43</sup> Regarding NELA's suggest to remove the word 'net' from the Object, the department maintained that this option:

...would not be consistent with the Safeguard provisions in the Act, which place an obligation on Safeguard facilities to avoid an 'excess emissions situation', which occurs when a facility's net emissions (net of any surrender of SMCs or ACCUs) exceed its baseline.<sup>44</sup>

### **Coverage and new entrants**

- 3.38 Inquiry participants made a number of recommendations in relation to the coverage of the scheme and the treatment of new entrants.
- 3.39 The Australian Forest Products Association was concerned about what happens to facilities that are in the scheme but drop below the threshold. It encouraged the Government to address this in the bill.<sup>45</sup> In its Position Paper, the Government proposed to allow facilities to retain access to SMCs for 'five years after they fall below the coverage threshold', retaining an incentive to continue to reduce emissions even when facilities are 'operating close to the threshold'.<sup>46</sup>
- 3.40 The Carbon Market Institute (CMI) and NELA both proposed there should be an option for smaller facilities to 'opt-in' to the Safeguard Mechanism, which NELA said would 'provide a market-incentive' for these facilities to decrease their emissions, while creating more 'SMC trade opportunities for hard-to-

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<sup>41</sup> Mr Mark Beaufoy, Director, NELA, *Committee Hansard*, 27 February 2023, p. 64.

<sup>42</sup> Australian Conservation Foundation (ACF), *Submission 2*, p. 4.

<sup>43</sup> The Department, *Submission 8*, p. 4.

<sup>44</sup> The Department – Answers to written questions on notice from Senator Grogan – 1 March 2023 (received 2 March 2023), p. 2.

<sup>45</sup> Australian Forest Products Association, *Submission 19*, p. 5.

<sup>46</sup> The Department, *Safeguard Mechanism Reforms Position Paper*, January 2023, p. 31.

abate facilities'.<sup>47</sup> CMI added that this would also act as a test for 'the potential for dropping the 100 000 tonnes of carbon dioxide equivalent (tCO<sub>2</sub>-e) threshold for mandatory inclusion in future phases'.<sup>48</sup>

- 3.41 The Department responded to these suggestions, saying the 'complexities' involved in allowing smaller facilities to opt-in to the scheme 'would take significant time, resources, and consultation to work through'. It would not be possible to implement the Safeguard reforms on time if this option was pursued in the bill, and 'the increased regulatory burden required for Safeguard participation may act as a barrier to entry for smaller facilities'. In addition, the Department contended that abatement opportunity from smaller facilities would be 'relatively small compared to the projected abatement under proposed reforms'.<sup>49</sup>
- 3.42 The Climate Council recommended an additional provision be included in the bill to amend provisions around proscribed carbon units in the NGER Act.<sup>50</sup> The amendment proposed would require that 'any coal, oil or gas facilities entering the mechanism after 1 July 2023 may only surrender SMCs for the purpose of reducing their net emissions' (that is no access to ACCUs).<sup>51</sup> This proposal was echoed by the Smart Energy Council.<sup>52</sup> The AWU and MEU did not support this proposal, recommending that both SMCs and ACCUs 'be available for use by all Safeguard facilities, including fossil fuel facilities'.<sup>53</sup>
- 3.43 CANA recommended that provisions be added to ensure new facilities entering the Safeguard Mechanism be required to meet their baselines without ACCUs; that is, with access 'only to improved practices and technologies and Safeguard Mechanism Credits'.<sup>54</sup>
- 3.44 CMI submitted the 'question of new entrants' should be 'addressed head on' in the bill. This could be done by incorporating the carbon budget 'into the regulatory framework' and requiring potential impacts on that budget to be considered in relation to new entrants, or 'significant expansion of facilities'.<sup>55</sup>

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<sup>47</sup> Carbon Market Institute (CMI), *Submission 20*, p. 6; NELA, *Submission 10*, p. 7.

<sup>48</sup> CMI, *Submission 20*, p. 6.

<sup>49</sup> Government Departments – Answers to written questions on notice from Senator Grogan – 23 February 2023 (received 27 February 2023) p. 2.

<sup>50</sup> See NELA Act, section 22XM and 22XN. 'Prescribed carbon units and surrender.'

<sup>51</sup> Climate Council, *Submission 3*, p. 6.

<sup>52</sup> Smart Energy Council, *Submission 24*, p. 3.

<sup>53</sup> AMWU and MEU, *Submission 22*, p. 7.

<sup>54</sup> CANA, *Submission 17*, p. 2.

<sup>55</sup> Mr Kurt Winter, Director, Corporate Transition, CMI, *Committee Hansard*, 27 February 2023, p. 20.

3.45 The Australian Chamber of Commerce and Industry confirmed its members are concerned that new entrants 'will increase the pressures on other businesses'. Principal Economist, Mr Peter Grist stated:

We would be reluctant for the facilities currently in the scheme to be required to have harsher emissions reductions associated with new entrants... the existing facilities within the safeguard mechanism should have access to some of those [offsets] first.<sup>56</sup>

3.46 The Department responded to suggestions that the bill should incorporate provisions around the treatment of new fossil fuel projects, stating:

The NGER Act is a framework for reporting and disseminating company information about greenhouse gas emissions, and energy production and consumption. It is not designed to permit or prevent facility operations. The proposed Safeguard Mechanism reforms are designed to reduce net emissions from the industrial sector to contribute to the achievement of Australia's climate targets. There are established Commonwealth and State and Territory approval and licensing processes required for permitting operation of industrial facilities.<sup>57</sup>

3.47 The Department also noted that the reforms will reduce the impact of new entrants and expansions, with estimates suggesting a two-thirds reduction in emissions:

Emissions from new entrants, which includes coal, oil and gas but excludes backfills and expansions for the reasons we talked about at the [13 February 2023 Estimates hearing], are projected to cumulatively total 38 megatons between 2023–24 and 2029–30 in the absence of reforms. The safeguard reforms will reduce aggregate baselines for those same class of facilities to 12 megatons over that same period. So that represents that 26-megaton abatement task that we spoke about at the last estimates.<sup>58</sup>

### **Committee view**

3.48 The NGER Act is an emissions reporting framework and is clearly not designed to permit or prevent any type of facility operations; it is not an approvals regime. These matters are covered under established Commonwealth, state and territory legislation.

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<sup>56</sup> Mr Peter Grist, Principal Economist, Australian Chamber of Commerce and Industry, *Committee Hansard*, 27 February 2023, pp. 26–27.

<sup>57</sup> Government Departments – Answers to written questions on notice from Senator Grogan – 23 February 2023 (received 27 February 2023) p. 4.

<sup>58</sup> Ms Edwina Johnson, Branch Head, Safeguard Taskforce, the Department, *Committee Hansard*, 28 February 2023, p. 46. Further information provided by the Department confirmed: 'The Safeguard Mechanism reforms will limit net emissions from the Narrabri, Beetaloo, Barossa, Scarborough, Pluto LNG, Crux and North West Shelf LNG (including Browse backfill) projects to an estimated 11 Mt CO<sub>2</sub>-e in 2029-30... In the absence of the reforms, the baseline scenario in the 2022 emissions projections estimates total emissions from these seven projects to be 21 Mt CO<sub>2</sub>-e in 2029-30'. The Department – Answers to questions on notice from Senators Hanson-Young and D Pocock – public hearing Canberra, 28 February 2023 (received 2 March 2023), [p. 2].

- 3.49 However, the committee understands the concerns raised by inquiry participants about the potential impact of new entrants on the decarbonisation potential of the Safeguard Mechanism, and the availability of SMCs and offsets for existing Safeguard facilities.
- 3.50 The reforms in this bill will assist in significantly reducing emissions from new entrants and expansions, projected to be a two-thirds improvement on business-as-usual. However, going forward it is also appropriate that the Government closely monitors the impact of new entrants under the reformed Safeguard Mechanism, with a view to making changes to the regulatory settings in future, if required.
- 3.51 The Government's existing statutory mechanism for reporting on progress made towards Australia's greenhouse gas emissions reduction targets—the Annual Climate Change Statement<sup>59</sup>—provides an appropriate vehicle for reporting on the performance of the Safeguard Mechanism.

#### **Recommendation 4**

- 3.52 The committee recommends that the Australian Government continues to monitor the impact of new entrants on the delivery of the Safeguard Mechanism's share of Australia's emissions reduction targets, and reports to Parliament on progress through the Annual Climate Change Statement.**

#### **Ministerial Rule-making**

- 3.53 Under existing legislation, the Minister's power to make Safeguard Rules is largely unconstrained. The bill would amend the NGER Act to 'reasonably fetter' the Minister and regulator's discretion and 'safeguard the integrity of SMCs'.<sup>60</sup> The provision would prevent the Minister making Safeguard Rules 'unless satisfied that those rules are consistent with the second object of the NGER Act'.<sup>61</sup> While supporting this provision, NELA argued further reforms were required to 'better guide' the regulator:

To ensure that the issuing of SMCs is consistent with the broader legislative framework, NELA submits that the NGER Act should also prescribe the key elements of SMCs to limit the Regulator's discretion.<sup>62</sup>

- 3.54 The ACF recommended the provision be updated to be more 'consistent with stated legislative intent', by removing the subjectivity. Specifically:

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<sup>59</sup> The Annual Climate Change Statement is a requirement under the *Climate Change Act 2022*. The Department, [Annual Climate Change Statement](#) (accessed 1 March 2023).

<sup>60</sup> Proposed subsection 22XS(1A). NELA, *Submission 10*, pp. 4–5.

<sup>61</sup> Which is to ensure aggregate net emissions from the operation of Safeguard facilities decline.

<sup>62</sup> NELA, *Submission 10*, pp. 4–5.

The Minister must not make safeguard rules unless those rules are consistent with the second object of this Act [to ensure aggregate net emissions from the operation of Safeguard facilities decline].<sup>63</sup>

### **Deemed surrender**

3.55 As discussed in Chapter 2, some industry stakeholders were concerned about how deemed surrender of offsets would work under the amended Act. Australian-based multinational company, Orica, urged the Government to amend the bill in a way that would protect deemed surrender for existing contract holders, for the life of those contracts.<sup>64</sup>

3.56 Orica has existing carbon abatement contracts that run for seven years and that, it says, were entered into 'in good faith'. Should deemed surrender only be grandfathered for two years as proposed by the reforms, this:

...risks penalising those like Orica who have moved early with voluntary emissions reduction targets and projects that deliver real, measurable emission reductions. This outcome is completely at odds with our shared objective of supporting local industry with transition in line with Australia's international commitments.<sup>65</sup>

3.57 Orica noted that the Government proposed in August 2022 the idea of 'grandfathering for the duration of existing contracts'. This is an option Orica would support.<sup>66</sup>

3.58 The Department submitted:

The deemed surrender provisions allow a facility to reduce their emissions—helping to meet their Safeguard compliance obligations—and generate and sell the resulting ACCUs to the Government. They allow a facility to receive a double benefit for each ACCU – they receive a financial benefit from selling the ACCU, and they receive a benefit from reducing their Safeguard compliance obligation.<sup>67</sup>

3.59 The Government is seeking to end this 'double-counting' of ACCUs through deemed surrender, as discussed in Chapter 2. The Department was asked to comment on Orica's concerns. Ms Edwina Johnson from the Safeguard Taskforce confirmed that there are currently six projects that will be grandfathered, with Orica's two longer term projects being by far the largest. The Government is proposing to grandfather deemed surrender arrangements

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<sup>63</sup> ACF, *Submission 2*, p. 4.

<sup>64</sup> Orica – Safeguard Mechanism – Amendments Sought (public hearing Canberra, 27 February 2023), p. 2.

<sup>65</sup> Orica – Safeguard Mechanism – Amendments Sought (public hearing Canberra, 27 February 2023), p. 1.

<sup>66</sup> Orica – Safeguard Mechanism – Amendments Sought (public hearing Canberra, 27 February 2023), p. 1.

<sup>67</sup> The Department, *Response to Orica Supplementary Submission 11.1*, p. 1.



for two more years 'to ensure that those ACCUs are not used twice beyond that two-year period'. Ms Johnson said the Department has heard and considered feedback and believes the proposed timeframe gives firms 'sufficient time to re-establish their arrangements'.<sup>68</sup>

3.60 Asked if firms will have to 'breach or break' their contracts in two years' time, Ms Johnson explained 'no contracts' will need to be broken:

Four of [the grandfathered projects] can complete their contracts with government within that period, so they would be able to both use those ACCUs to sell to government and use them to surrender under the safeguard mechanism. Then there are two projects for which the government contracts go beyond that two-year period, and those are optional contracts, so there's no question of a forced breakage.<sup>69</sup>

3.61 Orica responded to the Department's evidence, saying the two contracts in question are 'optional *delivery*' contracts, meaning the company has the option to sell its ACCUs to government, or 'on the secondary market'. However, the Commonwealth is contractually obligated 'to honour the contract and to purchase and accept delivery' of any ACCUs Orica chooses to sell to it:

[I]f Orica exercises its contractual right to sell its ACCUs to the Commonwealth, then the Commonwealth is obligated to purchase them. Secondly, unlike the optional delivery contract which is being used for the next [Emissions Reduction Fund] auction (in March 2023) and which includes new provisions which effectively give the Commonwealth the right to suspend the seller's right to exercise its option if there are changes to the Legislative Rules which affect certain eligible offset projects, our Carbon Abatement Contracts with the Commonwealth do not have any equivalent 'change of law' provision and therefore delivered ACCUs must be accepted.<sup>70</sup>

3.62 Orica noted the new Carbon Credits (Carbon Farming Initiative) Amendment (No. 1) Rules 2023, which came into effect on 12 January 2023, make it 'possible' for the Government to 'on-sell ACCUs it has purchased through contracts, instead of being forced to retire them as was the case prior to 11 January 2023'. Orica argued this means that the Government could purchase its ACCUs and on sell at a higher price; thus preventing Orica 'from claiming an emissions reduction that [it has] created, through real-on site decarbonisation', while 'forcing' the company 'to offset the emissions of another Safeguard facility who is not demonstrating actual on-site abatement'.<sup>71</sup>

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<sup>68</sup> Ms Edwina Johnson, Branch Head, Safeguard Taskforce, the Department, *Committee Hansard*, 28 February 2023, p. 58.

<sup>69</sup> Ms Edwina Johnson, Branch Head, Safeguard Taskforce, the Department, *Committee Hansard*, 28 February 2023, p. 58.

<sup>70</sup> Orica, *Submission 11.1*, pp. 4–5. Emphasis added.

<sup>71</sup> Orica, *Submission 11.1*, pp. 4–5.

- 3.63 The Department responded to these concerns, and addressed Orica's suggestion that the company was being unfairly targeted.<sup>72</sup> The Department said the proposal to limit grandfathering of deemed surrender arrangements to two years 'was based on the volume of ACCUs affected rather than on which proponents would be affected'. Grandfathering these arrangements for two years would mean 'more than 3 million tonnes of emissions reductions would not need to be sourced from elsewhere', and 'would provide time for businesses to adjust to the new arrangements'.<sup>73</sup>
- 3.64 In response to Orica's suggestion that the Government may be planning to buy the contracted ACCUs and on-sell them at a higher price, the Department stated that the Government has not made a final decision regarding whether or not ACCUs subject to deemed surrender arrangements, and delivered to the Government, will 'be available to be sold under the cost containment measure or be cancelled instead'. Government will 'carefully consider' this issue, along with other feedback received as a result of the position paper process.<sup>74</sup>

### **Increased penalties**

- 3.65 Regulation currently governing the Safeguard Mechanism includes a range of enforcement measures for facilities with excess emissions, but the quantum of the penalties are defined in regulations.<sup>75</sup> Amendments proposed by the bill would take the civil penalty amount out of the Regulations and put it into the Act, providing greater Parliamentary oversight. The penalties would also be significantly increased by the amendment, which is designed to 'strengthen enforcement arrangements and ensure penalties are sufficient to deter non-compliance'.<sup>76</sup>
- 3.66 According to the Position Paper:

Currently, the civil penalty for an excess emissions situation is based on the number of days of noncompliance, rather than the scale of exceedance. This means that 1 tonne of excess emissions could be judged an equal offence to 100 000 tonnes of excess emissions.

The Government proposes to update the civil penalty to base it on both the quantity of excess emissions and the number of days of non-compliance. This better reflects the environmental impact of the excess emissions situation. The maximum civil penalty will be set at 1 penalty unit per tonne

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<sup>72</sup> Orica, *Submission 11.1*, p. 5.

<sup>73</sup> The Department, *Response to Orica Supplementary Submission 11.1*, p. 1.

<sup>74</sup> The Department, *Response to Orica Supplementary Submission 11.1*, p. 1.

<sup>75</sup> The Department, [Safeguard Mechanism Reforms Position Paper](#), January 2023, pp. 51–52 (accessed 22 February 2023).

<sup>76</sup> Explanatory Memorandum, p. 2.

of excess emissions per year... From 1 January 2023, a penalty unit will be set at \$275.<sup>77</sup>

- 3.67 The ACF welcomed the inclusion of strengthened penalties for excess emissions and additional penalties for providing false or misleading information. However, ACF recommended 'a broader range of penalty provisions be considered', and the regulator's discretion around enforcing anti-avoidance provision be reduced.<sup>78</sup>
- 3.68 The CER noted that it already has 'a range of compliance powers' for the Safeguard Mechanism and NGER Act, but rarely needs to draw upon them as the schemes have 'very high compliance rates' (98–100 per cent).<sup>79</sup>

## Reporting and transparency

- 3.69 Stakeholders made a number of suggestions for strengthened reporting and transparency measures to encourage higher emissions reduction activity and greater use of onsite abatement.
- 3.70 The EDO suggested the bill should include provisions mandating government reporting on how the Safeguard Mechanism is performing against Australia's 'remaining carbon budget':

We've got only seven years to achieve our 2030 goal, so what we need to do—potentially through mechanisms like this and other pieces of legislation—is be able to track how Australia's carbon budget is looking, and whether any new entrants will fit within that carbon budget.<sup>80</sup>

- 3.71 NELA argued that additional transparency measures—such as requiring facilities to publicly disclose 'the number of ACCUs that a business buys or the number of SMCs that it uses'—would enliven reputational concerns for facilities, ultimately leading to higher emissions reductions.<sup>81</sup>
- 3.72 The Grattan Institute agreed that it would be reasonable to require that holdings of SMCs and ACCUs be made public:

We understand that is something that the regulator has been pushing for some time, and that's a process already in train. It's important, of course, that it is in place before we see the extension of the full year of this legislation.<sup>82</sup>

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<sup>77</sup> The Department, *Safeguard Mechanism Reforms Position Paper*, January 2023, pp. 51–52.

<sup>78</sup> ACF, *Submission 2*, p. 4.

<sup>79</sup> Clean Energy Regulator, *Submission 27*, p. 2.

<sup>80</sup> Ms Rachel Walmsley, Head of Policy and Law Reform, Environmental Defenders Office (EDO), *Committee Hansard*, 27 February 2023, p. 65.

<sup>81</sup> Mr Mark Beaufoy, Director, NELA, *Committee Hansard*, 27 February 2023, p. 64.

<sup>82</sup> Mr Tony Wood, Program Director, Energy and Climate Change, Grattan Institute, *Committee Hansard*, 27 February 2023, p. 14.

3.73 Dr Barry Traill, the Director of Solutions for Climate Australia (CANA), maintained that it would be 'straightforward' for facilities to report levels of onsite abatement, use of SMCs, and use of ACCUs, for wider publication, as they are already required to collate that information:

We see that as quite a straightforward and nonburdensome requirement. Given that the company has to report on their abatement figures and will have done their own mathematics very simply to determine how that was done, we don't see that as burdensome at all.<sup>83</sup>

3.74 Professor Macintosh proposed 'automated disclosure' of abatement methods be implemented by expanding information captured by the Emissions Reduction Fund project register, or through facilities' annual returns:

They're required to submit annual returns. You make them disclose there, because all the ACCUs are numbered, so it could be easily automated. So, in the registry, you could just have that information appear: 'They used X number of credits from X projects, which are Y type'.<sup>84</sup>

3.75 Existing reporting requirements for Safeguard facilities are summarised below:

Emissions from covered facilities are reported through the National Greenhouse and Energy Reporting scheme, by 31 October following each financial year.

Responsible emitters for covered facilities must ensure that they are not in an excess emissions situation on or after 1 March following each reporting year, and have a number of options available to manage any excess emissions.

The Clean Energy Regulator is required to publish information about all covered facilities for each reporting year. Information published includes the baseline emissions number in force for that year, total reported emissions, the responsible emitter(s) for each facility, and any Australian carbon credit units (ACCUs) surrendered.<sup>85</sup>

3.76 Baselines for the Safeguard facilities are published in a table on the CER's website, along with data for facilities with a multi-year monitoring arrangement (currently 21 facilities).<sup>86</sup>

3.77 The committee notes that the bill includes provisions that would allow for the Rules to require the CER to publish information about ACCUs and SMCs in

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<sup>83</sup> Dr Barry Traill, Director, Solutions for Climate Australia, CANA, *Committee Hansard*, 27 February 2023, p. 49.

<sup>84</sup> Professor Andrew Macintosh, Australian National University, *Committee Hansard*, 27 February 2023, p. 58.

<sup>85</sup> Clean Energy Regulator (CER), [Safeguard facility reported emissions 2020–21](#) (latest data; accessed 2 March 2023).

<sup>86</sup> CER, [Safeguard baselines table](#), 11 July 2022; CER, [Safeguard multi-year monitoring period table](#), 1 July 2022 (accessed 2 March 2023).

Registry accounts, and their holders, in accordance with specified requirements.<sup>87</sup> The Department further clarified that:

Some facilities covered by the Safeguard Mechanism [currently] report production of outputs that meet definitions of production variables under the Safeguard Rules. Under the reforms, it is proposed all facilities covered by the Safeguard Mechanism would report this information.

It is already the case that the CER publishes, for each facility and each compliance period, the baselines, covered emissions, and the total amount of prescribed carbon units surrendered (prescribed carbon units are currently ACCUs and would also include SMCs under the reforms). This information is published on the CER's website. Under the reforms, it is proposed that emissions intensity determinations, determinations that a facility is trade-exposed baseline-adjusted, and borrowing adjustments would be published.<sup>88</sup>

3.78 Major emitter, Woodside, was asked if it would disclose the number of SMCs and ACCUs it holds, and the source of those credits. Woodside replied that it 'has not been Woodside's practice to disclose specific details around our carbon credit portfolio for competitive reasons'. Instead, the company reports annually on its 'carbon offsets strategy and the units retired to meet [its] corporate targets', and believes this is 'appropriate'.<sup>89</sup>

3.79 Another transparency measure proposed was to mandate in the Act corporate transition plans for Safeguard facilities. Mr Erwin Jackson from the Investor Group on Climate Change (IGCC) supported this proposal, saying transition plans provide critical information for investors:

What a corporate transition plan can do is show the use of offsets in the context of everything else that the company is doing. For some companies and some facilities, it may be quite difficult for them to reduce emissions... If you've got a good corporate transition plan in place, which is standard practice now and is financial practice in the US, the UK and Europe in terms of their disclosures, it gives them confidence and allows investors to invest with confidence in Australia. In the absence of those plans, we'll continue to have the situation where we see companies, as we've seen in Australia from a number of large emitters, overly relying on offsets. Investors will become less confident in them, divest from them and move their money offshore to other companies that are more efficient.<sup>90</sup>

3.80 In response to this suggestion, the Department stated that 'implementation of any such approaches would need to specify expectations of what these reports

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<sup>87</sup> See proposed sections 60A and 60B (Item 27 Schedule 2 of the Bill), dealing with amendments to the *Australian National Registry of Emissions Units Act 2011*.

<sup>88</sup> The Department – Answers to written questions on notice from Senator Grogan – 1 March 2023 (received 2 March 2023), p. 2.

<sup>89</sup> Woodside, Response to questions on notice, p. 2.

<sup>90</sup> Mr Erwin Jackson, Director, Policy, Investor Group on Climate Change (IGCC), *Committee Hansard*, 27 February 2023, p. 66.

would cover and any requirements around assurance of their content'. Further, the Department noted that:

The Treasury has been consulting on the design and implementation of the Government's commitment to standardised, internationally aligned requirements for disclosure of climate related financial risks and opportunities in Australia to enhance transparency. Consideration would need to be given to the potential duplication between these requirements and any associated compliance costs.<sup>91</sup>

3.81 The Smart Energy Council highlighted the need for regulators to better review emissions reduction projects. Noting that it may not be 'feasible' to review every project, External Affairs Manager, Mr Wayne Smith suggested an auditing model like that implemented for the Small-scale Renewable Energy Scheme, which provides subsidies for residential rooftop solar:

Through that system, the Clean Energy Regulator actually undertakes, under legislation, inspections of a statistically significant number of systems to ensure that those systems are doing what they say they're doing, so they're delivering results for the customer and for the Australian public as well. You take that kind of concept, in a sense, and broaden it out. You say: shouldn't the Australian government be doing at least a statistically significant number of inspections to ensure that projects are actually delivering what they say they're delivering?<sup>92</sup>

3.82 The Department noted that there are already a number of transparency measures built into the existing climate change framework, including the annual statement to parliament, which 'requires the government to explain what its policies are [and] what has been achieved in terms of emissions reductions and so on by sector, including the projections'. Ms Evans added that an independent report by the Climate Change Authority will provide further analysis on Australia's progress in meeting its targets, and 'all of that will be in the public domain'.<sup>93</sup>

### **Committee view**

3.83 With strong support from businesses, industry organisations, investor groups, trade unions, civil society groups, and the states and territories, the Government has increased the ambition of Australia's 2030 emission reduction target to 43 per cent below 2005 levels by 2030, and affirmed Australia's commitment to net zero emissions by 2050. These targets have been enshrined in law through the *Climate Change Act 2022*.<sup>94</sup>

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<sup>91</sup> The Department – Answers to written questions on notice from Senator Grogan – 1 March 2023 (received 2 March 2023), p. 2.

<sup>92</sup> Mr Wayne Smith, External Affairs Manager, Smart Energy Council, *Committee Hansard*, 27 February 2023, p. 68.

<sup>93</sup> Ms Jo Evans, Deputy Secretary, the Department, *Committee Hansard*, 28 February 2023, p. 85.

<sup>94</sup> See s. 10, *Climate Change Act 2022*.

- 3.84 Achieving these targets will be virtually impossible without reforms to the Safeguard Mechanism.
- 3.85 The Safeguard Mechanism currently enables limits to be placed on the emissions of around 215 large industrial facilities, responsible for around 28 per cent of national emissions. Under the current arrangements, the Government can set baselines for emissions, but cannot create credits to incentivise covered facilities to reduce their emissions.<sup>95</sup>
- 3.86 The Safeguard Mechanism (Crediting) Amendment Bill will build on this established framework, creating new, tradable emissions credits that will incentivise heavy industry to reduce emissions in cost-effective ways. The bill also amends the *National Greenhouse and Energy Reporting Act 2007* to ensure that emissions from Safeguard facilities *go down*, instead of up.
- 3.87 As noted in Chapter 1, flaws in the original implementation of the Safeguard Mechanism, including too much 'headroom' in facilities' emissions baselines, have resulted in continued growth in industrial emissions. The evidence clearly indicates that without reforms to the Safeguard Mechanism, emissions from large facilities will continue to increase.<sup>96</sup>
- 3.88 The proposed reforms aim to ensure Safeguard facilities deliver a proportional share of Australia's 43 per cent emissions reduction target, while helping those facilities reduce their emissions gradually and predictably over time. Due to the long lead times required to finance and build large industrial scale abatement projects, emissions from this sector cannot be reduced unless reforms to the Safeguard Mechanism are bedded in by July 2023.<sup>97</sup>
- 3.89 Modelling indicates that, under the proposed reforms, net emissions of Safeguard facilities will *fall*; from a projected 143 million tonnes in 2022-23, to no more than 100 million tonnes by 2030. In addition, the reforms in aggregate will deliver around 205 million tonnes of abatement by the end of the decade.<sup>98</sup>
- 3.90 The bill establishes a flexible framework, leaving many details to delegated legislation, which enables the Safeguard Mechanism to be dynamic, reducing emissions efficiently, and using the lowest cost abatement options.
- 3.91 Support for the bill and the broader reforms was clear among most inquiry participants, a number of whom highlighted the fact that failure to reform the Safeguard Mechanism now would result in a higher burden of the 43 per cent

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<sup>95</sup> Explanatory Memorandum, pp. 1–2.

<sup>96</sup> [Safeguard Mechanism \(Crediting\) Amendment Bill 2022 Bills Digest](#), Parliamentary Library, pp. 7–8 (accessed 1 March 2023).

<sup>97</sup> Government Departments – Answers to written questions on notice from Senator Grogan – 23 February 2023 (received 27 February 2023) p. 2.

<sup>98</sup> Department, *Safeguard Mechanism Reforms: Position Paper*, p. 2.

national emissions reduction target having to be met by the rest of the economy.<sup>99</sup>

- 3.92 In this report, the committee has canvassed many issues that extend beyond the scope of the bill under inquiry. Across the evidence collected, and substantial public hearings, the committee was able to address a number of concerns relating to the broader reforms of the Safeguard Mechanism, and has made related recommendations designed to improve its effectiveness.
- 3.93 The committee notes that consultation on the subordinate legislation—which will amend the National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015—is currently underway, and many matters raised by stakeholders will be addressed as part of that process.
- 3.94 The committee also notes with approval the Government's intention to review Safeguard Mechanism policy settings in 2026-27. This will provide an opportunity to ensure the framework is appropriately calibrated, and progress further reforms, if required.
- 3.95 The time to reform the Safeguard Mechanism is now. The bill before the Parliament has broad support and provides a solid framework to facilitate meaningful emissions reduction by Australia's largest emitters. The bill provides certainty to industry and investors, while building in appropriate levels of flexibility to ensure the Safeguard Mechanism meets its intended decarbonisation aims.
- 3.96 Of the many issues raised about scheme design, including the use of offsets, on-site abatement, strong compliance and ensuring the scheme contributes to the targets, the bill enhances the flexibility of the reforms to address those matters in both the initial design and to continue to improve the scheme over time. The ability to create Safeguard Mechanism Credits is particularly important for rewarding on-site abatement and reducing the need for offsets from outside the scheme. Without the passage of this bill, the Government's ability to reduce emissions by amending the Safeguard Rules under the existing Act would be less efficient and effective in meeting our legislated climate change targets.

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<sup>99</sup> See for instance: Mr Tony Wood, Program Director, Energy and Climate Change, Grattan Institute, *Committee Hansard*, 27 February 2023, p. 15; Mr Kurt Winter, Director, Corporate Transition, CMI, *Committee Hansard*, 27 February 2023, p. 21.



**Recommendation 5**

**3.97 The committee recommends that the Senate pass the bill.**

**Senator Karen Grogan  
Chair**



# Coalition Senators' dissenting report

## Summary

- 1.1 Coalition Senators do not support the Safeguard Mechanism (Crediting) Amendment Bill 2022 (the bill). The Coalition cannot support legislation when the Government has not properly assessed the impacts of reforms on the Australian economy.
- 1.2 The Coalition believes in a sensible transition to net zero emissions, which protects Australian jobs and the prosperity of our towns and regions. Coalition Senators do not believe the Government will achieve this balance with the proposed reforms to the safeguard mechanism. The Coalition is concerned with the disproportionate economic impacts the bill will have on regional Australia.
- 1.3 Coalition Senators believe the bill will result in further price increases for Australians as the additional costs of delivering the required emissions reduction will be passed on to households.
- 1.4 The Coalition is deeply concerned that Australian businesses will become less competitive compared to international rivals, and that potential facility closures could reduce the economy's sovereign capabilities in key industrial sectors.
- 1.5 The Coalition believes the Government has failed to properly inform the Senate on the market outlook for Australian Carbon Credit Units and Safeguard Mechanism Credits.

## Background

- 1.6 The previous Coalition Government introduced the safeguard mechanism to limit the growth of emissions in the industrial sector by applying an emissions baseline on 215 of Australia's largest emitters. Emissions reductions instead were driven by the Emissions Reduction Fund (ERF), which supported voluntary action by landholders, businesses and communities. The ERF auction in April 2022, saw 7.6 million tonnes of carbon dioxide equivalent (CO<sub>2</sub>-e) abatement contracted across the agriculture, vegetation, landfill and water, and industrial sectors.<sup>1</sup>
- 1.7 This brought total contracted abatement to 217 million tonnes, at an average of \$17.35 per tonne. Labor's changes to safeguard mechanism will force facilities to reduce their emissions intensity by up to 4.9 percent each year, regardless of whether the technology exists for them to do so. Failure to meet the

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<sup>1</sup> See: Clean Energy Regulator, [Auction Results – April 2022](#), 13 April 2022, (accessed 6 March 2023).

Government's emissions targets or purchase the necessary amount of offsets will see a business fined \$275 per tonne.<sup>2</sup>

- 1.8 Labor's claim that its safeguard mechanism policy mirrors the Coalition's is a cheap political tactic designed to mislead. Economic impacts have not been assessed.
- 1.9 The Coalition believes in a sensible transition to net zero emissions, which protects Australian jobs and the prosperity of our towns and regions. It is the Coalition's belief this is best achieved through investment in low-emissions technologies, not taxation, as the current Government is proposing.
- 1.10 The committee's inquiry into the safeguard mechanism highlighted a multitude of concerns, from industry groups as well as environmental organisations, about the lack of clarity in the legislation, particularly around the provision of Australian Carbon Credit Units (ACCUs).
- 1.11 The Coalition believes the Government has not provided sufficient information to the inquiry on the economic impacts of the reforms to the safeguard mechanism.
- 1.12 When requested, both the Minister for Climate Change and Energy and the Department of Climate Change, Energy, the Environment and Water declined to provide the economic modelling that was undertaken.<sup>3</sup>
- 1.13 At a Senate Economics Legislation Committee supplementary estimates hearing on 15 February 2023, the Treasury confirmed their modelling of the safeguard mechanism reforms had not considered broader macroeconomic impacts such as the impact on investment, jobs and prices.<sup>4</sup>
- 1.14 No witnesses to the inquiry were able to provide analysis of the economic impacts of the reforms to the safeguard mechanism.
- 1.15 The Coalition is deeply concerned the Government has embarked on a major restructure of the Australian economy, without doing any of the work.

### **Additional cost of living pressures**

- 1.16 The Coalition believes many of the facilities covered under the safeguard mechanism will be challenged with the delivery of the required 4.9 per cent annual reduction to their emissions intensity baseline. The Government has

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<sup>2</sup> The bill sets a maximum civil penalty of one penalty unit per tonne. As at 1 January 2023, the value of one penalty unit is \$275.

<sup>3</sup> See: [letter from Minister Bowen to the Committee regarding a PII claim in relation to the modelled ACCU level under the Safeguard Mechanism reforms](#), received 1 March 2023; and evidence from Department of Climate Change, Energy, the Environment and Water officials, *Committee Hansard*, 28 February 2023, pp. 43–60 and 66–74.

<sup>4</sup> Mr Luke Yeaman, Deputy Secretary, Macroeconomic Group, Treasury, *Senate Economics Legislation Committee Hansard*, 15 February 2023, p. 77.

not provided the committee with an assessment of how key sectors will achieve the emissions reduction or what it will cost.

- 1.17 Several witnesses stated they believed many businesses would rely on purchasing carbon credits to meet their emissions reductions to 2030. The Coalition believes this will create an additional cost for Australian businesses—particularly if the price of carbon credits reaches the \$75 price cap the Government is establishing. The cost of these carbon credits will be passed on to Australian households in the form of higher prices and increased bills.
- 1.18 Should businesses be unable to acquire sufficient carbon credits they will be made to pay a \$275 penalty for every tonne of carbon dioxide they emit above their baseline. Far from lessening the impact of Australia’s current cost-of-living crisis, the Government’s policy will make it worse by increasing the price of everyday goods, from groceries to electricity and petrol.
- 1.19 During the inquiry the Australian Chamber of Commerce and Industry confirmed businesses would pass their higher operating costs under the safeguard mechanism on to consumers.<sup>5</sup>

### **Australian businesses will become less competitive**

- 1.20 Australia is an open economy and a trading nation. The Coalition believes there has been no meaningful assessment of the impacts of the safeguard mechanism reforms on the competitiveness of Australian businesses.
- 1.21 Several witnesses to the inquiry noted the introduction of a Carbon Border Adjustment Mechanism (CBAM), like the one proposed in Europe, could be a way to protect trade exposed businesses. Government witnesses provided no timeline for the CBAM to be developed and implemented in Australia.
- 1.22 The Coalition also notes that while a CBAM can protect a facility competing within Australia, it does not support Australia’s exporters who will be competing in international markets against rivals from nations with no carbon price. The Coalition considers these to be unacceptable risks.
- 1.23 The Coalition is concerned the proposed safeguard mechanism reforms will risk closing down Australia’s cement, steel, aluminium, oil refining and mining industries. The loss of these sectors represents an unacceptable hit to the nation’s economic security and sovereign manufacturing capabilities.
- 1.24 With no pathway to decarbonise, many Australian businesses will have no option but to reduce production, move offshore or shut down entirely, leaving workers, families and communities worse off.
- 1.25 The committee heard evidence from the Institute of Public Affairs that a large number of safeguard facilities are located in regional Australia.<sup>6</sup> Facility

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<sup>5</sup> Mr Peter Grist, Principal Economist, Australian Chamber of Commerce and Industry, *Committee Hansard*, 27 Feb 2023, pp. 25–6.

closures arising from lost competitiveness would therefore have a disproportionate impact on regional economies and communities. The Coalition believes the Government has not adequately assessed these regional impacts or developed a sufficient support package.

- 1.26 The committee also heard from several witnesses that the Government's proposed Powering Australia Plan, and \$600 million funding package for trade exposed entities, was grossly inadequate.<sup>7</sup>

## **Carbon Credits**

- 1.27 Several stakeholders appearing at the inquiry told the committee that access to carbon credits would be an important part of businesses' emissions reductions strategies. This included Woodside Energy who have already implemented their own emissions reduction pathway and are taking action to create a supply of carbon credits to offset their current and future emissions from new projects.<sup>8</sup>
- 1.28 The Minerals Council of Australia also provided evidence that the mining industry would rely heavily on carbon credits to deliver its emissions reduction as technologies were not yet mature enough to deploy at Australian mine sites.<sup>9</sup>
- 1.29 The Coalition notes several witnesses stated the use of carbon offsets should be limited as they do not represent real emissions reduction at the facility. The Coalition does not agree with this position and considers all forms of carbon credit to be legitimate.
- 1.30 The Coalition believes all facilities under the safeguard mechanism should have equal and unrestricted access to carbon credits. The Minerals Council of Australia noted without access to carbon credits, many mines across Australia were at risk of closure with significant losses in jobs, investment and government revenue as a result.<sup>10</sup>
- 1.31 The Coalition is concerned at the lack of modelling undertaken on the carbon credit market. Neither the Government nor supporters of the safeguard

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<sup>6</sup> Mr Daniel Wild, Deputy Executive Director, Institute of Public Affairs, *Committee Hansard*, 27 February 2023, p. 79.

<sup>7</sup> Mr Daniel Walton, National Secretary, Australian Workers Union, *Committee Hansard*, 28 February 2023, p. 27.

<sup>8</sup> Mr Peter Metcalfe, Vice President, Climate and Sustainability, Woodside Energy, *Committee Hansard*, 27 February 2023, p. 61.

<sup>9</sup> Ms Tania Constable, Chief Executive Officer, Minerals Council of Australia, *Committee Hansard*, 28 February 2023, p. 2.

<sup>10</sup> Ms Constable, Minerals Council of Australia, *Committee Hansard*, 28 February 2023, p. 2.

mechanism reforms provided an assessment of the potential growth in demand, supply or price of ACCUs.

- 1.32 As previously noted, the Coalition is deeply concerned at the Government's refusal to release the modelling underpinning this policy. The Coalition believes it is essential the Government provides all information available for Senators to make an informed vote on this bill.
- 1.33 The Coalition believes this bill should not be progressed until the Government releases the modelling required for Senators to make a well-informed decision on the impacts of the proposed reforms and bill.
- 1.34 The Coalition does not support the continued attacks on the credibility of ACCUs. The Coalition is deeply concerned at the limited planning that has supported the Government's policy development in the area of carbon credits.
- 1.35 The Coalition notes the Department of Climate Change, Energy, the Environment and Water concerningly admitted, in response to questions from Senator David Pocock, that they had not considered what would occur if governments ran out of carbon credits to sell into the market to maintain the proposed price cap.<sup>11</sup>

## **Conclusion**

- 1.36 The Coalition does not support the Safeguard Mechanism (Crediting) Amendment Bill 2022.
- 1.37 The Coalition feels there has been insufficient assessment of the impacts of the Government's proposed reforms and the system is not equitable for Australian industries as it stands.
- 1.38 The Government cannot answer what costs will be passed on to consumers. During a cost-of-living crisis already caused by its own reckless spending policies, the Government must carefully consider how reforms to the safeguard mechanism will further affect domestic prices.
- 1.39 Labor has not and will not consider technological investment as the primary driver of responsible emissions reduction that ensures the Australian economy remains productive and successful while also meeting climate obligations.

## **Recommendation 1**

- 1.40 The Coalition recommends that the bill be opposed.**

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<sup>11</sup> Ms Jo Evans, Deputy Secretary, and Ms Edwina Johnson, Branch Head, Safeguard Taskforce, Department of Climate Change, Energy, the Environment and Water, *Committee Hansard*, 28 February 2023, p. 51.

**Senator Hollie Hughes**  
**Member**  
**Shadow Minister for Climate Change and Energy**

**Senator Ross Cadell**  
**Member**  
**Nationals Whip in the Senate**

**Senator the Hon Jonathon Duniam**  
**Participating member**  
**Shadow Minister for the Environment**



# Australian Greens' dissenting report

- 1.1 The evidence from this inquiry is clear. Under Labor's Safeguard Mechanism, actual pollution from coal and gas goes up and the climate crisis gets worse.
- 1.2 This isn't incremental progress, it's making things worse. You cannot put the fire out while pouring petrol on it.
- 1.3 The first step in fixing a problem is to stop making the problem worse. But Labor's Safeguard Mechanism makes the problem worse.
- 1.4 The Australian Greens are of the view that, given the danger that new coal and gas projects pose to a stable climate and a safer society, this bill and legislative instruments should not pass in their current form.
- 1.5 Coal and gas are the main causes of the climate crisis. To have any chance of getting the climate crisis under control and meeting even the net zero climate targets that the government claims to support, there can be no new coal and gas projects. This is the view of the conservative International Energy Agency,<sup>1</sup> the United Nations Secretary-General<sup>2</sup> and the world's scientists.<sup>3</sup> It seems that Labor takes a different view.
- 1.6 This inquiry has prompted further doubts about the effectiveness of Labor's Safeguard Mechanism to achieve any real reduction in emissions.
- 1.7 In fact, actual pollution from the biggest causes of the climate crisis—coal and gas—will *rise*<sup>4</sup> under the scheme and the global emissions impact from just one new gas project starting in 2025 will wipe out the entire claimed benefit of the Safeguard Mechanism.<sup>5</sup>
- 1.8 A good climate policy should see pollution from coal and gas go down, not up. Given that 57 per cent of emissions covered by the safeguard come from coal,<sup>6</sup> oil and gas, we'd have thought the government would be keen to tell the

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<sup>1</sup> International Energy Agency, [Net Zero by 2050: A Roadmap for the Global Energy Sector](#), May 2021, pp. 18–19.

<sup>2</sup> Secretary-General of the United Nations, [Secretary-General's briefing to the General Assembly on Priorities for 2023](#), 6 February 2023.

<sup>3</sup> Australia Institute, [An Open Letter: No New Coal Mines](#), 27 November 2015.

<sup>4</sup> [Senate Answer to Question on Notice 1352](#) and the Department's [Emissions Projections 2022](#) Report both show emissions rising under the baseline scenario. The Department's sustained and continual refusal to answer whether emissions also rise under the 'additional measures' scenario, which includes the Safeguard Mechanism, can be inferred as confirmation that coal and gas emissions also increase.

<sup>5</sup> See analysis below.

<sup>6</sup> Internal research by the Parliamentary Library.

committee that their safeguard would cut pollution from coal and gas. But the government didn't say that.

- 1.9 The government made no commitment and offered no evidence that pollution from coal and gas would actually go down, despite repeatedly being invited to do so. In fact, the government's own 2022 Emissions Projections say pollution from the gas sector will go up.<sup>7</sup> The climate crisis will get worse.
- 1.10 If the Department of Climate Change, Energy, the Environment and Water (the Department) possessed any information to dissuade the committee of the view that actual coal and gas pollution would increase under the Safeguard Mechanism, they could have provided it and are still welcome to provide it.
- 1.11 The Department's stubborn unwillingness to provide answers to the most basic questions has made it difficult to have any confidence that the scheme as designed will do anything to curb business-as-usual behaviour from coal and gas companies.
- 1.12 It is worth recalling that the Safeguard Mechanism only targets a narrow class of coal and gas total emissions, namely, scope 1 direct emissions from a facility. Of this narrow class of emissions, only 4.9 per cent a year will face a price signal. What cost impacts are imposed on this fraction of a fraction of overall emissions can be completely offset, with facilities able to buy their way out of the scheme at a very low price for a very sustained time.
- 1.13 Deputy Secretary of the Department, Ms Jo Evans, made this clear in her testimony when she said in response to Senator David Pocock's questioning about Australian Carbon Credit Unit (ACCU) prices reaching the proposed \$75 price cap:

The reality...is that we have genuinely not anticipated getting into that situation [of the \$75 price cap being reached] so we don't have an answer for that at this point. We would need to think it through. We think it's at least 10 years away before we would be even close to getting to there.<sup>8</sup>

- 1.14 Minimal prices for offsets appear inevitable with the government having already contracted 119.6 million ACCUs by 2030, with a further 23.7 million ACCUs held in the private market.<sup>9</sup> This total 143.3 million ACCUs contracted or already in existence represents 69.9 per cent of the government's total abatement task of 205 million tonnes by 2030.

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<sup>7</sup> Department of Climate Change, Energy, the Environment and Water, *Australia's emissions projections 2022*, December 2022.

<sup>8</sup> Ms Jo Evans, Deputy Secretary, Department of Climate Change, Energy, the Environment and Water, *Committee Hansard*, 28 February 2023, p. 51.

<sup>9</sup> Senator Wong on behalf of the Minister for Climate Change and Energy, [answer to Senate Question No. 1365](#), 25 January 2023 (received 28 February 2023).

- 1.15 What this means is that not only can coal and gas pollution continue to rise as long as enough offsets are bought, but more than two-thirds of the modest ambitions of this scheme will have been achieved without a single dollar of new investment.
- 1.16 In his evidence to the committee, the Carbon Market Institute's, Mr John Connor, cited expectations that around 70 per cent of offset delivery contracts with the government would be broken through the fixed delivery exit arrangement.<sup>10</sup> On this calculation, the program instigated by former Minister for Energy and Emissions Reduction, the Hon Taylor MP and allowed to continue under the current government, will permit around 84 million land-based offsets to flood into the private market.
- 1.17 The biggest beneficiaries of this abundance of offsets will be coal and gas companies with new projects planned. Since profiteering from the invasion of Ukraine, coal and gas companies are best placed to use their swelling balance sheets to scoop up all the necessary offsets at the detriment of hard-to-abate industries that genuinely need ACCUs like steel, aluminium and cement.
- 1.18 The biggest risk from intentionally suppressed low prices is not just the greenwash that will be painted over the expansion plans of coal and gas companies, but that offsets will displace the urgent investment in measures that *actually* reduce industrial pollution.
- 1.19 This is an unacceptably high opportunity cost in this critical decade for climate action, particularly given that methane from coal and gas, which is a short lived and very potent heat trapping gas, is what is already causing the carnage of natural disasters in our lifetime.
- 1.20 As Mr Anatoli Launay-Smirnov, coal-mine methane analyst for Ember, assessed the risk of offsetting methane:
- I don't think offsets will work with methane. CO<sub>2</sub> and methane are very different gases. Most offsets are carbon offsets, carbon dioxide offsets, and methane is a completely different gas that behaves differently. It has a much shorter lifetime. Cross-offsetting is meaningless, and you need to physically get rid of methane going into the atmosphere, rather than trying to find a CO<sub>2</sub> project. That has an impact over hundreds of years, whereas methane has an impact of almost immediately, so we would really advise against offsetting methane.<sup>11</sup>
- 1.21 If government policy doesn't prioritise rapidly phasing out the release of methane from coal and gas production, then, over coming years, we are exposing our society to natural disaster costs orders of magnitude higher than

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<sup>10</sup> Mr John Connor, Chief Executive Officer, Carbon Market Institute, *Committee Hansard*, 27 February 2023, p. 22.

<sup>11</sup> Mr Anatoli Launay-Smirnov, Coal Mine Methane Analyst, Ember, *Committee Hansard*, 27 February 2023, p. 5.

Treasury's estimated 0.25 per cent of GDP (\$5 billion) that the Australian public were forced to cover for the impacts of last year's floods.<sup>12</sup>

- 1.22 Because methane is so toxic in the short term, the United States is leading a push to reduce methane use by 30 per cent by 2030. Cuts to methane in the next few years are critical to have any chance of meeting climate targets. But despite Australia signing up to the Global Methane Pledge, methane pollution will rise under the Safeguard Mechanism, with at least seven new massive gas projects projected by Labor to get underway by 2030.
- 1.23 It is no wonder that the Prime Minister recently said in question time that Labor's safeguard is endorsed by Woodside, Shell, Rio Tinto and Origin.<sup>13</sup>
- 1.24 Coal and gas companies should be paying to clean up the mess they are making through schemes like the Safeguard Mechanism. But instead they are able to lend their support for such policies, then announce three-fold boosts in their profits to the ASX while the community cleans up the debris left in their wake. Prime Ministers and Premiers will increasingly attend the anniversaries of another 1 in a 100-year disaster.

### **Just one new coal and gas project wipes out gains from the Safeguard Mechanism**

- 1.25 To measure the size of the shadow that new coal and gas projects will cast over the Albanese Government's centrepiece climate reform, just one expanded gas project will more than wipe out all of the gains the Safeguard Mechanism is expected to achieve.
- 1.26 Woodside's Scarborough-Pluto project in Western Australia—which is forecast by Labor to commence in 2025—will contribute a net amount of 232–235 million tonnes of carbon pollution globally by 2030.<sup>14</sup>
- 1.27 This is 27–30 million tonnes more pollution out to 2030 than the 205 million tonnes that are projected to be removed by the Safeguard Mechanism.
- 1.28 This is the effect of just one fossil fuel project on the horizon. The government's emissions projections assume at least a further five new gas projects on top of Scarborough and Pluto before 2030<sup>15</sup> with a total 117 coal and gas projects in

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<sup>12</sup> Rach Clun, ['Floods cost economy \\$5 billion last year'](#), *The Sydney Morning Herald*, 12 January 2023, (accessed 6 March 2023).

<sup>13</sup> The Hon Anthony Albanese MP, Prime Minister, *House of Representatives Hansard*, 15 February 2023, p. 56.

<sup>14</sup> See Appendix below.

<sup>15</sup> Department of Climate Change, Energy, the Environment and Water, *Australia's emissions projections 2022*, December 2022, pp. 45 and 47.

the government's list of major projects in development.<sup>16</sup> The global impact of emissions from these projects is 1306 million tonnes of pollution a year.<sup>17</sup> For reference, Australia's emissions are 490.5 million tonnes a year.<sup>18</sup>

- 1.29 The first step in fixing a problem is to stop making the problem worse. As it stands, the 'safeguard' will see actual emissions from coal and gas rise and bring the climate crisis closer. Labor's policy sees the climate crisis get worse.

### **Recommendation 1**

- 1.30 That the Government should design a scheme that makes pollution from coal and gas go down, not up.**

### **Recommendation 2**

- 1.31 The Bill be amended to prevent any new coal, oil or gas project from proceeding in Australian lands or waters.**
- 1.32 The Safeguard Mechanism allows coal and gas corporations (indeed, all the scheme's participants) to 'cut' all of their pollution by buying offsets from someone else. Paying someone else to go on a diet for you doesn't work, and Australia's biggest coal and gas polluters won't cut pollution by buying offsets.
- 1.33 The ability to meet 100 per cent of safeguard obligations by buying offsets means the government's claimed 205 million tonnes of emissions 'cuts' from the entities covered by the scheme could be entirely on paper. Pollution from the Safeguard entities can go up as long as they buy enough offsets. It is an accounting trick that won't fool the planet.

### **Recommendation 3**

- 1.34 Given the substantial, ongoing integrity concerns with ACCUs generated from existing projects and methodologies, the Government should take immediate action to ensure all credits, including existing credits have integrity.**
- 1.35 There has been a pattern of non-disclosure in this inquiry reminiscent of the Morrison Government. There have been Ministerial claims of public interest immunity to prevent disclosure of documents forecasting expected offset use

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<sup>16</sup> Department of Industry, Science and Resources, *Resources and energy major projects: 2022*, 19 December 2022.

<sup>17</sup> Internal research by the Parliamentary Library.

<sup>18</sup> Department of Climate Change, Energy, the Environment and Water, [Quarterly Update of Australia's National Greenhouse Gas Inventory: September 2022](#), (accessed 6 March 2023).

and actual pollution reductions.<sup>19</sup> While, at the same time, the Department's outright obstruction of information has made it very difficult for Senators to have a clear view of the effect of the legislation and legislative rules.<sup>20</sup>

- 1.36 These are crucial documents needed for law-makers to come to an informed decision about how the scheme is envisioned to work and in what ways it needs to be amended.

#### **Recommendation 4**

- 1.37 The Committee recommends that the Senate reject the Government's claims of public interest immunity and insist on the production of the assumptions behind the use of offsets and on-site abatement.**

- 1.38 The Committee also heard allegations that viewing the 'carbon estimation areas' that contain surveys of changes in tree cover for the Human Induced Regeneration offset method would show that crediting ACCUs is occurring where there is already tree cover. In other words, it is alleged that offsets are being awarded for trees that were already there.<sup>21</sup>

- 1.39 While we acknowledge that the majority report recommends making this information publicly available as a result of the Chubb Review, the Australian Greens are of the opinion that to assist Senators to have the necessary information before they vote, that these materials and data should be provided to the committee and thoroughly assessed to test the veracity of those allegations.

#### **Recommendation 5**

- 1.40 The committee recommends that the Senate compel the production of the carbon estimation areas materials from both the Clean Energy Regulator before the final two sitting weeks of March 2023.**

#### **Recommendation 6**

- 1.41 That recommendations 1 through to 4 of the majority report be implemented by the Government.**

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<sup>19</sup> The Hon Chris Bowen MP, Minister for Climate Change and Energy, *Letter from Minister Bowen to the Committee regarding a PII Claim in relation to the modelled ACCU level under the Safeguard Mechanism reforms*, additional information received 1 March 2023, p. 1.

<sup>20</sup> Department of Climate Change, Energy, the Environment and Water officials, *Committee Hansard*, 28 February 2023, pp. 43–60 and 66–74.

<sup>21</sup> Professor Andrew Macintosh, Australian National University, *Committee Hansard*, 27 February 2023, p. 54.

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## Recommendation 7

**1.42 Given the danger that new coal and gas projects pose to a stable climate and a safe society, this bill and legislative instruments should not pass in their current form.**

1.43 Finally, the Greens are sympathetic to the views of genuine Australian industry expressed during the inquiry that they are being asked to do more than they otherwise ought simply to make room for massive coal and gas projects.<sup>22</sup> The Greens are open to suggestions made by sectors that have a future in a net zero world for a reconsideration of their treatment under the Safeguard Mechanism.

1.44 The Greens want genuine Australian industry and manufacturing to thrive. Aluminium, steel, bricks, fertilisers, glass and cement all have a future in a clean economy, but coal and gas don't. We should be supporting genuine Australian industry to transition, not asking them to make room in a finite carbon budget for more coal and gas.

**Senator Sarah Hanson-Young**  
**Deputy Chair**

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<sup>22</sup> Australasian Centre for Corporate Responsibility, *Submission 7*, p. 5.

## Appendix: Information on emissions from Woodside's Scarborough-Pluto Project

In 2021, Climate Analytics assessed the emissions impact of the Pluto project, including Train 1, the expansion to Train 2, and the opening up of the Scarborough gas field to supply Train 2 and part of Train 1, as well as a large increase in domestic gas. They had assumed that domestic gas would be supplied from the Train 2 development from 2025 and LNG from 2026. They calculated that over the lifespan of the Pluto LNG plant, between 2021 and 2055 it would emit 1370 million tonnes of scope 1 and 3 emissions domestically and globally.<sup>23</sup>

Based on Climate Analytics' assessment of 1370 million tonnes of emissions over 35 years, this equates to an average of about 39 million tonnes of emissions a year.

The Australian Energy Market Operator (AEMO) reported in its 2022 Western Australia Gas Statement of Opportunities that:

Woodside Energy commenced development of Pluto Train 2 and the associated Scarborough gas field in August 2022. The operator is targeting first liquefied natural gas (LNG) for 2026. For the forecasts in this GSOO [Gas Statement of Opportunities], AEMO has assumed first domestic gas supply in 2027.<sup>24</sup>

Taking into account the revised AEMO projections for domestic gas availability, the Scarborough-Pluto project will produce around 243 million tonnes of emissions globally between the years 2024 and 2030.

Cumulative scope 1 emissions of from Pluto LNG facility,<sup>25</sup> including the Pluto expansion-Scarborough gas field project from and including 2024 to 2030, will be between 19–22 million tonnes.<sup>26</sup>

Under the Safeguard Mechanism, facilities will be required to reduce by 4.9 per cent a year compounded on average from the 2022-23 emissions level. With Pluto LNG emissions estimated at 1.95 MtCO<sub>2e</sub>, then under this average Safeguard Mechanism wide baseline reduction, the cumulative emissions allowed to the project would be approximately 11.2 MtCO<sub>2e</sub>.

The resulting cumulative reduction would be a maximum of 8–11 million tonnes. Given the way in which the government proposes to set industry

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<sup>23</sup> Climate Analytics, [Warming Western Australia: How Woodside's Scarborough and Pluto Project undermines the Paris Agreement](#), November 2021, p. 13.

<sup>24</sup> Australian Energy Market Operator, *2022 Western Australia Gas Statement of Opportunities*, December 2022, p. 13.

<sup>25</sup> Clean Energy Regulator, [Safeguard facility reported emissions 2020-21](#), (accessed 6 March 2023).

<sup>26</sup> Climate Analytics, [Warming Western Australia: How Woodside's Scarborough and Pluto Project undermines the Paris Agreement](#), November 2021, p. 35.



baselines it is very likely that the actual required reduction from the future project will be less than that, particularly as it will expand production from 2026.

Subtracting this from the 243 million tonnes above equals at least a net 232–235 million tonnes to be produced globally from the Scarborough-Pluto project under the Safeguard Mechanism.

Every tonne of Scope 1 or Scope 3 emissions has the same impact on atmospheric concentrations of greenhouse gases and the impact on global warming irrespective of how it is accounted for. These are directly comparable as to what is saved and what is released into the atmosphere. It is immaterial that only scope 1 emissions from the Scarborough and Pluto project will be accounted for within Australia's recorded emissions or that the Safeguard Mechanism only regulates scope 1 emissions.



# Senator David Pocock's additional comments

## **Proposed reform of the Safeguard Mechanism needs improvement**

- 1.1 Australians elected the 47th parliament with a mandate for real and ambitious action on climate change. Reform of the Safeguard Mechanism is an opportunity to take significant steps towards fulfilling that mandate. But the proposed reform, while progressive on the previous 10 years of inaction, needs significant improvement to reflect the scale and gravity of the challenge we face.
- 1.2 The design of the mechanism is complex and poses significant risks. Few economists believe that a baseline and credit scheme is the best tool for addressing the immense challenge of industry decarbonisation. Most agree that it would be far better to develop a cap and trade mechanism and build on the lessons learned in other jurisdictions.
- 1.3 The ambition built into the proposed changes is mediocre at best. Few, if any, scientists would agree that the proposed changes are adequate for Australian industry, and particularly the fossil fuel industry, to do its fair share of the global burden in holding warming to 1.5°C.
- 1.4 The political courage needed to address these fundamental issues remains lacking. I hope that there will soon be a renewed appetite for greater ambition and a willingness to take the political risks necessary to avoid climate catastrophe.
- 1.5 Despite the significant drawbacks, I believe that a reform of the Safeguard Mechanism that places integrity at its heart will result in significant real abatement of greenhouse gases. In considering the Safeguard Mechanism (Crediting) Amendment Bill 2022 (the bill), and any subsequent Safeguard Mechanism Rule, I am focussed on improvements that will increase real abatement, avoid blowing the Safeguard Mechanism carbon budget, and minimise financial risk to the taxpayer.
- 1.6 However, I am particularly concerned about proposed equal treatment of the fossil fuel industry and every other facility under the Safeguard Mechanism. Improvements need to be made to prevent the fossil fuel industry from buying their way out of decarbonisation using offsets.
- 1.7 Equally, improvements need to be made to promote decarbonisation of strategically important industries, and the industries of the future, without unnecessarily risking carbon leakage. We need industries like steel, aluminium and cement, and we need to move swiftly to establish conditions for those industries to transition.

- 1.8 Although the subject of this inquiry is the bill, it must be considered in the context of broader reform of the Safeguard Mechanism. I have not made submissions in previous consultations on the broader proposed reform due to resource constraints. As such, these additional comments make recommendations in relation to both the bill and the broader proposed reform.
- 1.9 The bill should pass subject to the adoption of additional recommendations as set out below.

### *Integrity and the treatment of new entrants*

- 1.10 The Safeguard Mechanism must have integrity—it has to do what it is designed to do. The government’s Position Paper is clear on what this is: a reduction in net emissions of CO<sub>2</sub>-e from safeguard facilities ‘to no more than 100 million tonnes [per annum] by 2030 and [a carbon budget] capped at 1233 million tonnes between 2021 and 2030’.<sup>1</sup>
- 1.11 There is a substantial risk that new fossil fuel facilities will blow the safeguard mechanism carbon budget.<sup>2</sup> This risk was raised by many throughout the committee process.
- 1.12 Ms Suzanne Harter, Climate Change and Energy Policy Adviser, Australian Conservation Foundation (ACF), warned that if the reserve is not large enough emissions will exceed the cap:

The problem really is that the analysis that has created the reserve is a little bit murky, so we don't know exactly what has been included in those new entrants. But when we have commissioned some pieces of work—one by ERI, another that was a WA case study, and we have one underway right now—we see a couple of things. One is that there is, in fact, a pipeline of new projects, particularly new coalmines and gas facilities, that will be bringing new emissions under that cap. So that's an issue with regard to either blowing out the cap, if the reserve isn't big enough, or putting a cost impost on all of those 215 facilities that are in safeguard currently.<sup>3</sup>

- 1.13 Dr Barry Traill, Director, Solutions for Climate Australia, Climate Action Network Australia (CANA), echoed these concerns, explaining that multiple analyses have forecasted that new entrants would significantly increase

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<sup>1</sup> Department of Climate Change, Energy, the Environment and Water, *Safeguard Mechanism Reforms: Position Paper*, January 2023, p. 2.

<sup>2</sup> See for example: Ms Suzanne Harter, Climate Change and Energy Policy Adviser, Australian Conservation Foundation (ACF), *Committee Hansard*, 27 February 2023, p. 43; Dr Barry Traill, Director, Solutions for Climate Australia, Climate Action Network Australia (CANA), *Committee Hansard*, 27 February 2023, p. 43; Mr Tony Wood, Program Director, Energy and Climate Change, Grattan Institute, *Committee Hansard*, 27 February 2023, p. 9.

<sup>3</sup> Ms Harter, Climate Change and Energy Policy Adviser, ACF, *Committee Hansard*, 27 February 2023, p. 43.

emissions, risking Australia's ability to reach its target as well as reduce availability of credits in the mechanism for other participants:

There are now three separate analyses which show that new entrants would bring significantly more emissions into the pipeline and risk blowing out the safeguard mechanism in a whole range of ways, not only affecting our ability to reach the 43 per cent target, which is fundamental, but also flowing through to wipe out the supply of ACCUs [Australian Carbon Credit Units] for other participants in the mechanism. I really want to flag that strongly. All these analyses are based on a series of assumptions about new entrants, but I would flag that they're different from the government's analysis. If we're not working on a firm foundation of agreed facts, that is of concern when we're trying to nail down the best outcome.<sup>4</sup>

- 1.14 The Australia Institute gave similar evidence that the expected emissions from new facilities are expected to overwhelm the budget and impede Australia reaching its target:

Given the determination of the proponents of fossil fuel projects to open large new facilities whose emissions will be far more than the 100,000 tonnes per year threshold of the Safeguard Mechanism there is a significant risk that new entrants will overwhelm the budget and place greater burden on either other covered facilities or other parts of the economy. They might also prevent the achievement of the legislated 43 percent target.<sup>5</sup>

- 1.15 The Australia Institute questioned how the emissions budget would be balanced with new entrants as it is unlikely that the emissions profiles from existing facilities would be similar to new facilities:

It is unclear how the emissions budget will be balanced with new entrants. While it is possible that emissions from existing facilities that close before 2030 have a similar emissions profile to the new mines, gas wells and factories that might choose to begin polluting before 2030, there is no reason to expect that such a coincidence will occur.<sup>6</sup>

- 1.16 Mr Tony Wood, Program Director, Energy and Climate Change, Grattan Institute, argued for tightening the safeguard mechanism carbon budget, noting the difficulties faced in accurately forecasting projects:

We've suggested that that budget be even tighter, that the budget for the safeguard mechanism should be in the rules to make sure that that's firm so that, if a new facility does enter, its emissions are counted within that cap and not from another part of the economy. The issue then becomes: how big is this reserve? Inevitably, there is a risk. A point we made in our submission is that there are several risks in the way the safeguard is

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<sup>4</sup> Dr Traill, Director, Solutions for Climate Australia, CANA, *Committee Hansard*, 27 February 2023, p. 43.

<sup>5</sup> The Australia Institute, *Submission 18*, p. 10.

<sup>6</sup> The Australia Institute, *Submission 18*, p. 5.

designed at the moment. Some of them are very difficult to foresee because we know from history that lots of projects that have been proposed just don't go ahead, so trying to forecast how this is going to work is close to impossible.<sup>7</sup>

### *A legislated Safeguard Mechanism budget*

- 1.17 The issue of risk to the Safeguard Mechanism budget was discussed in the majority report,<sup>8</sup> but no solution was proposed.
- 1.18 Organisations including the National Environmental Law Association (NELA), Australian Projections, Carbon Market Institute (CMI) and the ACF all proposed that the bill be strengthened to include a reference to specific emissions reduction targets. As noted in the majority report, CMI submitted that the 'question of new entrants' could be addressed in the bill by incorporating the carbon budget 'into the regulatory framework', *overtly*. This would require decision-makers to calculate potential impacts on Australia's emissions reduction budget when considering approvals for new heavy-emissions projects, or 'significant expansion of facilities'.<sup>9</sup>
- 1.19 I note that the bill includes a proposed new object for the *National Greenhouse and Energy Reporting Act 2007* (NGER Act), which requires that 'aggregate net emissions from the operation of [Safeguard] facilities *decline*'.<sup>10</sup> This is a vast improvement on the existing objects of the Act, under which emissions from Safeguard facilities have continued to increase. However, it is not strong enough.
- 1.20 As NELA recommended, I propose that the new object should 'prescribe a rate at which emissions should decline overall'. Specifically, the Act should specify that emissions from Safeguard facilities should decline at a rate required to achieve Australia's greenhouse gas emissions reductions targets under the Paris Agreement.<sup>11</sup> Australian Projections suggested the wording should be:
- ...aggregate net covered emissions from the operation of designated large facilities decline in line with Australia's international commitments, and the provisions of the Climate Change Act 2022.<sup>12</sup>
- 1.21 The bill also seeks to amend the NGER Act to place an obligation on the minister and regulator to make Rules that are consistent with the objects of the

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<sup>7</sup> Mr Wood, Program Director, Energy and Climate Change, Grattan Institute, *Committee Hansard*, 27 February 2023, p. 9.

<sup>8</sup> See majority report, pp. 57–60.

<sup>9</sup> Mr Kurt Winter, Director, Corporate Transition, CMI, *Committee Hansard*, 27 February 2023, p. 20.

<sup>10</sup> *Safeguard Mechanism (Crediting) Amendment Bill 2022*, proposed subsection 3(2) and Explanatory Memorandum, p. 10. Emphasis added.

<sup>11</sup> NELA, *Submission 10*, p. 3.

<sup>12</sup> Australian Projections, *Submission 9*, p. 1.

Act.<sup>13</sup> The proposed provision prevents the minister making Safeguard rules ‘unless satisfied that those rules are consistent with the second object of the NGER Act’.<sup>14</sup> In other words, the minister can only make Rules that result in aggregate net emissions from Safeguard facilities declining. However, without reference to the rate of decline required, this amendment is likely to be ineffective.

## Recommendation 1

**1.22 Amend the objects of the *National Greenhouse and Energy Reporting Act 2007* (NGER Act) to set out key objectives of the Safeguard Mechanism, including:**

- that the industrial sector makes a requisite proportional contribution to meeting Australia’s overall emissions reduction targets; and
- that aggregate net covered emissions from the operation of designated large facilities decline in line with the provisions of the *Climate Change Act 2022*.

**1.23 In line with this, the NGER Act should be amended to require that the Minister must be satisfied that the Safeguard Rules are consistent with those objectives when making or amending the Safeguard Rules.**

## Recommendation 2

**1.24 Put a carbon budget of 1,233 million tonnes CO<sub>2</sub>-e emissions between 2021 and 2030 in legislation or regulation as an absolute cap on scheme emissions.**

### *Monitoring and reporting on the Safeguard Mechanism budget*

1.25 Several submitters and witnesses supported regular reporting on the Safeguard Mechanism emissions budget, and the size and use of the reserve designed for new entrants. For instance, Ms Rachel Walmsley, Head of Policy and Law Reform, Environmental Defenders Office (EDO), argued for greater transparency in the system, particularly around how new entrants will fit within the budget:

But one of the other things that we've seen in our analysis of climate law is a real gap between linking targets, goals and objects to the carbon budget that we have remaining. What we need is absolute transparency on how we're tracking against our remaining carbon budget. We've got only seven years to achieve our 2030 goal, so what we need to do—potentially through mechanisms like this and other pieces of legislation—is to be able to track how Australia's carbon budget is looking, and whether any new entrants will fit within that carbon budget. We need to see how any

<sup>13</sup> Proposed subsection 22XS(1A). NELA, *Submission 10*, pp. 4–5.

<sup>14</sup> Which is to ensure aggregate net emissions from the operation of Safeguard facilities decline.

innovations we have in other areas—transport, energy efficiency—raises our budget. We need a far more transparent system of how to track and link all these legislative things to our actual carbon budget.<sup>15</sup>

1.26 The Grattan Institute suggested the bill could be amended so that:

...the regulator has to publish, every year, how much of the safeguard budget has been consumed and how much remains, alongside the information of how much everyone's exactly measured, and then people can take one number off the other and see what the reserve is.<sup>16</sup>

### **Recommendation 3**

**1.27 Require the Clean Energy Regulator to report annually on the size and use of the Safeguard Mechanism budget and reserve, including the drawdown of the reserve by category (new entrants, expanded production, and unacquitted exceedance of baselines).**

#### *Treatment of new entrants*

1.28 As detailed above, many submitters and witnesses raised concerns about the need for cautious treatment of new entrants, and in particular new fossil fuel facilities.

1.29 The Australia Institute argued that without greater clarification on how new entrants are accommodated, there is effectively no cap within a cap-and-trade scheme:

It remains unclear how new entrants to the Safeguard Mechanism will be treated and accommodated. Without specifying how new entrants will be limited or how the 1,227 million tonnes (Mt) carbon dioxide equivalent (CO<sub>2</sub>e) carbon budget for the Safeguard Mechanism to 2030 will be re-distributed when they enter, the advent of SMCs [Safeguard Mechanism Credits] effectively creates a cap-and-trade scheme with no cap.<sup>17</sup>

1.30 In a relatively recent consideration of what impact new shale gas facilities should have on greenhouse gas emissions, the Hon Justice Rachel Pepper recommended that:

That the NT and Australian governments seek to ensure that there is no net increase in the life cycle GHG emissions emitted in Australia from any onshore shale gas produced in the NT.<sup>18</sup>

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<sup>15</sup> Ms Rachel Walmsley, Head of Policy and Law Reform, Environmental Defenders Office (EDO), *Committee Hansard*, 27 February 2023, p. 66.

<sup>16</sup> Mr Wood, Program Director, Energy and Climate Change, Grattan Institute, *Committee Hansard*, 27 February 2023, p. 14.

<sup>17</sup> The Australia Institute, *Submission 18*, p. 28.

<sup>18</sup> The Hon Justice Rachel Pepper, *Scientific Inquiry into Hydraulic Fracturing in the Northern Territory – Summary of the Final Report*, Recommendation 9.8, p.35.



## Recommendation 4

### 1.31 New entrants must have a net zero impact on emissions and no access to Australian Carbon Credit Units (ACCU) to comply with baselines.

#### *Anti-avoidance definitions and new facilities*

1.32 Several submitters and witnesses raised concerns that anti-avoidance provisions risk allowing significant extensions to be undertaken and not fall into the definition of a new entrant.

1.33 As an example, Mr Gavan McFadzean, Manager, Climate Change and Energy Program, ACF, expressed concerns that Woodside would treat the Scarborough project as an expansion of its existing facilities:

We have one additional concern, which comes back to Suzanne's earlier point about the need to tighten anti-avoidance definitions in the bill. What Woodside will, very likely, intend to do is treat the Scarborough project as an expansion or an extension of its existing operations on the Burrup Peninsula because of the existing infrastructure it has there and not treat it as a new entrant, which it should be. We still think this is a problem with this bill. That's an area that definitely needs to be tightened.<sup>19</sup>

1.34 Ms Harter from the ACF, argued for a clear definition of 'facilities' as there is currently uncertainty around how expansions of existing facilities will be treated under the scheme:

A further uncertainty is how expansions of current facilities will be treated and how extensions of current facilities will be treated, because there are also those under a production adjusted baseline which moves up and down with production—an intensity baseline. That means an existing facility that somehow manages to tap into a new gas reserve, for example, will bring those emissions into the safeguard under an existing facility. This all hinges around how new facilities are defined, which is a point that we have put into our submission. A new definition or a very clear definition of 'facilities' will be very, very important for us to better understand those emissions that are going to come into the scheme and whether that reserve is even close to being adequate, alongside what we feel are new requirements needed for new entrants.<sup>20</sup>

## Recommendation 5

### 1.35 Clarify that any facility expansion or extension that will be responsible for over 100,000 tonnes of CO<sub>2</sub>-e a year is classified as a new entrant.

#### *Incentivise real abatement through a carbon mitigation hierarchy*

<sup>19</sup> Mr Gavan McFadzean, Manager, Climate Change and Energy Program, ACF, *Committee Hansard*, 27 February 2023, p. 47.

<sup>20</sup> Ms Harter, Climate Change and Energy Policy Adviser, ACF, *Committee Hansard*, 27 February 2023, p. 43.

1.36 The proposed reform of the Safeguard Mechanism does not, at present, provide the right incentives to maximise real abatement. The mechanism must have a carbon mitigation hierarchy embedded in its design. There must be market incentives for facilities to first avoid, and then minimise their emissions. As noted by many submitters, offsets should be used only as a last resort.<sup>21</sup> In the words of Professor Ian Chubb, ‘offsets can’t be a device which big emitters use not to change their behaviour not to do something about reducing emissions’.<sup>22</sup>

### *Limits on the use of ACCUs*

1.37 The Safeguard Mechanism reform as proposed would place Australia alongside Kazakhstan as the only two countries with a market mechanism for carbon and no limit on the use of offsets as a source of abatement.<sup>23</sup>

1.38 The Australasian Centre for Corporate Responsibility (ACCR) submitted that Australia’s ‘unlimited use of land-based offsets is poor science and poor policy’, and noted that Australia is ‘out of step with international practice’.<sup>24</sup> The ACCR observed that, under schemes in other national jurisdictions, the use of offsets is generally limited to 10 per cent of emissions reduction obligations, or less.<sup>25</sup> The ACCR provided the graph below, which compares Australia’s Safeguard Mechanism limits on offset use, relative to other national carbon prices:

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<sup>21</sup> Climate Council of Australia, *Submission 3*, p. 5; EDO, *Submission 5*, p. 3; Australia Institute, *Submission 18*, p. 8; CANA, *Submission 17*, pp. 1-2; Smart Energy Council, *Submission 24*, p. 3; Lock the Gate Alliance, *Submission 25*, p. 5; Mx Annika Reynolds, Climate Policy Advisor, Ember, *Committee Hansard*, 27 February 2023, p. 5.

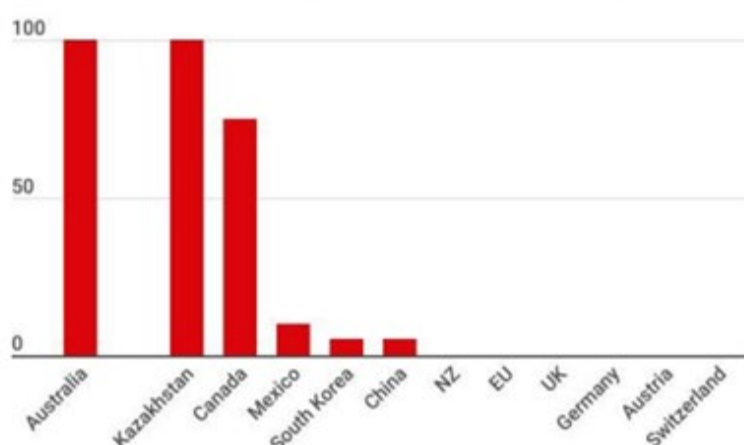
<sup>22</sup> [‘Carbon credits can’t be used to shun cuts: Chubb’](#) *The Australian*, 10 October 2022, (accessed 3 March 2023).

<sup>23</sup> Australasian Centre for Corporate Responsibility (ACCR), *Submission 7*, p. 8

<sup>24</sup> ACCR, *Submission 7*, p. 7.

<sup>25</sup> ACCR, *Submission 7*, p. 8.

Figure 2: SGM limits on offset use, relative to other national carbon prices (% of liability, or emissions as applicable)



Source: ACCR, *Submission 7*, p. 8.

- 1.40 A limit on the proportion of abatement that can be achieved through ACCUs would create a significantly higher incentive for facilities to decarbonise rather than relying on offsets.
- 1.41 A large number of submissions recommended a cap on the proportion of abatement that can be achieved using ACCUs.<sup>26</sup> As noted in the majority report, the EDO said failing to insert ‘a clear power’ into the Act that would allow the Minister to place a cap on the use of ACCUs would result in a ‘business as usual’ situation, where ‘real abatement’ does not happen.<sup>27</sup> The Lock the Gate Alliance likewise noted that ‘the unrestricted use’ of ACCUs and Safeguard Mechanism Credits (SMCs) will ‘at best delay critical action to decarbonise industry, and at worst mean that a considerable fraction of claimed abatement will not actually occur’.<sup>28</sup>
- 1.42 The Australia Institute was also supportive of a cap, proposing a mitigation hierarchy and a limit of 5 per cent on the use of ACCUs Safeguard facilities.<sup>29</sup> Meanwhile, the submission from the Australian National University and University of New South Wales, Canberra Emissions Reduction Fund research

<sup>26</sup> See ACF, *Submission 2*, p. 8; Climate Council of Australia, *Submission 3*, pp. 5–6; Doctors for the Environment Australia, *Submission 5*, pp. 2–4; EDO, *Submission 5*, p. 8; ACCR, *Submission 7*, pp. 8–9; NELA, *Submission 10*, pp. 3–5; Farmers for Climate Action, *Submission 13*, p. 4; Australia Institute, *Submission 18*, p. 14; CANA, *Submission 17*, p. 2; Smart Energy Council, *Submission 24*, pp. 3–4; Lock the Gate Alliance, *Submission 25*, p. 1; The Australian National University (ANU) and the University of New South Wales, Canberra (UNSW) Emissions Reduction Fund (ERF) research team, *Submission 28*, p. 1; Ms Polly Hemming, Director, Climate and Energy Program, The Australia Institute, *Committee Hansard*, 27 February 2023, p. 36; and Ms Harter, Climate Change and Energy Policy Adviser, ACF, *Committee Hansard*, 27 February 2023, p. 43.

<sup>27</sup> Ms Walmsley, Head of Policy and Law Reform, EDO, *Committee Hansard*, 27 February 2023, pp. 62–63.

<sup>28</sup> Lock the Gate Alliance, *Submission 25*, p. 1.

<sup>29</sup> Australia Institute, *Submission 18*, p. 14.

team proposed that a quantitative limit on the use of ACCUs ought to be 'set as a percentage of any annual exceedance above the applicable baseline'.<sup>30</sup>

- 1.43 Concerns were raised in some submissions and by some witnesses that hard-to-abate industries did not have access to technologies that would allow them to decarbonise and so access to ACCUs is necessary.<sup>31</sup> The Climate Council of Australia suggested that the use of ACCUs 'be progressively phased down to a set percentage of a facility's total baseline' over time. The Climate Council also proposed 'differential percentages' be applied across different sectors, depending on 'the available technology options for achieving genuine emissions reduction'.<sup>32</sup>
- 1.44 The modelling of demand for ACCUs has not been made public. What has been said is that in 2030, somewhere around 20 per cent of facilities' emissions reduction will be achieved using ACCUs.<sup>33</sup>

## Recommendation 6

- 1.45 Legislate a declining limit on the use of ACCUs by Safeguard Mechanism facilities, reducing to 20 per cent of exceedance above baselines by 2030. If the Government is unwilling to implement a hard cap, there should be a discount on the carbon value of ACCUs over thresholds, with the discount on carbon value escalating in proportion to the use of ACCUs on a sliding scale.**

### *SMCs to be used in preference to ACCUs*

- 1.46 Many submitters made a convincing case that SMCs should be used in preference over ACCUs, as SMCs represent actual avoided emissions.<sup>34</sup> To operationalise this, there must be a market privilege for SMCs over ACCUs.
- 1.47 The ACF stated:

Offsets should sit within a hierarchy that starts with avoiding, minimising and mitigating emissions. They should be a last resort until mitigation

<sup>30</sup> ANU and UNSW ERF research team, *Submission 28*, p. 1.

<sup>31</sup> See ACF, *Submission 2*, pp. 3-4; Carbon Market Institute (CMI), *Submission 20*, p. 3; Australian Aluminium Council, *Submission 15*, pp. 3-4; Grattan Institute, *Submission 30*, p. 7, Ai Group, *Submission 33*, p. 4.

<sup>32</sup> Climate Council of Australia, *Submission 3*, p. 5.

<sup>33</sup> Department of Climate Change, Energy, the Environment and Water, responses to questions from Senator Grogan, 1 March, received 2 March 2023, p. 1.

<sup>34</sup> See Climate Council of Australia, *Submission 3*, p. 5; EDO, *Submission 5*, p. 3; Australia Institute, *Submission 18*, p. 8; CANA, *Submission 17*, pp. 1-2; Smart Energy Council, *Submission 24*, p. 3; Lock the Gate Alliance, *Submission 25*, p. 5; Mx Reynolds, Climate Policy Advisor, Ember, *Committee Hansard*, 27 February 2023, p. 5; and Ms Harter, Climate Change and Energy Policy Adviser, ACF, *Committee Hansard*, 27 February 2023, p. 43.

technologies and operational changes can take effect for hard-to-abate industries. They should not be the primary means of achieving pollution reduction.<sup>35</sup>

1.48 The CANA also emphasised this point, recommending that ‘facilities must use Safeguard Mechanism Credits first, given their higher integrity and more direct equivalence in emissions reduction, before facilities are allowed access to Australian Carbon Credit Units’.<sup>36</sup> The Australia Institute agreed, specifically noting that ‘ACCU should always be seen as a “last resort”’.<sup>37</sup>

1.49 In considering how SMCs could be given preference over ACCUs, a variety of ways to establish a mitigation hierarchy have been proposed.<sup>38</sup> As noted in the majority report, the Climate Council of Australia recommended:

- adding an amendment to the NGER Act to require facilities to report on emissions reduced through ‘onsite projects’, and/or investments and initiatives that will lead to ‘genuine emissions reduction in future’;
- adding a requirement for facilities to ‘surrender SMCs alongside [Australian Carbon Credit Units (ACCUs)] when doing so for the purpose of reducing net emissions’; and
- ‘expressly’ including in the legislation that the minister can use regulation to establish ‘the total share of prescribed carbon units able to be surrendered against a facility’s obligations’.<sup>39</sup>

1.50 The Smart Energy Council (SEC) maintained that for the Safeguard Mechanism to be effective, there needs to be a requirement that SMCs are used before resorting to ACCUs. The SEC stated:

If reasonable steps have been taken to achieve on-site emissions, SMCs must be purchased first, up to a certain threshold. If the threshold of SMCs has been purchased, only then can ACCUs be purchased. This will deliver the real achievement of the Safeguard Mechanism cap.<sup>40</sup>

1.51 As noted in the majority report, CANA echoed this suggestion, saying SMCs have ‘higher integrity and more direct equivalence in emissions reduction’.<sup>41</sup>

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<sup>35</sup> Australian Conservation Foundation (ACF), *Submission 2*, p. 5.

<sup>36</sup> CANA, *Submission 17*, p. 2.

<sup>37</sup> Australia Institute, *Submission 18*, p. 8.

<sup>38</sup> For a sample submitters who are generally supportive of a mitigation hierarchy proposal, see: EDO, *Submission 5*, p. 5; National Environmental Law Association (NELA), *Submission 10*, pp. 3–5; CANA, *Submission 17*, p. 2; Smart Energy Council, *Submission 24*, pp. 3–4; Lock the Gate Alliance, *Submission 25*, p. 5; Ms Harter, Climate Change and Energy Policy Adviser, ACF, *Committee Hansard*, 27 February 2023, p. 43.

<sup>39</sup> Climate Council of Australia, *Submission 3*, pp. 5–6.

<sup>40</sup> Smart Energy Council, *Submission 24*, p. 3.

<sup>41</sup> CANA, *Submission 17*, p. 2.

1.52 The Climate Council of Australia proposed that the bill be amended to make further updates Section 22XK and Section 22XM of the NGER Act (along with any necessary consequential sections) in order to:

- require covered facilities to surrender SMCs alongside ACCUs when doing so for the purpose of reducing net emissions;
- expressly state that the total share of prescribed carbon units able to be surrendered against a facility's obligations can be determined by the Minister via regulation; and
- clarify that any coal, oil or gas facilities entering the mechanism after 1 July 2023 may only surrender SMCs for the purpose of reducing their net emissions.<sup>42</sup>

### **Recommendation 7**

**1.53 Ensure that SMCs are used by Safeguard Mechanism facilities to meet compliance requirements in preference to ACCUs.**

#### *The Cost Containment Mechanism*

1.54 The cost containment mechanism creates an artificial price ceiling and has a distorting effect on the market.

1.55 The Grattan Institute raised this concern submitting that:

Because facilities are not liable for 100 per cent of their emissions, the proposed ceiling price for ACCUs of \$75 per tonne is a very low effective cost of carbon: about \$17/t across the seven years to 2030, and equivalent to a long-term (2050) cost of \$105/t. It is well below the average internal carbon price of \$96/t disclosed by Safeguard companies. This implies that new projects and expansions will be viable without needing to purchase ACCUs from the government; and that the cap could be higher without imposing significant costs.

How the government manages the supply and demand for ACCUs for the cost-containment measure will be critical to its effectiveness.<sup>43</sup>

1.56 The Lock the Gate Alliance added:

In the absence of any other incentive or restriction, the only way profit-maximising companies would choose to pursue direct abatement instead of purchasing carbon credits would be if abatement was cheaper. The cost containment measure interferes in this basic market process and actually looks set to protect polluters from having to pay anywhere close to the full cost of dealing with their pollution. The cost containment measure appears to compare poorly both with IEA carbon price estimates at 2030 to achieve a pathway to net zero, and the internal price of carbon already being factored in by several fossil fuel companies. This proposal becomes even more problematic when it is considered that businesses outside the scope of the Mechanism will be exposed to the volatility of the ACCU market

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<sup>42</sup> Climate Council of Australia, *Submission 3*, pp. 5–6.

<sup>43</sup> Grattan Institute, *Submission 30*, p. 9.

price, despite being smaller-scale emitters voluntarily seeking to offset their emissions.<sup>44</sup>

- 1.57 Should the price of ACCUs exceed the cost containment mechanism, the government would have to sell ACCUs back into the market. It is likely that most, if not all, of the suppliers of contracted ACCUs will have exited their contracts with government long before the price hits that level.
- 1.58 This risks placing the taxpayer on the hook for the difference between the market price of ACCUs and the cost containment mechanism.
- 1.59 The Grattan Institute demonstrated this point:

If the supply of ACCUs available from the government is constrained, the amount that companies are willing to pay will rise to somewhere between \$75/t and the penalty price of \$275/t, with the exact price reflecting the market's view on how many ACCUs the government is likely to make available. In this case, the government makes a loss on any sales to Safeguard participants.<sup>45</sup>

- 1.60 Alternatively, the ANU-UNSW ERF research team recommended that a penalty price be used instead:

The cost-containment mechanism is internationally unique. You don't see a cost-containment mechanism like this anywhere in the world. The idea that the government buys offsets and then resells them puts us in a completely different category to everybody else. Every other scheme that I know of has a simple penalty price, and we've always had it under all the schemes that we've run in Australia. Once you hit that price, you can either surrender ACCUs if you want to, or you can simply pay the penalty price.

The beauty of that is that, administratively, it's so simple. But, most importantly, it doesn't expose the Commonwealth to a liability.<sup>46</sup>

- 1.61 This would mean the 'Commonwealth actually raises revenue, and it can take that revenue and then use it to help with the transition of covered facilities or use it to support other activities, whether it be in the land sector or the agricultural sector'.<sup>47</sup>

## Recommendation 8

- 1.62 Remove the cost containment mechanism. If the government considers the mechanism necessary, it should be implemented as a penalty price, with any revenue directed into the Powering the Regions Fund. The mechanism should be subject to a three-year sunset period.**

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<sup>44</sup> Lock the Gate Alliance, *Submission 25*, pp. 5–6.

<sup>45</sup> Grattan Institute, *Submission 30*, p. 9.

<sup>46</sup> Professor Andrew Macintosh, ANU-UNSW ERF research team, *Committee Hansard*, 27 February 2023, p. 59.

<sup>47</sup> Professor Macintosh, ANU UNSW ERF research team, *Committee Hansard*, 27 February 2023, p. 60.

### *Improve the integrity of ACCUs*

1.63 As the majority report highlights, many submitters raised concerns that the ability of the Safeguard Mechanism to reduce Australia's emissions would be adversely affected if there remain unresolved questions around the integrity of ACCUs.

1.64 The committee received compelling evidence that persistent and credible concerns remain over the integrity of a significant proportion of ACCUs.

1.65 These concerns were comprehensively set out in the submission and evidence from the ANU-UNSW ERF Research Team. The Research Team's primary concern about the Safeguard Mechanism is that 'it allows unfettered access to ACCUs, even though there are significant unresolved integrity issues with existing offset projects...[which] could jeopardise Australia's ability to meet its emission reduction targets'.<sup>48</sup>

1.66 The three main methods of concern include: human-induced regeneration, landfill gas and avoided deforestation projects. The research team's analysis pointed to the scale of the issue of these methods which indicated that:

...between now and 2030 about 61 million high-risk or low-integrity ACCUs...will be available for use under the safeguard mechanism out of existing human-induced regeneration [landfill gas and avoided deforestation] projects...

...that does not include 139 projects that have not reported. When you include them, it has to be more than 70 million ... If you think about it, the safeguard mechanism total estimated abatement is 205 million tonnes. So if we're talking about 70-plus million low-integrity credits that are in circulation, it will cut the effectiveness of the safeguard mechanism almost in half.<sup>49</sup>

1.67 The integrity issue with the human-induced regeneration method, the Research Team argued, is that 'it has not been applied in accordance with its original intent: to incentivise the regeneration of native forests by allowing juvenile trees and shrubs to regrow in areas that were previously cleared'.<sup>50</sup> At the hearing on 27 February 2023, the research team stated:

...what we can say with 100 per cent certainty is that 97 per cent of the project areas of these projects are located in intact native vegetation. We are following every single one of those projects using satellite imagery. What we also know for sure is that the areas that have been cleared in these projects are largely not included in the areas that been credited.<sup>51</sup>

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<sup>48</sup> ANU-UNSW ERF research team, *Submission 28*, p. 1.

<sup>49</sup> Professor Macintosh, ANU-UNSW ERF research team, *Committee Hansard*, 27 February 2023, pp. 55–56.

<sup>50</sup> ANU-UNSW ERF research team, *Submission 28*, Attachment 1, p. 3.

<sup>51</sup> Professor Macintosh, ANU-UNSW ERF research team, *Committee Hansard*, 27 February 2023, p. 54.



1.68 Therefore, the research team recommended that these credits be blocked from existing projects unless ‘they can come across and transition onto a method that limits eligibility to areas that are cleared’.<sup>52</sup>

1.69 With regard to landfill gas, the research team recommended that landfill gas projects should be blocked unless they adopt higher baselines. Its submission explained:

Landfill gas projects receive ACCUs for capturing and combusting the methane component of the biogas emitted from solid waste landfills. The integrity problem with the landfill methods is that many of the larger projects are getting ACCUs for combusting methane that they would have combusted anyway because their ‘baselines’ are too low.<sup>53</sup>

1.70 Significantly, at the committee’s hearing, the research team added that:

... more than 90 per cent of the landfill gas industry are in full agreement with us that the baselines are too low... They have themselves actually called for the method to be changed. I know they’ve also met with the department, asking the department to get on with this process, and we haven’t seen any action as yet.<sup>54</sup>

1.71 As for avoided deforestation, these ACCUs should also be blocked because ‘principally, that the rate of deforestation in the project areas would have to have been much higher than it has been historically for the number of ACCUs that have been issued to be justified’.<sup>55</sup> Professor Macintosh explained:

The simplest way to understand this is to look at the map of where these projects are. These avoided deforestation projects are all located in the west of New South Wales and the vast majority of them—in fact, I think it’s 94 per cent of them—are located into the western local land services region. So we are talking way out west. The rates of land clearing out there are very low, for a very good reason—it’s dry. It’s not economically sensible to clear vast areas of land. There is clearing that goes on out there—absolutely there is—but not on the scale that would make it logical for the areas that are currently being credited for the maths to stack up.<sup>56</sup>

1.72 I note that Minister Bowen revoked the avoided deforestation method under the Emissions Reduction Fund on 14 February 2023. However, there are still many ACCUs in the system that were created prior to this time that are of questionable integrity. Furthermore, ACCUs will continue to be created under existing avoided deforestation projects.

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<sup>52</sup> Professor Macintosh, ANU-UNSW ERF research team, *Committee Hansard*, 27 February 2023, p. 59.

<sup>53</sup> ANU-UNSW ERF research team, *Submission 28*, Attachment 1, p. 2.

<sup>54</sup> Professor Macintosh, ANU-UNSW ERF research team, *Committee Hansard*, 27 February 2023, p. 56.

<sup>55</sup> Dr Don Butler, private capacity, *Committee Hansard*, 27 February 2023, p. 56.

<sup>56</sup> Professor Macintosh, ANU-UNSW ERF research team, *Committee Hansard*, 27 February 2023, p. 55.

1.73 Some of the concerns outlined by the ANU-UNSW ERF research team were echoed by GreenCollar, the largest carbon aggregator in Australia, which noted that methods should always be looked to be improved, they should also be moved on from when they reach the end of their life. For example, GreenCollar stated: 'We absolutely are in support of the end of [the avoided deforestation] method. It's reached the end of life. It was a method written for a specific context that is no longer relevant'.<sup>57</sup>

1.74 GreenCollar even volunteered to discount the value of some carbon credits and stated:

We would be supportive of that idea. I don't think it's our job to figure out what that number is, but we do think that that's probably one of the better resolutions here, because it has become such a contested space, and, as I said before, we share concerns.<sup>58</sup>

1.75 In going some way towards addressing this issue, there is widespread support for full implementation of the Chubb Review from industry, including for instance the AiGroup:

The full implementation of the Chubb recommendations should further bolster confidence that Australian Carbon Credit Units represent real reductions in emissions and real removals of carbon from the atmosphere.<sup>59</sup>

1.76 The President of the Business Council of Australia, Mr Tim Reed also endorsed the full implementation of the Chubb review recommendations:

...the work that the minister had Professor Chubb and his colleagues do was very important work, and...we are supportive of the recommendations being fully implemented, because we do believe that integrity is a very important issue.<sup>60</sup>

## **Recommendation 9**

**1.77 Prevent Safeguard Mechanism facilities from surrendering ACCUs unless there is a high degree of certainty that the abatement that they offer is real, additional and permanent. This starts with full implementation of the Chubb Review as a matter of urgency.**

1.78 Another proposal with considerable support from stakeholders was the instatement of 'rolling vintage windows' that limit the opportunity for use of

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<sup>57</sup> Mr James Schultz, Chief Executive Officer, GreenCollar, *Committee Hansard*, 28 February 2023, p. 23.

<sup>58</sup> Mr James Schultz, Chief Executive Officer, GreenCollar, *Committee Hansard*, 28 February 2023, p. 24.

<sup>59</sup> AiGroup, *Submission 33*, p. 4.

<sup>60</sup> Mr Tim Reed, President, Business Council of Australia, *Committee Hansard*, 28 February 2023, p. 31.

ACCUs. This is a design feature of the European Union Emissions Trading Scheme (EU ETS), and other similar markets.

- 1.79 Support for an ACCU vintage window proposal was received from submitters such as Mr Tennant Reed, the Director of Climate Change and Energy at AiGroup who explained:

...it would be sensible to build in some safeguard against that kind of outcome [an unexpectedly large volume of offsets being issued], and that a rolling vintage window for compliance grade units would not be a bad way of going about that. Under that idea, you pick a number—we suggested five years. Units older than that—and we suggested this in relation to domestic offsets, SMCs and international units if and when they are allowed for compliance under the scheme—would not be able to be retired for compliance purposes... That seems like a reasonable approach not so much to change the expected outcome of the scheme, or expected prices, but to guard against unexpected errors in forecasts.<sup>61</sup>

- 1.80 Support for an ACCU vintage limitation also came from the Climate Markets Institute:

[Vintaging] is one of the discussions being had...in that, if we are to look at some limits, it may be easier to look at some vintage limits. That means you have a certain trailing period of previous years for ACCUs and potentially even SMC's that are available and some other models of five or seven years or so in that framework. That is one of the flexibility mechanisms and options that we think certainly should be considered.<sup>62</sup>

## Recommendation 10

- 1.81 Subject ACCUs, SMCs and any future use of international credits to rolling vintage windows of 3-year timeframe.**

### *Transparency around the use of ACCUs*

- 1.82 There was broad support for increased transparency around the creation and surrender of ACCUs and SMCs.<sup>63</sup> The Grattan Institute noted that, at present,

<sup>61</sup> Mr Tennant Reed, Director of Climate Change and Energy at AiGroup, *Committee Hansard*, 27 February 2023, p. 26.

<sup>62</sup> Mr John Connor, Chief Executive Officer, CMI, *Committee Hansard*, 27 February 2023, p. 22.

<sup>63</sup> ACF, *Submission 2*, p. 10; EDO, *Submission 5*, p. 10; Farmers for Climate Action, *Submission 13*, p. 4; Australian Forest Products Association, *Submission 19.1*, p. 1; Australian Workers' Union and Mining and Energy Union, *Submission 22*, p. 6; Smart Energy Council, *Submission 24*, p. 4; Grattan Institute, *Submission 30*, p. 10; ANU and UNSW ERF research team, *Submission 28*, Attachment 1, p. 8 and Attachment 2, p. 12; Grattan Institute, *Submission 30*, p. 3; Climate Friendly, *Submission 32*, p. 2 and Attachment 1, p. 3; Ms Walmsley, Head of Policy and Law Reform, EDO, *Committee Hansard*, 27 February 2023, p. 65; Carbon Market Institute, answers to questions on notice from Senator Hanson-Young, 27 February 2023, received 2 March 2023, p. 1; Mr Wood, Grattan Institute, *Committee Hansard*, 27 February 2023, p. 14; Mr Wayne Smith, External Affairs Manager, Smart Energy Council, *Committee Hansard*, 27 February 2023, p. 68.

‘the market for ACCUs currently lacks any real transparency and the market for Safeguard Mechanism Credits (SMCs) is yet to be introduced’.<sup>64</sup> The Grattan Institute stated that:

To minimise demand for ACCUs from the cost-containment measure, the government should ensure delivery of the Australian Carbon Exchange currently under development by the Clean Energy Regulator, ideally well before the end of the first compliance year. The major benefits will be greater investor confidence and lower overall cost.<sup>65</sup>

1.83 The ACF submitted that ‘transparency and removal of barriers to scrutiny will be critical to ensure the integrity of SMC creation and making relevant documents available will assist in ensuring accountability’ and subsequently stated:

ACF recommends that all documents relied upon for measurement determinations be freely available, and that none be excluded from public view due to paywalls or licensing requirements (which can be addressed). Further to this Bill, measurement determination requirements should be tightened to incorporate relevant international best practice reporting requirements with as much actual and verified measurement as possible. Emissions reduction claims, and even resulting generation of SMCs, should not be the result of broad estimation.<sup>66</sup>

1.84 The ANU-UNSW Emissions Reduction Fund research team stated that these issues of transparency were so important that they ought to be legislated:

The Australian Government should ensure there is complete transparency in the operation of the scheme by enshrining comprehensive disclosure obligations in the *Carbon Credits (Carbon Farming Initiative) Act 2011* (CFI Act). The Act should also be amended to provide public interest groups and others with standing to seek injunctions to restrain contraventions of the Act and judicial review of administrative decisions made under the Act.<sup>67</sup>

1.85 Subsequently, the group called for transparency to be guaranteed:

Ensure the panel’s recommendations for greater transparency are fully implemented by including requirements in the *Carbon Credits (Carbon Farming Initiative) Act 2011 (Cth)* (CFI Act) that mandate the disclosure of offset reports, audit reports, carbon estimation areas, any data submitted to evidence compliance with eligibility requirements and all data relied on by the proposed Carbon Abatement Integrity Committee in evaluating and endorsing methods. The offset registry should also be required to include details of the crediting periods for registered projects.<sup>68</sup>

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<sup>64</sup> Grattan Institute, *Submission 30*, p. 10.

<sup>65</sup> Grattan Institute, *Submission 30*, p. 10.

<sup>66</sup> ACF, *Submission 2*, p. 10.

<sup>67</sup> ANU and UNSW ERF research team, *Submission 28*, Attachment 1, p. 1.

<sup>68</sup> ANU and UNSW ERF research team, *Submission 28*, Attachment 2, p. 12.

- 1.86 Increased transparency also gained support from industry. Ms Tania Constable, the CEO of the Minerals Council of Australia, told the committee that the MCA has ‘called for greater transparency across the [safeguard] mechanism as a whole’ and that transparency is ‘important for the [safeguard] mechanism for a whole range of reasons’. She went on to explain that the MCA’s member companies ‘embrace transparency and are participating in various transparency measures’.<sup>69</sup>
- 1.87 It is my view that transparency is the only route to accountability and, accordingly, a carbon offset system that achieves genuine abatement. The annual publishing of the details of ACCUs and SMCs can only facilitate these ends, as will the publication of Corporate Transition Plans to ensure that practicable action is being taken.

### Recommendation 11

#### 1.88 **Require the Clean Energy Regulator to:**

- **Publish the details of ACCUs that are held and that have been surrendered by each facility, including project origin on a yearly basis; and**
- **Publish new data on the Carbon Estimation Areas as often as practicable.**

### Recommendation 12

#### 1.89 **Amend the *Carbon Credits (Carbon Farming Initiative) Act 2011* to provide for extended standing for judicial review.**

#### *More targeted and substantial financial support for manufacturing*

- 1.90 Decarbonising the manufacturing industry is a substantial task and is particularly difficult in hard-to-abate sectors. Large capital investments will be needed, with the financing and other challenges often difficult to meet.
- 1.91 To support the transition for emissions-intensive, trade-exposed facilities, the government is proposing a ‘dedicated funding of an initial \$600 million will be available under the Safeguard Transformation Stream of the Powering the Regions Fund to support decarbonisation activities’.<sup>70</sup>
- 1.92 Mr Daniel Walton, the National Secretary of the Australian Workers Union, which represents workers in approximately three-quarters of the 215 safeguard facilities, explained that funding available under the Safeguard Transformation Stream needs to increase:

<sup>69</sup> Ms Tania Constable, Chief Executive Officer, Minerals Council of Australia, *Committee Hansard*, 28 February 2023, p. 11.

<sup>70</sup> Department of Climate Change, Energy, the Environment and Water, *Safeguard Mechanism Reforms: Position Paper*, January 2023, p. 4.

I don't think the \$600 million that is being proposed to assist is going to go anywhere near the amount of money that's required to assist a lot of the businesses covered in that 215 lot. We're estimating that three to four times that money is going to be required because the scale of change is significant.<sup>71</sup>

- 1.93 Similarly, Ms Jennifer Westacott, the Business Council of Australia's CEO told the committee that 'we think the \$600 million is a starting point, and government needs to be open to increasing that amount over time...'.<sup>72</sup>

### **Recommendation 13**

#### **1.94 Increase in the funding available through the Safeguard Transformation Stream of the Powering the Regions Fund.**

- 1.95 The majority report did not go far enough in ensuring that the Safeguard Transformation Stream of the Powering the Regions Fund must only be used to support genuine decarbonisation projects. It must not be used to subsidise the fossil fuel industry, or to purchase ACCUs.

- 1.96 Lock the Gate Alliance expressed concerns that money from the Powering the Regions Fund which is supposed to be supporting regional workers and communities to take advantage of the opportunities provided by the clean energy transition, could be funnelled towards fossil fuel companies. Lock the Gate argued that, while the consultation paper for the PRF cites metals, critical minerals, chemicals and cement manufacturing as facility types covered by the Safeguard Mechanism, there is nothing in the paper that suggests that fossil fuel facilities would not be eligible to receive PRF payments like other sectors.<sup>73</sup>

- 1.97 Likewise, Mr McFadzean from ACF, noted there had been significant gains in removing public funding for the fossil fuel sector and that the PRF should not be allowed to be used by the sector to purchase ACCUs:

If we're referring to access of the \$600 million allocation in the Powering the Regions Fund, our view would be that that facility should not be allowed to access public money for the purchase of ACCUs, especially the fossil fuel sector. We welcome the federal government commitment thus far, as we saw in the last October budget, to begin to remove public funding for the fossil fuel sector. There were some significant gains there, and we wouldn't want to see a retrograde step where fossil fuel entrants we would like to see exit the Australian economy are able to access public

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<sup>71</sup> Mr Daniel Walton, National Secretary, Australian Workers Union, *Committee Hansard*, 28 February 2023, p. 27.

<sup>72</sup> Ms Jennifer Westacott, Chief Executive Officer, Business Council of Australia, *Committee Hansard*, 28 February 2023, p. 33.

<sup>73</sup> Lock the Gate Alliance, *Submission 25*, p. 7.

funds in order to purchase access. That would be another subsidy to the fossil fuel sector.<sup>74</sup>

- 1.98 The Grattan Institute echoed these concerns, arguing that the Powering the Regions Fund should not fund expansions of coal or gas use or extraction:

That's a recommendation that applies to any of these funds. While we don't see that the government should be banning new projects, the idea that any of those projects, be they coal, gas or oil, would be financially supported by government is absolutely not what we should be doing. In powering the regions, there are much more valuable things we can do if we're going to reorient our regions where many of the current carbon intensive jobs are. If we're going to reorient those regions towards those industries that will be future focused, we need to make sure we get the biggest bang for our buck—that is, not putting it into oil and gas.<sup>75</sup>

- 1.99 Similarly, Mr Peter Grist, Principal Economist, Australian Chamber of Commerce and Industry, was of the view that the Powering the Regions Fund should be directed towards emissions intensive trade exposed industries.<sup>76</sup>

- 1.100 The Smart Energy Council argued that the fund should be limited to zero emissions technologies of projects that will reduce emissions by at least 43 per cent by 2030, consistent with the Climate Change Act.<sup>77</sup>

- 1.101 When questioned on whether the PRF required additional safeguards to avoid money passing to sunset industries, Mr Erwin Jackson, Director, Policy, Investor Group on Climate Change, argued that companies should be better financially incentivised to achieve zero emissions:

I think it would be quite helpful for the government to do a couple of things in that context. One would be to be very explicit about that. Another would be to make sure they establish a national just transition authority ... I think the biggest issue with the Powering Australia fund is that it's chump change, really. What we need to actually deliver is a strong market signal to those companies that, in the long term, they have to get to zero, which both sides of politics have agreed with—both major parties, sorry, have agreed with. We also need to send them a price signal to actually deliver that and provide them with the financial incentive to do so. The current design of the safeguard mechanism, we believe, overall, delivers that.<sup>78</sup>

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<sup>74</sup> Mr McFadzean, Manager, Climate Change and Energy Program, ACF, *Committee Hansard*, 27 February 2023, p. 51.

<sup>75</sup> Mr Wood, Program Director, Energy and Climate Change, Grattan Institute, *Committee Hansard*, 27 February 2023, pp. 16–17.

<sup>76</sup> Mr Peter Grist, Principal Economist, Australian Chamber of Commerce and Industry, *Committee Hansard*, 27 February 2023, p. 27.

<sup>77</sup> Smart Energy Council, *Submission 24*, p. 4.

<sup>78</sup> Mr Erwin Jackson, Director, Policy, Investor Group on Climate Change, *Committee Hansard*, 27 February 2023, p. 69.

1.102 The Australia Institute pointed out that 74 per cent of covered facilities are already committed to reaching net zero, therefore an additional incentive (like SMCs) should not be required to encourage greater abatement if the facilities are owned or managed by companies that are already on a decarbonisation pathway.<sup>79</sup>

1.103 Regarding Corporate Transition Plans, as was noted in the majority report, Mr Erwin Jackson, Director, Policy, Investor Group on Climate Change, outlined the benefits of being made public, stating:

What a corporate transition plan can do is show the use of offsets in the context of everything else that the company is doing. For some companies and some facilities, it may be quite difficult for them to reduce emissions ... If you've got a good corporate transition plan in place, which is standard practice now and is financial practice in the US, the UK and Europe in terms of their disclosures, it gives them confidence and allows investors to invest with confidence in Australia. In the absence of those plans, we'll continue to have the situation where we see companies, as we've seen in Australia from a number of large emitters, overly relying on offsets. Investors will become less confident in them, divest from them and move their money offshore to other companies that are more efficient.<sup>80</sup>

#### Recommendation 14

**1.104 Public funding to Safeguard Mechanism facilities should only be provided where it will support genuine business transformation to decarbonise operations. Access to the Safeguard Transformation Stream should be subject to the following restrictions:**

- Fossil fuel producers should be denied access;
- Companies receiving funds must be prevented from using the funds to purchase ACCUs; and
- Companies receiving funds must have a publicly available Corporate Transition Plan and complete annual reporting on the implementation of the plan. Such plans should include: what measures are being taken to reduce emissions, identification of verifiable and quantifiable KPIs which track the success of transition actions, and measures that will be taken to ensure transparency.

#### *Proper treatment of methane under the Safeguard Mechanism*

1.105 As noted in the majority report, methane is over 80 times more potent than carbon dioxide over a 20 period and it is causing massive climate harm. It is the second most abundant greenhouse, and is responsible for about one third of global heating since the Industrial Revolution.

<sup>79</sup> The Australia Institute, *Submission 18*, pp. 24 and 33.

<sup>80</sup> Mr Erwin Jackson, Director, Policy, Investor Group on Climate Change, *Committee Hansard*, 27 February 2023, p. 66.



- 1.106 The majority report also rightly notes that methane represents 26 per cent of Australia's national inventory, with the fossil fuel industry accounting for 40 per cent of Australia's methane emissions. The reasons for Australia to deal with its fossil energy methane problem are too compelling to ignore.
- 1.107 First, cutting energy sector methane emissions is one of the lowest hanging fruits on the path to decarbonisation. The International Energy Agency (IEA) has repeatedly emphasised that methane abatement can be done cost-effectively: they note that 75 per cent of methane emissions from oil and gas could be avoided using existing technologies, much of that with positive returns. And a 75 per cent reduction in OECD countries' energy sector methane is also what the IPCC tells us is required to avoid the worst of climate change.<sup>81</sup>
- 1.108 In Australia, analysis from S&P Global commissioned by the Environmental Defense Fund (EDF) found that:
- ...capturing the methane that is currently wasted by gas and oil companies operating in Australia through venting, flaring and other emissions would profitably provide around 2 billion cubic metres of additional gas to the market. This is around 2.5 times the east coast shortfall projected by the Australian Competition and Consumer Commission in January 2023 (of 30PJ).<sup>82</sup>
- 1.109 Second, Australia is being left behind its competitors and trade partners on methane action, even though we are a major contributor to the problem. The majority report notes Australia's recent signing of the Global Methane Pledge, but Australia continues to lag behind.
- 1.110 Third, it's simply unacceptable that fossil fuel companies can avoid disclosing to the Australian public their emissions of such an important greenhouse gas as methane. For the Safeguard Mechanism to work effectively, we need an accurate, transparent baselining of emissions. The IEA has raised concerns that Australian methane emissions could be more than 60 per cent higher than government estimates (and company reporting) suggest.
- 1.111 As set out by the EDF,<sup>83</sup> there are three core actions that will set Australia up for cost-effective, rapid methane reductions to address these problems as part of the reforming the Safeguard Mechanism.
- 1.112 First, we must adopt international best practices into the National Greenhouse and Energy Reporting (Measurement) Determination 2008 by requiring coal, gas and oil facilities to conduct direct emissions measurement at both the

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<sup>81</sup> Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change.

<sup>82</sup> EDF, *Submission 29*.

<sup>83</sup> EDF, *Submission 29*.

source and site levels. This should integrate source and site level measurements reconciled using statistically-valid sampling, robust methane measurement technologies, and be consistent with global best practice such as the OGMP 2.0 framework for oil and gas and Metcoal Methane Partnership standards for coal.

1.113 Second, reflecting the government's proposal to integrate international best practice emissions intensities into Safeguard baselines, the National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015 should be updated to require fossil fuel baselines to meet the global best practice.

1.114 These are not radical proposals—the Committee heard from both of the gas companies appearing at the hearing, Woodside and INPEX, that they are confident in their methane reporting accuracy and, in Woodside's case, that their methane emissions are 0.1 per cent of marketed gas.<sup>84</sup>

1.115 Similarly, the Minerals Council of Australia described the extent of methane reporting in Australia:

...we may be one of the only countries in the world that reports on both open cut and underground. All of our underground is reported based on measurement. With open cut it is more difficult but we're seeing more and more mines reporting open cut on methods 2 and 3.<sup>85</sup>

1.116 Our legislation needs to keep up with what companies are telling governments and investors that they are already achieving.

1.117 And third, given the importance of abating such a potent greenhouse gas, and the opportunity for methane abatement to actually relieve domestic price pressures on energy for Australian families and businesses, the Safeguard Mechanism must limit methane to being tradeable only with other methane, and not being offset with ACCUs. Companies must be prevented from simply buying offsets of lower greenhouse-potency carbon credits to avoid dealing with their methane emissions. Our legislation must set Australia up for rapid, cost-effective and real methane reductions.

## **Recommendation 15**

**1.118 Bring methane emissions reporting and methane intensity targets into line with international best practices.**

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<sup>84</sup> See Mr Peter Metcalfe, Vice President, Climate and Sustainability, Woodside Energy, *Committee Hansard*, 28 February 2023, p. 64; and Mr Cameron McPhie, General Manager, Commercial, INPEX, *Committee Hansard*, 28 February 2023, p. 36.

<sup>85</sup> Mr Daniel Zavattiero, General Manager, Climate and Energy, Minerals Council of Australia, *Committee Hansard*, 28 February 2023, p. 7.

## Recommendation 16

**1.119 Methane abatement from Safeguard-covered facilities should only be tradeable with methane emissions of other Safeguard-covered facilities, and should be confined to the Safeguard Mechanism Credit market, not the Australian Carbon Credit Market.**

### *The absence of key information*

1.120 The government has claimed public interest immunity and so has not provided the modelling of ACCU usage as a proportion of total abatement under the Safeguard Mechanism reforms.<sup>86</sup> This makes the consideration of key aspects of the Safeguard Mechanism and the bill far more difficult.

1.121 In considering the integrity of ACCUs created under the HIR method, it would have assisted to have Carbon Estimation Areas available for public scrutiny.

## Recommendation 17

**1.122 Make public:**

- **The modelling of ACCU usage as a proportion of total abatement under the reform of the Safeguard Mechanism; and**
- **Carbon Estimation Area data.**

**1.123**

**1.124**

**Senator David Pocock  
Participating Member**

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<sup>86</sup> See [letter from Minister Bowen to the Committee regarding a PII Claim in relation to the modelled ACCU level under the Safeguard Mechanism reforms](#), received 1 March 2023,; and evidence from Department of Climate Change, Energy, the Environment and Water officials, *Committee Hansard*, 28 February 2023, pp. 43–60 and 66–74.



# Appendix 1

## Submissions and additional information

### *Submissions*

- 1 National Farmers' Federation
- 2 Australian Conservation Foundation
- 3 Climate Council of Australia
- 4 Doctors for the Environment Australia
- 5 Environmental Defenders Office
- 6 Minerals Council of Australia
- 7 Australasian Centre for Corporate Responsibility
- 8 Department of Climate Change, Energy, the Environment and Water
- 9 Australian Projections Pty Ltd
- 10 National Environmental Law Association
- 11 Orica
  - 11.1 Supplementary to submission 11
  - Department of Climate Change, Energy, the Environment and Water response to Orica supplementary submission 11.1
- 12 Business Council of Australia
- 13 Farmers for Climate Action
- 14 Chemistry Australia
- 15 Australian Aluminium Council
- 16 Institute of Public Affairs
- 17 Climate Action Network Australia
- 18 The Australia Institute
- 19 Australian Forest Products Association
  - 19.1 Supplementary to submission 19
- 20 Carbon Market Institute
- 21 bp Australia
- 22 Australian Workers' Union and Mining and Energy Union
- 23 Australian Industry Greenhouse Network
- 24 Smart Energy Council
- 25 Lock the Gate Alliance
- 26 LMS Energy Pty Ltd
- 27 Clean Energy Regulator
- 28 The Australian National University (ANU) and the University of New South Wales, Canberra (UNSW) Emissions Reduction Fund (ERF) research team
  - 28.1 Supplementary to submission 28
  - Attachment 1
  - Attachment 2

- 29 Environmental Defense Fund
- 30 Ms Anna Molan
- 31 Woodside Energy
  - Attachment 1
- 32 Climate Friendly
  - Attachment 1
- 33 Ai Group
- 34 Emeritus Professor Ian Chubb
  - Attachment 1

### *Additional Information*

- 1 Ember - Australia's coal mines can deliver two thirds of methane cuts (received 27 February 2023)
- 2 Ember - Safeguard Mechanism consultation response (received 27 February 2023)
- 3 Ember - Tackling Australia's Coal Mine Methane Problem (received 27 February 2023)
- 4 Grattan Institute - Redesigning the Safeguard Mechanism to drive emissions reductions (received 27 February 2023)
- 5 Grattan Institute - Position paper submitted to Department of Climate Change, Energy, the Environment and Water Safeguard Mechanism consultation (received 27 February 2023)
- 6 The Australian National University and University of New South Wales, Canberra Emissions Reduction Fund research team - The safeguard Mechanism and carbon (received 27 February 2023)
- 7 Environmental Defenders Office - A Roadmap for Climate Reform (received 27 February 2023)
- 8 Smart Energy Council - Position paper submitted to Department of Climate Change, Energy, the Environment and Water Safeguard Mechanism consultation (received 27 February 2023)
- 9 GreenCollar - Avoided Deforestation Q&A (received 28 February 2023)
- 10 INPEX - Response to Department of Climate Change, Energy, the Environment and Water Safeguard Mechanism consultation on draft legislation (received 28 February 2023)
- 11 INPEX - Response to Department of Climate Change, Energy, the Environment and Water Safeguard Mechanism Position Paper (received 28 February 2023)
- 12 Carbon Market Institute - Additional evidence (received 2 March 2023)
- 13 National Environmental Law Association - Response to Department of Climate Change, Energy, the Environment and Water Safeguard Mechanism consultation on draft legislation (received 28 February 2023)

*Answer to Question on Notice*

- 1 Government Departments - Answers to written questions on notice from Senator Grogan - 23 February 2023 (received 27 February 2023)
- 2 Carbon Market Institute - Answers to questions on notice from Senator Hanson-Young - public hearing Canberra, 27 February 2023 (received 1 March 2023)
- 3 Ember - Answers to questions on notice from Senators - public hearing Canberra, 27 February 2023 (received 1 March 2023)
- 4 Environmental Defenders Office - Answers to questions on notice from Senator Hanson-Young - public hearing Canberra, 27 February 2023 (received 1 March 2023)
- 5 Woodside Energy - Answers to questions on notice from Senators - public hearing Canberra, 28 February 2023 (received 2 March 2023)
- 6 GreenCollar - Answers to questions on notice from Senators Hanson-Young and David Pocock - public hearing Canberra, 28 February 2023 (received 2 March 2023)
- 7 Department of Climate Change, Energy, the Environment and Water - Answers to questions on notice from Senators Hanson-Young and David Pocock - public hearing Canberra, 28 February 2023 (received 2 March 2023)
- 8 Department of Climate Change, Energy, the Environment and Water - Answers to written questions on notice from Senator Grogan - 1 March 2023 (received 2 March 2023)
- 9 Australian Forest Products Association - Answer to question on notice from Senator Duniam - public hearing Canberra, 28 February 2023 (received 2 March 2023)
- 10 INPEX - Answers to questions on notice from Senators - public hearing Canberra, 28 February 2023 (received 2 March 2023)
- 11 Environmental Defense Fund - Answers to questions on notice from Senators - public hearing Canberra, 28 February 2023 (received 2 March 2023)
- 12 Clean Energy Regulator - Answer to questions on notice from Senator David Pocock - public hearing Canberra, 28 February 2023 (received 2 March 2023)
- 13 Clean Energy Regulator - Answer to questions on notice from Senators - public hearing Canberra, 28 February 2023 (received 2 March 2023)
- 14 Department of Climate Change, Energy, the Environment and Water - Answer to question on notice from Senator Hanson-Young - public hearing Canberra, 28 February 2023 (received 3 March 2023)
- 15 Clean Energy Regulator - Answer to question on notice from Senator Hanson-Young - public hearing Canberra, 28 February 2023 (received 6 March 2023)

*Correspondence*

- 1 Letter from Minister Bowen to the Committee regarding a PII claim in relation to the modelled ACCU level under the Safeguard Mechanism reforms, received 1 March 2023

- 2 Letter from Orica to the Committee correcting evidence given in public hearing Canberra 27 February 2023, received 5 March 2023

### *Tabled Documents*

- 1 Carbon Market Institute - Opening Statement (public hearing Canberra, 27 February 2023)
- 2 The Australian National University and the University of New South Wales, Canberra Emissions Reduction Fund research team - Opening Statement (public hearing Canberra, 27 February 2023)
- 3 National Environmental Law Association - Opening Statement (public hearing Canberra, 27 February 2023)
- 4 Environmental Defenders Office - Opening Statement (public hearing Canberra, 27 February 2023)
- 5 Australian Centre for Corporate Responsibility - Opening Statement (public hearing Canberra, 27 February 2023)
- 6 Investor Group on Climate Change - Opening Statement (public hearing Canberra, 27 February 2023)
- 7 Orica - Opening Statement (public hearing Canberra, 27 February 2023)
- 8 Institute of Public Affairs - Opening Statement (public hearing Canberra, 27 February 2023)
- 9 Minerals Council of Australia - Opening Statement (public hearing Canberra, 28 February 2023)
- 10 National Farmers' Federation - Opening Statement (public hearing Canberra, 28 February 2023)
- 11 Australian Forest Products Association - Opening Statement (public hearing Canberra, 28 February 2023)
- 12 GreenCollar - Opening Statement (public hearing Canberra, 28 February 2023)
- 13 Business Council of Australia - Opening Statement (public hearing Canberra, 28 February 2023)
- 14 INPEX - Opening Statement (public hearing Canberra, 28 February 2023)
- 15 Australian Chamber of Commerce and Industry - Opening Statement (public hearing Canberra, 27 February 2023)
- 16 Australian Workers' Union - Opening Statement (public hearing Canberra, 28 February 2023)
- 17 Orica - Amendments sought to Safeguard Mechanism (public hearing Canberra, 28 February 2023)
- 18 The Australia Institute - Opening Statement (public hearing Canberra, 27 February 2023)
- 19 Document tabled by Senator Hanson-Young - Australian National Registry of Emissions Units Rules 2023 (public hearing Canberra, 27 February 2023)
- 20 Document tabled by Senator Hanson-Young - Carbon Credits (Carbon Farming Initiative) Amendment (No. 2) 2023 (public hearing Canberra, 27 February 2023)



- 21 Document tabled by Senator Hanson-Young - National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023 (public hearing Canberra, 27 February 2023)
- 22 Document tabled by Senator Hanson-Young - Safeguard Mechanism Legislation Amendment (2023 Measures No 1) Regulations 2023 (public hearing Canberra, 27 February 2023)



# Appendix 2

## Public hearings and witnesses

*Monday, 27 February 2023*

Main Committee Room  
Parliament House  
Canberra

*Environmental Defense Fund*

- Mr Matt Watson, Vice President, Energy Transition

*Ember*

- Mr Anatoli Launay-Smirnov, Coal Mine Methane Analyst
- Dr Sabina Assan, Coal Mine Methane Analyst
- Mx Annika Reynolds, Climate Policy Advisor

*Grattan Institute*

- Mr Tony Wood, Program Director, Energy and Climate Change
- Ms Alison Reeve, Deputy Program Director, Energy and Climate Change

*Carbon Market Institute*

- Mr John Connor, Chief Executive Officer
- Mr Kurt Winter, Director, Corporate Transition

*AiGroup*

- Mr Tennant Reed, Director, Climate Change and Energy

*Australian Chamber of Commerce and Industry*

- Mr Peter Grist, Principal Economist
- Mr David Alexander, Chief of Policy and Advocacy

*The Australia Institute*

- Dr Richard Denniss, Executive Director
- Ms Polly Hemming, Climate and Energy Program Director

*Australian Conservation Foundation*

- Ms Suzanne Harter, Climate Change and Clean Energy Policy Adviser
- Mr Gavan McFadzean, Manager, Climate Change and Clean Energy Program

*Climate Action Network Australia*

- Dr Barry Traill, Director, Solutions for Climate Australia

*Lock the Gate Alliance*

- Ms Carmel Flint, National Coordinator
- Sam Moorhead, Research Coordinator

*Climateworks Centre*

- Ms Kylie Turner, Program Impact Manager
- Ms Anna Malos, Australia – Country Lead

*The Australian National University and the University of New South Wales, Canberra Emissions Reduction Fund research team*

- Associate Professor Andrew Macintosh
- Professor Don Butler
- Dr Megan Evans, Senior Lecturer
- Associate Professor Dean Ansell
- Ms Marie Waschka, Senior Research Officer

*National Environmental Law Association*

- Mr Tom Webb, Director & Secretary
- Mr Mark Beaufoy, Director

*Environmental Defenders Office*

- Ms Rachel Walmsley, Head of Policy & Law Reform
- Ms Briana Collins, Solicitor

*Australasian Centre for Corporate Responsibility*

- Mr Alex Hillman, Lead Carbon Analyst

*Investor Group on Climate Change*

- Mr Erwin Jackson, Director, Policy

*Smart Energy Council*

- Mr Leigh Heaney, Government Relations Manager
- Mr Wayne Smith, External Affairs Manager

*Orica*

- Mr Paul Evans, Global Vice President, Corporate Affairs and Sustainability
- Ms Mel Cheesman, Head, Government and Regulation
- Ms Meredith Read, Manager, Decarbonisation

*Institute of Public Affairs*

- Mr Daniel Wild, Deputy Executive Director
- Mr Morgan Begg, Director of Research

*Tuesday, 28 February 2023*

Main Committee Room

Parliament House

Canberra

*Minerals Council of Australia*

- Ms Tania Constable, Chief Executive Officer
- Mr Daniel Zavattiero, General Manager, Climate and Energy

*National Farmers' Federation*

- Mr Warwick Ragg, General Manager, Natural Resource Management

*Australian Forest Products Association*

- Mr Victor Violante, Deputy Chief Executive
- Mr Tim Lester, Senior Policy Manager

*GreenCollar*

- Mr James Schultz, Chief Executive Officer
- Dr Jenny Sinclair, Chief Scientist

*Australian Workers' Union*

- Mr Daniel Walton, National Secretary

*Business Council of Australia*

- Mr Tim Reed, President
- Ms Jennifer Westacott, Chief Executive Officer

*INPEX*

- Mr John Williams, Government Affairs and Approvals Manager
- Mr Cameron McPhie, General Manger, Commercial

*Department of Climate Change, Energy, the Environment and Water*

- Ms Jo Evans, Deputy Secretary
- Ms Edwina Johnson, General Manager, Safeguard Mechanism Taskforce
- Ms Alannah Pentony, General Manager, Land and Climate Active Branch
- Ms Melanie Ford, A/g Head of Emissions Reduction Division
- Mr Peter Wood, A/g Manager, Safeguard Mechanism Taskforce

*Department of Industry Science and Resources*

- Mr Chris Golding, General Manager, NGER & Safeguard Branch
- Mr Mark Weaver, General Manager, Industrial Competitiveness & Strategy Branch, Industry Growth Division

*Department of Infrastructure, Transport, Regional Development, Communications and the Arts*

- Ms Stephanie Werner, First Assistant Secretary, Domestic Aviation and Reform Division
- Ms Janet Quigley, First Assistant Secretary, Regional Development and Local Government Division
- Mr Andrew Madsen, Acting First Assistant Secretary, Surface Transport Emissions and Policy Division
- Mr Tristan Kathage, Assistant Secretary, Reducing Surface Transport Emissions Branch
- Ms Natalie Weddell, Acting Assistant Secretary, Regional Policy Branch

*Clean Energy Regulator*

- Mr David Parker, Chief Executive Officer
- Ms Shayleen Thompson, Executive General Manager, Scheme Operations Division
- Ms Jane Wardlaw, General Manager, NGER & Safeguard Branch

*Woodside Energy*

- Mr Tony Cudmore, Executive Vice President Strategy and Climate
- Mr Peter Metcalfe, Vice President Climate Sustainability