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ACF Submission

Safeguard Mechanism (Crediting) Amendment Bill

The Australian Conservation Foundation (ACF) welcomes the opportunity to provide a submission to the Senate Standing Committees on Environment and Communications regarding the Safeguard Mechanism (Crediting) Amendment Bill.

Introduction

ACF is Australia's national environment organisation. We are over 700,000 people who speak out for the air we breathe, the water we drink, and the places and wildlife we love. We are proudly independent, non-partisan and funded by donations from our community.

Australia and the world face an unprecedented climate and mass extinction crisis caused first and foremost by digging up and burning fossil fuels like coal, oil, and gas. The impacts of climate change are already being felt across Australia with extreme floods, droughts, and bushfires having truly catastrophic impacts on a growing number of communities, some which have suffered through multiple crises with almost no time for recovery.

The CSIRO and Bureau of Meteorology (BOM) *State of the Climate 2022 Report* confirm that Australia has already warmed by around 1.4 degrees - more than the global average; there has been an increase in extreme fire weather, and a longer fire season; oceans around Australia are acidifying and have warmed by more than 1°C since 1900, contributing to longer and more frequent marine heatwaves; and sea levels are rising around Australia, including more frequent extremes that are increasing the risk of inundation and damage to coastal infrastructure and communities.¹ These are just some of the recorded climate impacts already being confirmed.

¹ <http://www.bom.gov.au/state-of-the-climate/>



The world is on a very dangerous global warming trajectory and every fraction of a degree puts Australians at greater risk. Australia has made an outsized contribution to the problem, at times registering the highest per capita emissions in the developed world² yet Australia also has an abundance of solutions at our fingertips, including some of the world's best renewable energy resources. Australia can and must step up. This includes Australia's industrial sector, which has been shielded from emissions reduction obligations for over a decade.

ACF has 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. We believe 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. However, we feel that a few more adjustments are needed.

The bottom line is that to be successful the Safeguard Mechanism must result in real, lasting, on-site emissions reduction, not rely heavily upon Australian Carbon Credit Units (ACCUs), which should be intended as a last resort for hard-to-abate industries, not used to enable new coal and gas developments that will release enormous amounts of greenhouse pollution for years to come.

ACF provided a submission to the previous consultation on the Safeguard Mechanism (Credit) Amendment Bill 2022, which can be accessed [here](#). With the benefit of the proposed Safeguard Mechanism Reforms Position Paper, we provide further recommendations below.

This submission will be divided into two parts:

- **Part 1:** Issues arising from the Safeguard Mechanism Reform Position Paper, and related amendments to the Safeguard Mechanism (Crediting) Amendments Bill
- **Part 2:** Recommendations related to the contents of the draft Safeguard Mechanism (Crediting) Amendments Bill.

² <https://www.climatecollege.unimelb.edu.au/facts4paris-australias-capita-emissions-remain-highest-among-its-key-trading-partners#:~:text=Australia%20remains%20the%20highest%20per,%22peaking%20by%202030%22%20pledge>.



Part 1: Summary of Key Recommendations

ACF recommends that the settings proposed in the Safeguard Mechanism Reforms Position Paper be updated to include the following requirements.

- All facilities covered by the Safeguard Mechanism must demonstrate that they have taken steps to achieve genuine on-site emissions reduction before they can gain access to the purchase of SMCs or ACCUs to acquit their emissions reduction obligations.
- SMCs will be required to take precedence over ACCUs where facilities cannot meet their emissions reduction obligations through genuine mitigation. Facilities currently covered by the Safeguard Mechanism must demonstrate purchase of SMCs before being allowed to apply ACCUs to meet their annual emissions reduction obligations. This will keep emissions reduction within the Safeguard Mechanism cap, provide further incentive for facilities able to reduce below their baseline to generate SMCs to meet demand, and have greater direct emissions reduction equivalency than use of ACCUs.
- Limits will be placed on the use of ACCUs to meet baseline requirements. Limits will be sector-specific, set on a percentage basis and determined by the emissions reduction technology solutions available to each sector including the degree to which the sector qualifies as genuinely 'hard-to-abate' and essential.
- Any new entrants to the Safeguard Mechanism (i.e., those entering 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.

Based on the above recommendations that would apply to the proposed Safeguard Mechanism settings, ACF recommends that the following amendments be made to the Safeguard Mechanism (Crediting) Amendments Bill 2022 and applied to the National Greenhouse and Energy Reporting (NGER) Act.

- Include in Section 21 of the NGER Act a requirement that all facilities covered by the Safeguard Mechanism must provide an annual report to the Regulator that details the emissions that have been reduced and removed through onsite projects.
- Include in Section 22XK and 22XM of the NGER Act a requirement that all facilities covered under the Safeguard Mechanism must surrender SMCs to be able to surrender ACCUs when meeting net emissions reduction obligations.



- Add an enabling statement, which provides that the relevant Minister can determine through regulation the total share of prescribed carbon units that can be surrendered against a facility's emissions reduction obligations.
- Include a requirement that any new entrants that enter the Safeguard Mechanism after 1 July 2023 can only use SMCs for the purpose of reducing their net emissions.

Part 2: Summary of Key Recommendations

- ACF recommends removing 'net' from the newly added Object of the NGER Act to simply state 'that aggregate covered emissions from the operation of designated large facilities decline'. 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.
- ACF recommends that the provision limiting the Minister's rule-making powers be updated consistent with stated legislative intent by simply removing the current subjectivity from the provision. The specific recommended update is included below:

37 After subsection 22XS(1)

Insert:

(1A) The Minister must not make safeguard rules unless [delete 'satisfied that'] those rules are consistent with the second object of this Act.

- ACF recommends reducing the discretion assigned to the Regulator in enforcing the anti-avoidance provision by establishing clearer criteria for declaring an enterprise a facility that removes the opportunity to avoid regulation.
- ACF recommends that a broader range of penalty provisions be considered for false or misleading information. Make failure to comply with a notice to relinquish SMCs a civil penalty that attracts a broader range of compliance options. Also consider whether there are other types of infringements, beyond provision of false and misleading information, that should require relinquishment of SMCs.
- 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 include as much actual and verified measurement as



possible. Emissions reduction claims, and even resulting generation of SMCs, should not be the result of excessive estimation.

Part 1: Issues arising from the Safeguard Mechanism Reform Position Paper and related amendments to the Safeguard Mechanism (Crediting) Amendments Bill

One of ACF's most significant concerns related to the proposed Safeguard Mechanism reform settings is the complete lack of any limits on the use of carbon offsets for existing facilities or new entrants.

The unlimited use of offsets by covered facilities threatens to undermine the integrity of the Safeguard Mechanism by allowing absolute emissions under the scheme to increase. This is entirely out of step with global expectations, international standards³ and the net zero policies of a growing number of jurisdictions around the world — most of which place strict limits on the use of offsets. Most importantly, it is out of step with the primary goal of effective climate change policy, which is genuine emissions reduction.

Offsets should sit within a hierarchy that starts with avoiding, minimising and mitigating emissions. They should be a last resort until mitigation technologies and operational changes can take effect for hard-to-abate industries. They should not be the primary means of achieving pollution reduction.

Further, there is a limited supply of high-integrity offsets in Australia. The projected demand from new and existing coal and gas projects alone is likely to dramatically outstrip available ACCUs⁴. Growing demand from sectors such as coal and gas would mean access could be denied or made very difficult for essential industries with genuinely hard-to-abate emissions.

³ For example, the *ISO Net Zero Guidelines* state: "If the organization offsets emissions, only those counterbalancing residual emissions should count towards its net zero target. The organization should not use offsets towards achievement of interim targets. <https://www.iso.org/obp/ui/en/#iso:std:iso:iwa:42:ed-1:v1:en>

⁴ <https://energyresourceinsights.com/wp-content/uploads/2022/12/Safeguard-mechanism-report-221219.pdf>



Integrity concerns with ACCUs and other offset standards are well-documented and include significant issues such as permanence and additionality. Despite the Chubb review, low-integrity offsets remain in Australia's carbon market and creation of sufficient high-integrity offsets will be an ongoing concern into the future.

Globally, there are growing concerns about what has been described as 'state-sponsored greenwashing' which is tied to excessive use of offsets to meet net zero commitments. Australia has been a global climate laggard for the last decade and has just recently started to be recognised for taking responsible steps and increasing ambition including through the increase to our 2030 Nationally Determined Contribution under the Paris Agreement delivered by the Albanese Government. It would be a poor result to tarnish this improved reputation by 'greenwashing' our way to net zero.

With these concerns in mind, ACF recommends updates to the released Safeguard Mechanism settings related to the use of both ACCUs and Safeguard Mechanism Credits (SMCs). These proposed updates also have implications for the Safeguard Mechanism (Crediting) Amendment Bill 2022, which are outlined further in this submission.

Recommendations: ACF recommends that the settings proposed in the Safeguard Mechanism Reforms Position Paper be updated to include the following:

- All facilities covered by the Safeguard Mechanism must demonstrate that they have taken steps to achieve genuine on-site emissions reduction before they can gain access to the purchase of SMCs or ACCUs to acquit their emissions reduction obligations.
- SMCs should be required to take precedence over ACCUs where facilities cannot meet their emissions reduction obligations through genuine mitigation. Facilities currently covered by the Safeguard Mechanism must demonstrate purchase of SMCs before being allowed to apply ACCUs to meet their annual emissions reduction obligations. This will keep emissions reduction within the Safeguard Mechanism cap, provide further incentive for facilities able to reduce below their baseline to generate SMCs to meet demand, and have greater direct emissions reduction equivalency than use of ACCUs.
- Limits will be placed on the use of ACCUs to meet baseline requirements. Limits will be sector-specific, set on a percentage basis and determined by the emissions reduction technology solutions available to each sector including the degree to which the sector qualifies as genuinely 'hard-to-abate' and essential.



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- Any new entrants to the Safeguard Mechanism (i.e., those entering 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.

Recommendations: Based on the recommendations above that would apply to the proposed Safeguard Mechanism settings, ACF recommends that the following amendments be made to the Safeguard Mechanism (Crediting) Amendments Bill 2022. These amendments apply to the National Greenhouse and Energy Reporting (NGER) Act.

- Include in Section 21 of the NGER Act a requirement that all facilities covered by the Safeguard Mechanism must provide an annual report to the Regulator that details the emissions that have been reduced and removed through onsite projects.
- Include in Section 22XK and 22XM of the NGER Act a requirement that all facilities covered under the Safeguard Mechanism must surrender SMCs to be able to surrender ACCUs when meeting net emissions reduction obligations.
- Add an enabling statement, which provides that the relevant Minister can determine through regulation the total share of prescribed carbon units that can be surrendered against a facility's emissions reduction obligations.
- Include that all facilities that enter the Safeguard Mechanism after 1 July 2023 can only use SMCs for the purpose of reducing their net emissions.



Part 2: Recommendations related to the contents of the draft Safeguard Mechanism (Crediting) Amendments Bill

Objects of the NGER Act

The exposure draft has been updated so that the objects of the Safeguard Mechanism's enabling Act, the *National Greenhouse and Energy Reporting Act 2007* (NGER Act), will include a requirement that aggregate net covered emissions from the operation of designated large facilities must decline.

This is a welcome update in that it embeds the emissions reduction objective of the reformed Safeguard Mechanism in the NGER Act. However, the inclusion of 'net' also embeds reliance on carbon offsets to achieve the emissions decline. As noted, unfettered access to ACCUs for existing and new facilities under the Safeguard Mechanism has implications for genuine, lasting abatement, investment in clean technologies, and Australia's global reputation related to climate commitments. Limits should be placed on the use of carbon credits and ACCUs should not be made available to new entrants. New entrants should instead be required to acquit all their emissions by applying best practice technological solutions and Safeguard Mechanism Credits.

Recommendation: ACF recommends removing 'net' from the newly added Object of the NGER Act to simply state 'that aggregate covered emissions from the operation of designated large facilities decline'. 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.

Limits on the Minister's rule-making powers

The draft Bill adds a limit on the Minister's rule making powers by requiring that the Minister be *satisfied* that rules being made are consistent with the second object of the NGER Act (i.e., that aggregate net covered emissions from the operation of designated large facilities decline).

Current drafting of the relevant provision (included below) does not clearly give effect to the stated legislative intention expressed in the Explanatory Memorandum.

37 After subsection 22XS(1)

Insert:

(1A) The Minister must not make safeguard rules unless *satisfied* that those rules are consistent with the second object of this Act.



Recommendation: ACF recommends that the provision limiting the Minister's rule-making powers be updated consistent with stated legislative intent. The specific recommended update is included below --- 'satisfied that' would be removed. This would simply remove the current subjectivity from the provision.

37 After subsection 22XS(1)

Insert:

(1A) The Minister must not make safeguard rules unless [delete 'satisfied that'] those rules are consistent with the second object of this Act.

Anti-avoidance provisions in the NGER Act

The draft Bill adds a provision allowing the Regulator to declare an enterprise a facility in certain situations where the enterprise may not otherwise be caught by the Safeguard Mechanism.

This is a positive addition that along with the inclusion of anti-avoidance measures in regulation will assist in addressing concerning loopholes identified in the SGM that have allowed facilities to avoid SGM regulation.

However, the anti-avoidance provision outlined for the NGER Act relies upon a subjective view from the Regulator. It requires the Regulator to exercise discretion, and to form a view that a facility boundary was made for the purpose of avoiding regulation. This could weaken the provision and potentially make it more vulnerable to challenge.

ACF has noted that anti-avoidance is also addressed in the Safeguard Mechanism Reform Position Paper and the intent signalled there would handle our primary concerns in the Bill.

Recommendation: ACF recommends that the Bill be updated consistent with the intent signalled in the Safeguard Mechanism Reform Position Paper. Consistent with this intent, ACF recommends reducing the discretion assigned to the Regulator in enforcing the anti-avoidance provision by establishing clearer criteria for declaring an enterprise a facility.

Also note that 54B(b) has a drafting typographical error, and presumably should read 'but for the scheme' and not 'but for this section'.

Punishments for false or misleading information: Subdivision C—Compliance with relinquishment requirement

Punishments for false or misleading information are welcome. However, the only penalty available for false and misleading information is an order to relinquish the Safeguard Mechanism Credits (SMCs),



even if they resulted from fraud. These provisions would be more useful if strengthened. Failure to comply could indicate a serious offence.

Recommendation: ACF recommends that a broader range of penalty provisions be considered for false or misleading information. We also recommend that failure to comply with a notice to relinquish SMCs be made a civil penalty that attracts a broader range of compliance options.

Changes to measurement determinations

The creation of SMCs where facilities are below their baseline encourages use of any option available to increase the gap between reported emissions and a facility baseline. In short, there is an added economic incentive to take advantage of any provision that helps generate SMCs.

As such, NGER measurement determination is more important than ever, and its current reliance upon estimated rather than measured emissions reductions will need to be addressed. Except for underground coal mines where measurement is a critical part of ensuring health and safety for workers, there is likely to be significant margin of error in reported emissions. The extent of this error is coming to light through satellite technology that can measure and identify the source of large methane emissions, including from coal mines and gas facilities. Although not specifically addressed in this Bill, improvements to measurement determination must be addressed through strengthened measurement, reporting and verification requirements.

The draft Bill addresses transparency issues related to measurement through publishing requirements. 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. Currently, the draft Bill allows for some unnecessary exceptions due to issues such as copyright. These issues should be addressed rather than allowed to result in exclusion of the documents from free public view.

Recommendation: 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.

