



Law Council  
OF AUSTRALIA

*Business Law Section*

18 September 2015

Emission Reduction Fund submissions  
Safeguard Mechanism Branch  
Department of the Environment  
GPO Box 787  
Canberra ACT 2601

Via email: [emissions-reduction-submissions@environment.gov.au](mailto:emissions-reduction-submissions@environment.gov.au)

Dear Sir or Madam,

### **Draft National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015**

- 1 This submission concerning the draft *National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015* (**Safeguard Mechanism Rule**) is made by the Climate Change Committee of the Business Law Section of the Law Council of Australia (the **Committee**).
- 2 The Committee is made up of experienced legal practitioners working in the climate change area, and welcomes the opportunity to comment on the Safeguard Mechanism Rule. The Committee acknowledges that the Safeguard Mechanism Rule is generally consistent with previously announced Government policy, and so these submissions are correspondingly brief. There are, however, three matters that the Committee wishes to bring to the Department's attention.

### **Access to carbon units**

- 3 Under the *National Greenhouse and Energy Reporting Act 2007* (Cth) (**NGERA**), one of the ways of avoiding an "excess emissions situation" is to surrender prescribed carbon units (ss.22XE, 22XK). At least initially, the only prescribed carbon units will be Australian carbon credit units (**ACCUs**), although provision is made for the Safeguard Mechanism Rule to specify additional kinds of carbon units (NGERA, s.22XM). In order for there to be cost-effective compliance, it is important that responsible emitters have access to reasonably priced ACCUs and a range of other high-integrity carbon units.

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- 4 The supply of ACCUs is currently quite limited and the risk is that, as a result of concentrated compliance-buying, the price of ACCUs will increase at the very time that responsible emitters are seeking to acquire ACCUs to avoid an excess emissions situation. Accordingly the Committee suggests that consideration be given to supplementing the Emissions Reduction Fund reverse price auctions with a mechanism to facilitate responsible emitters acting as buyers, in order to give responsible emitters access to a larger pool of ACCUs, increase the funds available to buy ACCUs and encourage the development of projects under the Emissions Reduction Fund.
- 5 The Committee also considers it desirable that the range of carbon units that can be used to avoid an excess emissions situation should be expanded, as soon as possible, beyond ACCUs to encompass international units of high integrity, such as EU allowances, NZ units and specified kinds of CERs. This will assist in cost-effective compliance and, in this regard, the Committee welcomes the Government's statement that this matter will be considered in the 2017/18 review of the Emissions Reduction Fund.

### **Resources available to Regulators**

- 6 There will be considerable work for the Clean Energy Regulator in establishing the initial reported-emissions baselines, considering applications for the adjustment of those baselines, and assessing applications for calculated-emissions baselines, benchmark intensity baselines and production-adjusted baselines. Making these decisions will entail carefully evaluating a potentially significant amount of data. Typically the Regulator is required to take all reasonable steps to make relevant decisions within 60 days of the application for decision being made. It is appropriate that decisions be required to be made in a timely fashion, but it is also critical that these decisions be considered decisions. This means that the Government will need to ensure that the Regulator is adequately resourced to make high-quality decisions within the prescribed 60 day period.

### **Aggregation of baselines**

- 7 Responsible emitters that have operational control over transport facilities in more than one State or Territory are able to irrevocably elect to have their baselines determined at a national level rather than at a State or Territory level (r.14(2); *National Greenhouse and Energy Reporting Regulations 2008* (Cth), reg.2.19A). The Committee considers that there would be merit in allowing other responsible emitters to effectively aggregate their emissions baselines across all of the designated large facilities that are under their operational control, and measuring their emissions performance against such an aggregated baseline. There is the potential to allow for such aggregation in a way such that the aggregated baseline is lower than the sum of the individual baselines, eg. as where the aggregated baseline is calculated by reference to the highest annual emissions for all of the relevant facilities over the 2009-14 period as opposed to merely being the sum of each individual facility's highest annual emissions for that period. This would also give

responsible emitters the flexibility to move production between facilities, thereby accommodating increased production without exceeding the emissions baseline.

If you have any questions in relation to the submission, in the first instance please contact the Committee Chair, Mr Grant Anderson, by phone on 03-9613 8928 or via email: [Grant.Anderson@allens.com.au](mailto:Grant.Anderson@allens.com.au).

Yours faithfully,

A handwritten signature in black ink, appearing to read 'John Keeves', with a long horizontal stroke extending to the right.

**John Keeves, Chairman**  
Business Law Section