



Environmental  
Defenders Office

## **Submission on amendments to the Safeguard Rule**

**24 February 2023**

## **About EDO**

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

***Successful environmental outcomes using the law.*** With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

***Broad environmental expertise.*** EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

***Independent and accessible services.*** As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

Environmental Defenders Office is a legal centre dedicated to protecting the environment.  
**[www.edo.org.au](http://www.edo.org.au)**

### **Submitted to:**

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Uploaded at: [Safeguard Mechanism reform: consultation on proposed design](#)

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## Executive Summary

Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on the Australian Government's Consultation Paper on reforms to the Safeguard Mechanism.

With just 7 years in between the commencement of the proposed reforms and the 2030 emissions reduction target milestone, there is no option but for the Safeguard Mechanism to be designed to carry out its purpose courageously and with precision.

With respect to this suite of reforms, EDO has made submissions to the Department of Climate Change, Energy, the Environment and Water (**DCCEEW**) on the [Consultation Paper](#) on 20 September 2022 (**primary submissions**), the [Safeguard Mechanism \(Crediting\) Amendment Bill 2022 and Carbon Credits \(Carbon Farming Initiative\) Amendment \(Safeguard Facility Eligibility Requirements\) Rules 2022](#) (**the draft Bill**) on 28 October 2022, and to the [Senate Standing Committee on Environment and Communications](#) on the draft Bill on 25 January 2023.

The draft Bill and subordinate legislation (**the Rules**) have developed significantly since EDO's submission on the Consultation Paper. This submission reiterates a number of key recommendations.

**This submission on the Safeguard Rules reforms should be read in tandem with EDO's submission to the Senate Standing Committee.** As stated in that submission, while the bulk of the Safeguard Mechanism will reside in subordinate legislation, strong drafting of the enabling legislation will serve as the guard rails between which it can operate as Parliament intends. The submission made to the Senate Standing Committee makes recommendations that focus on restricting facilities' use of offsets to comply with the Safeguard Mechanism, new entrants that are advantaged by improved technologies that facilitate genuine business transformation.

This submission focusses on recommendations for amendments to the Safeguard Rules that partner with the recommendations made for the draft Bill to the Senate Standing Committee.

**This is to address the major risk to the success of the reforms, that unfettered use of offsets disincentivises and detracts from real emissions reduction, in direct opposition to the principle of mitigation hierarchy, discussed below.**

EDO also makes further recommendations for the Rules that are aimed at:

- Fortifying the baseline decline "reserve";

- Aligning the cost containment measure for Australian Carbon Credit Units (**ACCUs**) with international carbon prices; and
- Better regulating access to multi-year monitoring periods.

## **Overview of recommendations**

### **Recommendation 1 – Reduce use of offsets for compliance.**

- a. Cap ACCUs for use within the Safeguard Mechanism to 5%.
- b. Require surrender of SMCs alongside ACCUs.
- c. Prohibit ACCUs derived from human induced regeneration, avoided deforestation and landfill gas projects (with exceptions) being used under the Safeguard Mechanism.
- d. Ban new entrant’s reliance on ACCUs.

### **Recommendation 2 – Align the ACCU price ceiling with international carbon prices.**

### **Recommendation 3 – Increase the baseline decline “reserve”.**

### **Recommendation 4 – Expect high integrity “credible plans” for access to multi-year monitoring periods.**

- a. Define “credible plan” in the Rules and require the satisfaction of criteria to meet the definition.
- b. Provide that the same credible plan that is available to the Clean Energy Regulator and is publicly available.

## The framework for the recommendations.

### 1. Safeguard Mechanism reform is only one part of the climate reform challenge.

EDO's submission is couched in our [Roadmap for Climate Reform](#)

We advocate for reform that is science-aligned, prudent and ambitious enough to meet the scale of the climate crisis.

EDO has made 58 recommendations for comprehensive climate form in our Roadmap for Climate Reform.

Our submissions on the Safeguard Mechanism reflect our overarching position on key issues related to climate change policy. In particular, we advocate that legislation reflecting genuine pathways to net-zero does require a stop to new fossil fuels, and a phase out of existing fossil fuels.

### 2. Good climate policy reflects a mitigation hierarchy.

EDO recommends that the offsets mitigation hierarchy (**mitigation hierarchy**) be embedded in all climate policy and legislation, including the Safeguard Mechanism.

The [website](#) of DCCEEW defines the mitigation hierarchy in relation to its environmental offsets guidance for environmental assessments under the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**), as follows.<sup>1</sup>

The mitigation hierarchy is a tool that is used to limit the amount of damage an action, such as a development, will have on the environment. There are three steps, and each step **must be followed in order** and to the greatest extent possible before moving on to the next. These steps are:

1. Avoid
2. Mitigate
3. Offset

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Offsetting is the final step in the mitigation hierarchy **and should only be applied once impacts have been avoided and mitigated.**

In other words, offsets must be a measure of last resort.

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<sup>1</sup> See *Environment Protection and Biodiversity Conservation Act 1999*, Environmental Offsets Policy (October 2012) at <https://www.dcceew.gov.au/environment/epbc/publications/epbc-act-environmental-offsets-policy>.

This is not a new concept in Australian law and policy, particularly in relation to biodiversity conservation.<sup>2</sup> It is widely utilised and accepted internationally, and increasingly as it relates to decarbonisation.<sup>3</sup> So too should it be embedded in Australian climate policy and legislation.

This is because it is founded in the science of attaining the best environmental outcome. As stated by Derik Broekhoff, Senior Scientist at the Stockholm Environment Institute, “any failure to avoid discretionary emissions today leads to a greater challenge for limiting cumulative emissions in the future.”<sup>4</sup>

In contrast to that approach, the current drafting of the Safeguard Mechanism subverts the mitigation hierarchy by incentivising facilities to prioritise compliance via offsets over abating or mitigating emissions onsite.

EDO’s recommendations are designed to clarify the Safeguard Mechanism to better reflect international and national standards for offsetting, and the best available science.

### **3. Real emissions reduction upholds human rights.**

Good climate policy and legislation will recognise that environmental protection is a human rights issue and embed human rights protections in its design.

The Explanatory Memorandum to the draft Bill contained a Statement of Compatibility with Human Rights in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth). The focus of the Statement is on the rights to privacy and reputation and freedom of expression that may affect people involved in corporations that have designated facilities regarding the disclosure of personal information. It states that “other provisions which are likely to impact individuals do not engage any human rights.”<sup>5</sup>

EDO is of the view that the draft Bill would, in fact, engage human rights other than those of the people involved in regulated corporations, and that a well drafted Bill could promote those human rights.

Noting the nuances of the Queensland jurisdiction from which the judgment emerged, President Kingham of the Queensland Land Court recently found that material contributions to climate change limit the rights to life, equality before the law, the best

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<sup>2</sup> See, for example, Queensland Environment Offsets Policy, v.1.13, 5; NSW Biodiversity Offsets Policy for Major Projects, 7.

<sup>3</sup> For example, see IUCN, Biodiversity Offsets Issues Brief (September 2016); United Nations High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities at <https://www.un.org/sites/un2.un.org/files/high-level-expert-group-update7.pdf>.

<sup>4</sup> Derik Broekhoff, Senior Scientist at the Stockholm Environment Institute, summarised the issues in an Independent Expert Report addressed to ClientEarth (Report, 4 July 2022). See Derik Broekhoff, Expert Report (4 July 2022) available at <https://www.clientearth.org/media/exyfip2p/productie-4-broekhoff-expert-report-v2-2-final.pdf>.

<sup>5</sup> Explanatory Memorandum, Safeguard Mechanism (Crediting) Amendment Bill 2022, 5.

interests of the child, the cultural rights of Aboriginal and Torres Strait Islander people, property and privacy and family life.<sup>6</sup>

That is because of the effects of greenhouse gas emissions on exacerbating extreme weather events such as bushfires, flooding, heatwaves, and dangerous storms that threaten the life and health of all Queenslanders, but especially young people, elderly people, marginalised groups and Aboriginal and Torres Strait Islander people.

Every tonne of emissions contributes to climate change,<sup>7</sup> and each tonne increases the risk of catalysing the onset of cascading tipping points (discussed further below) that will result in self-perpetuating climate change beyond human control. Each tonne of emissions, therefore, is dangerous to human (and ecological) systems.

It is likely, then, that greenhouse gas emissions of facilities covered by the Safeguard Mechanism impacts human rights, and that legislation with a focus on immediate and rapid decarbonisation of those facilities has the potential to positively promote human rights.

Legislation that deprioritises real emissions reduction in favour of unrestricted offsetting, which increases risk of emissions continuing to rise, and jeopardises cultures and future generations, is a limitation on human rights.

EDO's recommendations are designed to align the Safeguard Mechanism reforms with appropriate human rights standards.

## Recommendations for 4 areas of reform

### 1. Reduce use of offsets for compliance.

EDO has made extensive submissions to the government on the consultation paper regarding the dangers of allowing unfettered reliance on offsets for compliance with the Safeguard Mechanism.

We reiterate that access to ACCUs for compliance with the Safeguard Mechanism should be curbed, because:<sup>8</sup>

- ACCUs lack integrity;<sup>9</sup>
- recommendations of the (then pending) Independent Review into the Integrity of Australian Carbon Credit Units (**Chubb Review**) are unlikely to be implemented

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<sup>6</sup> *Waratah Coal Pty Ltd v Youth Verdict & Ors (No 6)* [2022] QLC 21, from [1297]. According to the Parliamentary Joint Committee on Human Rights' "Guide to Human Rights", the right to healthy environment is also a relevant consideration.

<sup>7</sup> See discussion in EDO Primary Submissions at 7-8.

<sup>8</sup> See EDO Primary Submissions, Recommendation 3.

<sup>9</sup> See below for EDO's opinion of the effects of the Chubb Review on this statement.

rapidly enough so that ACCUs can contribute meaningfully to the emissions reduction task of the Safeguard Mechanism; and

- carbon offsetting in general is very rarely equivalent to real emissions reduction, because:
  - inherent uncertainties in the quantification of carbon offsets mean that they are unlikely to counterbalance fossil fuel emissions on a tonne-for-tonne basis;
  - carbon offsets predominately derive from natural carbon storage, which has a problem of permanence (e.g., forest fires destroying carbon sinks, such as the Amazon rainforest fires in 2020 and 2021);
  - natural carbon storage will become less effective over time due to over-saturation of land and ocean sinks with cumulative emissions, leading to more CO<sub>2</sub>-e remaining in the atmosphere; and
  - as the global economy decarbonises, opportunities for additional mitigation that could compensate for remaining emissions will dwindle.

We note similar concerns have been raised by many experts and stakeholders including the

- Clean Energy Council;<sup>10</sup> and
- Climate Council of Australia.<sup>11</sup>

Media coverage and political attention on the risks of prioritising offsets on the path to net-zero is only intensifying.<sup>12</sup> Nonetheless, the Bill as drafted will allow up to 100% use of ACCUs for compliance with the Safeguard Mechanism.

**We understand the complexity of the offsets debate but urge the government to reconsider their current proposal. Offsets are useful tools for the decarbonisation challenge, but only as a last resort and not for mandatory compliance schemes.**

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<sup>10</sup> Clean Energy Council, Response to the Safeguard Mechanism Consultation Paper, 20 September 2022, 4, at <https://consult.dcceew.gov.au/safeguard-mechanism-reform-consultation-paper/submission/view/178>.

<sup>11</sup> Climate Council, Submission, Recommendation 9, 25, at <https://consult.dcceew.gov.au/safeguard-mechanism-reform-consultation-paper/submission/view/34>.

<sup>12</sup> Examples of the many reports that echo EDO's concerns in the past 4 months include: Australian Broadcasting Corporation (ABC), *Carbon credit doubts remain, as farmers weight up Chubb Review findings, but market holds steady*, 13 January 2023, at <https://www.abc.net.au/news/rural/2023-01-13/carbon-credit-scheme-doubts-but-market-stays-steady/101848058>; ABC Four Corners, *Carbon Colonialism*, 13 February 2023, at <https://www.abc.net.au/news/2023-02-13/carbon-colonialism/101968870>; Nick O'Malley, Sydney Morning Herald, *Can carbon offsets land a blow on climate change?* 18 February 2023, at <https://www.smh.com.au/environment/climate-change/can-carbon-offsets-land-a-blow-on-climate-change-20230216-p5ckzt.html>; SBS News, *You can pay to offset carbon on everything from flights to utilities. Does it actually do anything?* 5 November 2022, at <https://www.sbs.com.au/news/article/you-can-pay-to-offset-carbon-on-everything-from-flights-to-utilities-does-it-actually-do-anything/of3abl8fv>; Aljazeera, *Do carbon offsets even work?* 10 November 2022, at <https://www.aljazeera.com/program/all-hail/2022/11/10/why-we-cant-offset-our-way-out-of-climate-change-all-hail>.



## Implications of the Chubb Review

We acknowledge the findings of the Independent Review into the Integrity of Australian Carbon Credit Units (**Chubb Review**) that were published after the initial Safeguard Mechanism submissions were made. The results of the Chubb Review have not altered our position, rather, have solidified it.

While the headline of the Chubb Review was that ACCUs are essentially sound, the recommendations made by the panel demonstrated that significant reform is required to improve integrity.

Of note, the Chubb Review panel recommended:

- total restructure of the Clean Energy Regulator roles to separate responsibilities to independent bodies;<sup>13</sup>
- establishment of an integrity committee with an independent secretariat;<sup>14</sup>
- redefining the Offsets Integrity Standards;<sup>15</sup>
- redefining the criteria for human-induced regeneration methods and landfill gas methods;<sup>16</sup> and
- no new project registrations to be allowed under the current avoided deforestation method.<sup>17</sup>

These are not minor tweaks to the ACCU scheme but require deep transformation. The findings and recommendations confirm reform is needed to address integrity concerns regarding the role of the Clean Energy Regulator, and the methods of human-induced regeneration, landfill gas and avoided deforestation were recognised by the Chubb Review panel.

Furthermore, the findings of the Australian Academy of Science Review of Four Methods for Generating Australian Carbon Credit Units, commissioned by the Chubb Review, echoed the integrity concerns of the scientific and research community that were referenced by EDO in its primary submissions.<sup>18</sup>

That review found:

- Regards human-induced regeneration methods: “It is not clear how changes in carbon sequestration in HIR projects can be convincingly differentiated between human and climatic changes...compounding these limitations is the complexity of method description, hindering comprehension, analysis and transparency.”<sup>19</sup>

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<sup>13</sup> Recommendation 1.

<sup>14</sup> Recommendation 2.

<sup>15</sup> Recommendation 6.

<sup>16</sup> Recommendation 8, 10.

<sup>17</sup> Recommendation 9.

<sup>18</sup> EDO Primary Submissions, 18.

<sup>19</sup> Australian Academy of Science, Review of Four Methods for Generating Australian Carbon Credit Units, October 2022, 11.

- Regards avoided deforestation methods: “Reliance upon counterfactuals leaves the scheme inherently vulnerable to integrity accusations...climate change may pose a risk to the maintenance of AD carbon abatements.”<sup>20</sup>
- Regards landfill gas method requirements: “How these requirements ensure the additionality of landfill gas projects is unclear, which is a limitation as additionality is currently central to the integrity of ACCUs.”<sup>21</sup>

Again, these concerns are not peripheral but go to the core of offset integrity standards: realness and additionality. It is unclear why the Chubb Review panel did not reference this review that they commissioned in their final report, although, the panel’s recommendations do reflect some engagement with the material.

Overall, EDO welcomes the government’s acceptance in principle of the Chubb Review recommendations which we consider have potential to greatly improve the integrity of ACCUs. We note, however, the limitations of the implementation of these recommendations when considering the role that ACCUs should play in the Safeguard Mechanism. We note two key concerns.

**First**, the Chubb review recommendations will take time to implement and will almost certainly take effect after the Safeguard Mechanism legislation and subordinate legislation commences. In this regard, we reiterate the recommendations made in our consultation paper.<sup>22</sup>

**Second**, the Chubb review recommendations cannot correct the ACCUs already in existence that will not meet the new integrity standards. For example, while the panel recommends the abolishing of new ACCUs derived from the existing avoided deforestation method, millions of existing ACCUs in that category will be available for purchase to comply with the Safeguard Mechanism. Unlimited access to these credits undermines public confidence in the Safeguard Mechanism’s capacity to genuinely reduce emissions.

As a result, our view remains that unlimited ACCUs should not be available to facilities for compliance with the Safeguard Mechanism; and the Chubb Review recommendations

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<sup>20</sup> Australian Academy of Science, Review of Four Methods for Generating Australian Carbon Credit Units, October 2022, 14.

<sup>21</sup> Australian Academy of Science, Review of Four Methods for Generating Australian Carbon Credit Units, October 2022, 17.

<sup>22</sup> Environmental Defenders Office, Submission, Recommendations 1-7 at <https://www.edo.org.au/wp-content/uploads/2022/09/220920-EDO-Safeguard-Mechanism-Submission.pdf>. The Recommendations include:

Recommendation 1 – Broaden scope and oversight.

Recommendation 2 – Reduce flexibility measures to ensure actual emissions reduction.

Recommendation 3 – Limit offsetting and improve integrity.

Recommendation 4 – Set an ambitious decline rate.

Recommendation 5 – Restrict new entrants.

Recommendation 6 – Ensure coordinated reform to achieve emissions reduction targets.

Recommendation 7 – Ongoing integrity assurance.

must be fully implemented in relation the limited ACCUs available for use under a Safeguard Mechanism ACCU cap.

### **We risk Australia's international standing (not just emissions reduction goals) by allowing unfettered use of offsets for a mandatory compliance scheme.**

According to new analysis from the Australia Institute, Australia is the world's third-largest fossil fuel exporter in the world behind Russia and Saudi Arabia.<sup>23</sup> These figures in the report are based on the International Energy Agency's (IEA) standardised energy units combined with the IPCC data.

The risk that overprioritisation of offsets poses to emissions reduction in real terms has been well-ventilated above and in earlier EDO submissions.<sup>24</sup>

It is also worth stating, however, that it is not best (or even usual) practice to allow emitters to rely on offsets to comply with emissions reduction schemes on an international level.

As the government is aware, the ACCU market is currently largely a voluntary market used by corporations and governments to achieve self-directed emissions reduction plans. The introduction of the Safeguard Mechanism reforms will see the use of the ACCU market for mandatory compliance purposes skyrocket.

However, almost all mandatory emissions reduction schemes in the world have strict quantitative and qualitative limitations on the use of offsets for compliance.

The European Union Emissions Trading System (**EU ETS**) is an example of the gradual phase out of the use of offsets which are now banned for use for compliance. Between 2005 and 2007, offsetting capability was unlimited, followed by qualitative and quantitative limits between 2008-2012 that saw allowance of offsets capped as a percentage and credits derived from certain methods like nuclear power were disallowed. Further limitations were developed between 2013 and 2020, and the use of offsets were **totally banned in the EU ETS by 2021.**<sup>25</sup>

Other notable examples include:

- Offsets are **not allowed** by the New Zealand ETS.<sup>26</sup>
- The Swiss ETS saw a **cap of 4.5%** use of offsets for compliance until 2020, after which they were **also banned.**<sup>27</sup>

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<sup>23</sup> <https://australiainstitute.org.au/post/new-analysis-australia-ranks-third-for-fossil-fuel-export/>

<sup>24</sup> EDO Primary Submissions, 18.

<sup>25</sup> International Carbon Action Partnership, EU Emissions Trading System, at <https://icapcarbonaction.com/en/ets/eu-emissions-trading-system-eu-ets#:~:text=Quantitative%20Limits%3A%20The%20total%20use,of%20offsets%20is%20not%20allowed.>

<sup>26</sup> International Carbon Action Partnership, New Zealand ETS, at [https://icapcarbonaction.com/en/compare/48/45/99.](https://icapcarbonaction.com/en/compare/48/45/99)

<sup>27</sup> International Carbon Action Partnership, Swiss ETS, at [https://icapcarbonaction.com/en/compare/64/55/51.](https://icapcarbonaction.com/en/compare/64/55/51)

- Offsets are **not allowed** by the UK ETS.<sup>28</sup>
- After 2021, the Korea ETS' share of offsets allowed **decreased to 5%** of an entity's compliance obligation.<sup>29</sup>
- The Mexican ETS imposes a **limit of 10%** use of offsets for compliance.<sup>30</sup>
- The USA – California Cap-and-Trade Program allowed **8%** use of offsets between 2013-2020 and **4% from 2021**.<sup>31</sup>

**The only country that allows for 100% use of offsets for mandatory compliance is Kazakhstan.**

Australia should model itself on the best international emissions reduction schemes, in the implementation of the Safeguard Mechanism reforms.

In confirming policy and regulatory design, the government can benefit from international governments with decades of experience in mandatory emissions reduction schemes and impose strict quantitative and qualitative limitations on the use of offsets as a compliance option.

As such, EDO makes the below recommendations.

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<sup>28</sup> International Carbon Action Partnership, United Kingdom, at <https://icapcarbonaction.com/en/compare/48/45/99>.

<sup>29</sup> International Carbon Action Partnership, Korea Emissions Trading Scheme, <https://icapcarbonaction.com/en/compare/47/59/119>.

<sup>30</sup> International Carbon Action Partnership, Mexico, at <https://icapcarbonaction.com/en/compare/47/59/119>.

<sup>31</sup> International Carbon Action Partnership, California Cap-and-Trade Scheme, at <https://icapcarbonaction.com/en/compare/48/45/99>.

## Recommendation 1

- a. **Cap ACCUS for use within the Safeguard Mechanism to 5%** to bring Australia in line with international standards on offsetting for compliance.
- b. **Require surrender of SMCs alongside ACCUs** to prioritise high integrity flexibility options and industry doing their fair share, over offsetting.
- c. **Prohibit ACCUs derived from human-induced regeneration, avoided deforestation, and landfill gas methods** to reflect the integrity issues identified by the Chubb Review Panel and leading experts. Some exceptions may apply, including\*:
  - a. existing landfill gas projects that are flaring-only (i.e., do not destroy methane using an electricity generator);
  - b. landfill gas projects involving the use of electricity generators, provided the baseline for the project exceeds 45% of the gas combusted at the facility;
  - c. existing human-induced regeneration projects if they have transitioned onto a new method that limits eligibility to forest areas that have previously been comprehensively cleared and where pre-existing mature trees and shrubs are required to be excluded from the areas that are credited; and
  - d. plantation projects involving either the establishment of new plantations on land that was previously used for other non-forest purposes or the conversion of short-rotation plantations to long-rotations, provided they have 100-year permanence periods.
- d. **Ban new entrant's reliance on ACCUs** to recognise that new entrants have technological advantages over existing facilities and should be incentivised to be ambitious at the planning stage, and phase out the use of offsets for compliance, as is international best practice.

\* Thanks go to Professor Andrew Macintosh and his expertise for these recommendations.

## 2. Align the ACCU price ceiling with international carbon prices.

The starting price ceiling devised by the government for an ACCU is too low at \$75, compared with:

1. competitive international carbon prices; and
2. the social cost of carbon.

It should be raised to **at least \$100** to near best international and ethical standards.

International carbon prices demonstrate that the government's \$75 cap is unambitious and can be reasonably increased. For example, see the following spot prices (in AUD – exchange rate on 21 February 2023):

- Swiss ETS: \$97 in November 2022;<sup>32</sup>
- UK ETS: \$121 in December 2022;<sup>33</sup>
- EU ETS: \$154.5 in February 2023.<sup>34</sup>

Further, as stated in EDO's primary submissions, a carbon price does not reflect the price of the actual damage caused by a tonne of carbon emissions, often called a "social cost of carbon." Although the models generally used to calculate a social cost of carbon contain certain well-acknowledged limitations that lead to an underestimate of damages, apply discount rates that effectively value the lives of future generations as being worth less than current generations,<sup>35</sup> or do not internalise the cost of damage to cultures,<sup>36</sup> they nonetheless provide a useful minimum baseline for the potential cost of climate change. One highly cited publication on the topic was led by Katharine Ricke and [published in 2018](#).<sup>37</sup> Ricke et. al concluded that a country-level cost of carbon analysis finds a global median price of US\$417/t (approximately AUD\$610/t), and an upper estimate of US\$1000/t (approximately AUD\$1482).

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<sup>32</sup> ICAP Allowance Price Explorer, at <https://icapcarbonaction.com/en/ets-prices>.

<sup>33</sup> Statista, UK-ETS carbon pricing in the United Kingdom 2022, <https://www.statista.com/statistics/1322275/carbon-prices-united-kingdom-emission-trading-scheme/#:~:text=The%20price%20of%20emissions%20allowances,97.75%20euros%20per%20metric%20ton>.

<sup>34</sup> Trading Economics, EU Carbon Permits, at <https://tradingeconomics.com/commodity/carbon>.

<sup>35</sup> Stern, H. & Stiglitz, J., The Social Cost of Carbon, Risk, Distribution, Market Failures: An Alternative Approach, National Bureau of Economic Research Working Paper 28472 (2021) ("Stern & Stiglitz 2021") available at <http://www.nber.org/papers/w28472>; Howard, Peter, Omitted Damages: What's Missing From The Social Cost Of Carbon (2014), available at

[https://costofcarbon.org/files/Omitted\\_Damages\\_Whats\\_Missing\\_From\\_the\\_Social\\_Cost\\_of\\_Carbon.pdf](https://costofcarbon.org/files/Omitted_Damages_Whats_Missing_From_the_Social_Cost_of_Carbon.pdf)

<sup>36</sup> See e.g., Katharine Ricke et al., 'Country-level social cost of carbon' (2018) 8(10) *Nature Climate Change* 895-900, available at <https://www.nature.com/articles/s41558-018-0282-y#change-history>.

<sup>37</sup> Katharine Ricke et al., 'Country-level social cost of carbon' (2018) 8(10) *Nature Climate Change* 895-900, available at <https://www.nature.com/articles/s41558-018-0282-y#change-history>.

It is EDO's position that a carbon price should better reflect a social cost of carbon to better represent the true costs to the Australian economy. This is particularly so where the government expects to sell ACCUs at a fixed rate at the top of the price ceiling, where the funds collected are directed to further abatement opportunities. There are numerous estimates of the economic costs that Australia will bear because of increasing extreme weather events derived from climate change. One estimate is \$94 billion by 2060 and \$129 billion by 2100.<sup>38</sup>

The current proposal put by the government demonstrates that it agrees the polluter should pay for this damage, but \$75/ACCU (i.e., \$75/"t") insufficiently accounts for the real cost of carbon.

### Recommendation 2

As such, EDO recommends that the starting price ceiling for ACCUs be increased to **at least \$100**.

### 3. Increase the baseline decline "reserve".

EDO is supportive of a "reserve" being built into the baseline decline calculations to account for "higher-than-expected production growth from existing and new facilities and trade exposed baseline adjustments."<sup>39</sup>

However, we submit that the reserve does not consider key uncertainties in real climate change outcomes and should be increased for the following reasons.

**First**, uncertainty in measuring and reporting emissions must be built into the reserve. EDO repeats and relies on that in its primary submissions, which identified research proving significant under-reporting of methane emissions in Australia.<sup>40</sup> EDO's primary submissions also referred to issues with the current *National Greenhouse and Energy Reporting (Measurement) Determination 2008 (NGERD)* methods for measuring methane. Current methods only require closed underground mines to report emissions for 20 years after mine closure, when mines can continue emitting methane indefinitely.<sup>41</sup> While the NGERD methods can be updated, and we recommend they are, their existing deficiencies are evidence that scientific and technological uncertainties will continue emerge that will further whittle down the carbon budget.

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<sup>38</sup> Climate Council, Markets are moving: The economic costs of Australia's Climate Inaction, at <https://www.climatecouncil.org.au/resources/markets-moving-economic-costs-australias-climate-inaction/#:~:text=Under%20this%20scenario%2C%20Queensland%20is,NSW%20more%20than%20%245%20billion..>

<sup>39</sup> DCCEEW, Safeguard Mechanism Reforms Positions Paper, 2.

<sup>40</sup> ACCR, *Glencore's methane problem: Analysis of Glencore's underreporting of methane emissions* (Report, April 2022), available at <https://www.accr.org.au/downloads/glencore-s-methane-problem-20-apr-2022.pdf>.

<sup>41</sup> Nazar Kholod et. al, 'Global methane emissions from coal mining to continue growing even with declining coal production' (2020) 256, *Journal of Clean Production*.

**Second**, scientific uncertainties must be accounted for in the reserve. Climate modelling is rapidly improving and regularly providing new intelligence about the trajectory of global warming. The concept of “tipping points” (i.e. the points at which change in certain elements of the climatic system becomes self-perpetuating) is one example of an area where there has been significant growth in understanding that has led to more severe estimates of the effects of global warming over time. A recent study published in *Science* concluded that we have likely crossed some tipping point thresholds already and will likely cross further thresholds over 1.5°C of warming.<sup>42</sup> The initial identification of tipping points by Lenton et al. in 2008, predicted that those thresholds would not be reached before 2°C of warming.<sup>43</sup>

The question of the timing of tipping points is vital to our survival as a species, yet the key global accords on climate change, such as the Paris Agreement, were drafted on information about tipping points that is now outdated. Of course, there will be more instances of this underestimation of climate change impacts in general as research capability develops.

We must be prepared for this inevitability by building such scientific and technological uncertainties into the baseline decline reserve. Such a proposal is squarely in accord with key concepts of national and international environmental law, including the precautionary principle and intergenerational equity.

Not taking such precautions increases the risk that our children and grandchildren will be faced with an even heavier climate change burden and regulatory challenge.

### **Recommendation 3**

As such, EDO recommends that the baseline reserve be substantially increased, which would in turn cause the baseline decline rate to be steeper.

## **4. Require high integrity “credible plans” for access to multi-year monitoring periods.**

EDO’s recommends that multi-year monitoring periods be removed from the draft Safeguard Mechanism. This is in line with our overarching position that flexibility measures for facilities be minimal to ensure real emissions reduction.<sup>44</sup>

If multi-year monitoring periods do continue to be a feature of the Safeguard Mechanism, EDO welcomes the draft provision requiring facilities to develop a credible plan that is

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<sup>42</sup> Armstrong McKay et al, “Exceeding 1.5C global warming could trigger multiple climate tipping points” (*Science*, 9 September 2022).

<sup>43</sup> Lenton et. al, “Tipping elements in the Earth’s climate system”, (*Perspective*, 12 February 2008) at <https://www.pnas.org/doi/abs/10.1073/pnas.0705414105>.

<sup>44</sup> See EDO Primary Submissions, Recommendation 2.



provided to the Clean Energy Regulator. We are concerned, however, that the provision does not go far enough to ensure that these plans are actually credible.

The current drafting provides that an application made by a facility for access to a multi-year monitoring period must:<sup>45</sup>

include a plan setting out a credible basis for how the facility will, before the end of the declared multi-year period, utilise technology that has, or will, become available to reduce the facility's covered emissions below the facility's baseline emissions number for the declared multi-year period.

There is no definition of "a plan setting out a credible basis" nor a criteria that must be met in order to meet the definition of a "credible plan". Given that there are also no draft provisions to monitor or enforce the actioning of the credible plan, EDO's concern is that, in practice, this additional safeguard will not have regulatory force.

EDO recommends that a "credible plan" can and should be defined clearly in the Rules as a time-bound action plan that outlines how a facility will pivot its existing assets, operations, and business model towards a trajectory that aligns with the most recent and ambitious climate science recommendations.

This echoes the international corporate standard for business transition plans (comparable to "credible plans" in the Safeguard Mechanism) as defined by the United Nations (UN) in its recent report: *Integrity Matters: Net Zero Commitments by Business, Financial Institutions, Cities and Regions*. The UN position is that:<sup>46</sup>

transition plans are an essential tool to show how non-state actors will successfully deliver on their commitments in an equitable and just way, and therefore build public trust. While no entity can predict the path to 2050, frequently updated transition plans make pledges concrete while highlighting uncertainties, assumptions and barriers.

The UN standard for business transition plans requires the following:<sup>47</sup>

1. disclosure of short-medium and long-term absolute emission reduction targets, and, if relevant, relative emission reduction targets. Targets must account for all greenhouse gas emissions and include separate targets for material non-CO2 greenhouse gas emissions;
2. details of the third-party verification approach and audited accuracy;
3. reference to credible sector pathways consistent with limiting warming to 1.5°C with no or limited overshoot (e.g. IPCC, IEA, Network for Greening the Financial System (NGFS), One

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<sup>45</sup> National Greenhouse Gas and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023, s 35.

<sup>46</sup> United Nations High-level Expert Group on the Net-Zero Emissions Commitments of Non-State Entities, *Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions* (November 2022) at [https://www.un.org/sites/un2.un.org/files/high-level\\_expert\\_group\\_n7b.pdf](https://www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf).

<sup>47</sup> United Nations High-level Expert Group on the Net-Zero Emissions Commitments of Non-State Entities, *Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions* (November 2022), 21, at [https://www.un.org/sites/un2.un.org/files/high-level\\_expert\\_group\\_n7b.pdf](https://www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf).

- Earth Climate Model (OECM)) and explain any material difference between the non-state actor's transition plan and sector pathways;
4. explanation of emissions reductions and, if needed, removal actions with time-bound key performance indicators. If removals are needed, explain why;
  5. demonstration of how specific actions across all parts of the non-state actors' value chain will meet near-medium and long-term targets;
  6. disclosure of how capital expenditure plans, research and development plans and investments are aligned with all targets (e.g. capex-alignment with a regional or national taxonomy) and split between new and legacy or stranded assets;
  7. outline of actions to address any data limitations; and
  8. details of value chain (e.g. suppliers) engagement approach (e.g. consideration of scope 3 emissions).

We recommend that the international standard set out in this report be embedded into the Safeguard Mechanism to ensure that the expectations on Australian facilities are world class and support the best environmental outcome.

Further, EDO firmly recommends that the same “credible plans” that are provided to the Clean Energy Regulator be made publicly accessible. Whether Australia is meeting its emissions reduction targets is a matter for public knowledge, and is not commercial-in-confidence.

**If a ‘credible plan’ is credible it should be publicly defensible.**

#### **Recommendation 4**

- a. Import the UN Integrity Standards for business transition plans into a mandatory criteria for “credible plan” for facilities to access multi-year monitoring periods
- b. Require public disclosure of the same “credible plan” that is provided to the Clean Energy Regulator

### **Corresponding recommendations to the enabling legislation**

Section 22XS of the *National Greenhouse and Energy Reporting Act 2007* (Cth) (**NGER Act**) provides that the Minister may make rules prescribing matters that are either required or permitted by the NGER Act or necessary or convenient for carrying out or giving effect to the safeguard provisions of the NGER Act.

As such, the Rules cannot be inconsistent with the NGER Act and will have no effect to the extent of the inconsistency.

It is important, then, to consider whether EDO's recommendations on the Rules require amendments to the enabling legislation so that they are not inconsistent with the NGER Act.

## **1. EDO's Recommendation 1 – reduce use of offsets for compliance**

The draft Bill repeals existing subsection 22XN(1) which deals with the way prescribed carbon units may be surrendered for the purposes of reducing a facility's net emissions number in s 22XK.

The original subsection provided:

- (1) If a person is the registered holder of one or more prescribed carbon units, the person may, by electronic notice transmitted to the Regulator, surrender any or all of those units.

The new subsection provides:

- (1) A person who is the registered holder of one or more prescribed carbon units may, by electronic notice transmitted to the Regulator, surrender any or all of those units for the purposes of reducing the net emissions number for a facility for a period if:
  - (a) the person has complied with the requirements (if any) specified in the safeguard rules; and
  - (b) the surrender meets the requirements (if any) specified in the safeguard rules; and
  - (c) the period meets the requirements (if any) specified in the safeguard rules.

**In our view, the draft subsection (1) in the draft Bill is likely broad enough to permit all of the recommendations made by EDO in Recommendation 1, that is:**

- a. Cap ACCUs for use within the Safeguard Mechanism to 5%.
- b. Prohibit ACCUs derived from human induced regeneration, avoided deforestation and landfill gas projects (with exceptions).
- c. Ban new entrant's reliance on ACCUs.

However, there are amendments that could be made to the NGER Act that solidify the foundation for the recommended amendments to the Rules.

Those recommendations were raised in EDO's submission to the [Senate Standing Committee on Environment and Communications](#) on the draft Bill on 25 January 2023:

R2 Amend ss 22XK and 22XM of the NGER Act to:

- a. Require covered facilities to surrender a greater number of SMCs alongside ACCUs;
- b. Expressly provide 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;
- c. Provide that new entrants 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.

## **2. EDO's Recommendations 2-4**

Recommendations 2-4 made by EDO do not require further amendments to the enabling legislation than those already drafted by the government.

## **3. Additional recommendations to the enabling legislation**

EDO's submission to the [Senate Standing Committee on Environment and Communications](#) recommends the following additional amendments to the draft Bill.

- R1 Amend s 21 of the NGER Act to require facilities to make reports to the Regulator about their emissions reduced and removed through onsite projects before they can access carbon credit purchasing options.
- R3 Further amend s 3 of the NGER Act to harmonise the purpose of the Act with the *Carbon Credits (Carbon Farming Initiative) Act 2011 (CFI Act)*.

These recommendations are similarly directed at improving the alignment of the Safeguard Mechanism reforms with a mitigation hierarchy. Further detail can be read in the body of that submission.

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*Thank you for the opportunity to make this submission.*

*Please do not hesitate to contact our office should you have further enquiries.*

We note that EDO has made 58 recommendations for comprehensive climate reform in our Roadmap for Climate Reform available at:

[A Roadmap for Climate Reform - Environmental Defenders Office \(edo.org.au\)](#)