Safeguard Taskforce and Committee Secretary
Senate Standing Committees on Environment and
Communications PO Box 6100, Parliament House
Canberra ACT 2600
By email: ec.sen@aph.gov.au; and
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28 February 2023

Dear Safeguard Taskforce/Committee Secretary,

RE: National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023 (Safeguard Rules) – call for submissions

The National Environmental Law Association Ltd ACN 008 657 761 (**NELA**) welcomes the opportunity to comment on the National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023 (**Safeguard Rules**).[1]

1. NELA's objects and its interest in this Senate Inquiry

NELA is the national peak body for advancing Australian environmental law and policy. It is an independent, multidisciplinary, member- based association focused on environmental law and sustainability. NELA is managed by a national board that includes Directors with expertise in international and domestic legal frameworks for biodiversity conservation, climate change and natural disasters, environmental regulation and regulatory theory and natural resource management.

One of NELA's core objectives is to provide a forum for, and to otherwise assist in, the discussion, consideration and advancement of environmental law across the legal profession and the wider community. NELA is also a member of the leadership committee of the Professional Bodies Climate Action Charter Australia and New Zealand Forum, which represents professional members in Australia across a wide range of sectors from finance, insurance, science, engineering, law, health, construction and the built environment.

Given the significant influence that the Safeguard Mechanism may have on Australia's emissions reduction efforts, the Safeguard Rules which provide detailed support for the regime are of key concern for NELA's members. NELA is grateful for the opportunity to make a submission to the Department of Climate Change, Energy, the Environment and Water (**DCCEEW**).

2. Background to this submission

Under the Paris Agreement, Australia is required to assist in the global effort of limiting global warming to well below 2 degrees Celsius, and preferably 1.5 degrees Celsius compared to pre-industrial levels. Australia's Nationally Determined Contribution (**NDC**) as prescribed under the *Climate Change Act 2022*

[1] NELA gratefully acknowledges the assistance of Charlotte Traves, NELA Publications Officer, Mark Beaufoy, NELA Director and Tom Webb, NELA Director and Secretary in preparing this submission.

(Cth) (**CC Act**) commits it to achieving net zero emissions by 2050 and a target of 43 per cent below 2005 levels by 2030. To meet these legislated targets, urgent reform is necessary. The Safeguard Mechanism advances these goals, ensuring that Australia's largest industrial facilities make a proportionate contribution to Australia's emissions reductions efforts while remaining competitive in a decarbonizing global economy. Accordingly, NELA echoes its submission to the Senate Standing Committee on Environment and Communications made on 25 January 2023 titled 'Senate Inquiry into the Safeguard Mechanism (Crediting) Amendment Bill 2022 – call for submissions' and its submission to the Department of Industry, Science and Resources (**DISER**) made on 20 September 2022 titled 'Safeguard Mechanism Reform: Consultation Paper',[2] where NELA stated its support for recommendations made by the Climate Change Authority (**CCA**) that an 'enhanced safeguard mechanism' is a 'pragmatic and durable way of reducing emissions across a range of industrial, manufacturing and resource sectors'.

As stated in its 25 January 2023 submission, monetising greenhouse gas pollution presents a beneficial method of managing emissions. Although NELA supports the ultimate creation of a comprehensive emissions trading scheme, the safeguard mechanism (**SM**) has the potential to make an important temporal contribution to furthering Australia's efficient and commercially competitive transition to net zero. Particularly, the introduction of Safeguard Mechanism Credits (**SMCs**) provides a useful market-based incentive for emissions reduction by allowing the issuing of tradeable SMCs for participants operating facilities that match or surpass Australia's climate targets. The Safeguard Rules provide a launchpad for the effective operation of the Safeguard Mechanism (Crediting) Amendment Bill 2022 (**SMC Amendment Bill**). To this end, the Safeguard Rules implement the reformed SM, outlining important details pertaining to baselines and baseline decline rates for existing and new facilities, compliance options, the SM's interaction with ACCU projects, and tailored treatment for Trade Exposed Facilities (**TEF**) and Trade Exposed Baseline Adjusted Facilities (**TEBAF**). NELA submits that while the Safeguard Rules provide a strong foundation for the operation of the SM, the details of the instrument must be closely analysed to ensure best possible future outcomes.

3. <u>Summary of comments and recommendations</u>

- Regarding baselines and baseline decline rates for existing and new facilities, NELA generally supports proposed method of calculating baselines for new and existing facilities, along with the proposed hybrid model which are outlined in detail in the Safeguard Rules;
- In relation to compliance options listed under the Safeguard Rules, NELA supports the proposed flexible compliance regime, however, submits that the availability of ACCUs to meet SM baselines should not be unlimited and should be reduced over time, so that actual reductions in emissions or purchase of SMCs become the primary tools to meet SM baselines;
- NELA submits that there should be further clarification on when, if at all, international best practice will be taken into account when calculating the baselines for existing facilities, and that this should be considered during the review of the new SM in 2026-2027 or earlier (in line with NELA's recommendation that the review period be brought forward).

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[2] National Environmental Law Association, 'Safeguard Mechanism Reform: Consultation Paper' (20 September 2022) <https://www.nela.org.au/wp-content/uploads/Safeguard-Mechanism-Consultation-Paper- Final.pdf>.

- NELA re-iterates a point made in its previous submission that the proposed decline rate to 2030 should be included in the objects to the NGER Act, rather than only in the Safeguard Rules.
- In terms of the SM interaction with ACCU projects, NELA supports the decision to disallow Safeguard Facilities from counting ACCUs sold to the Government through existing carbon abatement contracts towards their baseline for the first two years following the operation of the reforms;
- NELA submits that the availability of ACCUs to meet SM baselines should not be unlimited and should be reduced over time, so that actual reductions in emissions or purchase of SMCs become the primary tools to meet SM baselines;
- Ultimately, NELA submits that SMCs should be the exclusive credit for reductions in emissions covered by SM facilities, and that ACCUs are only to be available for emissions reductions outside the SM;
- In relation to tailored treatment for trade exposed facilities and trade exposed baseline adjusted facilities, NELA supports the adoption of a framework which is based on the comparative impact of emissions reductions efforts on SM facilities to ensure that businesses are not comparatively disadvantaged;
- However, while this framework allows SM facilities to reduce compliance costs and maintains an incentive for the facilities to reduce their emissions, the Government will need to remain vigilant to the potential for baseline decline variation to jeopardise the scheme's overall integrity;
- NELA supports the proposal which allows the Safeguard Rules to account for emerging technologies in allowing facilities to apply for multi-year period declarations for up to 5 years, provided that they do not extend after 30 June 2030 and are coupled with clear and enforceable prerequisites for successfully applying for the multi-year period declarations; and
- NELA recommends that the review period, which is currently scheduled for the 2026-2027 financial year, be brought forward to the 2025-2026 financial year.

4. <u>Comments and recommendations</u>

Regarding baselines and baseline decline rates for existing and new facilities, **NELA generally supports the proposed method of calculating baselines for** new and **existing facilities, along with the proposed hybrid model** which are outlined in detail in the Safeguard Rules. The baselines for new facilities and existing facilities that begin manufacturing new products will be calculated using industry average emissions-intensity values, premised on international benchmarks and subject to an annual decline rate. NELA supports the use of international benchmarks for new facilities and development of new products, and recognition that new facilities will be best placed to implement new technologies. Currently, baselines for existing facilities are not proposed take into account international best practice. NELA submits that there should be further clarification on when, if at all, international best practice will be taken into account when calculating the baselines for existing facilities. NELA submits that this should be considered during the review of the new SM in 2026-2027 or earlier as submitted below.

NELA supports the proposed hybrid approach where a facility's baseline will be set using a combination of its site-specific and industry-average emissions intensity values. The two emissions intensity values will then be weighted towards the site-specific value initially and transition towards industry average by 2030. This transitional approach, which recognises the inherent variability of large emitting facility's emissions profiles, ensures that costs for business will be introduced incrementally, and businesses will have adequate time to implement decarbonization methods and technologies. The hybrid model delivers the long-term benefits of industry average baselines, while making the SM manageable for all facilities by giving businesses more time to prepare for the changes. This design will allow the balancing of baseline compliance, investing in at-point decarbonisation, and allowing sufficient flexibility so that compliance obligations can be managed by facilities over time.

Under the Safeguard Rules, all new and existing Safeguard Facilities will be required to reduce emissions by an average of 4.9 per cent each year until the financial year ending 30 June 2030, unless a differential trade exposed baseline adjusted facility rate has been approved. This emissions reduction rate ensures that SM covered facilities deliver a proportional share of emissions reductions required to meet the national 2030 target. This aims to deliver the estimated 205 million tonnes of abatement by 2030 by capping emissions at 1,233 million tonnes between 2021 and 2030, to no more than 100 million tonnes by 2030. NELA has made the point in its previous submission that this decline rate to 2030 should be included in the objects to the NGER Act, rather than only in the Safeguard Rules.

In relation to compliance options listed under the Safeguard Rules, **NELA supports the proposed flexible compliance regime, however, submits that the availability of ACCUs to meet SM baselines should not be unlimited and should be reduced over time, so that actual reductions in emissions or purchase of SMCs become the primary tools to meet SM baselines.** Ultimately, NELA submits that SMCs should be the exclusive credit for reductions in emissions covered by SM facilities, and that ACCUs are only to be available for emissions reductions outside the SM.

In the early stages for the reformed SM, NELA supports the Government's recognition of compliance costs concerns, and the subsequent introduction of a costs containment measure, which allows the government to sell Australian Carbon Credit Units (**ACCUs**) to SM facilities at a fixed price of $75.00 per ACCU in 2023-2024, where SMCs are unable to be secured by facilities. This 'cost containment measure' provides business certainty about maximum compliance costs. NELA also supports the flexibility surrounding how SM facilities can manage or use SMCs (banking and borrowing), which has the potential to reduce compliance costs for facilities, while preserving positive environmental outcomes and supporting more timely investment decisions. Currently, the banking and borrowing of up to 10 per cent of a facility's baseline per year will be permitted up to 2030. This allows SMCs to be used for compliance with the SM in any year up to 2030, irrespective of when they were issued. This flexibility is necessarily limited by the imposition of a 10 per cent interest rate to be applied in the year after the borrowing occurs.

In relation to tailored treatment for trade exposed facilities (**TEFs**) and trade exposed baseline adjusted facilities (**TEBAFs**), **NELA supports the adoption of a framework which is based on the comparative impact of emissions reductions efforts on SM facilities to ensure that businesses are not comparatively disadvantaged.** This framework allows companies to remain competitive while realising that competitiveness is becoming increasingly dependent on progressing the net zero target. The introduction of TEFs and TEBAFs will allow this by permitting eligible facilities to apply for a dedicated funding stream to assist in emissions reductions and cost impact. TEBAFs will be able to apply for lower baseline decline rates based on SM scheme impact which can be locked in for three years. These baselines could be as low as 2 per cent each year. While this framework allows SM facilities to reduce compliance costs and maintains an incentive for the facilities to reduce their emissions, the Government will need to remain vigilant to the potential for baseline decline variation to jeopardise the scheme's overall integrity. The Safeguard Rules make headway in this regard by requiring TEBAFs to accompany their application for a determination with a safeguard audit report.

NELA supports the proposal which allows the Safeguard Rules to account for emerging technologies in allowing facilities to apply for multi-year period declarations for up to 5 years, provided that they do not extend after 30 June 2030. In saying this, the Government must ensure that there are clear and enforceable prerequisites for successfully applying for the multi-year period declarations. Currently, these declarations can only be triggered if there is a baseline exceedance which is due to a lack of available technology. Where this is the case, facilities will need to demonstrate a credible plan to reduce culminative emissions during the period's duration. It is crucial that the integrity of multi-year monitoring periods is maintained, so as to avoid delaying meaningful emissions reductions.

NELA recommends that the Government bring forward the review period by one year, which is currently scheduled for the 2026-2027 financial year, to the 2025-2026 financial year. Bringing forward this review period will allow for scheme design and performance to be reviewed and allow a sufficient amount of time to make informed scheme adjustments and long-term investment decisions for 2030 and beyond. Doing so will support the Government not to be too focused on 2030 goals, and instead direct energy towards longer term goals, and what declining baselines will look like after 2030 in achieving the net zero commitment in the following decades.

5. <u>Conclusion</u>

In terms of aspects beyond what is addressed in the Safeguard Rules, NELA looks forward to the Government's undertaking of a review to explore policy options to further address carbon leakage, and the potential use of an Australian carbon border adjustment mechanism (**CBAM**) in response to stakeholder feedback. Further, NELA supports an inquiry into Safeguard Facilities' access to high quality international offsets, and a potential accompanying legislative framework. Ultimately, NELA welcomes the introduction of the Safeguard Rules, which provide a predictable and stable regulatory framework for safeguard facilities to meet their own corporate commitments, and meaningfully contribute to Australia's climate goals more generally. The rules achieve this while seeking to maintain Australia's industrial competitiveness in a decarbonizing world.

Madeline Simpson
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