Law Council
OF AUSTRALIA

25 September 2026

Mr Mike Kaiser
Secretary
Department of Climate Change, Energy, the Environment and Water
John Gorton Building, King Edward Terrace
PARKES ACT 2600

By email: safeguard.mechanism@dcceew.gov.au

Dear Mr Kaiser

2026–27 Safeguard Mechanism Review

The Law Council of Australia welcomes the opportunity to make a submission to the Department of Climate Change, Energy, the Environment and Water (**DCCEEW**) on the 2026–27 Review of the Safeguard Mechanism (the **Review**). The Law Council acknowledges the significant contribution of the Law Society of New South Wales to this submission.

The Consultation Paper states that the Review is not intended to recommend fundamental changes to the Safeguard Mechanism's design, but instead to assess current policy settings to confirm the 2023 reforms to the Mechanism are working as intended and appropriately calibrated, and to inform the best policy settings towards the Australian Government's plan to achieve net zero emissions by 2050.[1] It also states that initial results indicate the reformed settings are working as intended and that the scheme is on track to meet its 2030 emissions targets.[2]

Many of the issues raised in the Consultation Paper are of a scientific or technical nature, and will benefit from feedback informed by industry stakeholders with operational exposure and expertise in these areas. From the Law Council's perspective, it will be important that any changes introduced promote legal certainty and are capable of enforcement. Consistent with its Climate Change Policy,[3] the Law Council reiterates that Australia's climate change and emissions-reduction laws and policies should:

- fully implement and comply with Australia's international legal obligations concerning climate change, including under the Paris Agreement;
- give effect to rule-of-law principles; and
- operate fairly and equitably and promote public confidence.

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1 Australian Government, Department of Climate Change, Energy, the Environment and Water, *Safeguard Mechanism Review* (Consultation Paper, August 2026) 2 (**Consultation Paper**).
2 Ibid 6, 10; See also Australian Government Clean Energy Regulator, *2024-25 Safeguard Mechanism data insights* (Report, April 2026) 3.
3 Law Council of Australia, *Climate Change Policy* (Policy Statement, 27 November 2021).

General comments on the Consultation Paper

The Consultation Paper reports an increased surrender of Safeguard Mechanism Credits and Australian carbon credit units (**ACCUs**), alongside net emissions reductions broadly consistent with the trajectory to 100 million tonnes by 2029–30.[4] The Law Council notes that early reductions have relied more heavily on ACCUs than on emissions reductions at facilities, potentially deferring more difficult abatement into the post-2030 period.

A further risk is that reliance on concessional baselines for trade-exposed businesses appears higher than anticipated.[5] If those arrangements expand or continue, they could dilute the scheme's impact. While lower production growth has contributed to lower emissions, a stronger rebound may increase baselines and then require reassessment of the decline rate. Flexibility and competitiveness measures, including banking, borrowing and monitoring, remain useful, but may defer real abatement and increase pressure closer to 2030.

Emissions reduction technologies

In response to the question on page 12 of the Consultation Paper, the Law Council considers that the current Safeguard Mechanism settings provide a workable foundation and the framework is reasonably stable. The prescribed decline rates give industry clear direction, and support from the Australian Renewable Energy Agency, the Clean Energy Finance Corporation and the Net Zero Fund helps bring forward early projects.

However, members of the legal profession responding to the Consultation Paper consider the current policy settings are not yet driving sufficient on-site abatement and that industry will require clear post-2030 rules, support for higher-cost technologies, and incentives that make direct emissions cuts more attractive than ongoing offset use to do this. Anticipated barriers include:

- high capital costs and long lead times for major industrial upgrades;
- technologies that are still immature, unproven, or difficult to deploy at a sufficiently high scale in certain sectors such as cement and steel;
- limited access to firmed renewable energy, transmission capacity, and electricity infrastructure;
- continued reliance on ACCUs, which can reduce the urgency to invest in direct abatement;
- concessional baselines that reduce the strength of the decarbonisation signal; and
- sustained workforce and supply-chain constraints which delay project delivery.

Addressing these considerations will better support Australia to meet its climate targets under its international commitments.

Domestic offsets

Our feedback indicates that open access to ACCUs has helped facilities comply while larger abatement projects are planned and constructed. However, there is a risk that

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4 Australian Government, Department of Climate Change, Energy, the Environment and Water, *Safeguard Mechanism Review* (Consultation Paper, August 2026) 13-14.

5 Ibid 10.

offsets are now carrying too much of the burden with gross emissions not falling quickly enough. Accordingly, the scheme may need to start shifting towards on-site abatement from 2030.

Members of the legal profession responding to this review suggest a measured approach may include:

- light guardrails for facilities with very high ACCU use;
- gradual increases to the cost-containment price;
- targeted support for capital-intensive projects that can deliver material emissions reductions; and
- facility-level abatement plans that would also improve transparency by setting out anticipated ACCU and Safeguard Mechanism Credits use, planned investments and the pathway each facility expects to follow as baselines decline.

Others have emphasised the urgency of accelerating on-site abatement and suggest stronger measures to limit reliance on ACCUs coupled with more prescriptive abatement requirements.

In the Law Council's view, these measures should complement rather than duplicate existing corporate climate reporting requirements and be implemented in a manner that promotes legal certainty, regulatory predictability and effective emissions reduction outcomes.

Coverage

Regarding the questions relating to the Safeguard Mechanism threshold on page 39, alignment between the coverage threshold and state- and territory-level thresholds and may warrant further consideration. For example, in NSW the threshold has been lowered to 25,000 tonnes CO_2-equivalent per year under the new Climate Change Licensee Requirements, which come into effect from 2027.[6] If such alignment were to occur, it would be important to consider processes for managing the phasing in of new facilities and any legal risks that may arise. It would also be critical to ensure that state and territory regimes are compatible and consistent with any proposed changes at the Federal level.

Any reduction should be preceded by regulatory impact analyses addressing abatement potential and administrative impacts. The Law Council considers that these would need to be accompanied by appropriate transition arrangements to support compliance, including clear guidance and sufficient lead time for newly covered facilities (for example, those where viable on-site abatement options are not reasonably available in the near term).

Legal and other implications of any changes

Ultimately, it will be important for the Department to consider the legal and practical consequences of any changes to the Safeguard Mechanism resulting from this

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[6] See NSW Environment Protection Authority, *Climate Change Licensee Requirements* (Policy, March 2026) 6; See also Law Council of Australia, 'Productivity Commission Interim Report—Investing in cheaper, cleaner energy and the transition to net zero' (Submission, 23 September 2025) 2; Australian Institute of Company Directors, 'Productivity Commission inquiry on the five pillars of productivity – Interim Reports' (Submission, 15 September 2026), 26.

consultation. Those changes should be assessed not only from an emissions reduction perspective, but also by reference to legal certainty, scheme integrity, enforceability and compliance risk.

The Law Council also reiterates that relevant government agencies must be adequately resourced to administer and enforce the scheme, and any changes to it, effectively.

Contact

If the Law Council can be of further assistance on this matter, in the first instance, please contact Xenia Taunt-Rivers, Policy Lawyer [redacted].

Yours sincerely



Elizabeth Shearer
President-elect