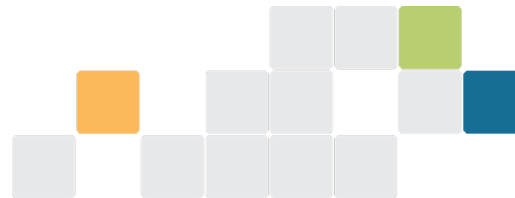


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Australian Government
Clean Energy Regulator



8 February 2023

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary

Clean Energy Regulator (CER) Submission – Safeguard Mechanisms (Crediting) Amendment Bill 2022

I am pleased to provide a submission to the Environment and Communications Senate Committee in response to the call for submissions on the Safeguard Mechanisms (Crediting) Amendment Bill 2022.

This letter is intended to provide the Committee with information about the careful attention the CER applies and will continue to apply to assurance and compliance for the Safeguard Mechanism and the other schemes we administer.

Key points

- The CER has an upfront assurance framework designed to ensure that Safeguard obligations for companies to report emissions and comply with their baselines are met.
- The CER maintains a strong focus on what might be called assurance or “preventative” compliance for the Safeguard and other schemes administered by the CER, with a commitment to continuous improvement. Enforcement action is taken to ensure compliance when preventative steps have not been successful - but this is rare because compliance levels are high.
- This preventative compliance approach is driven by the need to ensure that obligations are met and that, for example, issued carbon units represent real abatement.
- Compliance and assurance systems are being further upgraded to ensure that CER processes are best placed to meet the requirements of the reformed Safeguard, including issuing the proposed new Safeguard Mechanism Credits (SMCs). This work is well under-way. However, once operational, the Safeguard reforms will necessitate a higher volume of administrative activity on the part of the CER as a result of Safeguard crediting and other new features of the scheme (such as for Emissions Intensive Trade Exposed reporters and the cost containment mechanism). It will be important for the CER to be appropriately resourced so we can respond well to these new demands.
- CER implementation of the reformed Safeguard will be informed by key compliance lessons learnt from administering the ACCU scheme, namely a focus on innovation, continuous improvement and, when



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warranted, the use of strong compliance and enforcement powers to remove any bad actors from the scheme.

The CER, NGER and the Safeguard mechanism

The CER administers schemes legislated by the Australian Government for measuring, managing, reducing or offsetting Australia's carbon emissions including: the National Greenhouse and Energy Reporting (NGER) Scheme, the Safeguard Mechanism and the Australian Carbon Credit (ACCU) Scheme.

The Safeguard Mechanism applies to all facilities that emit more than 100,000 tonnes CO₂-e in a financial year. The CER uses the NGER data to determine which facilities are covered by the Safeguard Mechanism for that particular financial year.

Each Safeguard facility's annual emissions are compared to its baseline (set by the CER). If a facility's emissions are below its baseline, it has met its Safeguard obligations for that year. If the facility's emissions exceed its baseline, it must take steps to reduce its net emissions (e.g. by surrendering ACCUs).

NGER – a solid foundation for assurance

Emissions reporting by Safeguard companies and facilities (reporters) leverages the mature architecture of the NGER Scheme. Many Safeguard reporters have a long history of measuring and reporting their greenhouse and energy emissions through NGER, which is a legislated scheme for compulsory facility level reporting, and which commenced in 2008.

Emissions data reported under the NGER Scheme is used to identify Safeguard facilities in each compliance period (financial year) and to determine whether these facilities are above or below their baselines.

Each year, the CER undertakes a detailed program of work designed to provide quality assurance over reported NGER data to maximise its accuracy and quality. This careful checking is a key focus for relevant CER staff who use a well-established process to assess reports.

The CER is committed to continuous improvement. The assessment process includes interrogation of the nearly 15 years of NGER data. Machine learning (algorithms) are used to identify any anomalies such as unexplained variances or trends in reporting. Where possible, reported NGER data is compared with other data sets from other entities (such as from the Australian Energy Market Operator) to test for accuracy and consistency.

Applications for Safeguard baselines must use the legislated NGER emissions accounting rules as the basis for reporting emissions. Under the Safeguard Mechanism Reforms, the Government proposes the site-specific component of each facility's baseline will be set using historical NGER data – this data will previously have been subject to the CER's detailed quality assurance processes. As an additional level of assurance, it is proposed these applications will also be accompanied by an audit report provided by a registered Greenhouse and Energy Auditor (see section below).

Compliance powers

In addition to the checking and assurance processes, the CER has a range of compliance powers for the Safeguard mechanism and NGER. In practice, these have been used only rarely as the NGER and Safeguard schemes have very high compliance rates (100 per cent compliance with Safeguard Mechanism obligations by the 1 March deadline each year). NGER's compliance rate is on average around 98 per cent on the reporting with non-compliance generally reflecting late or inaccurate reporting. About 900 companies report under NGER each year. Compliance and enforcement tools available to the CER include audits, enforceable undertakings, and civil financial penalties.



Audits

The NGER legislation creates a framework for independent auditors with specific knowledge, skills and experience to be registered as Greenhouse and Energy Auditors. These auditors can be voluntarily used by companies to provide assurance over their NGER data; they must be used to provide assurance over Safeguard baseline applications; and are used by the CER to carry out its own annual audit program.

The CER cannot (and would not) amend an audit report. The CER can and has excluded auditors from this program there are concerns that audits have not been up to standard.

The CER annual audit program is used to provide additional assurance of companies' data. The level of compliance for Safeguard and NGER is very high and unresolved concerns are relatively low. Where concerns remain, NGER reports are selected for CER's audit program. Safeguard reporters are generally selected if they have a history of late or inaccurate reporting. Once completed, CER staff assess the audit reports and conduct further investigations. The reporters are then required to resubmit their reports to the CER to correct significant errors. CER staff closely monitor Safeguard reporters with adverse or qualified audit findings to check for future non-compliance.

The proposed new Safeguard Mechanism arrangements with declining baselines will likely lead to additional facilities that may have the requirement to surrender ACCUs or SMCs to bring these facilities into compliance consequentially. As part of implementing the reformed Safeguard Mechanism, the CER plans to expand its audit program for Safeguard facilities.

Enforceable Undertakings

The CER can enter into a voluntary but enforceable undertaking (EU) with Safeguard reporters. Once an EU is agreed, its requirements have regulatory effect.

The CER is closely monitoring enforceable undertakings with two NGER reporters, one of which is also a Safeguard reporter. The two reporters were identified as having a history of submitting incomplete and inaccurate reports. The EUs require the companies to hire expert assistance to review and improve reporting governance, improve their internal reporting systems, and ensure their emissions reporting is "signed off" at CEO or board level.

CER monitors compliance with these EUs closely and the companies are complying with all requirements.

Compliance penalties

Currently, the civil penalty for an excess emissions situation is based on the number of days of non-compliance, rather than the scale of exceedance. The CER has not needed to use civil penalties or infringement notices under NGER or Safeguard to date as the levels of compliance are very high.

The proposed Safeguard Mechanism reforms would update and strengthen the civil penalty to base it on both the quantity of excess emissions *and* the number of days of non-compliance. Infringement notice charges will also be increased with the maximum infringement notice charge set at one-third of the maximum civil penalty to a maximum of 150,000 penalty units. From 1 January 2023, a penalty unit is set at \$275.

Lessons learnt from ACCU compliance

Participation in the ACCU scheme is voluntary and parties that opt into the scheme by registering a project take on a substantial level of compliance obligations. Here too, the CER has an upfront assurance framework designed to assure that ACCUs represent real abatement in practice. The reason for this upfront approach is that ACCUs are a compliance unit, increasingly so under the planned Safeguard arrangements.

Each application for ACCU project registration and ACCU issuance is assessed in accordance with the requirements of the legislation and the applicable method supported by robust systems and processes. These have been developed through a continuous improvement program to utilise big data and

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sophisticated analysis. The CER uses remote sensing tools using geospatial (GIS) (satellite) imagery equipped with machine learning, to check that projects are performing in accordance with method requirements and scheme rules.

ACCU projects are required to undergo at least 3 audits by an independent auditor registered under the NGER Scheme. An audit report must accompany the first application to receive ACCUs. ACCU projects can also be subject to additional audits through the agency's audit program. The CER utilises these audits and other on the ground checking to supplement evidence from geospatial or on ground imagery provided by scheme participants.

As with Safeguard, for the ACCU scheme, the CER has a broad range of compliance powers under its legislation. The use of these powers is rare as compliance levels are also high in the ACCU scheme. Where there is deliberate non-compliance with evidence of intent, the CER initiates investigations and may pursue civil action or refer matters for criminal prosecution. The CER can and does remove any "bad actors" from the scheme using the requirement that scheme participants maintain "fit and proper person" (FPP) status. One scheme participant was subject to an enforceable undertaking in 2021 and subsequently removed from the scheme using FPP powers. The CER keeps other regulators informed of these developments.

New and enhanced systems

The CER is currently consolidating and modernising its existing systems for Safeguard and NGER. This work is well underway but completing it will be contingent on the CER being provided with new funding for human resources and IT investment. The changes to systems and processes will reduce regulatory burden and further improve data quality. Elements of this IT work for the NGER and Safeguard schemes include a modernised web-based gateway to the scheme, new smart or interactive application forms that simplify reporting, and computer assisted assessment and validation checks to improve scheme administration.

Next steps

The CER is well placed to implement the Safeguard reforms, drawing on many years of experience administering carbon abatement schemes and a strong commitment to innovation and continuous improvement. Planning and system development is well-advanced for the proposed Safeguard, and we aim to offer emissions reporters a seamless transition to the new arrangements when the new Safeguard legislation and rules comes into force.

That said, once operational, the Safeguard reforms will necessitate a higher volume of administrative activity. It will be important for the CER to be appropriately resourced so we can respond effectively to these new demands.

I hope the Committee finds the information in this submission useful. I would be happy to appear before the Committee at one of its hearings if that would be of assistance.

Yours sincerely

[Redacted signature]

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