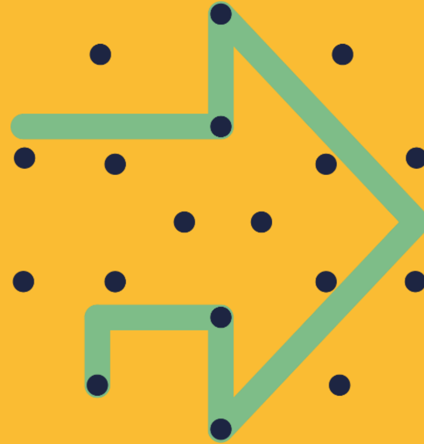


Department of Climate Change, Energy, the Environment and Water

Safeguard Mechanism Reform – Consultation on draft legislation

submission

November 2022

Department of Climate Change, Energy, the Environment and Water: Safeguard Mechanism Reform – Consultation on draft legislation

submission

The Carbon Market Institute (**CMI**) welcomes this opportunity to provide feedback on the Department of Climate Change, Energy, the Environment and Water's (**DCCEEW**) **exposure draft of the *Safeguard Mechanism (Crediting) Amendment Bill 2022*** (**Draft Bill**) and the ***Carbon Credits (Carbon Farming Initiative) Amendment (Safeguard Eligibility Requirements) Rules 2022*** (together, **Exposure Draft Legislation**), which opened for consultation on 10 October 2022.

CMI is an independent member-based industry association championing best practice for businesses in the transition to net zero emissions. CMI's 140+ strong membership includes organisations from across the entire carbon value chain, including primary producers, carbon service providers, legal and financial institutions, technology firms and emissions intensive companies.

CMI's Board annually updates the CMI Advocacy Policy Positions in consultation with, but independent of, members. Our positions include supporting policies aligned with Australia's fair share of effort to achieve the high-ambition Paris Agreement goal to limit warming to 1.5°C, evolving Australia's carbon markets to guide investment and opportunities in the transition, and ensuring rigorous governance, integrity and disclosure on carbon crediting.[1]

CMI also administers the Australian Carbon Industry Code of Conduct, which was established in 2018 to promote and steward consumer protection and market integrity.[2]

The positions put forward in this submission are CMI's view, independent of members, and do not represent any CMI individual, member company or industry sector.

Strategic outlook

CMI reiterates our strong support for the Albanese Government's reform agenda to strengthen the Safeguard Mechanism into a declining baseline and credit scheme (hereafter enhanced Mechanism). These changes will provide a supportive policy framework for industry's own commitment to net zero by 2050. As we elaborated in our submission to DCCEEW's Safeguard Mechanism reform consultation paper (Consultation Paper), at its core, the enhanced Mechanism should be designed to drive industrial decarbonisation and thereby strengthen Australia's competitiveness in a carbon-constrained global economy.[3] Alongside the Independent

[1] CMI 2021, 'Advocacy Policy Position Statement 2021', https://carbonmarketinstitute.org/app/uploads/2021/12/CMI-Advocacy-Policy-Positions-Updated-Dec-2021-004.pdf.
[2] More information can be found on The Code's website: https://carbonmarketinstitute.org/code/.
[3] See more in: CMI 2022, 'DCCEEW Safeguard Mechanism Reform – First Consultation', https://carbonmarketinstitute.org/app/uploads/2022/09/FINAL_Safeguard-Mechanism-Reform-Submission-1.pdf,

Review of ACCUs (ACCU Review) and other key initiatives, the enhanced Mechanism will enable Australia to achieve efficient emissions reduction supported by a high integrity carbon crediting framework.

CMI is broadly supportive of the Exposure Draft Legislation that will establish essential framework architecture to facilitate the implementation of the enhanced Mechanism, including through:

- The introduction of the Safeguard Mechanism Credit (SMC) as an important market-based incentive to accelerate at source emissions reductions;
- The consistent legal treatment of SMCs and ACCUs that will enable the creation and trade of SMCs among entities within the enhanced Mechanism to facilitate an efficient pathway for the industrial sector to decarbonise and broaden the range and volume of market supply; and
- Amendments to the *Carbon Credits (Carbon Farming Initiative) Act 2011* (CFI Act) to ensure that new activities that reduce covered emissions at Safeguard facilities are no longer eligible for ACCUs and instead generate SMCs, reinforcing the integrity of the enhanced Safeguard.

CMI recognises that introducing the legislative amendments outlined in the Draft Bill into parliament is a government priority, to ensure their passage into law ahead of the 1 July 2023 scheduled start date for the enhanced Mechanism. Nevertheless, without clarity on key design elements of the enhanced Mechanism, it is challenging to support some aspects of the Exposure Draft Legislation. We note that many of the key policy design questions will be a focus of government consultation on the *National Greenhouse and Energy Reporting (Safeguard Rule) 2015* (Safeguard Rules) later this year, not least the government's approach to setting declining baselines and the treatment of emissions-intensive trade-exposed entities (EITEs). Given this, CMI notes that some of our positions may be revised in line with these still-to-come draft Safeguard Rules, which we look forward to commenting on.

CMI moreover considers it important that the overarching framework legislation of the enhanced Mechanism supports the ongoing integrity of the scheme. The Draft Bill offers an opportunity to introduce additional checks and balances into the *National Greenhouse and Energy Reporting Act 2007* (NGER Act) that strengthen ministerial accountability with respect to any future changes to the subordinate Safeguard Rules. This will help ensure that the enhanced Mechanism drives ongoing industrial decarbonisation in a way that supports Australia's legislated emissions reduction targets and Paris Agreement obligations into the future under successive governments.

Recommendations

To support the integrity of the enhanced Mechanism as a market-based policy whilst facilitating the continued maturation of Australia's carbon market, CMI recommends that the government:

1. **Introduce additional amendments to the NGER Act under the Draft Bill that would require ministerial orders amending the Safeguard Rules, including any assignment of an aggregate carbon budget to facilities covered by the enhanced Mechanism, to be updated in reference to Australia's legislated emissions reduction targets. This could act as a measure to prevent future ministerial orders from loosening declining baselines and provide a clearer legal pathway to challenge such changes, should this occur.**

   Section 22XS of the NGER Act prescribes the Minister's discretionary power to amend the Safeguard Rules. CMI recommends the government incorporate an additional clause into the NGER Act under this section

that requires the Minister to consider Australia's legislated emissions reduction targets in the Climate Change Act 2022 when amending the Safeguard Rules. Introducing such a clause should be done with a view to clarifying administrative accountability to ensure that baselines are set and decline in a manner that supports Australia's obligations under the Paris Agreement. This clause should create a floor but not a ceiling on the rate of industrial decarbonisation and aggregate volume of abatement delivered by facilities under the enhanced Mechanism.

2. **Introduce additional amendments to the NGER Act under the Draft Bill to enable smaller, below-threshold facilities to 'opt in' to the enhanced Mechanism. This will create an additional incentive for at-point decarbonisation and can be used to signal the government's consideration of expanding scheme coverage in the longer term, giving smaller facilities time to prepare.**

   CMI supports the proposed amendments that will enable entities with emissions below the designated large facility threshold to register to report under the NGER Act, such that they can generate SMCs. We encourage the government to consider extending this opportunity to generate SMCs not just to covered facilities whose emissions are approaching the coverage threshold, but to existing below-threshold facilities on an opt-in basis to give these entities an incentive to reduce their emissions and ensure greater SMC supply for hard-to-abate facilities.

   As we elaborated in our response to the Consultation Paper, the enhanced Mechanism should be implemented such that scheme coverage can expand in a phased approach, beginning in 2025. This will allow the government to scale Australia's climate ambition beyond the 43 per cent 2030 NDC when it sets the 2035 NDC in 2025, and subsequent NDCs thereafter. While a phased approach should be informed by market design analysis, enabling smaller facilities to opt into the Mechanism sooner could signal the government's eventual expansion of the Mechanism whilst enabling smaller facilities to participate and benefit from the incentives the mechanism would provide. In creating an 'opt in' model for smaller facilities, however, the government should consider and guard against potential perverse outcomes. For example, below-threshold opt ins should not be permitted in a way that could create an oversupply of cheaper SMCs that may disincentivise at-point decarbonisation at larger covered facilities.

3. **Remove the proposed amendments to the NGER Act that will make it possible to transfer a percentage of SMCs issued into a holding account so that they could be provisioned to EITE facilities to assist with liability costs. We consider that SMC provision is an inappropriate form of tailored treatment. To maintain the integrity of in-scheme carbon pricing and decarbonisation drivers, we recommend that support for EITEs is sourced from outside the enhanced Mechanism.**

   CMI recognises that tailored treatment may be needed by EITE facilities to help 'contain' the cost of compliance and prevent carbon leakage as baselines decline under the enhanced Mechanism. However, we caution against direct SMC provision and other forms of in-scheme EITE support. As the Draft Bill and Explanatory Document do not explain what 'other purposes' transferring a percentage of SMCs into a holding account may serve, CMI does not support amendments to the NGER Act that would enable this.

Direct credit provision, exemptions and carve outs, and differential decline rates – as well as ACCU price caps or fixed penalty prices that some have advocated for[4] – all carry the risk of diluting carbon prices and distorting decarbonisation drivers.[5] Their provision also misses opportunities to support facilities to decarbonise their businesses and may ultimately undermine the effectiveness of the enhanced Mechanism in reducing emissions.

CMI reiterates our suggestion that the government explore outside-scheme EITE support measures, such as priority access to government funding for transformational upgrades. Further details are outlined in our submission to the Consultation Paper.[6] We also encourage the government to explore developing a carbon border adjustment mechanism (CBAM) in the medium term. This would help support the future competitiveness of lower-emitting Australian industry and further address carbon leakage risks.

4. **Develop additional amendments to the *Carbon Credits (Carbon Farming Initiative) Act 2011* (CFI Act) in the Draft Bill to allow Commonwealth ACCU purchases to be guided by factors other than least cost abatement.**

Given that the Draft Bill proposes amendments to the CFI Act, we consider it an opportune time for the government to expand its least cost abatement purchase mandate. With the introduction of stronger compliance demand for ACCUs under the enhanced Mechanism and with the growth of voluntary corporate commitments to net zero, Australia's carbon market is experiencing increasing private sector demand. While private sector demand is likely to sustain a growing market for least-cost ACCUs, CMI recognises an ongoing role for Commonwealth-funded ACCU purchases to support investor confidence in Australia's maturing carbon market. This is particularly the case in the context of emerging abatement and removal technologies, as well as carbon credits that provide significant material co-benefits.

As the market continues to evolve, we recommend that public funding for ACCUs focus on emerging abatement and removal technologies to help bring down marginal abatement costs to commercialise these methods and grow new markets.[7] Co-benefit rich methods like blue carbon – with likely sustained high implementation costs but which hold significant social and biodiversity potential including

[4] The Minerals Council of Australia (MCA) and The Australia Institute (TAI) have both called for fixed penalty prices set at $24 and $25 per tCO_2-e, respectively. The Australian Petroleum Production and Exploration Association (APPEA) similarly encourages the government to consider including a shortfall charge compliance option under the enhanced Mechanism, which would put a price/cost safety net on the cost of compliance. For more details, see: MCA 2022, 'Submission to Safeguard Mechanism Reforms Consultation Paper', https://www.minerals.org.au/sites/default/files/Submission%20-%20Minerals%20Council%20of%20Australia_FINAL.pdf, p. 9; TAI 2022, 'Safeguarding fossil fuels: Submission to the Safeguard Mechanism Reforms Consultation paper', https://australiainstitute.org.au/wp-content/uploads/2022/10/P1295-The-Australia-Institute-Submission-Safeguards-Mechanism-Reforms.pdf, p. 14; APPEA 2022, 'Consultation Paper: Safeguard Mechanism Reforms', https://consult.industry.gov.au/safeguard-mechanism-reform-consultation-paper/submission/view/204, p. 8.
[5] CMI 2022, 'CMI welcomes draft Safeguard Bill, warns against "rash decisions"', https://carbonmarketinstitute.org/2022/10/13/cmi-welcomes-draft-safeguard-bill-warns-against-rash-decisions/.
[6] CMI 2022, 'DCCEEW Safeguard Mechanism Reform – First Consultation', https://carbonmarketinstitute.org/app/uploads/2022/09/FINAL_Safeguard-Mechanism-Reform-Submission-1.pdf, pp. 7-9.
[7] See: CMI 2022, 'Australian Government Independent Review of ACCUs submission', https://carbonmarketinstitute.org/app/uploads/2022/10/FINAL-CMI-ACCU-Review-submission.pdf, pp. 3, 8.

supporting coastal adaptation – as well as projects that draw on local Indigenous knowledge and support First Nations communities should also be a focus.[8]

To facilitate this approach, CMI recommends the government introduce additional amendments to section 20G of the CFI Act to update the principles on which Commonwealth-funded carbon abatement purchasing processes are based. While we appreciate that the currently proposed amendments to the CFI Act could make it possible for government funding for ACCUs to be targeted based on criteria beyond least cost, greater legal clarity should be provided to guide government purchase decisions into emerging removal and co-benefit rich methods as private demand for carbon credits matures.

5. **Consider further whether the proposed amendment to the *Australian National Registry of Emissions Units Act 2011* (ANREU Act) that would require the CER to publish SMC and ACCUs in each ANREU Registry account will best support market liquidity as compared with alternative options such as improved market monitoring and reporting by the regulator and/or the role of market platforms and exchanges.**

   CMI strongly supports efforts to improve market liquidity and integrity and reduce market risks such as those posed by speculators, including through improvements to transparency. However, it is not apparent whether the proposed changes would achieve the desired outcome, as compared with alternative approaches. Enhanced market monitoring and reporting and regulatory compliance and enforcement, as well as market exchanges, are all other means of supporting transparency and liquidity that should be explored. Accordingly, CMI recommends the government undertake a cost benefit analysis on the proposed changes as compared with alternative approaches.

We elaborate our responses to each of the proposed reforms in the Exposure Draft Legislation in the **Attachment**.

Should you have any questions about CMI's submission or wish to discuss any aspect in greater detail, please contact Gabriella Warden, Manager, Research and Government Relations, at gabriella.warden@carbonmarketinstitute.org.

Yours sincerely

Kurt Winter
Director, Corporate Transition

[8] CMI has welcomed the government's recent budget, which included finance for blue carbon ecosystem restoration projects in a $204 million funding boost for the Great Barrier Reef – see: CMI 2022, 'CMI welcomes 'sold' first budget as Hon. Chris Bowen opens day 2 of Summit', https://carbonmarketinstitute.org/2022/10/26/cmi-welcomes-solid-first-budget-as-the-hon-chris-bowen-opens-day-2-of-summit/.

Attachment

Section of draft Bill		CMI response
Schedule 1 **Part 1: Amendment of the NGER Act**	**Section 22XM of the NGER Act specifies that ACCUs can be used to reduce the net emissions of Safeguard facilities and allows for the Safeguard Rules to determine what other units can be used to reduce the net emissions of Safeguard facilities. The draft Bill specifies that SMCs can also be used to reduce net emissions of Safeguard facilities.**	Conditional on the removal of aggregate headroom from baselines, CMI supports amendments to the NGER Act that provide for the issuance of SMCs and their use to reduce net emissions at Safeguard facilities. We stress that SMCs should not be fungible with ACCUs outside the enhanced Mechanism and should only be available for purchase and use by covered entities to meet their compliance obligations. The introduction of SMCs creates an additional incentive for industrial decarbonisation at covered facilities. We strongly support that SMC creation and trade remains limited to facilities covered by the enhanced Mechanism, with a supporting role for financial intermediaries to support market liquidity.[9]
	The draft Bill also allows for the Safeguard Rules to provide limits on the use of these units (if any).	CMI supports proposed amendments to the NGER Act that will allow the Safeguard Rules to place limits on facilities' use of credits (SMCs, ACCUs, other units that may be permitted in the future, such as Article 6 compliant international credits). This is needed to ensure that intertemporal flexibility provisions that may be included in enhanced Mechanism design, such as banking/borrowing SMCs, do not create perverse incentives for facilities to delay decarbonisation.[10] CMI looks forward to commenting on the detail of limits to SMC banking and/or borrowing when the government releases the draft Safeguard Rules for consultation later this year. Beyond limits to SMC banking/borrowing, CMI reiterates our position that further guidance or limits on the use of ACCUs, SMCs and other credits under the enhanced Mechanism should be postponed until the conclusion of Phase 1. This will ensure that further restrictions are only introduced if experience of the scheme in operation

[9] Detail on the role of financial intermediaries is outlined in: CMI 2022, 'DCCEEW Safeguard Mechanism Reform – First Consultation', https://carbonmarketinstitute.org/app/uploads/2022/09/FINAL_Safeguard-Mechanism-Reform-Submission-1.pdf, p.10.

[10] CMI recommends that SMC banking should be limited within the same phase or five-year rolling period, and that SMC borrowing is prohibited or restricted to ensure that facilities to not over-rely on these intertemporal flexibility provisions instead of investing in decarbonisation. See more: CMI 2022, 'DCCEEW Safeguard Mechanism Reform – First Consultation', https://carbonmarketinstitute.org/app/uploads/2022/09/FINAL_Safeguard-Mechanism-Reform-Submission-1.pdf, pp. 7. 14.

		demonstrates them to be necessary.[11] However, it is sensible to amend the NGER Act now to allow the Safeguard Rules to introduce such limits in an expedient manner if required at the conclusion of Phase 1.
	The draft Bill amends section 15B of the NGER Act to enable an entity other than a controlling corporation or responsible emitter for a designated large facility to register to report under the NGER Act.	CMI supports amendments that will enable entities with emissions below the designated large facility threshold to register to report under the NGER Act, such that they can generate SMCs. We encourage the government to consider extending this opportunity to generate SMCs not just to covered facilities whose emissions are approaching the coverage threshold, but to existing below-threshold facilities on an opt-in basis to give these entities an incentive to reduce their emissions and ensure greater SMC supply for hard-to-abate facilities. However, as highlighted in Recommendation 2, in adopting this recommendation, measures that guard against potential perverse outcomes may be required. For example, below-threshold opt ins should not be permitted such that they create an oversupply of low-cost SMCs that disincentivise at-point decarbonisation at larger covered facilities. As we elaborated in our response to the Consultation Paper, the enhanced Mechanism should be implemented such that scheme coverage can expand in a phased approach, beginning in 2025. This will allow the government to scale Australia's climate ambition beyond the 43 per cent 2030 NDC when it sets the 2035 NDC in 2025, and subsequent NDCs thereafter. While a phased approach should be informed by market design analysis, enabling smaller facilities to opt into the Mechanism sooner could signal the government's eventual expansion of the Mechanism whilst enabling smaller facilities to participate and benefit from the incentives the Mechanism would provide. To complement this incentive and back in covered facilities' transition to not just below-threshold emissions, but to net zero, we recommend that the government use Phase 1 of the enhanced Mechanism to explore the impacts and potential for progressively lowering the 100,000 tCO_2-e coverage threshold to 25,000 tCO_2-e, beginning in Phase 2. If deemed appropriate, gradually reducing the threshold over time will back in facilities' transition to not just below-threshold emissions, but net zero, while bringing a greater

[11] CMI 2022, 'DCCEEW Safeguard Mechanism Reform – First Consultation', https://carbonmarketinstitute.org/app/uploads/2022/09/FINAL_Safeguard-Mechanism-Reform-Submission-1.pdf, pp. 9-10.

		proportion of Australia's emissions under scheme coverage.[12]
	The draft Bill makes it possible to transfer a percentage of all SMCs issued into a holding account. These SMCs could then be transferred to emissions-intensive trade-exposed facilities is to assist with the cost of meeting their liability or for other purposes.	As mentioned in Recommendation 3, CMI does not support the proposed amendments to the NGER Act that will permit the transfer of SMCs into a holding account so that they can be provisioned to EITE facilities to assist with liability costs. While tailored treatment for EITEs is required to prevent carbon leakage, CMI considers SMC provision to be an inappropriate form of support. Such in-scheme tailored treatment carries the risk of diluting carbon prices and distorting decarbonisation drivers. CMI encourages the government to explore outside-scheme EITE support, such priority access to transformational upgrade funding and low-cost financing through the PRF and National Reconstruction Fund (NRF). We also encourage the government to explore developing a CBAM in the medium term to reinforce the competitiveness of lower-emitting Australian industry and reduce carbon leakage risks.[13]
	To ensure that the Safeguard Mechanism and SMCs have a high level of integrity, the draft Bill provides for the Safeguard Rules to require audits in relation to crediting or regarding NGER reports from Safeguard facilities.	CMI is supportive of proposed amendments to allow the Safeguard Rules to require audits in relation to crediting. This will help ensure that the enhanced Mechanism and SMCs issued within it have a high level of integrity. We note that detail of the circumstances under which such audits might be required will be provided in the Safeguard Rules. We look forward to seeing these details when the government opens consultation on its draft amendments to the Safeguard Rules later this year.

[12] For more detail, see: CMI 2022, 'DCCEEW Safeguard Mechanism Reform – First Consultation', https://carbonmarketinstitute.org/app/uploads/2022/09/FINAL_Safeguard-Mechanism-Reform-Submission-1.pdf, p. 9.
[13] Again, see more detail in: Ibid, pp. 7-9.

	The draft Bill adds provisions to the NGER Act (Subdivisions B and C of Division 4A) for relinquishment of SMCs issued as a result of false or misleading information or reporting, similar to provisions in the CFI Act.	CMI supports amendments to the NGER Act that will relinquish SMCs that are found to have been issued under false or misleading information or reporting. These correspond to similar provisions that apply to ACCUs under the CFI Act and help ensure SMCs and ACCUs receive similar treatment under the enhanced Mechanism. CMI would welcome clarity on the legal and compliance consequences when a relinquished SMC has already been purchased and used by another entity to meet its baseline. As well as clarifying impacted parties' recourse to civil penalties under established Australian law, the government should clarify in the Safeguard Rule how liable entities' compliance obligations would be treated in these circumstances. This would serve to mitigate any impact that may result from any misleading or deceptive conduct. Equivalent provision should also be made for relinquished ACCUs to ensure consistent treatment.
Schedule 1 **Part 2: Amendment of the *Income Tax Assessment Act 1997***	**This Part contains amendments to the *Income Tax Assessment Act 1997* to include SMCs as specified registered emissions units, so that they receive the same tax treatment as other specified units, like ACCUs.**	CMI supports amendments to the *Income Tax Assessment Act 1997* that will include SMCs as specified registered emissions that attract the same tax treatment as ACCUs and other specified units.
Schedule 1 **Part 3 Application of amendments**	**This Part provides that amendments in relation to the notices given, and appointments made, only apply after commencement of this item.**	CMI supports.
Schedule 2 **Australian National Registry of Emissions Unit**	**The purpose of Schedule 2 to the draft Bill is to amend the ANREU Act so SMCs can be included in the Registry. The amendments would establish relevant ownership and transfer arrangements for the units, equivalent to those for existing unit types.**	CMI broadly supports amendments to the ANREU Act that will establish arrangements to exist in the Registry with ownership and transfer arrangements equivalent to those for ACCUs. We reiterate the importance that subordinate legislation specifies a role for financial intermediaries to facilitate the efficient trade and transfer of SMCs within the enhanced Mechanism, as they do for ACCUs.[14] We look forward to seeing this clarified in the draft rules and regulations that will be released for consultation in the coming months.

[14] Detail on the role of financial intermediaries is outlined in: CMI 2022, 'DCCEEW Safeguard Mechanism Reform – First Consultation', https://carbonmarketinstitute.org/app/uploads/2022/09/FINAL_Safeguard-Mechanism-Reform-Submission-1.pdf, p.10.

	Information about holdings and cancellations of SMCs would be published, consistent with other unit types	
	Schedule 2 inserts a paragraph into the definition of 'eligible international emissions units' in the *Australian National Registry of Emissions Units Act 2011*, so that the definition includes safeguard mechanism credit units, once prescribed by legislative rules. This would mean that the *A New Tax System (Goods and Services Tax) Act 1999* will treat safeguard mechanism credit units as GST-free, like ACCUs. Specifying safeguard mechanism credit units as eligible international emissions units also means that the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* would apply to these units in the same way it does to ACCUs, and means that these units would also be financial products under the *Australian Securities and Investments Commission Act 2001* and *Corporations Act 2001.*	CMI supports these amendments. We consider that SMCs should be treated consistently with ACCUs, including that they are regulated as financial products and are GST free.
	The amendments increase the transparency of information on unit holdings of all unit types. They require the Regulator to publish the	CMI acknowledges that the proposed amendment reflects the recommendations made by the Climate Change Authority and a range of previous government inquiries. While CMI strongly supports efforts to improve market liquidity and integrity and reduce market risks such as those posed by speculators, including through improvements to

	total number of ACCUs and SMCs in each Registry account at least once per quarter. These amendments respond to advice by the Climate Change Authority to improve the transparency of the ANREU.	transparency, it is not apparent whether the proposed changes would achieve the desired outcome as compared with alternative approaches: • The number of units held in each ANREU account does not necessarily reflect which units are available for trade. For example, at any given time, a number of these units may be held for later delivery. This information would not be visible in the reports of ANREU account holdings that the Draft Bill proposes the Clean Energy Regulator (CER) would have to deliver at least quarterly. Such cases are increasing with the growing role of financial intermediaries and banks in supporting trade of ACCUs and other units, which are increasingly used and traded as commodities and subject to hedging and other practices. • Publishing deidentified, aggregated information about the number of SMCs and ACCUs issued and traded in a particular time window could provide a more accurate picture whilst mitigating commercial risk to market participants by publishing individual unit holdings. For example, under California Cap-N-Trade, the California Air Resources Board (CARB) publishes a quarterly Compliance Instrument Report.[15] This summarises the number of compliance instruments (units) held in registry accounts under the Linked California and Quebec Cap-and-Trade Programs, presented by unit type (vintage, project type) and aggregated for each type of account. • Into the future, market platforms and exchanges can also support transparency and liquidity. As the market matures further, it is anticipated that most businesses engaging in carbon markets will settle towards offtakes where purchases are hedged through forward and futures markets. Having regard to the above considerations, CMI recommends the government undertake a cost-benefit analysis on proposed changes as compared with alternative approaches.

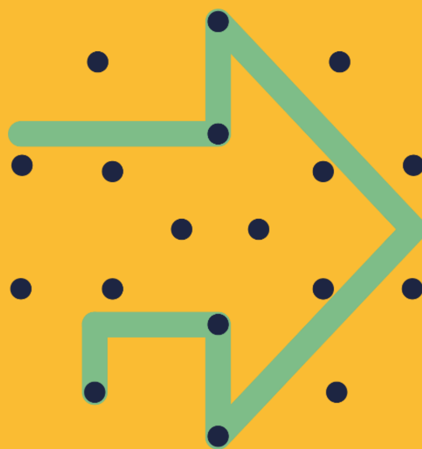
[15] California Air Resources Board (CARB) 2022, 'Compliance Instrument Report', https://ww2.arb.ca.gov/our-work/programs/cap-and-trade-program/program-data/compliance-instrument-report.

Schedule 3 – Clean Energy Regulator	**Schedule 3 to the draft Bill contains amendments to the CER Act and amendments to the *Clean Energy (Consequential Amendments) Act 2011* and the NGER Act that are consequential to those changes. These amendments implement Recommendation 14 of the Climate Change Authority's 2018 Review of the National Greenhouse and Energy Reporting Act.**	CMI supports amendments to the CER Act and NGER Act that align protections for all information held by the CER and allow the CER to be conferred additional functions by regulations under each legislation. CMI also supports the proposal to repeal some items from the *Clean Energy (Consequential Amendments) Act 2011* to ensure consistent protection, use and dissemination of information obtained under the NGER Act, *Renewable Energy (Electricity) Act 2000* and CFI Act.
Schedule 4 – Other amendments	**Schedule 4 to the draft Bill contains an amendment to the CFI Act relating to carbon abatement contracts and an amendment relating to regulatory additionality.**	CMI supports amendments to the CFI Act and *Carbon Credits (Carbon Farming Initiative) Amendment (Safeguard Facility Eligibility Requirements) Rules 2022* (CFI Rules) that will ensure that new activities that reduce covered emissions at Safeguard facilities are no longer eligible for ACCUs and instead generate SMCs. CMI reiterates our recommendation, as expressed in our response to the Consultation Paper, that allow existing registered ERF projects to continue generating ACCUs for the remainder of their crediting period, subject to double counting provisions, as well as our suggestion that it may be appropriate for facilities to participate in ERF projects that reduce emissions from electricity use, given that Scope 2 emissions are not included in Safeguard liability.[16] Similarly, existing deemed surrender arrangements should be grandfathered, but otherwise discontinued.[17] Rules should be established to ensure facilities generating ACCUs are not generating SMCs from the same activities until the crediting period of the current ACCU project phases out. CMI notes that several responses to the first Consultation Paper raised questions around the coverage and treatment of landfills under the enhanced Mechanism. [18] We note that

[16] CMI 2022, 'DCCEEW Safeguard Mechanism Reform – First Consultation', https://carbonmarketinstitute.org/app/uploads/2022/09/FINAL_Safeguard-Mechanism-Reform-Submission-1.pdf, pp. 14-15.
[17] Ibid.
[18] See, for example: Australian National University (ANU) 2022, 'Submission to the Safeguard Mechanism reform consultation', https://iceds.anu.edu.au/files/ANU%20ICEDS%20Safeguard%20Submission%20merged.pdf, p. 11; Waste Management and Resource Recovery Association of Australia (WMRR) 2022, 'WMRR Safeguard Response',

		ERF projects are prevalent at landfill sites and are often owned and managed by companies separate to the landfill operator liable entity. Given that the Exposure Draft Legislation seeks to amend the CFI Rule on the topic of regulatory additionality, CMI would welcome clarify from the government on how it intends to approach the treatment of landfills. We appreciate that the ACCU Review is currently considering the landfill gas electricity generation methodology and it may be the government's intention to clarify these matters in subsequent ministerial updates to the CFI Rule. Nevertheless, greater clarity on the government's policy approach would assist in resolving these complexities. We further encourage the government to consider introducing amendments to the CFI Act that expand the principles by which government purchases of ACCUs are bound, moving away from the least cost abatement ERF model. More detail on this suggestion can be found in Recommendation 4.

available for download at:
https://www.wmrr.asn.au/Web/Web/Our_Services/Advocacy_and_Industry_Resource_Pages/Submissions/Federal_Submissions.aspx.



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The Carbon Market Institute is at the centre of climate change policy and business in Australia. Independent and non-partisan, we bring business, policy makers and thought leaders together to drive the evolution of carbon markets towards a significant and positive impact on climate change.

Engaging leaders, shaping policy and driving action, we're helping business to seize opportunities in the transition to a low carbon economy.

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