



THE LAW SOCIETY
OF NEW SOUTH WALES

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3 October 2025

Climate & Environment Protection Branch
Strategy & Policy Division
NSW Environment Protection Authority

By email: climatechange.review@epa.nsw.gov.au

Dear Sir/Madam,

PROPOSED CLIMATE CHANGE LICENSEE REQUIREMENTS

The Law Society appreciates the opportunity to comment on the NSW Environment Protection Authority's (EPA) draft Climate Change Licensee Requirements (CCLRs), draft Climate Change Mitigation and Adaptation Plans (CCMAPs), and draft Greenhouse Gas Mitigation Guide for Coal Mining (Coal Mine Mitigation Guide). The Law Society's Climate Change Working Group contributed to this submission.

We support the release of the CCLRs, CCMAPs and Coal Mine Mitigation Guide, which set out proposed mitigation requirements for holders of environment protection licenses (EPLs) that meet certain annual greenhouse gas (GHG) emissions thresholds, subject to our comments below.

We recognise that this is an important development in the EPA's approach to regulating scope 1 and scope 2 emissions within NSW, in accordance with its Climate Change Action Plan 2023-2026 and the *Climate Change (Net Zero Future) Act 2023* (NSW).

1. Interaction between State and Commonwealth requirements

It is critical that any proposed State approach and requirements interact with the *National Greenhouse and Energy Reporting Act 2007* (Cth) (NGER Act) and the Safeguard Mechanism in a complementary way and are consistent with the regime operating at the Commonwealth level.

Proponents of large-emitting facilities will need to provide robust and consistent information about their actual and potential GHG emissions and be required to prepare a CCMAP that aligns their project's emissions pathway with the State's legislated emissions reduction targets. The State's legislated targets are more ambitious than the Federal Government's targets under the *Climate Change Act 2022* (Cth) and Australia's commitments under its Nationally Determined Contribution for 2030 (to which the Safeguard Mechanism is linked). This means that compliance with the Safeguard Mechanism (and its annual baseline decline rate) would not be enough to ensure compliance with the EPA's requirements.

Another area of potential inconsistency is the approach being taken with respect to the prescription of specific technologies under the Coal Mine Mitigation Guide. No other federal or state legislation or regulatory instrument (including the Safeguard Mechanism) requires specific technology changes to be implemented.

The EPA should consider aligning emissions reduction requirements with the Safeguard Mechanism because this would promote clarity, efficiency and consistency for responsible emitters, while also ensuring that Australia's national targets are met.

2. Facility and emissions boundaries

We appreciate that the EPA has made efforts to streamline reporting processes with existing schemes such as the National Greenhouse and Energy Reporting Scheme (**NGERS**) and climate statements under the *Corporations Act 2001* (Cth). In particular, we understand that the EPA would allow organisations that have already submitted information similar to the annual climate change reporting and CCMAPs under other schemes to re-use existing documentation, provided any gaps are addressed through an addendum.

While this approach will streamline reporting processes, there will still be practical complexities for proponents with multiple EPLs to meet the EPA's proposed annual emissions reporting requirements. This is because the boundaries for the purposes of corporate group level emissions reporting under NGERS will likely be different to the boundary and scope of the facility that is regulated under an EPL. Generally, entities with multiple facilities will report across the whole of their corporate group for the purposes of NGERS, and do not provide disaggregated reporting information, unless a facility is subject to the Safeguard Mechanism.

In light of the above, it would be preferable to more effectively streamline approaches between the Commonwealth and NSW emissions reporting regimes, for example, by allowing an entity that holds multiple EPLs to submit one annual emissions report across each EPL (as is permitted for CCMAPs).

3. Prescriptive technology mandates

As the EPA acknowledges¹, the Coal Mine Mitigation Guide requires the adoption of several mitigation technologies that are not yet proven to be commercially viable, safe, or effective in the NSW context (for example, VAM RTO technology). We are aware that some potential proponents are concerned that implementing unproven technologies could have material technical or safety risks.

In addition, the Coal Mine Mitigation Guide's mandating of specific technologies to the exclusion of other emerging or site-specific abatement options limits the flexibility of operators to pursue the most cost effective and feasible solutions for their circumstances. As noted, no other federal or state legislation or regulatory instrument in this area (including the Safeguard Mechanism) requires specific technology changes to be implemented. We are also aware that some potential proponents are concerned about the potential costs associated with the technology mandates proposed under the Coal Mine Mitigation Guide which do not differentiate between mines at different stages in their life of mine planning.

¹ NSW Environment Protection Authority, *Proposed Greenhouse Gas Mitigation Guide for NSW Coal Mines Consultation draft*, July 2025, 16-17, online: <https://hdp-au-prod-app-nswepa-yoursay-files.s3.ap-southeast-2.amazonaws.com/5017/5452/8073/25p4606-proposed-ghg-mitigation-guide-for-nsw-coal-mines.pdf>

4. Scope of exemptions

We note that the Coal Mine Mitigation Guide states that there will be potential for proponents to obtain exemptions from the specific mitigation actions listed there. As currently drafted, the exemption process does not have clear and objective criteria for both the standards for assessment and the scope of the EPA's decision-making discretion.

The EPA should provide further clarity in relation to the scope of potential exemptions, including by:

- publishing clear, objective exemption criteria;
- setting timeframes for decision-making; and
- establishing a review mechanism to ensure procedural fairness.

5. Publication of CCMAPs

At present, the proposal is that CCMAPs will be published by a proponent on a publicly accessible website. We are aware that some potential proponents are concerned about the level of technical detail to be provided in the CCMAPs which could be commercial in confidence or market sensitive, including in respect to future matters and strategies, and the use of offsets. Proponents are also expected to make forward-looking statements about potential GHG emissions (among other things).

Publication of such information could heighten potential greenwashing risks for proponents, have unintended consequences for competitiveness and influence Australian Carbon Credit Unit market supply and cost.

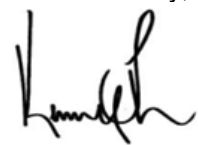
6. Transitional arrangements

We are also aware that some potential proponents are concerned about the application of the proposed mitigation requirements to existing projects and projects currently undergoing assessment. Requiring existing operations to retrofit mitigation technologies or revise existing decarbonisation strategies, particularly for projects later in life, is likely to impact upon project economics and could create unintended economic and social consequences.

The EPA could consider the introduction of transitional arrangements to apply to existing projects, distinguishing between existing projects and new projects. This would reflect the approach taken by the Federal Government as part of the 2023 Safeguard Mechanism reforms, recognising that there may be significant compliance challenges for proponents with existing approved operations.

Thank you for the opportunity to comment. Questions at first instance may be directed to Liza Booth, Head of Commercial and Advisory Law Reform, at (02) 9926 0202 or Liza.Booth@lawsociety.com.au.

Yours faithfully,



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Jennifer Ball

President