The Law Society OF NEW SOUTH WALES

Our ref: CCWG:RMsb180926

18 September 2026

Dr James Popple
Chief Executive Officer
Law Council of Australia
PO Box 5350
Braddon ACT 2612

By email: [redacted]

Dear Dr Popple,

2026-27 REVIEW OF THE SAFEGUARD MECHANISM

The Law Society is grateful for the opportunity to provide feedback to the Law Council in relation to the consultation paper, *2026-27 Review of the Safeguard Mechanism* (**Consultation Paper**). The Law Society's Climate Change Working Group contributed to this submission.

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 expertise in these areas. We note that it will be important to ensure that any changes introduced promote legal certainty and are capable of enforcement.

Perceived risks for the Safeguard Mechanism and whether it is on track to deliver its legislated outcomes

The Consultation Paper states that the purpose of this review is not to recommend fundamental changes to the design of the Safeguard Mechanism. It suggests that "initial results indicate that reformed policy settings are working as intended and the Safeguard is on track to deliver its 2030 emissions targets".[1] However, we acknowledge that it is likely that there will continue to be divergent views among industry and other stakeholders with respect to the effectiveness of the Safeguard Mechanism and whether the changes introduced in FY23-24 strike the appropriate balance between meaningful emissions reductions across Australia's industrial and resource sectors, while promoting economic growth and competitiveness.

The Law Society notes that early reductions are reliant on Australian Carbon Credit Units (**ACCUs**) as opposed to cuts made at the facility level.[2] As a result, this is expected to push the harder abatement task into the 2030s. See further commentary in response to Question 3 below.

[1] Australian Government, Department of Climate Change, Energy, the Environment and Water, *Safeguard Mechanism Review* (Consultation Paper, August 2026) 10 (**Consultation Paper**)
[2] See discussion in Consultation Paper, above n 1, 12-16.

A further risk to the Safeguard may arise from the way in which reliance on concessional baselines for trade exposed businesses is higher than expected.[3] If those arrangements expand or continue, they could dilute the scheme's impact. Further, while lower production growth has helped keep emissions down, a stronger rebound would likely lift baselines and may then require the decline rate to be reassessed. While members noted that other flexibility and competitiveness measures such as banking, borrowing and monitoring remain useful, they could also defer real abatement and increase pressure closer to 2030.

Are the Safeguard policy settings and Government support mechanisms suitable for developing and deploying emissions reduction technologies for the industrial sectors? Are there any remaining barriers to undertaking on-site abatement, including sector-specific barriers?

We note that the current settings for the Safeguard provide a workable foundation and the framework is reasonably stable. The set decline rates give industry a 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.

Members agree, however, that the current policy settings are not yet driving enough on-site abatement. Industry will need clearer post-2030 rules, support for higher-cost technologies and incentives that make direct emissions cuts more attractive than ongoing offset use to do this. We suggest that the main barriers are likely to be:

- High capital costs and long lead times for major industrial upgrades;
- Technologies that are still immature, unproven, or difficult to deploy at scale in 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
- Workforce and supply-chain constraints that can delay project delivery.

Are new policy measures for ACCU use needed to accelerate industrial decarbonisation? If policy measures are needed, what would be the best way to reduce reliance on ACCU use without unduly disrupting the carbon market and when should any such measures start?

We note that open access to ACCUs has helped facilities comply, while larger abatement projects are planned and built. Members have noted that the risk is that offsets are now carrying too much of the burden, with gross emissions not falling quickly enough. From 2030, members generally agree that the Government will need to start shifting the scheme towards on-site abatement.

Some of our members have suggested that a measured approach would be to introduce light guardrails for facilities with very high ACCU use, gradually increase the cost-containment price, and provide targeted support for capital-intensive projects that can deliver material emissions reductions. Facility-level abatement plans would also improve transparency by setting out expected ACCU and Safeguard Mechanism Credits use, planned investments and the pathway each facility expects to follow as baselines decline. Members have stressed the importance that these complement existing corporate climate reporting requirements rather than duplicating them.

Other members have emphasised the urgency of onsite abatement, and suggest more stringent reform, including significant limitations on the use of ACCUs coupled with more prescriptive requirements to abate.

[3] Ibid., 10.

Legal implications of any changes

It will be important for the Government to consider the legal and practical consequences of any changes to the Safeguard Mechanism. Any proposed changes should be assessed not only from an emissions reduction perspective, but also by reference to legal certainty, enforceability and compliance risk. An example may be if facility-level cap was imposed on ACCUs without a mechanism to manage compliance. This would be concerning, for example, for facilities that cannot keep their emissions below the baseline e.g., an airline or operators for which viable abatement technologies are not expected to be available in the near term.

Further, we note support among some members for lowering the coverage threshold, noting that alignment with state-level thresholds may be beneficial, such as the 25,000 tonnes CO_2-e per year under the NSW Government Climate Change Action Plan.[4] If this would occur, it would be important to consider processes for managing the phasing in of new facilities and any legal risks that may arise.

Thank you for the opportunity to comment. Questions at first instance may be directed to Sophie Bathurst, Senior Policy Lawyer, at (02) 9926 0285 or Sophie.Bathurst@lawsociety.com.au.

Yours sincerely,



Ronan MacSweeney
President

[4] See, also, commentary in Australian Institute of Company Directors, 'Productivity Commission inquiry on the five pillars of productivity – Interim Reports' (Submission, 15 September 2026), 26.