



THE LAW SOCIETY
OF NEW SOUTH WALES

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4 July 2024

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

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

Dear Sir/Madam,

Draft Climate Change Assessment Requirements and draft Greenhouse Gas Assessment Guide for Large Emitters

The Law Society appreciates the opportunity to comment on the NSW Environment Protection Authority's (EPA) draft Climate Change Assessment Requirements (CCARs) and draft Greenhouse Gas Assessment Guide for Large Emitters (Guide). The Law Society's Climate Change Working Group contributed to this submission.

We support the release of the CCARs and the Guide, which aim at assessing and mitigating greenhouse gas (GHG) emissions from new and modified high-emitting projects, through the environmental impact assessment and development approval process, subject to our comments below. We recognise that this is an important development in the EPA's approach, under the NSW Government's Climate Change Action Plan 2023-2026, and in accordance with its statutory obligations under the *Climate Change (Net Zero Future) Act 2023* (NSW), to regulating scope 1 and scope 2 emissions within NSW, through consideration at the planning approval stage for new and modified projects. Proponents of large-emitting projects will need to provide robust and consistent information about their potential GHG emissions and be required to prepare a Climate Change Mitigation and Adaptation Plan (CCMAP), to align with net zero targets and legislation and to better inform planning decisions.

As the proposed requirements for large emitters will interact with other elements that the NSW Government intends to introduce in this space (e.g., general CCARs), it will be important to ensure that a project can meet all the requirements (whether State or Federal) in a way that does not create suboptimal outcomes.

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.

One area of potential inconsistency is the approach being taken with respect to the use of offsets. The Safeguard Mechanism does not impose any quantitative or qualitative limits on Australian Carbon Credit Units (ACCUs) use (only disclosure requirements if the use is greater

than 30%). Imposing more restrictive and/or inconsistent requirements will put NSW in a different position to other States without those restrictions, and could potentially affect and distort the ACCU market. Also, liability under the Safeguard Mechanism is linked only to scope 1 emissions, and not scope 2 (or 3).

Another area where it would be preferable to streamline approaches between the Commonwealth and NSW regimes is leveraging existing audit requirements under the National Greenhouse and Energy Reporting Scheme, rather than requiring new expert reports or audits to be prepared.

GHG assessments

We note that the Guide states that it is intended to support proponents to prepare their GHG assessments, as well as the EPA and consent authorities to review the assessment's adequacy. However, we are concerned that the Guide does not include sufficient qualitative tools to assess whether any proposed mitigation and management pathways are appropriate and will reduce GHG emissions over the project's life. While we note that the EPA will be developing additional best practice guidance to assist proponents and the regulated community, we consider that such guidance should be available as early as possible, given that the CCARs and Guide will come into effect immediately.¹

GHG Mitigation Plans and CCMAPs

We are also aware that some potential proponents are concerned about the level of technical detail to be provided in the plans, including in respect to future matters and strategies, which could be commercial in confidence. At present, the Guide does not provide any guidance on how this material will be treated.

Project boundary

A critical factor in determining the emissions profile of a project is where the GHG assessment boundary is drawn. The Guide contains limited detail on how the boundary for a project for the purposes of emissions reporting is to be defined, and what scope of emissions are to be accounted for within the assessment boundary, which may give rise to uncertainty. Given this is an important threshold issue, further guidance would be helpful.

Grandfathering

There is no mention of how this framework would apply to projects currently undergoing assessment, and it would be worthwhile for this to be specifically addressed to provide certainty for proponents.

Please do not hesitate to contact Liza Booth, Head of Commercial and Advisory Law Reform on 02 99260202 or liza.booth@lawsociety.com.au if you would like to discuss this in more detail.

Yours faithfully,



Brett McGrath
President

¹ Environment Protection Authority, [Frequently asked questions](#), 5.