

THE SAFEGUARD MECHANISM

26 October 2015 | Australia, Brisbane, Melbourne, Perth, Sydney
Legal Briefings

The Government's Direct Action climate change program has been clarified by the release on 2 September 2015 of drafts of the legislative instruments intended to give effect to the Safeguard Mechanism.

OVERVIEW

To whom is this relevant?

Businesses that either:

- have material greenhouse gas emissions in Australia, and that might be caught by the proposed 'Safeguard Mechanism', or
- engage with other businesses who have material greenhouse gas emissions in Australia and might be caught.

WHAT HAS HAPPENED?

The Government's 'Direct Action' climate change program has been clarified by the release on 2 September 2015 of drafts of the legislative instruments intended to give effect to the Safeguard Mechanism.

The Safeguard Mechanism is intended to apply enforceable emissions 'baselines' to facilities which emit high volumes of carbon dioxide. This Safeguard Mechanism is intended to prevent the displacement of emissions reductions attained through the Emissions Reduction Fund by emissions increases elsewhere in the economy.

The draft instruments identify the detail of the proposed Safeguard Mechanism, such as: how baselines will be determined and adjusted; penalties for exceeding baselines; and special treatment for the resource and electricity sectors (See: Architecture of 'Direct Action' becomes clearer).

WHAT SHOULD WE DO?

Businesses that may be caught by the Safeguard Mechanism, or deal with businesses that might, should:

- consider making a submission on the draft instruments - more information, and
- ensure that their commercial arrangements cover these issues as the Safeguard Mechanism could result in emissions costs.

THE SAFEGUARD MECHANISM

The Safeguard Mechanism is proposed to commence on 1 July 2016. It is expected to apply to around 140 large businesses with facilities with direct emissions of more than 100,000 tonnes of carbon dioxide equivalence a year (Responsible Emitters). Direct emissions include fuel combustion, emissions from physical and chemical processes and fugitive emissions.

Some key features of the proposed Safeguard Mechanism are discussed below.

BASELINES

Baselines for existing facilities will be derived from the highest level of reported annual emissions between 2009-10 to 2013-14. Baselines may be:

- permanently increased if a facility undertakes an increase in productive capacity of 20 per cent or greater,
- temporarily increased in any year where expanding production is accompanied by an improvement in emissions intensity,
- adjusted to accommodate variability associated with the extraction of natural resources, and
- adjusted if facilities expect to exceed their baseline in the Safeguard Mechanism's first

year.

THE ENERGY SECTOR

In addition, a baseline will apply to the electricity sector as a whole. This baseline will be determined by peak carbon dioxide emissions by the sector between 2009-10 to 2013-14. Individual baselines will apply to particular facilities if the sector's overall baseline is exceeded.

NEW INVESTMENTS

For new facilities or new investments at existing facilities which are completed after 1 July 2020, baselines will be determined by reference to 'best practice' benchmarks.

For new investments completed prior to 1 July 2020, baselines will be based on an audited emissions forecast provided by the facility operator.

COMPLIANCE

If a Responsible Emitter exceeds its baseline, it may apply for multi-year monitoring. This would allow a facility to exceed its baseline in one year if the average emissions over two or three years are below the baseline.

Further, excess emissions may be offset by the purchase of Australian Carbon Credit Units.

There will be a range of sanctions available to the Clean Energy Regulator to penalise excess emissions. Sanctions include civil penalties of up to \$1,800,000.

This article was written by [John Taberner](#), Consultant, Sydney, [Michael Voros](#), Special Counsel, Perth, and Harry Edwards, Graduate, Sydney.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



JOHN TABERNER

CONSULTANT,
SYDNEY

+61 2 9225 5427

john.taberner@hsf.com

LEGAL NOTICE

The contents of this publication are for reference purposes only and may not be current as at the date of accessing this publication. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.

© Herbert Smith Freehills 2021

SUBSCRIBE TO STAY UP-TO-DATE WITH LATEST THINKING, BLOGS, EVENTS, AND MORE

Close

© HERBERT SMITH FREEHILLS LLP 2021