

## **EXPLANATORY STATEMENT**

Issued by Authority of the Minister for Climate Change and Energy

*Australian National Registry of Emissions Units Act 2011*

*National Greenhouse and Energy Reporting Act 2007*

*Safeguard Mechanism Legislation Amendment (2023 Measures No. 1) Regulations 2023*

The *Australian National Registry of Emissions Units Act 2011* (ANREU Act) supports the issuance, holding, transfer, and acquisition of Australian Carbon Credit Units (ACCUs). Section 97 of the ANREU Act provides that the Governor-General may make regulations prescribing matters required or permitted by the ANREU Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the ANREU Act.

The *National Greenhouse and Energy Reporting Act 2007* (NGER Act) provides for a national framework for reporting and disseminating company information about greenhouse gas emissions, energy production, energy consumption and other information. Section 77 of the NGER Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act, or necessary or convenient to be prescribed for carrying out or giving effect to the NGER Act.

The Safeguard Mechanism was established in 2016 and is legislated through provisions in the NGER Act. The Safeguard Mechanism applies to facilities with more than 100,000 tonnes of scope 1 (direct) carbon dioxide equivalent (t CO<sub>2</sub>-e) emissions each year. The Safeguard Mechanism requires that these facilities must keep their emissions below a legislated baseline or surrender prescribed carbon units (which include ACCUs) equivalent to any emissions above their baseline.

The *Safeguard Mechanism (Crediting) Amendment Act 2023* reduces Safeguard Mechanism baselines and enable facilities that stay below their baselines to generate tradeable credits, known as Safeguard Mechanism Credits (SMCs). This Act amends the ANREU Act and NGER Act to establish a framework for the creation and purchase of SMCs. The amendments have commenced and the proposed Regulations are required to ensure that facilities are subject to the updated reporting obligations for the financial year beginning 1 July 2023.

The purpose of the *Safeguard Mechanism Legislation Amendment (2023 Measures No. 1) Regulations 2023* (the amendment Regulations) is to amend the *National Greenhouse and Energy Reporting Regulations 2008* (NGER Regulations), made under the NGER Act, and the *Australian National Registry of Emissions Units Regulations 2011* (ANREU regulations), made under the ANREU Act, to support amendments made by the *Safeguard Mechanism (Crediting) Amendment Act 2023*, including by:

- updating regulations that provide for production to be reported by facilities covered by the Safeguard Mechanism;

- updating the NGER Regulations to remove civil penalties that are now prescribed in the NGER Act as a result of the *Safeguard Mechanism (Crediting) Amendment Act 2023*;
- makes consequential updates to the ANREU regulations as a result of the *Safeguard Mechanism (Crediting) Amendment Act 2023*, which included SMCs in the registry; and
- amending the NGER Regulations to better recognise cement ingredients manufactured with lower emissions containing supplementary cementitious materials under the Safeguard Mechanism scheme.

The measures contained in the proposed Regulations reflect the Powering Australia Policy, an election commitment which outlines reforms to the Safeguard Mechanism. These reforms are necessary for Australia to meet its greenhouse gas emissions reduction targets, which are legislated in the *Climate Change Act 2022*.

The *Safeguard Mechanism (Crediting) Amendment Act 2023* and these proposed Regulations incentivise facilities to reduce emissions and contribute to Australia's international commitments. The changes will support emissions reductions in the industrial sector, helping to ensure Australian businesses can remain competitive as the world decarbonises.

A consultation paper outlining options for Safeguard Mechanism reforms was publicly released for feedback on 18 August 2022. The dedicated consultation period ran until 20 September 2022 and included online briefing sessions and in-person roundtables and meetings. The Department received 242 submissions on the consultation paper. The non-confidential submissions were published on the Department's website.

An exposure draft of the *Safeguard Mechanism (Crediting) Amendment Bill 2022* was released for public consultation from 10 October 2022 to 28 October 2022. Submissions from over 50 businesses, industry groups and individuals were received during the consultation period and all non-confidential submissions were published on the Department's website.

From 10 January 2023 to 24 February 2023, a position paper on the Government's proposed design of the reformed Safeguard Mechanism, along with draft legislative rules and regulations, were released for consultation. The changes in Schedule 3 were developed in light of feedback from this consultation and discussed with impacted reporting entities. They allow for multi-site cement production facilities to be a single facility under the scheme, providing opportunities to better reflecting clinker and cement production processes and opportunities to lower emissions across those production processes.

Details of the amendment Regulations, including commencement details, are set out in [Attachment A](#).

The amendment Regulation is a legislative instrument for the purposes of the *Legislation Act 2003*.

This Instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in [Attachment B](#).

**Details of the *Safeguard Mechanism Legislation Amendment (2023 Measures No. 1) Regulations 2023***

Preliminary

Section 1 – Name

This section provides that the name of the instrument is the *Safeguard Mechanism Legislation Amendment (2023 Measures No. 1) Regulations 2023*.

Section 2 – Commencement

This section provides for the commencement of certain provisions of the instruments.

Schedule 1 commences at the same time as the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023* commences, being 1 July 2023.

Schedule 2 commences the day after this instrument is registered.

Schedule 3 commences on 1 July 2023.

Any part of the instrument aside from these schedules would commence on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

This section states that the Regulations are made under the *Australian National Registry of Emissions Units Act 2011* (ANREU Act) and *National Greenhouse and Energy Reporting Act 2007* (NGER Act). The power to make regulations in each Act includes the power to amend regulations already made, with any doubt about this resolved by subsection 33(3) of the *Acts Interpretation Act 1901*.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## **Schedule 1 — Amendments relating to the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023***

### ***National Greenhouse and Energy Reporting Regulations 2008***

#### **Item 1**

Item 1 repeals the definition of ‘benchmark emissions baseline determination’.

#### **Item 2**

Item 2 inserts a definition for ‘eligible facility’ and ‘landfill facility’ and provides that they have the same meaning as under the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015* (Safeguard Mechanism Rule).

#### **Item 3**

Item 3 repeals the definitions of ‘prescribed (annually adjusted) production variable’ and ‘production-adjusted baseline determination’.

#### **Item 4**

Item 4 inserts a definition for ‘production variable’ which provides that it has the same meaning as under the Safeguard Mechanism Rule.

#### **Item 5**

Item 5 repeals the existing regulations 4.23C and 4.23D. It replaces these provisions with a new regulation 4.23C, which provides for updated requirements for reporting quantities of production variables used to calculate a baseline emissions number.

The new provision provides that regulation 4.23C applies in relation to a designated large facility or an eligible facility, other than a landfill facility, to which the report relates. It also specifies what a report must include for each production variable that is to be referred to in calculating the baseline emissions number for the facility for the reporting year. Specifically: the quantity of the production variable for the facility for the reporting year, or part of the reporting year, to which the report relates (paragraph 4.23C(2)(a); and any supporting information specified in Schedule 1 to the Safeguard Mechanism Rule that applies the calculation of that quantity (paragraph 4.23C(2)(b)). It also provides that the quantity of a production variable included in the report under paragraph (2)(a) must: be measured using the units specified in Schedule 1 to the Safeguard Mechanism Rule that apply in relation to the variable; and meet any requirements or procedures specified in that Schedule that apply in relation to the variable.

#### **Item 6**

Item 6 inserts a transitional provision, with the heading ‘Division 7.9 - Application provisions relating to the Safeguard Mechanism Legislation Amendment (2023 Measures No. 1) Regulations 2023’ and inserts regulation 7.20 titled ‘Application—quantities of production variables’ into Division 7.9 which provides that despite the amendments to regulations 4.23C and 4.23D, those regulations as in force immediately before the commencement of the amendments (in Schedule 1) will continue to apply to reports under Parts 3, 3E or 3F of the NGER Act, for a financial year that ends on or before 30 June 2023.

**Schedule 2 — Amendments relating to the *Safeguard Mechanism (Crediting) Amendment Act 2023***

***Australian National Registry of Emissions Units Regulations 2011***

**Item 1**

Item 1 amends subregulation 27(1) to add a criterion for the Regulator to voluntarily close a Registry account. The Regulator, may for subsection 15(1) of the ANREU Act, close a Registry account kept in the name of a person if there are no entries for any safeguard mechanism credit units in the account and other criteria in regulation 27(1) of the *Australian National Registry of Emissions Units Regulations 2011* (ANREU Regulations) are met.

**Item 2**

Item 2 amends subregulation 28(3)(b), which sets out notification requirements in relation to the unilateral closure of a Registry account by the Regulator.

Subregulation 28(1) provides that for subsection 16(1) of the Act, this regulation applies if: a person has a Registry account; and has contravened, or is contravening, Part 2 of the ANREU Act or ANREU Regulations. Subregulation 28(3) provides that the Regulator must not close the Registry account unless, at least 30 days before closing the account, the Regulator gives the person a written notice: stating the Regulator proposes to close the account (paragraph 28(3)(a)); and setting out the effects of subregulations 28(4) and (5) (paragraph 28(3)(b)).

The amendment adds a requirement into paragraph 28(3)(b), so that the Regulator must also set out the effect of subregulation 28(7), being: if the Regulator has closed the account of a person under subregulation 28(2); and the person asks the Regulator to open another account in the person's name; the Regulator must refuse to do so.

**Item 3**

Item 3 amends subregulation 28(3) so that the Regulator would be required to give written notice setting out the effect of any legislative rules made for the purposes of subsection 16(5) of the ANREU Act.

**Item 4**

Item 4 includes a transitional provision in Part 6 of the ANREU Regulations titled 'Amendments made by Schedule 2 to the Safeguard Mechanism Legislation Amendment (2023 Measures No. 1) Regulations 2023' to provide that the amendments made to subregulation 28(3) by item 3 do not apply to a written notice given before the commencement of the Regulations.

***National Greenhouse and Energy Reporting Regulations 2008***

**Item 5**

Item 5 repeals all of Part 4A of the NGER Regulations. Part 4A has one civil penalty provision (regulation 4A.01) that prescribes, for subsection 22XF(2) of the NGER Act, the number of penalty units in relation to a person's conduct in breach of subsection 22XF(1) of

that Act. Provisions relating to civil penalties for such breaches were moved to the NGER Act and updated as part of the *Safeguard Mechanism (Crediting) Amendment Act 2023*.

## Schedule 3 — Lower emissions cement

### *National Greenhouse and Energy Reporting Regulations 2008*

#### **Item 1**

Item 1 inserts a definition for ‘cement production activities’ and provides that it has the meaning given by regulation 2.20A.

It also inserts a definition for ‘multi-site cement facility’ and provides that it means a facility that is a series of activities that are cement production activities and that form a single undertaking or enterprise in accordance with regulation 2.20A.

#### **Item 2**

Item 2 inserts regulation 2.20A titled ‘Forming part of a single undertaking or enterprise—multi-site cement production activities.’

Sub-regulation 2.20A(1) provides that multi-site cement production activities can form part of a single undertaking or enterprise, if:

- a series of activities together produce cement (cement production activities); and
- the cement produced by the cement production activities is covered by subsection 64(1) of Schedule 1 of the Safeguard Mechanism Rule; and
- the cement production activities occur at different sites; and
- a nomination is submitted to, and approved by, the Regulator in accordance with Regulation 2.20B.

The note to this section clarifies that cement production activities that occur at a single site will form part of the same single undertaking or enterprise in accordance with regulation 2.16 and are unaffected by regulation 2.20A.

Sub-regulation 2.20A(2) provides that for the purposes of 2.20A(1)(b) cement production activities are to be treated as if they were carried out at a facility. The purpose of these provisions is to allow a series of activities to form a single undertaking or enterprise for the purposes of the definition of facility in section 9 of the NGER Act.

Item 2 also inserts regulation 2.20B which sets out requirements regarding the nomination process for multi-site cement facilities.

- Regulation 2.20B(1) provides for this regulation to apply to cement production activities occurring at different sites.
- Regulation 2.20B(2) provides that the person with overall control in relation to the cement production activities may, for activities conducted on or after 1 July 2023, nominate the cement production activities at different sites that are to form part of the same single undertaking or enterprise.

Under regulation 2.14(1), the person with overall control in relation to an activity or series of activities (including ancillary activities), is the person who has the authority to introduce and implement any or all of the following for the activities: operating policies, health and safety policies, or environmental policies.

If more than one person could satisfy this requirement, then under regulation 2.14(2), the person that has the greatest authority to introduce and implement operating policies and environmental policies is taken to have overall control in relation to the activities.

- Regulation 2.20B(3) requires the Regulator to approve the nomination if they are satisfied that:
  - all the activities at the different sites listed in the nomination are ‘cement production activities’; and
  - if the person who made the nomination has overall control of the cement production activities in accordance with regulation 2.14(2), that all other persons who could have met regulation 2.14(1) at the time the nomination was made have indicated their agreement with the nomination.
- Regulation 2.20B(4) provides for a nomination approved under this regulation to take effect from 1 July of the financial year in which the nomination is approved, or the day on which the later nomination is approved if the circumstances in 2.20B(5) apply.
- Regulation 2.20B(5) describes the circumstances when a later nomination will be taken to exist, as follows:
  - a nomination by another person (the earlier nomination) has been in effect in relation to the cement production activities;
  - that other person no longer has overall control in relation to the cement production activities;
  - a person that currently has overall control in relation to the cement production activities makes a later nomination; and
  - the later nomination is approved by the Regulator.
- Regulation 2.20B(6) provides that the approved nomination ceases to have effect:
  - on the day the Regulator revokes the nomination or such other day as specified in the revocation request (if any); or
  - for earlier nominations in the circumstances in 2.20B(5), at the end of the day before the day the later nomination is approved.
- Regulation 2.20B(7) provides that the Regulator must revoke an approved nomination, if the person who made the nomination requests this.
- Regulation 2.20B(8) provides the Regulator may revoke a nomination if:
  - the Regulator becomes aware of circumstances relating to cement production activities or sites listed in the nomination; and
  - as a result of those circumstances the Regulator is no longer satisfied of the matters in regulation 2.20B(3); and
  - the person who made the nomination has not made a request to vary or revoke the nomination within 60 days of the circumstances occurring.



- Regulation 2.20B(9) also provides that the Regulator may revoke a nomination if:
  - the Regulator becomes aware that the person who made the nomination no longer has overall control in relation to the cement production activities listed in the nomination; and
  - within 60 days of that person ceasing to have overall control in relation to the cement production activities: that person has not requested the nomination to be revoked, or, the person who has assumed overall control in relation to the activities has not made a new nomination in relation to the activities.
- Regulation 2.20B(10) provides for the person who made the nomination to request the Regulator to vary the nomination, in relation to cement production activities or sites that are to form part of the same single undertaking or enterprise.
- Regulation 2.20B(11) requires the Regulator to approve the variation request if they are satisfied that:
  - all the nominated activities at the different sites listed in the request are ‘cement production activities’; and if the person who requested the variation has overall control of the cement production activities in accordance with regulation 2.14(2), that all other persons who could have met regulation 2.14(1) at the time the request was made indicate their agreement with the variation request.
- Regulation 2.20B(12) provides that an approved variation takes effect on the day the Regulator approves the variation, or on the day specified in the request (if any).
- Regulation 2.20B(13) requires that nominations, or requests to vary or revoke a nomination under this regulation, must be made to the Regulator and be in a form approved by the Regulator.

### **Item 3**

Division 4 of the NGER Regulations specifies information that must be set out in a report provided by a corporation to the Regulator under section 19, 22G or 22X of the Act for a reporting year in relation to one or more facilities of the corporation.

Item 3 amends the general information reporting obligation in paragraph 4.04A(2)(c) so that, for multi-site facilities, it is not necessary to report the latitude and longitude of the site where the activities constituting the facility are undertaken.

### **Item 4**

Item 4 amends the general information reporting obligation in paragraph 4.04A(2)(d) so that for multi-site cement facilities, it is not necessary to report the State or Territory to which the activities constituting the facility are attributable.

It would also amend paragraph 4.04A(2)(e) so that for multi-site cement facilities, it is not necessary to report the State or Territory in which the facility is located.

**Item 5**

Item 5 amends subparagraph 4.04A(2)(f)(i) so that for multi-site cement facilities the report must contain a brief description of the location and activities of the facility.

**Item 6**

Item 6 inserts a new regulation 4.28A. It applies to corporations with reporting obligations under sections 19, 22G or 22X of the NGER Act. If a facility of the corporation is a multi-site cement facility and the facility is in more than one State, or, more than one State or Territory, the information for the facility about greenhouse gas emissions or production or consumption of energy that the corporation is required to provide in its report under Part 4 of the NGER Regulations must be apportioned in respect of each State and Territory (if any) that the facility is physically located in. This is to assist with the compilation of emissions inventory information for each State and Territory, it is not relevant to the obligations under the Safeguard Mechanism.

## Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Safeguard Mechanism Legislation Amendment (2023 Measures No. 1) Regulations 2023**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The purpose of the *Safeguard Mechanism Legislation Amendment (2023 Measures No. 1) Regulations 2023* (the amendment Regulations) is to amend the *National Greenhouse and Energy Reporting Regulations 2008* and the *Australian National Registry of Emissions Units Regulations 2011*.

The amendment Regulations support primary legislation amendments under the *Safeguard Mechanism (Crediting) Amendment Act 2023*. The amendment Regulations reflect the changes to the Safeguard Mechanism framework that were implemented by the primary legislation amendment: primarily by updating regulations that provide for production to be reported by facilities covered by the Safeguard Mechanism; updating the NGER Regulations to remove civil penalties that are now prescribed in the NGER Act as a result of the *Safeguard Mechanism (Crediting) Amendment Act 2023*; and amending the NGER Regulations to better recognise cement ingredients manufactured with lower emissions containing supplementary cementitious materials under the Safeguard Mechanism scheme.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon Chris Bowen MP**  
**Minister for Climate Change and Energy**