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To whom it concerns,

SAFEGUARD MECHANISM IMPLEMENTATION: PRODUCTION VARIABLE UPDATES AND INTERNATIONAL BEST PRACTICE BENCHMARKS

The Chamber of Minerals and Energy of Western Australia (CME) is the peak representative body for the resources sector in Western Australia. CME is funded by member companies responsible for 41 per cent of Australia's corporate income tax receipts by value in 2021-22.¹ In 2022-23, the WA resources sector accounted for 65 per cent of Australia's resources exports,² half of Australia's resources capital expenditure³ and 53 per cent of Australian resources employment.⁴

CME recognises that climate change is a global challenge requiring coordinated action at international, national and sub-national levels. CME supports the Paris Agreement and its goal of limiting global warming to well below 2, preferably to 1.5 degrees Celsius, by reducing emissions to net zero as soon as possible and no later than 2050. Australia, as a signatory to the Paris Agreement, must actively contribute to this goal and fulfilment of its Nationally Determined Contributions (NDCs).⁵

CME welcomes the opportunity to provide input to the Department of Climate Change, Energy, Environment and Water (DCCEEW) consultation on production variable updates and international best practice (IBP) benchmarks under the Safeguard Mechanism (SGM). IBP benchmarks are relevant to many CME members, some of which are currently designing, commissioning, or constructing facilities that would currently qualify as new entrants under the SGM scheme. Others operate existing facilities that may be considered new entrants in future due to the production of new products or the expansion of current operations. Furthermore, investment outcomes of future projects in Australia are likely to be impacted by production variables and emissions intensities that apply to new entrants under the SGM. As such it is imperative that international best practice benchmarks are realistic and achievable, and that industry expertise is utilised to develop them.

In responding to this consultation, CME reflects the views of our member companies, and reiterates recommendations made in the CME submission to DCCEEW's consultation, *Safeguard Mechanism: International Best Practice Benchmarks*, dated 16 August 2023.⁶

1. Consultation with industry is critical to achieving optimal policy outcomes

CME is concerned that the current process and short timeframe for consultation on IBP benchmarks under the SGM does not reflect the significance and importance of the proposed legislative amendments. The impact of IBP benchmarks on the future of the mining and resources sector should not be underestimated. When developed collaboratively with industry stakeholders, and with a focus on emerging technologies, IBP benchmarks have the potential to support a decarbonised domestic economy in the future. This is particularly important for emerging critical minerals industries that must be supported if Australia is to achieve its ambition of becoming a global leader in critical minerals and achieving net zero emissions by 2050. Without adequate consultation with stakeholders to ensure appropriateness and workability, IBP benchmarks risk adversely

¹ Australia-wide operations of companies with direct, equity joint venture or subsidiary interests in WA-based member projects. Commonwealth of Australia, [2021-22 Report of Entity Tax Information](#), Australian Taxation Office, 9 November 2023.

² Government of Western Australia, [2022-23 Major Commodities Resource Data](#), Department of Energy, Mines, Industry Regulation and Safety (DEMIRS), 10 November 2023. Australian Bureau of Statistics (ABS), [5368 International Trade in Goods](#), Table 32a.

³ Investment refers to capital expenditure as measured by gross fixed capital formation, current prices. ABS, [5220 Australian National Accounts: State Accounts](#), Table 25. ABS, [5206 Australian National Accounts: National Income, Expenditure and Product](#), Table 34.

⁴ ABS, [6291 Labour Force, Australia, Detailed](#), Table 5.

⁵ CME, [Climate Policy](#).

⁶ CME letter submission, [Safeguard Mechanism: International Best Practice Benchmarks](#), dated 16 August 2023.

impacting future domestic industries. This could see Australia miss out on key investment opportunities to foreign markets with more favourable operating conditions. CME considers the duration and timing of the consultation on IBP benchmarks has not been sufficient to fully capture the valuable input of our members and ensure proposed amendments will support low emissions industries in the future. **CME recommends that DCCEEW extend the consultation period for IBP benchmarks and engage openly and transparently regarding the benchmark development methodology with relevant Australian industry stakeholders. Consultation to test and ensure the appropriateness of IBP benchmarks is critical to support the Australian governments ambitions in critical minerals and net zero by 2050.**

2. Amendment regarding Emissions Intensity Determinations should not be adopted

CME members have expressed concerns with the proposed amendment to subsection 11(1) of the Safeguard Mechanism Rule (the Rule). This amendment proposes that any existing facility that does not have an emissions intensity determination (EID) in place for a financial year, nor a set IBP emissions intensity, will have an emissions intensity for the production variable of zero. CME understands that the amendment is intended to ensure compliance to the reformed SGM scheme, however, contends that the consequence of non-compliance is too severe given the practical challenges of meeting the requirement under the Rules in the current timeframe. CME members have expressed concerns that their facilities under the SGM may be unable to meet the 30 April 2024 deadline for EID applications due to uncertain availability of historical emissions and production data, and the limited availability of assurance services to audit data required for application.

While CME understands that DCCEEW aims to reduce non-compliance with the scheme, the proposed amendment may result in negative outcomes for facilities that have attempted to comply in good faith. **Citing both the short timeframes to obtain an EID and constrained access to assurance services, CME recommends that DCCEEW consider alternatives to the proposed amendment, such as:**

- **Extending the deadline to obtain an EID as facilities face data and time constraints.**
- **Removing the proposed amendment to subsection 11(1).**

3. Adapt the mine rehabilitation production variable to improve utility

CME members have expressed in-principal support for the introduction of a mine rehabilitation production variable (PV) to support necessary and ongoing rehabilitation activities. CME members support the proposal that this PV should apply to any major rehabilitation activities, including those supporting closure activities in an active mining operation. While the proposed PV has advantages, such as a basis in the energy content of diesel fuel, some members have highlighted limitations of the PV. CME members have highlighted foreseeable challenges with application of the mine rehabilitation PV under the existing decline rate of the SGM. By the time many facilities will require the mine rehabilitation PV for end-of-life activities, the default emissions intensity may be too low to sufficiently cover emissions related to rehabilitation activities due to the year-on-year decline rate. As this PV will primarily be applied after a facility is productive and profitable, it is important that compliance to the SGM does not incur additional and unnecessary costs. CME understands that the mine rehabilitation PV is already uniquely designed to function differently to all other PVs because it reflects energy consumed rather than produced. **CME recommends that the mine rehabilitation PV is amended such that it is subject to no decline rate, or a discounted decline rate, to reflect its unique design and application, and reduce unnecessary costs of compliance.**

4. Improve the integrity and transparency of benchmark development methods

CME welcomes the commodity-specific approach to determining IBP benchmarks, noting this is a necessary approach to account for the diversity that exists between commodities. While CME makes recommendations to improve the overall methodology applied, the recognition of distinct differences between the commodities present in the resources industry is acknowledged and appreciated. Additionally, CME acknowledges that the supplementary approach for first-of-kind products included within the *Guidelines for setting international best practice benchmarks* begins to address a methodological gap for emerging industries.

While recognising that the aim of IBP benchmarks is to ensure that new facilities adopt the best available low-emissions technologies, CME members have expressed concerns with the proposed methodology for developing IBP benchmarks. Members have specifically highlighted that the application of a 90th percentile performance indicator (that is, the 'top 10%') for the new IBP benchmarks may unintentionally discriminate mining facilities based on orebody characteristic or grade. The proposed methodology may result in emissions intensity benchmarks that reflect the unique operating conditions of a small sample of mines, rather than the intended reflection of efficient operations and effective technology uptake. **CME recommends consideration of additional methodological approaches to mitigate potential bias, including:**

- Increasing the percentage of facilities that contribute to IBP benchmarks from the top 10 percent to the top 25 percent.
- Distinguishing between IBP for open-pit mining operations and underground mining operations to reflect the vastly different mining practices.

Further to this, CME members have expressed concerns that the stated calculation rational in the explanatory paper have generated unexpected results for IBP benchmarks. [To better understand benchmark development, CME recommends DCCEEW provides greater transparency surrounding the calculation of IBP benchmarks. Industry interrogation of benchmark calculations may enable any unintended bias or disadvantage to be discovered.](#)

Additionally, CME members are seeking clarity and transparency about how IBP benchmarks will be adapted to Australian conditions. Specific Australian circumstances must be considered in development of IBP benchmarks, including geological characteristics, such as ore grade, mineral complexity, as well as resource shape and depth. Australian circumstances should also refer to energy sources as these can be dictated by climatic factors and local fuel availabilities. Adaptation to Australian conditions requires deep understanding of the mining and resources sector and should be conducted in collaboration with industry. [CME recommends greater detail and transparency on the anticipated process of adaptation to Australian conditions.](#)

5. Make scheme rules for new entrants fairer and more achievable

CME members have expressed concerns that the 4.9% decline rate is not suitable for application to new facilities that are designed with the best available technologies to achieve the lowest possible emissions profile. The annual decline rate of the SGM is based on calculation alone rather than metrics that drive real abatement, such as best practice performance or technology maturity. New facilities will be largely unable to reduce emissions by 4.9% annually when available low-emissions technologies have already been adopted.

New low-emissions technologies can take decades to become commercially available. Development involves years of research, feasibility studies, demonstration, and piloting prior to them attracting sufficient investment and becoming commercially viable for adoption by an industrial facility. Further, when the technology is applied at a facility it results in a step-change in emissions performance rather than linear annual decline. It is unrealistic to expect new technologies to be commercially available annually and drive annual declines in practice.

CME members have also expressed concerns that the stringent criteria currently in place for new entrants to the SGM may significantly impact demand for Australian Carbon Credit Units (ACCUs) and Safeguard Mechanism Credits (SMCs) to meet very low baselines. It is important to the operation of the SGM that there is sufficient supply of eligible carbon offsets to enable facilities to comply with the scheme. [CME recommends an analysis of supply and demand of carbon offsets under current settings for new entrants is undertaken to ensure sufficient ACCU supply. This analysis should incorporate other ongoing policy developments, such as the Sectoral Decarbonisation Pathways and advice from the Climate Change Authority \(CCA\) on Australia's next Nationally Determined Contributions \(NDCs\).](#)

[CME recommends that DCCEEW consider alternative decline regimes for new SGM facilities that are reflective of technology development timeframe, to ensure fair outcomes and viability of Australian industry.](#) Alternatives DCCEEW could consider include:

- Applying an annual decline rate only when new technologies become available based on a technology scan to determine if best practice technology availability has changed.
- Applying a decline rate from no earlier than 2030 to enable SGM entities to plan and develop future abatement activities.
- Applying a discounted decline rate that reflects limited ability to abate where best practice is applied.
- Applying no decline rate until the planned 2026-27 review of the SGM rules and include a technology scan within the review to determine if international best practice benchmarks have changed.

6. Further redefine 'new entrants' to reduce disadvantage for existing operations

CME understands that IBP benchmarks will apply to new entrants to the SGM as an incentive to implement low-emissions technologies, to ensure that new facilities operate as efficiently as possible, and to reduce competitive distortions between facilities. CME acknowledges the clarified definition of 'new entrants' since early consultation on IBP benchmarks in July 2023, including assurance that existing facilities that begin producing materially similar new products will not be disadvantaged by higher compliance costs associated

with IBP benchmarks. However, CME is still concerned that some facilities may be disadvantaged by the current definition of 'new facility' and face disproportionate costs of compliance, such as:

- Facilities that have been approved but have not yet commenced operations. Facilities in a project development phase ranging from Final Investment Decision (FID) stage to construction and commissioning currently qualify as a 'new entrant'. These facilities already have finalised, and in some cases are contractually bound to, the design of key technology and infrastructure. These projects have limited capability to make changes, and therefore should be treated as an existing facility under the SGM.
- Facilities that secure a market for materials previously treated as a waste product. Facilities that successfully turn a waste product into a commercial by-product will introduce marginal, if any, changes to production pathways. Reflecting this limited ability to implement low-emissions technology, these facilities should qualify as existing facilities when reporting waste products sold.

To be aligned with the objectives of SGM, the rules for new entrants should not create disadvantage for existing or incumbent operations. CME recommends that the proposed amendments include provisions for facilities at FID, construction or commissioning phases and facilities that begin to sell waste products to qualify as existing facilities when SGM thresholds are met.

Conclusion

In summary, CME strongly recommends further consultation and engagement with industry stakeholders in relation to the Rules and IBP benchmarks to ensure the implementation of PVs and IBP benchmarks that are reasonable, achievable and support Australia's decarbonisation goals.

Should you require further information regarding this submission, please contact Ms Anita Logiudice, Manager of Resource Development & Sustainability, on 0448 468 632 or at A.Logiudice@cmewa.com.

Yours sincerely,



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