

21 September 2022



Prof. Matthew Tonts
Chair, Environmental Protection Authority
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Submitted via e-mail: info.epa@dwer.wa.gov.au

Dear Prof. Tonts

ENVIRONMENTAL FACTOR GUIDELINE - GREENHOUSE GAS EMISSIONS (DRAFT 2022)

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 more than 89 per cent of the State's mineral and energy workforce employment,¹ ranging from mining (mineral and petroleum commodities), manufacturing (alumina, basic inorganic chemicals and explosives) and supporting services. The value of royalties received from the sector totalled \$12.7 billion in 2020-21, accounting for 31.7 per cent of general government revenue².

CME is an active member of the Environmental Protection Authority's (EPA's) Stakeholder Reference Group (SRG) and welcomes the opportunity to comment on the *2022 Draft Environmental Factor Guideline – Greenhouse Gas Emissions (2022 EFG GHG)*. CME members recognise the challenges in developing GHG policy reform during a time of federal climate legislation uncertainty and appreciated the briefing provided by the EPA Chair and Deputy Chair on the draft guideline on 15 August 2022. The EPA's willingness to engage with industry through this process is welcomed and we hope to continue this dialogue through the finalisation and implementation of the guideline.

CME and its members acknowledge the efforts of the EPA in developing the existing 2020 EFG GHG which has provided direction to industry with regards to minimising impacts on the environment. CME also highlights the intent outlined by the EPA in the 2020 and the 2022 versions of this guideline aligns broadly with the principles set out in CME's Climate Position Statement³.

In making this submission for consideration by the EPA, CME seeks to provide some insight into the highest priority issues for our membership and provide practical recommendations where we consider edits to the draft EFG would improve its operability.

At a high level, CME's key recommendations are:

- Alignment with national frameworks and settings must be prioritised. CME recommend EPA delay decision making on the revision to the existing 2020 EFG GHG to incorporate and align with relevant federal policy settings currently under review, including reform of the Safeguard Mechanism (SGM).
- An update to the language regarding minimum expectations is required to deliver consistency with requirements under relevant state and federal policy settings, and to provide the necessary flexibility to approve projects that demonstrate best practice or emissions that are ALARP.
- Removal of Scope 2 emission threshold from the guideline to reflect alignment with federal requirements, and to recognise and not duplicate the decarbonisation requirements the electricity sector will be subject to through both state and federal policy settings. Further, updates to the Scope 3 requirements are required to reflect an appropriate balance between the provision of relevant information, and the appropriateness and influence of proponents in satisfying any proposed requirement.

¹ Government of Western Australia, [2020-21 Economic indicators resources data](#), onsite employment under State legislation, Department of Mines, Industry Regulation and Safety, 10 October 2021.

² Government of Western Australia, [2020-21 Annual report on State finances](#), Department of Treasury, 24 September 2021, pp. 167-168.

³ Chamber of Minerals and Energy WA, [Climate Position Statement](#), 16 September 2022

Further information to support these recommendations, and a number of additional practical considerations for the sector regarding the draft 2022 EFG GHG, is included below:

Alignment with National frameworks and settings

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 degrees Celsius (preferably 1.5), by reducing emissions to net zero as soon as possible and no later than 2050.

Following the 2022 Federal election, the Albanese Government increased Australia's Nationally Determined Contribution (NDC) under the Paris Agreement, committing⁴ to reduce emissions to 43% below 2005 levels by 2030 and reaffirming the commitment to achieve net zero emissions by 2050 through the [Climate Change Bill 2022](#).

Shortly after the release of the EPA's 2022 EFG GHG, the Federal Government commenced [consultation on reforms to the Safeguard Mechanism](#) to deliver reductions in industrial sector emissions in line with Australia's amended NDC. The proposed reform to the SGM seeks to establish declining limits on Scope 1 emissions through a nationally consistent framework, addressing the very same objective as the EPA's 2020 EFG GHG and the proposed 2022 EFG GHG.

Need for harmonisation and alignment to maximise success

CME recognises the role of nationally consistent frameworks to facilitate the most economically efficient and effective approach to transitioning Australia's economy to net-zero emissions. To deliver on this potential, **CME consider the Federal Government is the appropriate primary regulator of emissions reduction policy and regulation.**

Duplication of regulatory effort on climate change at the state level does not stand to deliver greater emissions reduction. Instead, this approach contributes to significant additional cost, regulatory and compliance burdens for all sectors captured. There is not only a lack of evidence that additional environmental outcomes stand to be delivered by layering of regulatory requirements for emissions reduction, this approach exposes projects and proponents to the risk of duplication, inconsistency and misalignment - a sub-standard regulatory outcome.

Of the 70 SGM regulated facilities operating in Western Australia, 68 are CME member companies. These companies stand to bear the brunt of the impact of any misalignment or duplication in emissions policy. **CME therefore strongly recommend that any proposal to establish GHG emissions limits at a state level, including the application of the EPA's EFG GHG, must recognise and defer to the primacy of nationally consistent policies which reflect national objectives.** Alignment with national settings is critical for the delivery of consistent and lowest cost economy-wide abatement and must be prioritised in the development of regulatory instruments including the EPA's EFG GHG.

CME note that the 2020 EFG GHG explicitly acknowledges the importance of avoiding duplication, and the need to take National policy settings into account. CME considers this is a practical approach.

Consideration and alignment to the State's existing [Greenhouse Gas Emissions Policy for Major Projects](#) (Major Projects policy) is also key to deliver consistency. In addition to setting out relevant inclusions for a Greenhouse Gas Management plan and being applicable for both new proposals and revisions captured for assessment by the EPA, the Major Projects policy specifically outlines the need to '...complement, rather than duplicate, the Australian Government's climate change policy framework.'

While the 2022 EFG GHG states that "EPA will have regard to relevant Commonwealth and State Government policy changes...", CME consider that where a proposal is subject to National policy settings which contribute to Australia's net zero target, the application of EFG GHG should be consistent with (and not seek to duplicate) these settings and requirements.

CME recognise the important role of the EPA in supporting the decarbonisation of industry, through the policy settings and commitments facilitated by the application of the EFG. Without appropriate recognition of how the 2022 EFG GHG may align and complement primary climate policy settings at a federal level, there is a risk of poor regulatory outcomes. To address the above recommendations, **CME recommend the 2022 EFG**

⁴ Commonwealth Government, [Letter to Executive Secretary, UN Framework Convention on Climate Change regarding Australia's Nationally Determined Contribution under the Paris Agreement](#), 16 June 2022.

GHG be updated to explicitly recognise the consideration of national policy settings and regulatory instruments in undertaking an assessment.

Further, existing settings should inform the EPA's assessment of proposed baseline, best practice, reasonableness and 'As Low As Reasonably Practicable' (ALARP) emissions. For example, regarding best practice, we note the requirement for a peer or expert review to verify best practice. This both imposes further cost burden on proponents, unnecessarily so given the objectives of the EPA (net zero by 2050) are already being achieved by the proposed reforms to the SGM and other complementary settings at a Commonwealth level. From a practical perspective it is also a challenge to find independent peer reviewers with the appropriate technical expertise, experience and understanding of the technology solutions to undertake this work.

Commonwealth settings relevant to inform minimum expectation

A further opportunity for consistency and alignment in the regulation of emissions reduction exists in the application of minimum expectations. The current process underway through adjustments to the SGM, and the associated baseline reductions, reflect the most appropriate pathway to facilitate the greatest commercially viable emissions reduction.

CME recommend the 2022 EFG GHG be updated to recognise the primacy of national settings on minimum expectations, and the need for a flexible approach which seeks the greatest alignment on viable emissions reductions.

Several sections of the draft 2022 EFG GHG state "...the EPA's minimum expectation is for deep and substantial emissions reductions this decade and achievement of net zero emissions no later than 2050 along a linear trajectory (at a minimum) from 2030.....proponents should seek to exceed these expectations and reach net zero well before 2050."

Implicit in this minimum expectation is the inference that proposals that don't have a straight-line trajectory to net zero, or can't achieve net zero, will not be approved in WA. This appears counterintuitive to a broader objective of encouraging proponents to seek to apply best practice emissions control, and to achieve GHG emissions that are ALARP.

The technology to mitigate emissions from all industrial processes is still developing. The WA Climate Change Policy⁵ acknowledges the challenges facing some proponents, highlighting 'reducing emissions in some sectors of the Western Australian project landscape is more straightforward, while abatement in other sectors and processes is difficult or 'hard to reach'. Decarbonising heavy industry, in particular, will require ongoing innovation and mechanisms to de-risk future investment'.

It is CME's view that a requirement for a linear trajectory fails to adequately incorporate these limitations.

In addition, state and federal policy settings are relevant to the ability to access the greatest, most efficient and practical emissions reduction. For many sectors in WA, this is best demonstrated by the evolving access and composition of electricity generation. The structural limitations currently present in electricity, and related policy settings, further illustrate the importance of a tailored, flexible approach which enables practical, commercially viable emissions reductions which align to national and state policy settings.

CME recommend the minimum expectation section of the EFG be updated as outlined below to deliver consistency with requirements under relevant policy settings, and provide the necessary flexibility to approve projects that demonstrate best practice or emissions that are ALARP:

...the EPA's view is that where practicable there should be a deep and substantial reduction in Western Australia's emissions this decade, and the achievement of net zero emissions no later than 2050 through a straight-line trajectory from 2030. In making an assessment, the EPA will consider relevant policy settings and availability of technology. The EPA's expectation for proposals is that they demonstrate best practice emissions management and achievement of emissions that are as low as reasonably practicable. Where possible proponents should seek to reach net zero well before 2050.

Other important considerations to facilitate harmonisation and enable abatement

There are a range of additional federal settings which are directly relevant to available emissions reduction, and the practicality of commitments for a proposal. To capture these, **CME recommend other sections of the**

⁵ Government of Western Australia, [WA Climate Change Policy](#), Department of Water and Environmental Regulation, November 2020.

EFG be updated to consider how a proposal meets the breadth of state and federal requirements, including an update to paragraph 8, 'When this guideline may be considered':

...Notwithstanding this, the EPA will continue to consider proposals on a case-by-case basis and recognises that a flexible approach is important **to align with emission reduction commitments under state and federal policy and** in driving innovation and improvement in best practice.

CME recommend similar updates are incorporated into the *Greenhouse Gas Management Plan* section of the 2022 EFG GHG to ensure that requirements within WA are consistent with, and do not duplicate, regulatory efforts at the federal level.

In addition, current settings do not adequately consider the interface of the EPA guideline and National renewable energy policy, such as the Renewable Energy Target (RET). The RET requires surrender of 'Renewable Energy Credits', expressed in units of renewable energy (MWh), rather than carbon emissions (t CO₂-e). This inconsistency leads to a duplication of exposure in the form of emissions liability and renewable energy credits.

Offsets an important tool

The ongoing use of carbon offsets to meet emissions reduction requirements is a reality for many hard to abate parts of our economy. A stable, credible and liquid carbon offset market will be necessary to enable a contribution to decarbonisation from parts of the economy that lack viable pathways in the short term.

The market, methodology and credibility of offsets is the remit of the Department of Climate Change, Energy, the Environment and Water (DCCEEW) and the Clean Energy Regulator (CER). While CME acknowledges the role of the EPA in seeking to apply the mitigation hierarchy, we consider it is outside of the remit of industry or state bodies and regulators to question or defend individual methodologies or accredited sources of offsets. Our preference is to continue to defer to DCCEEW to establish these parameters for consistency and certainty across the National market.

Mechanisms to reinforce the integrity of the market, including the [Chubb Review](#) currently underway, are important to reassure the broader economy of the robustness of this critical tool.

Ongoing alignment on carbon offset accreditation requirements will also be important to avoid unnecessary duplication in purchasing requirements, which would risk destabilisation of the broader market. **CME strongly recommend the update of the 2022 EFG GHG to recognise the role of the Commonwealth in establishing and maintaining a high-integrity carbon offset market.**

Scope 2 and Scope 3 emission requirements

CME supports the current approach that requires proponents to provide credible estimates of Scope 1, 2 and 3 emissions in a project proposal, although it must be acknowledged that any estimation of Scope 3 emissions is not straight forward.

Scope 2

The inclusion of a Scope 2 emissions threshold is inconsistent with requirements at a Commonwealth level through the SGM. CME hold concerns there may be circumstances where an otherwise non-significant proposal would be deemed as significant, and require assessment by the EPA, based on Scope 2 alone. CME recommends that the Scope 2 emission threshold is removed from the guideline, recognising that the electricity sector will be required to decarbonise in line with the sectoral requirements being put in place at a state and federal level, and the limitations for grid-connected proposals to progress substantial Scope 2 reductions in isolation.

Scope 3

The proposed requirement to include an obligation to demonstrate "reasonably practicable" mitigation measures have been considered for Scope 3 emissions is problematic, since Scope 3 emissions are outside of the proponent's direct control. Given there is very limited ability for proponents to question or seek to influence third parties, CME recommends that mitigation requirements should remain focused on the Scope 1 emissions profile, which is within the proponent's control.

CME further recommend the guidance is updated to reflect the 2020 EFG GHG requirements for "...proponents to provide estimates of scope 1, 2 and 3 emissions and how they are likely to change over the life of the proposal, to inform the assessment process.

The EPA may request the following information:

- **Credible estimates of scope 1, scope 2 and scope 3 GHG emissions (annual and total) over the life of the proposal.”**

CME consider this strikes an appropriate balance – providing relevant information to understand the emissions profile of the proposal without imposing a significant additional compliance requirement with little or no impact.

Application of Best Practice

CME supports the application of best practice emissions reduction as part of the assessment process for new proposals. Best practice must be both commercial and practical and relate directly to the industry and the viability of abatement options available. The application of the 2022 EFG GHG to existing proposals must recognise that the opportunity to implement best practice for existing proposals is fundamentally different to the opportunity available to some new proposals.

For new proposals, it is also relevant to highlight that a case-by-case approach is required regarding the application of best practice with respect to what is commercial and practical for the proponent. For every proposal, there are relevant factors which will influence what best practice looks like. Examples of relevant factors include mine site topography, access to power, access to technology, and the ability for a specific proponent to access potential technology.

Resource sector projects are typically large capital investment projects that “lock-in” commercially available plant, equipment and technology until the end of an individual asset’s life. Since energy inputs (fuel and electricity) are significant ongoing costs, engineering design and equipment selection are optimised upfront, accounting for energy efficiency, availability and reliability in this decision.

CME recommends the wording in the guideline be amended to clarify how best practice will be considered for existing facilities, including the important role for the EPA to apply an ‘alternatives analysis’ to chosen pathways, allowing proponents to demonstrate a best practice case.

CME also strongly recommend the removal of the requirement for regular reviews for SGM facilities, given this would duplicate reviews which are required to be undertaken at federal level. For example, dot point three under the Greenhouse Gas Management Plan section could be amended to state:

“...strategies that demonstrate how best practice measures have been applied to new equipment and processes and considered for existing components of the proposal to avoid or reduce a proposal’s Scope 1 emissions at commencement, and throughout the life of the proposal.”

Resourcing implications an important consideration moving forward

The application of this guideline to the pipeline of projects underway in the resources sector will have a significant impact to approvals pathways which are already increasingly destabilised and uncertain.

Many of these project proposals are responding directly to the need for a supply of the commodities required to support the transition of our economy or are directly addressing decarbonisation challenges.

CME consider that without reasonable, practically focussed guidelines there is a risk that project timeframes become significantly more delayed, delaying any contribution to emissions reduction or the decarbonisation of the resources sector. There is a balance which needs to be struck between the acknowledged significant role the EPA plays in the assessment of major projects in WA, and the importance of being judicious with the use of resources to focus them on priority proposals.

CME acknowledge the recent, and ongoing, capability and resourcing constraints of the EPA Services teams within DWER and recommend the implications of any settings be fully considered to deliver on the stated aim of ‘risk-based regulation’

Proposal boundaries

The 2022 EFG GHG includes a statement that proposals “...should not be split into separate referrals to avoid consideration of GHG emissions.”

CME notes that under Part IV of the *Environmental Protection Act 1986 (EP Act)*, the proponent is responsible for defining proposal boundaries. Separation of proposals is not done to avoid triggering GHG thresholds (as implied by the statement), rather it is most frequently done to respond to geographical, operational or structural (corporation) reasons. For example, often a proponent would consider geographically separate facilities to be separate proposals since they are operated by separate management/staff and are often run as separate business units.

Existing proposals would already have defined a facility under *National Greenhouse Energy and Reporting Act 2007 (NGERS)*. Altering proposal boundaries to 'group' activities at a state level may be inconsistent with NGERS reporting at a federal level.

CME recommends that proponents should continue to have the flexibility to define proposal boundaries as per the EP Act, and in line with business needs.

Conclusion and next steps

CME appreciates the opportunity to provide comment on behalf of our members.

In light of the issues raised, many of which link directly into processes underway at a Commonwealth level, CME consider it would be most appropriate for the EPA to engage with the Commonwealth to pursue a harmonised approach, before releasing a final guideline. The opportunity presented by the current timing is significant and opens the door to establish important alignment and certainty in the regulation of emissions reduction in WA.

CME looks forward to ongoing discussions with the EPA to realise the opportunities for Commonwealth and State alignment. Should you require any further information, please contact Roannah Wade, Manager Resource Development and Sustainability, on 0436 472 667 or via email at r.wade@cmewa.com.

Yours sincerely



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