

## **Clean Energy Regulator**

Benefit sharing for the fixed delivery exit arrangement

# **submission**

April 2022



### About the Carbon Market Institute

The Carbon Market Institute (CMI) is the independent industry association for business leading the transition to net-zero emissions. CMI has over 130 corporate and associate members representing the spectrum of business engaged in emissions reduction and carbon sequestration from primary producers to emissions intensive companies. CMI's 2050 vision is for a prosperous, climate-resilient net-zero emissions world. Our mission is to help business manage risks and capitalise on opportunities in the transition to a net-zero emissions economy.

#### A. Introduction

As announced without public consultation on 4 March 2022, current holders of fixed delivery contracts will now be able to pay an exit fee to be released from fixed delivery obligations to the Commonwealth under a new initiative being offered by the agency, rather than potentially exercising buyers' market damages clauses as currently set out in Government contracts.

The exit arrangement has been designed to build on existing provisions in the Emissions Reduction Fund (ERF) contracts that allow contract holders to pay a penalty for defaulting on a given milestone delivery of Australian carbon credit units (ACCUs). This new exit arrangement was deliberately designed as a "minimal change" so rights under the ERF contract were not substantially altered.

Following this announced change, the Clean Energy Regulator has called for submissions on how benefits sharing arrangements should be managed to avoid perverse outcomes for market participants, and for the market more broadly.

***Acknowledging the short timeline and competing industry challenges and developments, CMI has presented a truncated response, which is outlined below. We note that the positions put forward are not representative of any CMI individual, member company, or industry sector.***

#### B. CMI Position

The Carbon Market Institute notes its public position that the initial exit window for fixed carbon abatement contracts should be postponed until 1 July 2022, to enable proper consultation with landholders, traditional owners and other project stakeholders. More detail on this position can be found [here](#).

The Carbon Market Institute (CMI) is supportive of the Clean Energy Regulator's (CER) decision to undertake a consultation on benefits sharing arrangements, however, is concerned that the limited scope, short timeframe and submission-based mode of consultation will not provide enough information to avoid perverse outcomes in administering these changes.

CMI's high-level positions are outlined below.

1. The CER should greatly expand and extend its consultation process to ensure equal opportunity for all stakeholders to provide informed, independent feedback, as the current scope and timeframe of this consultation is not appropriately linked to the scale of impact of this change on the market.
2. The Government should ensure clear understanding of how decisions made here regarding the release of an unknown level of ACCU supply into the market will interact with other interlinked political and policy decisions that are yet to be determined.
3. In developing benefits sharing arrangements, the CER should have regard to the obligations of carbon service provider signatories as set out in the Australian Carbon Industry Code of Conduct, particularly as they relate to ethical conduct, provision of information and financial advice, disclosure and independent advice, complaints handling, and engagement with the Code Administrator.



1. The CER should greatly expand and extend its consultation process to ensure equal opportunity for all stakeholders to provide informed, independent feedback, as the current scope and timeframe of this consultation is not appropriately linked to the scale of impact of this change on the market.
  - A short, submission-based consultation window does not appropriately receive views of project stakeholders including landholders, traditional owners, farmers and regional communities. This sort of consultation does not enable project stakeholders the time to become fully informed of the impacts of these decisions on their farm businesses, nor does it allow them to actively engage in the process. Given the focus of this submission is around benefits sharing, the CER should invest in more active engagement with those that it seeks to protect in these benefits sharing relationships.
  - The CER should clarify and make public the legal, financial and taxation implications (from contractual changes and tax treatment of exit fees paid) that may impact non-CSP project stakeholders, so as to enable consultation with fully informed stakeholders. This is particularly important as project and sales contract structures and business models differ from project to project, and may require different treatment based on whether:
    - project stakeholders that are engaged in project or ACCU sales contracts as a proponent, as either an individual, a corporation or a trust entity; or
    - the carbon service provider's role is to act as an Aggregator, Agent or proponent.
  - The submission-based mode and limited timeframe of this consultation significantly impacts carbon service providers' ability to appropriately consult with their clients, as required under their Australian Financial Service Licence; and for Signatories, their obligations under the Australian Carbon Industry Code of Conduct requirements. This includes engagement with a range of clients, eligible interest holders, including Native Title Holders (and claimants), farmers, landowners, pastoralists, site owners, business owners, landlords, tenants, banks and subnational governments.
  - We note with concern that this consultation makes no mention of engagement with related parties – particularly Indigenous or Native Title stakeholders that have linked co-benefits embedded in projects and should arguably share in any financial premiums received from sale into voluntary markets.
  - CMI notes that under the current arrangements outlined by the CER, there are market concerns that the exit fee option provides unequal opportunity for market participants to benefit from this option. Established market participants with mature projects due for delivery of units within the delivery window are disproportionately positioned to benefit from this option. Newer market participants/entrants with more immature projects that are yet to deliver units (or are due to deliver units outside the delivery window) are excluded from achieving the same gains. This option should be implemented in a way that provides even benefit across the cohort of supply side market participants, and allows equal benefit sharing opportunities across the market.
  - On specific benefits sharing arrangements, implementation could include (but would require proper investigation to assess appropriate limits and levels):
    - Absolute or % limits on abatement volumes that a contract holder can claim in a delivery period;
    - a phased or 'pro-rata' approach to ensure a specific quantum of abatement is released across a three to five-year period.
    - a minimum threshold of benefits that must be shared with project stakeholders (e.g. the majority, if not all benefits (less CSP administrative costs) being passed onto project stakeholders). Note that minimum benefits and thresholds should be appropriately and actively consulted on with a wide range of project stakeholders across the country.
    - that the CER should ensure that all CSPs, regardless of business model, role, project or ACCU sales contracts, must have the informed consent of appropriate project stakeholders (as required by the Australian Carbon Industry Code of Conduct).



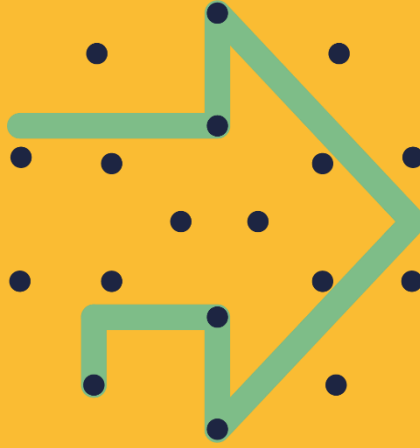
- The Government should clarify its intended use of how the exit payments will be used. These funds should be linked to supporting stronger corporate investment requirements under a strengthened Safeguard Mechanism responsibilities and stronger national emission reduction commitments. For example, the exit payments could be immediately re-invested into:
    - the Emissions Reduction Fund auction process;
    - ACCU method development to facilitate further expansion of the market; and/or
    - Greater extension and outreach services to support the education and capacity building of regional and rural project stakeholders to engage in carbon markets.
    - Investment in holistic national data collection strategy, including the provision of better data (with appropriate privacy provisions) to the market.
  - Any boundaries set on this process should apply the general principles of:
    - ensuring equal treatment of market participants;
    - avoiding price shocks and windfall gains;
    - and overall net benefit to Australia’s climate targets.
2. **The Government should ensure clear understanding of how decisions made here regarding the release of an unknown level of ACCU supply into the market will interact with other interlinked political and policy decisions that are yet to be determined.**
- The outcome of the federal election may have strong impacts on future carbon market demand, supply and price settings, particularly noting a change of Government would likely see declination of Safeguard baselines that will likely stimulate demand for compliance carbon units;
  - The outcome of the Climate Change Authority’s review into the eligibility of international carbon credits for use in Australia; and
  - Legislative and regulatory arrangements for proposed Safeguard Mechanism Credits (SMCs), the supply, demand, pricing and integrity standard of which is yet to be revealed.
3. **In developing benefits sharing arrangements, the CER should have regard to the obligations of carbon service provider signatories as set out in the Australian Carbon Industry Code of Conduct, particularly as they relate to ethical conduct, provision of information and financial advice, disclosure and independent advice, complaints handling, and engagement with the Code Administrator.**

CMI notes the recently released statement by the Australian Carbon Industry Code of Conduct Administrator, regarding [Signatory obligations under changing market conditions](#).

Changing market conditions may lead to real or perceived market behaviours that fall within the purview of the Code, including those that increase market volatility, uncertainty, or market misconduct. The Code Administrator has stated that it will remain vigilant to ensure there are no behaviours exhibited by Code Signatories that may result in inappropriate benefit at the expense of clients.

To assist Signatories in maintaining best practice integrity and accountability during this period, the Administrator has issued a statement as a reminder of their existing obligations to clients as set out in the Code, relating to ethical conduct; provision of information and financial advice; disclosure and independent advice; complaints handling; and engagement with the Code Administrator.

Whilst the obligations outlined in the Administrator’s statement currently apply only to carbon service providers that have voluntarily become Signatories to the Code of Conduct, CMI supports the use of the Code and these particular provisions as an important assurance tool to enhance protection of project stakeholders under these changing benefits sharing arrangements.



for more information please contact

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The Carbon Market Institute is an independent industry association and centre of excellence with a 2050 vision of a prosperous, climate resilient, net-zero emissions world. Our mission is to help business manage risks and capitalise on opportunities in the transition to a net-zero emissions economy.



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