



Submission to The Treasury in relation to exemptions from the financial services provisions of the Corporations Act 2001 for participants in processes relating to the Emissions Reduction Fund

The Government considers the existing generic financial services laws are not well suited for protecting participants against the risks associated with Emissions Reduction Fund (ERF) processes and, in some cases, may impede the efficient and effective operation of the ERF.

Under the current law, carbon abatement contracts and aggregation arrangements may be regulated as financial products, and some advice provided by carbon service providers may be regulated as a financial service under the financial services provisions in corporations law. If exemptions are not provided, most project proponents, aggregators, and carbon service providers would be required to hold an Australian Financial Services Licence (AFSL) and to meet the conduct and disclosure obligations contained in the financial services regime.

As a consequence the Government is proposing to simplify the application of the Corporations Regulations 2001, having adopted the view that if exemptions are not provided, most project proponents, aggregators, and carbon service providers would be required to hold AFSLs and to meet the conduct and disclosure obligations.

Under the proposed exemptions, most project proponents, aggregators and carbon service providers would not be required to hold an AFSL or provide Product Disclosure Statements (PDSs) so long as they do not provide financial services, as defined under the corporations laws.



The exposure draft provides that:

- carbon abatement contracts, which a project proponent and Clean Energy Regulator (CER) enter into after a successful ERF bid, would not be regulated as financial products;
- certain eligible aggregation arrangements would not be regulated as financial products;
- carbon service providers who only provide financial product advice which is incidental to technical advice relating to an ERF project would not be regulated as financial advisers.

The ERF will forward-contract for the purchase of Australian Carbon Credit Units (ACCUs) from eligible emissions reduction projects via a reverse auction. Under the reverse auction process, the CER will invite bids from proponents of projects already approved under the Carbon Farming Initiative (or aggregators of ACCUs from such projects) to offer to supply emissions reductions in the form of ACCUs.

The financial services regime will continue to apply to financial services that do not fall within the scope of the proposed exemptions to protect against the risks associated with these services. Therefore, financial services in relation to ACCUs which pose similar risks to other financial services, such as the brokering of trades, will continue to be regulated in a similar manner.

The Government has advised that it is developing alternative regulatory protections to protect against risks associated with ERF processes and intends to consult on these in a separate process. The Government is developing a standardised disclosure document that will highlight the risks and benefits associated with participating in an aggregated project. It is also developing best practice aggregation contracts which will include standard terms protecting the parties to the contract.



All other Commonwealth, State and Territory legislation and regulations regarding business entities will continue to apply.

When considering the balance between ease of participation for potential ERF proponents and ensuring adequate protections for parties, in our view the Government has not presented and articulated a compelling case that demonstrates that the removal of important regulatory financial protection is warranted.

Further, it is not possible to properly consider the full implications of the proposed amendments until the alternative regulatory protections that Government is developing have been finalised. These proposals need to be part of the same consultative process.

We submit that:

- The Government should not consider further exemptions and that further amendment of corporations law is not required for the efficient operation of the ERF;
- The proposed exemption for financial advice which is incidental to technical advice, as drafted could be exploited;
- The Government should present and consult on alternative models
- An exemption from dealing in relation to ACCUs is not warranted.