



Method Development and Purchasing Branch
Clean Energy Regulator
CANBERRA, ACT 2601
By email: erf-contracts@cleanenergyregulator.gov.au

11 April 2022

Dear Method Development and Purchasing Branch,

RE: Submission to the consultation on benefit sharing for the fixed delivery exit arrangement

The Australian Land Conservation Alliance (ALCA) welcomes the opportunity to provide a submission to the Clean Energy Regulator's consultation on *Benefit sharing for the fixed delivery exit process*.

Please note that ALCA is happy for this submission to be published in full.

[About the Australian Land Conservation Alliance](#)

ALCA represents Australia's leading land restoration and conservation organisations working with landholders on privately owned and managed land across Australia. Together, ALCA's members represent a substantial and growing voice in Australia's land management sector. Our eleven members are:

- Australian Wildlife Conservancy
- Biodiversity Conservation Trust NSW
- Bush Heritage Australia
- Greening Australia
- Landcare Australia
- Nature Foundation
- Queensland Trust for Nature
- South Endeavour Trust
- Tasmanian Land Conservancy
- The Nature Conservancy Australia
- Trust for Nature (Victoria)

ALCA land conservation efforts stretch across over 3 million square kilometres with more than 3,000 landholders. We have over 50,000 supporters and our combined annual turnover exceeds \$200 million. Together we work to support some of the most pressing conservation issues across the country – including invasive species and managing national environmental biosecurity threats, restoring endangered ecosystems, mitigating the impacts of climate change, and building the protected area estate.

Through their active land management, ALCA member organisations are deeply embedded in regional communities and economies, providing jobs, securing significant regional investment, and safeguarding remaining native habitat for the local community with its many positive spillover effects for agriculture. A number of ALCA's members are engaged in carbon projects, either directly, indirectly via landholder partners, or both. Within our members, some are carbon abatement contract (CAC) holders, and others are landholders.

Some ALCA members are statutory entities; the views expressed in this submission do not necessarily represent the views of the Government administering those statutory entities.

Summary

The size and impact of the recent Government intervention into the carbon market has impacted the perceptions of stability and certainty in Australian carbon markets, especially amongst potential landholder participants.

Certainty of outcomes for market participants – within the parameters of normal market fluctuations – is a critical feature of all well-functioning markets. The Government intervention – has created uncertainty and has distorted the market, leading to a precipitous decline in the ACCU spot price with immediate impacts upon the commerciality of future carbon projects – projects which the Australian Government is seeking to rely upon to meet its climate change commitments to net zero emissions.

For these reasons, **ALCA recommends the creation of an independent arms-length market regulator that is overseen by the Government but that operates independently from direct Ministerial intervention.**

Interventions by the regulator should be transparent, clearly signalled and implemented under a coherent plan.

For the reasons above, ALCA would support any independent review of carbon markets and their regulation.

The distribution of benefits under the fixed delivery exit arrangement will inevitably be subject to the commercial arrangements between CAC holders and landholders. However, to provide a fair playing field, **steps should be taken by the Clean Energy Regulator to ensure the landholder – as the ordinarily weaker party of the two – is aware of the nature and likely quantum of net benefit available under the fixed delivery exit process and their likely rights and entitlements** under careful Government caveat.

Recommendations

Independent review

1. ALCA would support any independent review of Australian carbon markets and their regulation.

Independent governance

2. ALCA supports the evolution of the carbon market regulator into a genuinely independent regulator that operates at arms-length from direct Ministerial intervention.

Transparency and accountability

3. Interventions by the carbon market regulator should be transparent, clearly signalled, and implemented under a coherent plan.
4. The modelled impacts upon the Government's ability to meet its net zero emission targets from this Government intervention into the carbon market and all future significant interventions should be publicly released, alongside the modelling itself.

Distribution of benefits

5. The carbon market regulator should take steps to safeguard a level playing field between CAC holders and landholders, as separate from determining the exact share of benefits between the two parties which inevitably will be subject to private commercial arrangements. The presumption should be in favour of the landholder, ordinarily the weaker of the two parties.

This means ensuring that the CAC holder and landholder:

- a. Are both aware of the benefit sharing for the fixed delivery exit arrangements, including the nature and likely potential quantum of those net benefits;
 - b. Are both aware of their likely rights and entitlements under such arrangements, making it clear that these are subject to their private commercial arrangements and that any information provided by the Government is not a substitute for independent expert advice;
 - c. Are both provided standardised, although potentially different, information from the carbon market regulator (akin to, just for example, Fair Work Information Statements that are provided to employees);
 - d. Are both actively encouraged to seek independent expert advice on the *Benefit sharing for the fixed delivery exit process*.
6. In dealing with the CAC holder regarding any contract release, the carbon market regulator should require their formal declaration or attestation that the standardise information (as referred to in 4.c. above) has been received by both the CAC holder and landholder.
 7. To inform the carbon market regulator and guide them in future regulatory action, the regulator should, in the contract release process, require CAC holders to formally declare or attest the proportion of the total net benefits that are expected to be received by the CAC holder versus the landholder (such as, just for example, 60% CAC, 40% landholder), in accordance with the CAC's best available knowledge at that time.

Thank you again for the opportunity to contribute to the Clean Energy Regulator's consultation on the *Benefit sharing for the fixed delivery exit process*.

ALCA looks forward to an ongoing engagement with Government to maintain and enhance the integrity of Australian carbon markets to deliver better outcomes for carbon and Australian biodiversity.

Australian Land Conservation Alliance