Submission on draft Corporations Amendment (Emissions Reduction Fund Participants) Regulation 2015

This submission is by the Aboriginal Carbon Fund. Aboriginal Carbon Fund is a national not-for-profit company helping to build wealth for traditional owners through the ethical trade of carbon credits. The Aboriginal Carbon Fund was established in 2010.

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Introduction

Aboriginal Carbon Fund does not hold an AFSL and does not provide expert financial services but comments on the discussion paper from the point of view of a company providing carbon services to Aboriginal organisations, indigenous Land Councils and other groups interested in land management and carbon projects. We do this in a way that builds and maintains ethical standards in the boarder carbon industry.

We come to the proposed amendments with mixed views. For example, the complexity of regulatory arrangements to undertake carbon projects constantly threatens to derail them. Anything to simplify the thick wood of regulation is welcome. On the other hand, consumer protections in the carbon industry are few. Our experience has shown that people have and will continue to try and take advantage of indigenous groups who lack the professional skills and knowledge to engage appropriately with the market. AFSL requirements may not be the best way to offer protection, but it is one specific protection that exists and any relaxation of these requirements needs be done thoughtfully.

Our main concerns are implementing broader consumer protections, avoiding differing regulation for segments of the carbon market and relaxing incidental financial advice.

Broader consumer protections

First and foremost, we support consumer protections to support an ethical industry free of carbon cowboys. Carbon businesses currently have no industry specific standards or protections and the current proposals must be seen in this context.

Regardless of whether the financial regulation proposals proceed, we support the proposal for a mandatory disclosure document to offer some level of transparency and protection. The proposal was specifically in relation to aggregated projects but could apply to all projects. It is likely that these kind of information requirements will be more helpful than protections offered by financial regulation.

More broadly, we note the Australian government previously proposed a system of accreditation for carbon service providers under the Carbon Skills program. As far as we are aware, the program has never been implemented. Such a program could provide a basic level of assurance that a business has passed some basic governance requirements and has appropriate general experience and qualifications. This kind of approach is likely to lift standards more than any protection implied by financial licences.

Separate treatment

The overall theme of the proposed amendments is to exempt the ERF process from financial services regulation. In general, there may be some reasons why carbon contracts with the government are lower risk.

However, more broadly, the case to regulate segments of the carbon market differently is poorly made out. For example, the paper suggests that sensible aggregation may lower the risk for ERF participants – why would this not also be the case for aggregation in the secondary and voluntary markets to service a buyer?

We do not support different and more onerous regulation for alternative markets to the ERF. The voluntary market, in particular, is important for indigenous projects and having a higher regulatory burden would be unhelpful. Moreover, to offer a full suite of services, an aggregator will need to buy and sell in all markets and therefore the amendments may not ease the regulatory burden if they only apply to the ERF. One set of rules will make it easy for everyone to understand and follow.

Incidental financial advice

The principle of exempting incidental financial advice is supported. As the paper notes, carbon projects often recruit a specialist to provide technical advice in relation to the project. It is difficult for specialists to insulate themselves from the commercial realities of a project when this is at the forefront of the project owner's mind. Project owners may already have to pay many specialists including a project manager/adviser, mapping expert and auditor – indigenous project owners in particular may not understand why they need to also pay for a financial adviser with no connection to the project about appropriate sales advice. A financial adviser may better understand the markets, but will not necessarily understand what is appropriate for the project.

Some thought could be given to extending the principle of incidental financial advice to situations where a carbon company provides a link to an appropriate broker, or merely passes information from a broker, to make clear this is also not financial advice.

Again, the paper proposes to limit this exemption to the ERF but exclude the secondary market—it is not clear why providing incidental advice to the secondary market should be regulated differently.

Overall view

In general, we would like to see better consumer protections for the carbon industry, including through mandatory disclosure documents and business accreditation. This is likely to be more successful than financial regulation. That said, any relaxation of financial regulation needs to be done thoughtfully.

We do not support separate regulation for the ERF and alternative carbon markets – this is confusing and disadvantages the alternative markets. Relaxing requirements for incidental financial advice is supported as this can occur naturally as part of general project servicing.