

Notification of Exclusive Dealing

Notifying party	
1. Details of the notifying party:	
1.1. Name, address (registered office), telephone number, and ACN	The Commonwealth of Australia as represented by the Department of the Environment and Energy ABN 34 190 894 983 John Gorton Building King Edward Terrace Parkes ACT 2600 GPO Box 787 Canberra ACT 2601
1.2. Contact person's name, telephone number, and email address	Dan Sheedy 02 6274 1774 carbonneutral@environment.gov.au
1.3. A description of business activities	The Department designs and implements Australian Government policy and programs to protect and conserve the environment, water and heritage, promote climate action, and provide adequate, reliable and affordable energy.
1.4. Email address for service of documents in Australia.	See Above
Details of the notified conduct	
2. Notified conduct is for:	Exclusive dealing (s. 47 of the <i>Competition and Consumer Act 2010</i> (Cth) (the Act)).
3. Details of the notified conduct:	
3.1. Description of the notified conduct	The Australian Government's voluntary National Carbon Offset Standard (the Standard) helps businesses, councils, universities and other organisations reduce and manage their emissions. The Standard sets out how to measure, reduce, offset, report and audit emissions. Certification against the Standard allows organisations to be formally recognised and credibly claim carbon neutrality. Certification is available for organisations, products & services, events, buildings, and precincts. The Standard is administered by the Department of the Environment and Energy (the Department). More information is at www.environment.gov.au/carbon-neutral .

The Department is intending to establish a register of carbon neutral consultants (the **Register**). The Department will, on its website, maintain a list of consultants with relevant technical expertise (**registered consultants**) to help streamline carbon neutral application and reporting processes.

Registered consultants will have a number of roles, including:

- assist entities seeking to become certified as carbon neutral (**applicants**) prepare an application
- assist entities that have become certified (**certified entities**) with their ongoing reporting requirements
- undertake technical assessments of carbon neutral applications and reports
- undertake source data validation of carbon neutral applications and reports.

Currently, the vast majority of applicants and certified entities need to source consultants to assist them in application and reporting processes. Entities are also required to engage an auditor to undertake a self-funded assurance audit on their application and every three years as part of the annual reporting requirement (the only exception being certification of small events). Both of these engagements (consultants and auditors) are typically expensive and of variable quality.

The Department is seeking to establish the Register to help improve the quality of services and reduce costs to applicants and certified entities. Establishment of the Register will coincide with changes to business processes, including:

1. technical assessment by a registered consultant of an application and once every three years funded by the applicant
2. third-party validation of source data on application funded by the applicant, and
3. ongoing risk-based verification audits (by an audit specialist) funded by the Department.

There is no current suitable industry standard or qualifications in Australia for the preparation and technical assessments of carbon neutral claims against the Standard. The establishment of the Register will help improve competition by providing a central portal whereby applicants and certified entities can seek high quality expertise to help prepare their application or reporting documents, undertake a technical assessment or undertake third-party validation (in line with changes to business process outlined above).

The registered consultants will have a critical role in ensuring the ongoing integrity of the Standard. As such, a robust application and assessment process will be developed to ensure only consultants with relevant expertise will be listed on the Register. This will be based on objective measures of relevant expertise, and the criteria for inclusion will be transparent and publicly available. To ensure registered consultants provide ongoing high quality expertise, the Department will monitor their work, for example, through the Department funded verification audits and Department assessments of applications. The proposed Register would be an open list with a clear application process and inclusion pathway. These new arrangements are expected to significantly reduce costs to the certified entity while maintaining best-practice integrity.

The initial step for registration as a consultant will be the completion of an application. This will provide a measure of a consultant's technical knowledge and experience. Applications will be assessed by the Department against publically available selection criteria. Depending on the outcome of the assessment, the following pathways will be followed:

1. Consultants who do not reach the minimum requirements can reapply at a later date.
2. Consultants who score highly on the application can choose to undertake a technical online assessment. A pass mark on the technical online assessment will enable the consultant to be immediately included on the Register. This pathway will be open year round.
3. Consultants who do not achieve a high score on the application, but who exceed a minimum requirement, will be eligible to attend training run by the Department. Following completion of the training, the consultant will be eligible to undertake a technical online assessment. Again, a pass mark on that assessment will enable a consultant to be included on the Register. Training will be provided by the Department once a year.

There is no intention of charging fees for:

- Registration
- Undertaking the application
- Undertaking the technical online assessment or
- Undertaking Department run annual training.

Registered consultants will be required to:

- complete a minimum number of technical assessments, or

	<ul style="list-style-type: none"> • attend a training session and pass the online technical assessment annually to maintain their registration.
<p>3.2 Relevant documents detailing the terms of the notified conduct</p>	<p>To finalise registration, a consultant or relevant employer will sign up to standard terms and conditions, which will include warranties as to relevant qualifications, proper and professional conduct, continuing professional development, a licence to the Commonwealth to material created in relation to an application or report under the Standard, insurance and indemnity requirements, dispute resolution and process for removal from the Register.</p> <p>The proposed revision to the audit requirements will be reflected in a minor amendment to the relevant section of the Standard, revised Terms and Conditions for the Licence Agreement and new guidance material available on the Department’s website.</p>
<p>3.3. Rationale for the notified conduct</p>	<p>Establishment of the Register will enable the implementation of the changes to business processes identified in 3.1, in particular, to facilitate technical assessments.</p> <p>The Standard is based on international best practice (including The Greenhouse Gas Protocol - A Corporate Accounting and Reporting Standard, Revised edition 2015, WBCSD and WRI and ISO 14064-1:2018 Greenhouse gases -- Part 1: Specification with guidance at the organization level for quantification and reporting of greenhouse gas emissions and removals (GHG Protocol)).</p> <p>In accordance with best practice principles, the Standard requires third-party validation of the carbon neutral claim to be submitted with an application for certification. As previously stated, the Standard currently requires an assurance audit by a person or organisation</p> <ul style="list-style-type: none"> a) registered on the Register of Greenhouse and Energy Auditors (NGER Register) as established under section 75A of the <i>National Greenhouse and Energy Reporting Act 2007</i> (NGER Act) or b) accredited to the international standard ISO14065:2013 or recognised international standards based on ISO 14040. <p>However, these audit qualifications are limited with respect to their fit-for-purpose suitability for the Standard. Auditors meeting the above accreditation standards are not necessarily experienced or familiar with the requirements of the Standard. As such, carbon neutral applicants are not always assured that the consultant they are engaging has the relevant technical knowledge of the Standard (even if they are qualified) to undertake an audit of the carbon neutral claim against the Standard.</p>

The Standard differs to carbon accounting for the NGER Act in that:

- While the Standard requires clients to report on Scope 3 emissions, reporting under the NGER Act only requires clients to report on Scope 1 and 2 emissions. Accounting for Scope 3 emissions is significantly more complicated than reporting on Scope 1 and 2 emissions.
- The rules to determine the relevant emissions boundary under the Standard are very technical and are based on the rules in the relevant standards under the GHG protocol. In contrast under the NGER Act emissions are reported at a facility level.
- ISO qualifications do not cover the boundary rules under the Standard.
- The NGER Register was developed specifically to provide a list of qualified persons to undertake audits of reporting required under the NGER Act. It was never intended to be a generic list to assist with audits related to carbon accounting.

There are also concerns regarding ongoing availability of qualified auditors. The NGER Register has both category 1 and category 2 auditors. Category 2 auditors have greater auditing experience and typically charge significantly more for their services. Given the voluntary nature of certification under the Standard, applicants seeking certification have typically engaged a category 1 auditor from the NGER Register. The number of category 1 auditors on the NGER Register has been steadily decreasing over the last few years. Over the same period the number of certifications under the Standard has increased (50% increase in numbers in the last 12 months).

We have been advised that applicants have oftentimes been unable to locate a suitable auditor that meets the ISO qualification requirements.

There will be no restrictions on an individual or organisation undertaking both the audit of source data and the technical assessment where they meet the requirements for performing both.

As noted in 3.1, registered consultants will also be able to assist in the preparation of application and reporting requirements (in addition to third party validation). Having suitably trained and/or validated (by the Department through the registration process) consultants will improve the quality of expertise given to applicants and registered entities.

3.4. Time period relevant to the notified conduct.	From 1 November 2019 it is intended the Register and the requirement to use a registered consultant for technical assessment of the carbon neutral claim will be mandated.
4. Documents submitted to the notifying party's board or prepared by or for the notifying party's senior management for purposes of assessing or making a decision in relation to the notified conduct and any minutes or record of the decision made.	N/a
5. Persons or classes of persons who may be directly impacted by the notified conduct.	<p>Those directly impacted by the notified conduct include:</p> <ul style="list-style-type: none"> • Current Category 1 registered NGER Auditors. All current category 1 NGER auditors will be invited to apply to join the proposed Register. Any auditors who did not qualify to join immediately (based on their technical experience) would be invited to attend training. As of 11 September there were 90 Category 1 registered NGER Auditors (see the register of NGER Auditors here: http://www.cleanenergyregulator.gov.au/Infohub/Audits/register-of-auditors). • Consultants seeking to be included on the Register. • Current and future applicants will be impacted by the mandated use of registered consultants. As of 11 September 2019 there are 79 entities with one or more certifications under the Standard.
Market information and concentration	
6. Identifying relevant products, services and geographic areas and identifying competing parties and supplier-customer relationships.	<p>The National Carbon Offset Standard has five published certification types: Buildings, Organisations, Products/Services, Events, and Precincts. The certification trademark is registered in Australia. Any eligible applicant within Australia may apply for use of the certification trademark.</p> <p>Applicants for certification will essentially be a 'customer' seeking the services of a registered consultant 'supplier'. The Register is open to any eligible person who meets the requirements for registration and as such all registered consultants or consultants seeking registration are competing parties.</p>
7. Relevant industry or industries.	The Department issues certification of carbon neutral claims under the Standard. Applicants often seek the assistance of a professional consultant

	<p>to help prepare their carbon neutral claims documentation. The current process required by the Standard is that this documentation must have an assurance audit completed by an auditor on the NGER Register (or with a relevant ISO qualification) prior to assessment by the Department.</p> <p>The proposed model would require both a technical assessment by a registered consultant as well as a source data check by a suitably qualified person on application, instead of a full assurance audit. Under some circumstances, the source data check and technical assessment could be completed by the same person/organisation if they meet the requirements for both. The revised process is expected to result in cost savings for clients.</p>
8. Overlapping products and/or services	N/a
9. Factors that would limit or prevent any ability for the parties involved to raise prices, reduce quality or choice, reduce innovation, or coordinate rather than compete vigorously.	<p>The Department will not set or restrict the registered consultant's fees. While all applicants and certified entities will be required to source a consultant from the Register, they will have a choice from a variety of consultants, including consultants who may offer additional services such as a source data check. The number of consultants and variety of services will encourage competition and help prevent price rises and coordination.</p> <p>The Department will encourage the entry of new consultants to the Register by offering free training and support, and charging no fees for registration.</p> <p>The requirements for registered consultants to have certain qualifications and training will help ensure that quality of the services is not reduced. In addition, the terms and conditions of registration requires consultants to conduct themselves in a proper and professional manner, participate in continuing professional development and comply with a consultant code of conduct.</p> <p>The Department will monitor the performance of registered consultants as it reviews applications containing the consultant's assessments including through the risk based verification audits it commissions. The Department also has the power to remove consultants from the Register who fail to comply with the terms and conditions of registration.</p>
Public benefit	
10. Benefits to the public that are likely to result from the notified conduct.	At present it is difficult for those seeking carbon neutral certification to identify appropriately qualified consultants to assist with the preparation of their application for carbon neutral certification. Registered consultants, in


	<p>addition to undertaking the technical assessment, will also be able to assist applicants and certified entities in preparing reporting documents.</p> <p>As identified above, current audit qualification requirements are not fit for purpose. Similarly there are no established quality assurance processes for consultants preparing carbon neutral application and reporting documents. This has led to instances of applicants engaging consultants at a cost only to have that application sent back for major revision by the Department as documents did not meet the minimum requirements. By providing ongoing training and monitoring of those on the proposed Register, the quality of advice and technical assessments should be greatly improved providing a simpler certification process for applications.</p> <p>It is difficult for suitable carbon consultants to meet the requirements of the NGER Register due to requirements for audit experience. Creation of a Register will allow consultants to more easily demonstrate that they are qualified to assist with carbon neutral applications without needing to achieve NGER Registration.</p> <p>The Register will have a positive impact on current carbon consultants who are appropriately qualified as it will allow future applicants to locate and access their services more easily. This is likely to increase business for current consultants and open the market to other consultants.</p> <p>Together with the provision of training and outreach activities, it is possible that the scheme will grow the market of appropriately qualified consultants, and thus, provide greater choice to applicants in the longer term.</p> <p>Further, requiring a technical assessment rather than an assurance audit once every three years will likely result in cost savings for applicants.</p>
Public detriment (including likely competitive effects)	
11. Detriments to the public that are likely to result from the notified conduct.	N/a
Contact details of relevant market participants	
12. Identify and/or provide names and, where possible, contact details (phone	The names and contact details for Category 1 registered NGER Auditors can be found here:

number and email address) for likely interested parties.	http://www.cleanenergyregulator.gov.au/Infohub/Audits/register-of-auditors).
Any other information	
13. Other information relevant to the ACCC's assessment of the notified conduct.	N/a

Declaration by notifying party

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).



 Signature of authorised person

Assistant Secretary, Land + Outreach Branch
 Office held Climate Change Division

Katrina Maguire

(Print) Name of authorised person

This 16th day of September 2019

