

13 February 2015

Mr John Lee
Analyst
Financial System & Services Division
The Treasury
Langton Cres
PARKES ACT 2600

By email: erf@treasury.gov.au

Dear Mr Lee,

Re: Corporations Amendment (Emissions Reduction Fund Participants) Regulation, 2015.

The National Farmers' Federation (NFF) welcomes the opportunity to provide feedback on the proposed amendments to the Corporations Regulation (the Regulation) in relation to Emissions Reduction Fund (ERF) Participants.

NFF is the peak national body representing farmers and the agriculture sector more broadly across Australia. The NFF's membership comprises all of Australia's major agricultural commodities. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations collectively form the NFF.

Given the minimum bid size of the ERF, participation for the agriculture sector will be largely as part of an "aggregated project" of a third party. Throughout the design phase of the ERF, NFF has continually highlighted to the Government our concerns about the risks associated with the aggregator model.

Exemptions from the need for an Australian Financial Services Licence (AFSL)

NFF supports in principle the provision of an AFSL exemption to technical carbon service providers, when financial advice is incidental to technical advice relating to the application of an approved method to a particular site.

However, the NFF does not support the proposed broadscale exemptions for an aggregator to hold an AFSL. In NFF's view, an aggregator (or aggregation consortium) holding an ANREU account and entering into a carbon abatement contract with the Clean Energy Regulator (CER) should be required to hold an AFSL.

The ERF is complex, and complexity is likely to increase as secondary markets associated with make good provisions and potentially the safeguard mechanism develop. A broadscale exemption from an AFSL means that projects contracted

through an aggregator may be put at a disadvantage over the longer term. An unlicensed aggregator would be unable to explore the opportunities as they arise in the future. Given that farmers are unlikely to be aware of these emerging opportunities, they may lock themselves into long arrangements that are ultimately not in their best interests.

NFF does not support the proposed exemptions in relation to Managed Investment Schemes. The premise of this exemption is that the underlying purpose of the aggregation arrangement is to reduce emissions. While this is the underlying purpose of the Government when contracting an aggregator, in NFF's view, it is inconceivable that an underlying driver of an aggregator or site owner is not some financial return associated with entering into contracts with the CER or other purchasers of ACCUs.

The possible range of contractual arrangements between an aggregator and site owner is considerable. In NFF's view, contracts will include provisions to share financial risks between the parties. These could be risks associated with the price received for the ACCUs generated, the costs of implementing the methodology, or the success or otherwise of the project in meeting expected emissions reduction targets. For this reason, NFF is of the view that aggregators – whether operating as a single entity or consortium, should hold an AFSL and that the proposed exemptions be reconsidered.

In NFF's view the proposed delineation between “usual ERF aggregation activities” and more sophisticated investment arrangements and managed investment schemes is very grey, and subject to considerable interpretation by the responsible compliance agency. NFF's view is that this is undesirable.

Consumer Protections

It is of paramount importance that Government accelerate the development of consumer protections in addition to the AFSL for site managers (including farmers) looking to participate in an aggregated project. Progress on developing these protections has been slow.

NFF has advocated that the Government ensure that adequate consumer protections are in place prior to the first ERF auction. Protections sought by NFF include:

- Government should ensure that there is clear, accessible and independent information available for farmers about the ERF and the aggregator model.
- Sellers (aggregators) should be required to provide farmers with this independently prepared information about their rights and obligations under the project contract.
- Sellers should be required to include a suite of standard terms and conditions in their agreements with farmers, clearly specifying the rights and obligations of all parties.

This is a model analogous to those adopted by State regulators in relation to residential tenancy agreements. These arrangements are generally specified in state-based residential tenancy legislation.

1) Government published clear and accessible information

In NFF's view, the availability of credible information by a third party such as Government will ensure that farmers are better placed to verify the claim of an

aggregator, and thus better able to understand the implications of participating in an aggregator's project.

The types of information that NFF thinks would be valuable include:

- Overall structure of the ERF and how farmers can participate
- Plain English guidance on matters to explore with a potential aggregation partner that are related to standard terms and conditions
- What to check for in an aggregator when deciding to participate in an aggregation project
- Detailed plain English guidelines on approved methods
- Suggested independent financial and legal advice that the site owner may wish to seek prior to entering into a contract

2) *Requiring sellers to provide site owners with independent information*

In registering a project with the CER, in NFF's view, an aggregator must be able to demonstrate that they have provided site owners with the independently prepared information.

Such an approach has numerous benefits in NFF's view. First, it ensures that the intended audience of the information (i.e. site owners) must receive it. Secondly, it reduces the costs associated with Government efforts to communicate and promote the existence of the information. Finally, it would encourage greater transparency by the aggregator of project risks.

3) *Standard terms and conditions*

In NFF's view, there is an opportunity to use the contractual process between the Commonwealth and the aggregator (i.e. *the seller*), or some other enforceable mechanism, to manage the risks associated with the aggregator model for both farmers and government.

NFF appreciates that there is no "one size fits all" aggregation model and thus one standard contractual arrangement between an aggregator and a site manager. However, in NFF's view there are a suite of standard conditions that aggregators should be required to include, and a suite of standard items that should be addressed in the contract (although the content of these items could vary).

It is important that farmers have a clear understanding of their rights and obligations when entering into an agreement with a seller. Similar to the rights and obligations of sellers in the proposed Carbon Abatement Contract, agreements between farmers and aggregators should address the rights and obligations of the parties in relation to:

- Delivery dates
- Payment schedules
- Reporting
- Audit
- Make-good arrangements when a site activity results in less abatement than predicted
- Over-delivery when a site activity results in more abatement than predicted
- Project termination

- Dispute resolution
- Insolvency
- Change in property ownership
- Project costs including those associated with the implementation of the methodology and auditing
- Force majeure.

Project agreements with aggregators will need to be in place prior to auction. Project contracts should also include provisions around the agreement lapsing after a specified time or number of unsuccessful ERF bids so as not to tie a site owner to an unsuccessful ERF aggregator for an unreasonable length of time.

Should you require clarification on any issue arising from this submission, please do not hesitate to contact Ms Jack Knowles, Manager NRM Policy on 02 6269 5666 or by email at jknowles@nff.org.au

Yours sincerely



SIMON TALBOT
Chief Executive Officer