



11 April 2022

Method Development and Purchasing Branch
Clean Energy Regulator
GPO Box 621
Canberra ACT 2601

Via email: erf-contracts@cleanenergyregulator.gov.au

Dear Sir/Madam

RE: Consultation paper on benefit sharing for the fixed delivery exit process

The National Farmers' Federation (NFF) welcomes the Government's consultation paper on benefit sharing arrangements for the fixed delivery exit process. NFF's primary position is that farmers must not be left worse off under these exit arrangements, and we strongly support a fair and reasonable way to share benefits from the exit arrangement. The least that should happen is that the existing contracts need to be met.

The sudden change to contractual arrangements is concerning and has created concern regarding the Government's role in the carbon market. While the NFF acknowledges the rationale and circumstances prompting the change in contractual arrangements — that is, high carbon prices that would have incentivised existing fixed delivery contract holders to break their contract anyway under a business-as-usual scenario — it is a poor look for both the Government and the Clean Energy Regulator (CER).

NFF notes its responses to the questions for feedback in the consultation paper.

1. Do you support a benefit sharing arrangements?

Yes, NFF would support a benefit sharing arrangement.

2. If yes, what features would a fair and reasonable benefit sharing framework have to help ensure financial gains created for the contract holder by the exit arrangement can flow to other relevant parties to the contract, depending on the situation?

Agreements that have been developed by fully informed parties and that are freely given between relevant parties are appropriate. NFF further agrees that the Clean Energy Regulator need not assess the adequacy or appropriateness of an agreement.

However, the biggest concern for parties remains to be the information asymmetry between contract parties, including the landholder and the CAC holder (which may be a carbon service provider) should they be separate. In the first instance, aggregators and third parties are normally used to navigating the already complex system of Carbon Farming Initiative (CFI) methodologies, and it would be unlikely that landholders have the resources available to make a fully informed judgement.

Furthermore, the NFF seeks clarification on where Indigenous Land Use Agreements fit into these arrangements, noting a potential additional layer of complexity should agreements have to be renegotiated.

The NFF also seeks clarification on the role of the Clean Energy Regulator in enforcing these agreements and whether there is a legislative requirement to support the benefit sharing arrangement framework—as opposed to simply an ‘expectation’. Furthermore, the CER should clarify whether there is any recourse should benefits not be shared in a ‘fair and reasonable way’. There does not appear to be any benchmark available to assess this, noting that reasonable benefits would have to be developed to reflect risk, longevity of commitment, and other factors.

3. Taking into consideration the many arrangements that may exist between carbon service providers and landholders or facility owners, how should the benefits flow?

In a balanced and equitable manner. While the NFF believes that no farmer should be left no worse off, NFF would also expect, under these arrangements, that farmers must also benefit to some extent, and therefore would not be conceivable that arrangements agreed to by the CER would solely benefit only one party.

4. What matters may affect reaching a fair and reasonable benefit sharing agreement?

Lack of information and understanding of risk, commitment (land and financial), alternative uses and opportunity costs of projects, and the quality of assets. Where there is an inability to be fully informed about these factors, resourcing should be made available from the CAC holder or carbon service provide to provide independent advice on these matters.

5. Should landholders that are CAC holders be able to access the exit arrangement without the agreement of CSP agents on benefit sharing if reasonable efforts to reach such an agreement are unsuccessful? If there are legal, contractual or other barriers to doing so, please tell us what they are.

Yes, the CSP is a replaceable entity.

6. What other considerations should be taken into account? Please provide details.

Ensure that there is a ‘better off overall’ test, particularly for the landholders, and that the arrangements makes sense to all party.

Yours sincerely

TONY MAHAR
Chief Executive Officer