



03 October 2023

ACCU Review Implementation
Department of Climate change, Energy, the Environment and Water
Kind Edward Terrace
Parkes ACT 2600

Via email: ACCUScheme@dcceew.gov.au

Dear DCCEEW,

RE: ACCU Review Discussion Paper

The National Farmers' Federation (NFF) welcomes the opportunity to provide a submission to the Department in response to the 28 questions outlined in the Australian Carbon Credit Unit (ACCU) Review Discussion Paper.

The NFF was established in 1979 and is the authoritative voice of the Australian agriculture industry. The NFF serves as the national peak body representing the broad interests of farmers across geographical and commodity borders. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations in turn form the NFF. As a general principle, the NFF seeks to ensure that any legislative reform does not have a perverse or adverse impact on agricultural productivity.

Overview

The NFF recognises the importance of this consultation and welcomes the opportunity to share our views on implementing the recommendations from the ACCU Review. It is important to note that while the NFF is not individually engaged within the carbon market, it does represent the agriculture sector, and therefore plays an important role in this discussion.

NFF have articulated several comments and concerns for the ACCU Review Implementation Taskforce to consider while undertaking activities to implement recommendations to improve transparency of the ACCU Scheme.

We trust that our views, and by extension the views of the Australian agriculture sector, are recognised and carefully considered by the Department.



Consultation Questions: NFF Response

Question 1: Are the proposed principles fit for purpose and how should they be applied to improve ACCU Scheme governance and integrity?

NFF holds some concern with the proposed introduction of ACCU Scheme Principles to guide and support the application of the existing Offsets Integrity Standards (OIS). We welcome the incorporation of language under Principles 1, 2, and 3 around ensuring the ACCU Scheme represents “real” greenhouse gas reductions or removals, that data is made publicly accessible subject to privacy or other commercial sensitivity protections, and that barriers to participation for regional communities are addressed and reduced. The inclusion of language like “real” marks a positive step forward as it sends a clear market signal that innovation and mitigation rather than the low-cost alternative (vegetation offsets) will be rewarded, alleviating potential pressure on land-use conflict within the farm sector. To support the execution of Principle 3, extension support officers and the provision of trusted, independent advice will be a necessary action.

NFF however holds some concern over additionality as outlined in Principle 1 (Integrity). While additionality is important as it maintains the overall integrity of the ACCU Scheme, this condition will stifle research and development (R&D) and erect a barrier for companies looking to accelerate sustainability action. This is apparent as it remains unclear, for example, whether existing methane mitigation trials will allow this additionality provision to be triggered and be able to generate ACCUs once a relevant methodology has been approved. That is, participation in trials should not then disqualify eligibility for a scheme.

Question 4: What are the risks to the market from publishing information about ACCU holdings?

NFF does not support the default publishing of data for all relevant area-based offset projects by the Clean Energy Regulator (CER), a legislative rule enabled by amendment to the *Safeguard Mechanism (Crediting) Amendment Act 2023* and by extension the *Carbon Farming Initiative Act 2011*. It is the position of the farm sector that an immediate exemption on the mandatory reporting of CEA data for projects managed by land managers is implemented. This is because appropriate protections must be put in place to ensure sensitive private data released by the CER, specifically details regarding the location of a project, are kept confidential. NFF proposes that this exemption remain in place as a manageable short-term solution until a complete database with in-built privacy protections is developed.



The farm sector welcomes engagement with relevant Government agencies to design and create a template standard that can be used to facilitate the reporting of voluntary data. The NFF Farm Data Code is one of several policy frameworks that could be utilised to inform the establishment of this digital infrastructure platform to report national CEA data.

Question 5: Are there other grounds or circumstances where information should be withheld, for example, an exemption for existing projects?

As detailed in the previous section, an exemption for the mandatory reporting of CEA data for projects managed by land managers must be immediately implemented. This will address key privacy consideration issues in the interim until a permanent resolution to this complex issue is developed.

Question 6: Should the government continue to focus its purchasing on least cost abatement? If not, what other considerations should it prioritise and why?

NFF is supportive of Recommendation 3.3 regarding the shifting of responsibility of Australian Government purchasing of ACCUs away from the CER and to another Government body. NFF supports a structural separation of the Emission Reduction Fund (ERF) auction system away from the CER and have previously articulated to the Department via submission to the Independent Review of ACCUs that this responsibility could reside, for example, with the Department of Industry given its expertise in grant programs. Any residual functions of the CER should also be aligned with this separation logic to ensure consistency with the objective of this Recommendation.

Question 8: What assistance or guidance would proponents need to effectively participate in the EOI process?

Recognising that some stakeholders lack a sufficient resource base to develop an EOI, NFF supports the development of measures that assist stakeholders prepare an EOI. This could be achieved by creating new grant opportunities or alternate funding support. This aligns with assurances that this wasn't a cost shifting measure by the Government.

Question 12: Are the proposed areas where the department could provide assistance during method development the right areas or skill gaps to focus on?



NFF is supportive of efforts undertaken by the Department to help method proponents understand how to participate in the ACCU Scheme and the development process of new methods through clear guidance material, workshops, and seminars. Barriers to participation must be broken down, and this can be achieved through proposed education assistance outlined in Section 2.3.1. With regards to advice on the policy landscape, farmers and landholders need to be kept engaged through consultation processes to ensure the policy and method development (and its impacts) are understood. Such a process will also ensure that the Government understands farmers' on-ground needs.

Question 13: Is the proposed approach to deal with newness appropriate to support participation in research, trials and demonstration projects needed to support method development?

As outlined in our response to Question 1, NFF holds significant concern around the issue of newness and additionality. Newness dictates that a business or entity can only earn ACCUs if the work they are undertaking is new (additional to normal business as usual conditions). This requirement would render companies engaged in undertaking research and trials of emerging technologies (i.e., feed additives to reduce enteric methane emissions from livestock) unable to earn ACCUs if that work is currently operationalised. This is not an unreasonable approach as early adopters must be allowed to explore and innovate, with a reasonable expectation of future legitimate participation. A further example is the establishment of Leucaena to assist in methane management. The folly of not allowing people to participate in a program that would not have existed if the trial work wasn't undertaken is stark.

The Australian agriculture sector has been actively engaged in decarbonisation efforts both through individual and collective action and has committed significant investment into the development of anti-methanogenic technologies with promising, measurable results. There also exists discussions around better or alternate pathways to nitrogen management in cropping enterprises, ongoing exploration of the viability of soil carbon sequestration, and a suite of sector-based emission reduction targets over various timeframes and ambition. While the industry is strongly committed towards embarking on the journey of decarbonisation, assistive technologies to do so remain expensive and cost-prohibitive to producers unless there is a possibility of receiving ACCUs.

ACCU generation requires methodologies to be developed which can take upward of several years, even under the proponent-led process in addition to a significant



input in R&D. NFF is concerned however that R&D has not reached its maximum potential given fears around how newness will work, and that existing research will not be treated as additional and hence trigger the additionality threshold provision. NFF supports options put forward in the Paper that address this issue as they do not prejudice future crediting opportunities. NFF supports all three options outlined in Section 2.3.2 as detailed:

- *An introduction of an “in lieu of newness” provision for entities undertaking research and trials;*
- *An introduction of a “notice of intent” system where land managers undertaking research projects could declare their activity and receive an exemption to the newness provision; and*
- *Reforms that exempt research projects from newness provisions in cases where the project is used to inform future method development or where a future project would only be commercially viable with ACCUs.*

As each of these options circumnavigate the newness barrier, if implemented, this will increase R&D levels. This would reduce technology cost, accelerate commercial viability of emerging technologies, and speed-up the method development process creating a pathway for ACCUs to be earned – an outcome that would further assist in bridging this cost gap.

In addition to recommendations outlined in Section 2.3.2, NFF notes that the most effective response involves the automatic exemption of any program designed to reduce methane emissions from the newness requirement, especially if such a program has no demonstrated long-term commercial viability without the support of ACCU generation.

Question 16: Will the proposed process for dealing with confidential data in consultation submissions balance the desire to ensure the ACCU Scheme is transparent while encouraging commercially sensitive data and information to be provided?

The proposal to provide stakeholders that choose to share commercially sensitive data under a proponent led method development process an opportunity to request their submissions be made either anonymous or confidential must be adopted. This is the minimum threshold requirement, and one that is reasonable given the sensitivity of the matter. These options will give certainty to stakeholders



that commercially sensitive data will be protected, and this will encourage and facilitate stronger stakeholder engagement in the process.

Question 19: Are the proposed timeframes reasonable? Could they be shortened?

The proposal to have draft methods or modules open for public consultation for a minimum of four weeks is not sufficient. A minimum timeframe of two months should be given for public consultation as this will ensure stakeholders have adequate time to carefully prepare a submission for review. Public consultation should also be proactive and meaningful. The Department must not limit announcement of a new public consultation to an email and website update, rather, it should proactively seek out and contact industry groups directly.

While NFF recognises that some methods may take longer to develop relative to others, we are supportive of greater ambition to reduce the development timeframe of new method development. A timeframe of 2 years is significant, and the proposed 18-month period for developers to submit a draft method for consideration by the Integrity Committee after an EOI is approved could be reduced substantially.

Further, NFF would like to note that the development process for new methodology like the Integrated Farm Management Method should be aligned with the sunseting of similar methodologies to ensure there exists a seamless transition for stakeholders.

Question 20: Should there be a mandated requirement to complete method development within a set timeframe?

Recognising that new methods will garner different levels of stakeholder interest and extended timeframes may be required to ensure a method is developed properly and free from errors, NFF does not support the introduction of a mandated requirement to complete method development within a hard deadline. A best practice guidance note with appropriate caveats would be a more sensible and sensitive approach.

Question 21: Does the proposed approach for reviewing and maintaining methods properly balance the need for integrity with the industry need for certainty?

NFF is supportive of the requirement that the Integrity Committee review an expiring method within a reasonable timeframe prior to the date it is due to



sunset. We propose that this review must be undertaken no later than twelve months before the sunset period. Public and targeted industry consultation on sunsetting methods must be a requirement rather than an option, and feedback gathered from such processes must be collated and used to advise the Minister on whether to remake or allow a method to sunset. This is of particular importance and would ensure issues are addressed head-on. For example, the Department has announced its intention to sunset the Animal Effluent Management Method to the dismay of industry.

Separately, NFF welcomes the proposed changes to Crediting Period Extension (CPE) Reviews and a relaxing on the requirement for crediting periods to undergo amendment. While NFF supports the proposed role of the Integrity Committee to advise whether a crediting period should be increased or decreased, before a decision is made, industry consultation must be held.

Question 24: Does the proposed scope of the Integrity Committee’s role compromise its primary role as an independent ACCU Scheme assurer?

NFF is not concerned that an expansion of the Integrity Committee’s functions, roles, and responsibilities will compromise its primary role as an independent ACCU Scheme assurer. These proposed expansions are consistent with and have been drawn out from Recommendations put forward by the independent umpire, the Chubb Review.

Question 25: Should the ACCU Scheme allow for a preliminary form of EIH consent to be given by a registered Native Title body corporate to allow a project to be registered by agreement? If yes, what form should or could that preliminary consent take?

The issue of accessing EIH consent is a major transactional issue in the process of developing projects, especially those with a substantive permanence period. There are three (3) key concerns:

- The time taken to identify the EIH, especially where there is either no Native Title determination resolved (so there may be competing interests from native title applicants) or there may be land where Native Title MAY be found to exist in the future, but at the point of contracting no potential EIH has either come forward or been identified. This scenario makes completing ILUAs quite difficult and a mechanism to ‘grandfather’ the possibility of an EIH emerging might be of value that would allow a pathway around the



intertemporal problem of wanting to complete the carbon contract in the absence of a formally, or even informally, identified party. NFF would welcome a discussion on how this might be progressed;

- That the EIH, or more particularly their appointed agent, does not negotiate in good faith. We have been advised that there are examples where the proponent (the carbon accumulator), the lease and the Native Title holder are all happy to enter into an arrangement and a land council or similar interlocutor has interest in the transaction. Some clarity on those roles would be helpful; and
- Where lease condition might need to be varied that they be done so in a manner that protects the principal purpose of the lease (predominately grazing) and the variation is not used as a mechanism to recast or reprioritise the purpose of the lease. To put it another way, carbon contracts cannot be used as a driver to undermine existing lease conditions to the extent that those use rights are changed or undermined.

NFF understand the ILUA process is quite complex and difficult, though has been subject to some improvement. The model of an ILUA (including but not limited to EIHs) is a reasonable process. Extreme care needs to be taken that it is not exercised as a de facto veto over the progress of legitimate commercial transactions. They are not an alternate policy tool; they are a necessary commercial transaction. Where policy change is sought, that should be done in a broader and more consultative manner.

Question 26: How could the preliminary agreement be withdrawn and what guidance or processes could be provided, noting the competing interests involved? Is a dispute resolution mechanism needed?

Building on the response to Question 25, If an EIH consent is granted then it should continue to stand. The circumstances for its withdrawal, if they are to exist, should be extremely tightly defined. Where such a withdrawal is contemplated not only should a dispute mechanism be required, but it should be treated as a commercial matter and appropriate penalties should also be available.

Question 27: How should eligible interest in land be defined for the purposes of the ACCU Scheme that ensures First Nations interests are appropriately respected?



Are there other ways of recognising interests that fall short of a Native Title determination through benefit sharing arrangements, and how might this work?

The first step is to recognise where Native Title, whether exclusive or non-exclusive has been resolved, that scenario should form the basis for an IULA negotiation. Where determination is pending then it is reasonable, providing that there is only one applicant for the Native Title, for that to form a part of an agreement, contingent on the (presumably future) resolution of the determination, recognising this is a slow and drawn-out legal process. Where no applicant exists then some reasonable savings provision COULD be negotiated for abundant caution, care would need to be taken that it can't unreasonably undermine a contract nor act in a non-commercial way.

Question 28: What support and resources do First Nations eligible interest holders, project proponents and communities need when considering or providing consent?

Appropriate technical and advisory support should be available to ALL parties. The NFF have continued to express concern that rights holders or applicants have access to legal resources from land councils and elsewhere, similar resources continue not to be made available to especially the farm sector.

Conclusion

The NFF thanks the Department for the opportunity to provide feedback to the questions outlined in the Discussion Paper. We look forward to continued discussion and engagement. Please do not hesitate to contact Warwick Ragg, General Manager (Natural Resource Management) via e-mail: WRagg@nff.org.au or phone (02) 6269 5666 at the first instance to progress this matter.

Yours sincerely,

TONY MAHAR
Chief Executive Officer