Dr Wendy Craik
Chair
Climate Change Authority
John Gordon Building
PARKES ACT 2600

By email: submissions@climatechangeauthority.gov.au

11 October 2017

Dear Dr Craik

Re: Review of the Carbon Farming Initiative legislation and the Emissions Reduction Fund

The National Farmers' Federation (NFF) thanks you for the opportunity to make comment on the review of the Carbon Farming Initiative (CFI) legislation and the Emissions Reduction Fund (ERF). Thank you for also meeting with NFF representatives, to inform this important review.

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

Commentators from far and wide continue to point to the "land sector" and farmers as key to achieving Australia's commitment at the Paris Climate Conference of a 26-28% reduction in our national emissions by 2030. Ensuring the policy settings are right to facilitate farmer participation and recognise the full range of contributions that farmers make to our emissions reductions goals is crucial. NFF has long argued that there are fundamental barriers to farmers participating in the carbon market. With the Emissions Reduction Fund now five auctions old, this is increasingly evident.

To ensure that the agricultural industry achieves the desired outcome of delivering productivity increases, emissions reduction, and NRM and agricultural policy objectives will require changes to the way in which agricultural production is valued at both a regulatory and consumer level. Farmers need a regulatory environment that fosters growth, productivity, innovation and ambition – not one that impedes. Getting the settings right means we can achieve a sustainable agricultural industry with increased productivity and profitability, improved natural capital and genuine emission reductions.

The results of the ERF auctions to date, where success has been dominated particularly by low cost avoided clearing projects in a very limited number of landscape types, highlight a very narrow focus on land use change and a "lock up and leave" mentality, rather than seeking to integrate productivity and emissions reduction goals. The bias of this success is also concerning when consideration is given to the level of ERF funding absorbed by avoided clearing projects in relation to the land use, land use change and forestry (LULUCF) sector's contributions to Australia's total emissions. A greater focus on abatement in other areas of the inventory is required.

The NFF has this year made substantial submissions to both the Climate Change Authority's '*Action on the land'* issues paper and the Department of the Environment and Energy's 2017 Review of Climate Change policy. Both these submissions have been attached for your reference but the NFF would like to take this opportunity to highlight the key messages that formed the basis for our submissions and are of particular relevance to the review of the CFI and ERF.

- **A focus on emissions intensity supports growth in global agricultural production to meet growing global food and fibre demand, while still contributing to emissions reduction efforts.**

- **Policies that encourage innovation and adoption of low emissions technologies and participation in carbon offset markets are most appropriate for agriculture.** Policies such as mandatory coverage in trading schemes or direct regulation do not suit the agriculture sector.

- **The current design of carbon offset markets is inefficient, and overhead costs limit participation by most farmers.** Reform is required to unlock the full carbon potential of Australian farms by improving the design of carbon markets to make them more accessible and more attractive for farmers**.**

- **For most farmers, there are not yet cost-effective methods in place to enable participation in carbon markets, and many technologies are still in the development phase and are not yet "method-ready".** Long term commitment to research is required to bring technologies and practices to a point where they are commercially viable.

- **The regulation of native vegetation management by State Governments has enabled Australia to meet its emissions reduction commitments under Kyoto but the cost of achieving these targets has been predominantly worn by farmers, who have not had access to a market or payments for the delivery of this service.** Rather than penalise, vegetation policies should recognise and reward farmers for sequestering carbon in vegetation. Ensuring that broader ecosystem service markets and carbon markets can work together into the future should be at the forefront of considerations in the policy design.

- **Investing in the R&D and extension of mitigation strategies that concurrently reduce emissions and improve productivity and profitability will be adopted by farmers as it makes business sense to do so.** As farmers adopt less emissions intense practices, the contribution of the land and agriculture sectors in the national greenhouse gas inventory will improve.

- **Past Commonwealth investment programs in emissions reduction R&D have been extremely successful in leveraging co-investment and building Australian research capability.** Future policies should incentivise industry to pursue the research that it is unlikely to fund on its own.

- **Government policy settings should be designed in such a way that both incentivises industry to pursue efficiency research and recognises that the public "captures" the carbon benefit of more emissions efficient practices.** Industry as a whole should have the capacity to capture the value of the carbon benefit realised from its investment and adoption

of carbon efficient practices, and for this benefit to be re-invested by the industry for the industry.

- **Credible international units may provide a lower cost pathway for Australian businesses to meet any future carbon liability.** A well-designed international market may also provide opportunities for Australian farmers and agribusinesses as it broadens the carbon market place to more purchasers of ACCUs.

A significant issue which has come to prominence and is not covered by either of the attached submissions is that of the stalled amendment of the *Carbon Credits (Carbon Farming Initiative) Act 2011*, specifically the proposal to clarify and correct a drafting error to section 28A. This issue regards the requirement of project proponents to obtain consent for the project from eligible interest holders in the project area. It is NFF's view that the original intent of section 28A, and indeed the intent that we supported both when the CFI Act was originally passed in 2011 and substantially amended in 2014 is that eligible interest holder approval related to sequestration projects, given that the permanence period associated with these projects is in effect a covenant on title. A broader interpretation to capture all area based emissions avoidance projects would in our view unnecessarily cumbersome for emissions avoidance projects. Importantly, the approval of eligible interest holders, and ensuring that project proponents have the legal right to conduct the project are two distinct issues and should be dealt with as such. This review is an opportunity for the CCA to provide its independent expert view to the parliament and to stakeholders on this very important issue.

In making its recommendations in relation to both s28A and legal right, the NFF urges the CCA to be cognisant of native title law. It is the view of the NFF that neither s28A or other legal right provisions be drafted in a manner that requires project proponents of area based emissions avoidance projects to engage and seek the consent of non-exclusive native title rights holders.

Further the NFF contends that, it is inappropriate for emissions abatement legislation to bestow a right on a class of interest holders whose claim of interest must otherwise be determined by a court through due judicial process.

The NFF does not accept that non-exclusive native title rights on pastoral lease land do or should include the right to carbon per se.

The formulation of native title rights and interests in determinations of native title are expressed by reference to the activities that may be conducted, as of right, on or in relation to the land or waters. Indigenous people may be able to demonstrate that some activity they perform under traditional law and custom could be an eligible project. However, for any native title right in relation to that activity to be recognised on a pastoral lease, that right must not be inconsistent with the rights of the lessee under the lease.

Determinations of native title on pastoral lease land do not recognise a native title right to burn the vegetation on the land as that right is inconsistent with the pastoral lessee's rights.

Pastoralists are opposed to any deeming of carbon rights for non-exclusive native title. If a native title right to carbon cannot be demonstrated under the traditional law and customs of the indigenous people with non-exclusive native title to an area, then that right cannot be recognised under Australian law. The government should not have the power to bestow native title rights on indigenous people if they do not exist under traditional law and custom or are inconsistent with third party rights.

Pastoralists recognise that the decision in *Akiba on behalf of the Torres Strait Regional Seas Claim Group v Commonwealth of Australia* [2013] HCA 33 provides a common law foundation to enable traditional trading or commercial interests to be recognised in appropriate circumstances. The commercial exploitation of activities in accordance with traditional law (for example fishing, hunting

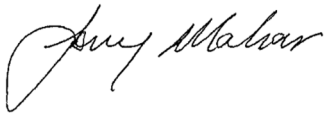
and gathering) is one thing, but to expand the range of activities to encompass a broader suite of commercial rights for any purpose is not supported. To do so is inconsistent with the basis of the consent determinations by which pastoralists have resolved Native Title.

If a Native Title groups' claims has not yet been determined then there should be no requirement to obtain consent nor give rights at a later date when a determination may be made. Further, pastoralists reject that consent must or should be financial.

We would be more than happy to discuss these, or our other submissions in further detail if you require and would be happy to facilitate a discussion with senior NFF representatives and the CCA Board if this is of interest to you.

In the first instance, please contact Manager of NRM Policy Ms Jack Knowles on 02 6269 5666 or jknowles@nff.org.au.

Yours sincerely



TONY MAHAR
Chief Executive Officer