



**ICIN** Indigenous  
Carbon  
Industry  
Network

## Submission to the ACCU Review

Prepared 3 October 2022

*For further information please visit our website [www.icin.org.au](http://www.icin.org.au)*

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## Executive Summary

Recommendations to the ACCU Integrity Review Panel as detailed in the submission include:

### **Governance of the Emissions Reduction Fund**

1. Allocate sufficient time and resources and put processes in place to ensure policies are properly informed by Indigenous groups.
2. De-couple the Clean Energy Regulator's (CER's) regulatory function and its role as issuer of ACCUs from its role as ACCU buyer.
3. The CER should operate independently and at arm's length from the Minister.
4. Method development priority setting should consider equity of opportunity.
5. Legislative Reform of the Carbon Farming Initiative Act is needed to recognise Indigenous rights and interests in carbon and avoid breaches in international law. The CFI Act should be amended to
  - a. recognise native title claimants (in addition to native title holders) as Eligible Interest Holders and in recognition that carbon projects have a 20–100 years lifespan.
  - b. embed principles of Free, Prior and Informed Consent as a prerequisite to project approval
  - c. clarify that the Crown does not have legal right and is not an Eligible Interest Holder (EIH) for exclusive possession native title land
6. The Australian National Registry of Emissions Units (ANREU) Account should be amended to allow for certification of copies by persons before whom a statutory declaration may be made under the Statutory Declarations Regulations 2018
7. Support equitable access by Aboriginal and Torres Strait Islander landholder groups by resourcing support for Indigenous landholders to access the ERF.
8. Resource a Project Start-Up Fund for Indigenous carbon projects
9. Resource Native Title Representative Bodies (NTRBs) and land councils to provide carbon advice to native title holders approached to provide EIH consent
10. Resource publicly available tools supporting carbon projects such as FullCam, SavCAM and NAFI to be user-friendly and accessible to Indigenous landholders.
11. Remove the ability to 'conditionally' register projects on native title lands (prior to obtaining FPIC consent of Native Title holders)
12. Recognise native title claimants as Eligible Interest Holders
13. Clarify that registering sequestration projects is a Future Act
14. Consider avenues to allow non-exclusive possession native title holders to become project proponents
15. Clarify that the Crown does not have legal right and is not an EIH for exclusive possession native title land
16. Support consistency of application of the ERF across all State and Territory legislation
17. Support the Indigenous Carbon Industry Network

### **Supporting Rigour and Integrity of Methods and Projects**

1. The method co-design timeframe should not be limited to 12 months across the board of all methods, but should be flexible depending on the method, and provide sufficient time for the method to be properly informed by Indigenous organisations.
2. Tools supporting calculation of ACCUs using ERF methods (eg FullCam, SavBat and other models) should be made free, accessible and transparent to landholders.

3. Changes to methods must be fully transparent and protect Indigenous rights and interests in carbon.
4. Continued investment in Method development

#### **Co-Benefits and Other Benefits**

1. Support Indigenous-owned carbon projects
2. Support Indigenous engagement by ICIN member organisations in discussions relating to co-benefits of carbon projects and relationships to other environmental markets.
3. The development of any related “Indigenous co-benefits” frameworks should be Indigenous-led, via the Indigenous Carbon Industry Network (ICIN) and recognise the unique diversity and self-determination of Indigenous-owned projects.

#### **Climate Active Requirements**

1. Do not support allowing Climate Active participants to meet their commitments using offsets generated by projects operating overseas.

#### **Future**

1. Build the Impacts of Climate Change into Carbon Methods and Support ‘Multiple Benefit’ Activities that both Mitigate Climate Change and Remediate Climate Impacts.
2. Avoid Perverse Outcomes for Land and Sea Management and Support Maintenance of Country by Indigenous people
  - a. That CER establish an Indigenous Reference Group made up of representatives from Indigenous organisations that own carbon projects to inform decision making processes.
  - b. That CER supports existing Healthy Country, Indigenous Protected Area and NRM Plans.
  - c. ERAC should be required to consider expert advice in relation to potential adverse environmental outcomes from method development. All methodologies should be required to incorporate environmental safeguards (including prohibited and restricted activities), as informed by scientific experts.
  - d. Any perverse incentives need to be avoided and ERAC should take explicit account of the potential for any such outcomes
  - e. That prevention of degradation should become a greater consideration under the Scheme, providing an avenue for rewarding good practice in land management and resulting carbon sequestration, rather than emphasising restoration
  - f. Whilst newness and additionality requirements are central to project integrity, the CFI Act should be amended to allow for longer and subsequent crediting periods in cases where an activity does not become business-as-usual but needs to be maintained on an ongoing basis

## About ICIN

The Indigenous Carbon Industry Network (**ICIN**) is the peak industry body representing Indigenous owned and operated carbon projects across Australia. Our members are Indigenous-owned organisations that operate across north Australia to develop and deliver carbon projects, mainly through savanna fire management, but also inclusive of any carbon method. Full members of the network include Indigenous carbon project proponents, such as Aboriginal Corporations and Native Title Prescribed Bodies Corporate (PBCs); as well as producers of Indigenous carbon credits, such as Indigenous ranger groups. Associate members include other Indigenous organisations with an interest in the carbon industry.

Our members are currently producing around 1.2 million carbon credits each year through 35 Indigenous-owned savanna carbon farming projects and have established an industry employing hundreds of people, sometimes part-time or seasonally in remote Australia. The Indigenous carbon industry is generating around \$59 million worth of Australian Carbon Credit Units (ACCUs) annually across northern Australia, predominantly through voluntary markets. The network is united by our Mission, Purpose, Objectives and Core Values which are captured in the ICIN Ltd Constitution (2022).

Since its establishment by a Steering Committee of Indigenous organisations in 2018, the ICIN has rapidly grown in both membership and services, and has recently been incorporated, with the appointment of a seven person Aboriginal Board of Directors to oversee ICIN operations. It has just transferred operational management from host organisation Warddeken Land Management Ltd, to the new governance structure of ICIN Ltd, which was registered as a not-for-profit company and charity in September 2021. ICIN seeks to meet the high expectations of its members and to increase Indigenous engagement across Australia into what is now a highly competitive and fast-paced corporate carbon market governed by rapidly evolving government policies.

**Our Mission is to promote and facilitate an active, innovative, and Indigenous-led carbon industry supporting healthy country and better livelihoods for Indigenous people.**

The network aims to achieve its mission, by:

1. Enabling and empowering Indigenous people to benefit from Australian carbon markets;
2. Working towards an Indigenous-led carbon industry supporting the advancements and aspirations of Indigenous people across Australia through:
  - Promoting Indigenous leadership and empowering Indigenous voices to be represented and Indigenous knowledges, practices and perspectives are represented in the Australian carbon industry;
  - Advocating for an Australian carbon industry that is accessible to Indigenous people, protects and strengthens Indigenous rights, delivers benefits to Indigenous communities and supports healthy country outcomes;
  - Ensuring the interests of the Indigenous carbon industry are represented in public decision-making processes;
  - Promoting best practice standards for Indigenous engagement in the Australian carbon industry, enabling fair business agreements and Indigenous empowerment;
  - Building, promoting and strengthening the reputation of Indigenous carbon credits in Australia and internationally;
3. Supporting an active network of Indigenous carbon businesses, organisations and groups engaged in the Australian carbon industry through:

- Building the capacity of Indigenous people to engage in the Australian carbon industry;
- Supporting the growth of Indigenous Producers and Indigenous Proponents benefiting from the Australian carbon industry;
- Disseminating information, research, policy and market updates and news about and for the Indigenous carbon industry.

ICIN has also produced several key resources to support the sector ([www.icin.org.au/resources](http://www.icin.org.au/resources)) including:

- a Guide to Indigenous Carbon Projects,
- a report Mapping Opportunities for Indigenous Carbon in Australia
- the Best Practice Guidelines Seeking Free, Prior and Informed Consent from Indigenous Communities for Carbon Projects
- videos showcasing Indigenous carbon projects
- a network of Indigenous organisations and a description of their project and contact details.

## Introduction

Recent public commentary about the integrity of the governance of the Emissions Reduction Fund (ERF) has had a significant detrimental impact on the carbon industry and the reputational standing of Australian Carbon Credit Units (ACCUs). This detriment has the potential to affect those proponents and producers of Indigenous ACCUs that are delivering projects to a very high standard of integrity. It is important that the ACCU Review Panel differentiates Indigenous carbon projects from projects where there may be concerns about carbon method implementation.

Indigenous-owned carbon projects have an excellent reputation for delivering high value outcomes, not only for the climate, but also for country, culture, and community. In recognition of this, Indigenous carbon credits attract a premium on the voluntary market (see State of the Indigenous Carbon Industry, below).

Research conducted with its members as well as results of forums and workshops held by ICIN demonstrate that Indigenous-owned carbon projects are unique and impactful because they;

- Are authorised by Traditional Owners
- Bring Traditional Owners back to their country
- Support the handing down of Traditional Biocultural Knowledge from Elders to future generations
- Facilitate other land management activities
- Support Traditional Owners to fulfil cultural obligations to look after Country
- Build on both Traditional and western knowledge of Country through opportunities for exchange of cultural and scientific information
- Provide meaningful employment and training opportunities in very remote areas, where jobs are generally scarce

The flow-on social benefits from carbon farming projects are not yet fully understood but also can include greater self-determination for remote community members, improved community cohesiveness and independent resourcing contributions to outstation and community infrastructure.

Most crucially though, speakers at the February 2022 National Indigenous Carbon Forum (NICF) highlighted that these broader benefits only happen when projects are self-determined and

Indigenous people are fully in control. Cissy Gore-Birch, ICIN Co-Chair, also cautioned that it is important for Indigenous people not to get lost in the western system that is the carbon market, and instead work together to elevate Indigenous knowledge and drive Indigenous benefit from the system.

*“It's really important to really think about where you are as Traditional Owners, understanding your rights and interest in this space, and making sure you get the right people and the right information.”*  
Cissy Gore-Birch, ICIN Co-Chair

For example, the Yumbangu Aboriginal Cultural Heritage and Tourism Development Aboriginal Corporation (YACHATDAC) Hands on Country Human-Induced Regeneration project on Iningai country, near Barcaldine in central Queensland (supported by the Indigenous Land and Sea Corporation), is delivering positive outcomes by fencing off areas from the impact of cattle and feral animals. This project in turn is supporting young people to return to country and connect with their traditional knowledge as well as other land management activities, such weed management, cultural site protection and feral animal management.

*“You mob need to trust Indigenous people to care for our lands. We always have one eye on the children’s fire, on our future. You might be worried about the next few years, but we have been here for thousands of years, we know what to do.”* Suzanne Thompson, YACHATDAC (speaking at the Climate and Country Forum 15 Sept 2022).

ICIN welcomes scrutiny of the method co-design process and methods that are legislated under the CFI Act and overseen by the Clean Energy Regulator.

## **Feedback on Emissions Reduction Fund Scheme**

ICIN has analysed the current state of the Indigenous carbon market, through its recent report; Mapping Opportunities for Indigenous Carbon in Australia (see [www.icin.org.au/resources](http://www.icin.org.au/resources) )

The report, co-authored by spatial scientist Jarrad Holmes and legal advisor Polly Grace, required detailed analysis and layering of Indigenous land tenure maps, carbon method types available, and current distribution of carbon projects through data available from the Clean Energy Regulator.

### **Strong link between Indigenous-led method design and implementation**

The results of this report clearly demonstrate that there is a very strong link between supporting and resourcing Indigenous-led design of carbon methods and the successful implementation of Indigenous-owned carbon projects.

Furthermore, that recognition of Indigenous rights and interests in carbon and supporting early engagement with Traditional Owners is key to realizing key benefits brought by Indigenous-owned carbon projects.

The development of the savanna fire management carbon methods started 15 years ago, prior to the Emissions Reduction Fund, through a partnership led by Traditional Owners of West Arnhem Land, with the Northern Territory Government, Northern Land Council, scientists at Charles Darwin University, Bushfires NT, CSIRO and the North Australian Indigenous Land and Sea Management Alliance (NAILSMA).

This work led to the first Indigenous-owned carbon project, the West Arnhem Land Fire Abatement Project which was established in 2006 through a voluntary agreement with Conoco-Phillips to offset

emissions from the Darwin Liquefied Natural Gas plant. There are now five Indigenous-owned SFM projects registered across Arnhem Land; and the Indigenous land management groups producing these carbon credits have now established their own company, Arnhem Land Fire Abatement NT Ltd, to manage reporting and sales of these projects.

Dr Otto Bulmaniya Campion of ALFA NT Ltd highlights how development of these carbon methods assisted with retaining and restoring critical cultural knowledge built upon many thousands of years of land management experience by Yolngu (the language speakers of north-east Arnhem Land).

*“Long time ago we had big mob old people leaving this area. If we manage fire Yolngu way we are doing the right thing, cleansing all the spirit for our family to return, and do hunting and gathering. The knowledge was nearly lost to the new generation, and our elders wanted to bring back this fire management through good partnerships with scientists and government.”* – Dr Otto Bulmaniya Campion, ALFA NT Director and Senior Gurruwilling Ranger, Arafura Swamp Rangers Aboriginal Corporation

There are now 31 Indigenous-owned savanna fire management projects across north Australia supporting delivery of social, cultural, environmental, and economic outcomes of global significance.

### **Key Barriers to Participation of Indigenous landholder groups**

Another key finding of the Mapping Opportunities for Indigenous Carbon in Australia report is that that carbon market has created many barriers to participation by Indigenous landholder groups in the Emissions Reduction Fund, leading to a situation where there are only four Indigenous owned carbon projects (registered to an Indigenous entity on the ERF) outside of the Indigenous-led savanna fire management method. These are all high value human-induced regeneration projects supporting revegetation through the exclusion of cattle and feral animals.

**The report clearly demonstrates that outside SFM methods the ERF has failed to include Indigenous landholders in the rapid growth of carbon projects and that in many cases Indigenous landholders have been outpaced by the corporate carbon companies and governments.**

Legislative and policy changes are needed to slow the carbon ‘rush’ to give Indigenous landholders a chance to catch up and have equitable access to this opportunity as there are a growing number of carbon ‘baggers’ (which we define as investment firms, carbon project service providers, and carbon development companies registering projects without Traditional Owner consent on Indigenous lands under provisions for Conditional Registration under the CFI Act).

The report highlights that *“One of the challenges for Indigenous organisations is the competitiveness and complexity of the industry and its stakeholders, with Indigenous organisations frequently being provided ‘advice’ by actors with strong vested interests. Supporting Indigenous organisations to recognise these risks, access independent advice and make appropriately informed decisions is a crucial part of building organisational capability.”*

Some of these challenges include:

1. A lack of recognition of the principle of Free, Prior and Informed Consent within the CFI Act, given that it allows for Conditional Registration of sequestration projects without consent of Eligible Interest Holders (EIH) from 5–7 years.
2. Complex and at times counter-intuitive information from the Clean Energy Regulator about how to establish a carbon project, that is highly technical and uses a great deal of jargon and legal language.

3. A lack of trusted, independent sources of information about the carbon market that are free of vested commercial interests. ICIN has been doing its best to address this gap but further support is needed at the project level.
4. Conflicts of interests by individuals and companies operating within the carbon industry are rife, and many landholders, particularly outside the savanna region, are forced to rely upon information brought to them by carbon service providers that have a vested interest in encouraging them to sign up as quickly as possible, often via overblown ACCU projections that underestimate project costs and allow the carbon service provider to own (and then trade and profit from) ACCUs generated from that project for years to come.
5. Transparency of transaction fees and of who pays and who profits from carbon projects, is often very low. This enables some carbon traders and brokers to charge very high transaction fees above market rates, without the prior knowledge of sellers of ACCUs.
6. Benefit sharing agreements supporting carbon projects that engage native title groups do not always value access to Aboriginal lands in a commercially equitable manner (ICIN has heard of some cases where an ad valorem 2% (of ACCU value) royalty is paid to native title groups). This represents a significant missed opportunity to support self-determined outcomes for Indigenous groups that go on to create social, cultural, environmental and economic benefits.

**Key Recommendations of *Mapping Opportunities for Indigenous Carbon in Australia*** include the need to:

**1. Expand the application of Emissions Reduction Fund methods within the Indigenous estate**

- a. Expand the Savanna Fire Management Methods
- b. Appropriate development of the Integrated Farm Management Method
- c. Expand the Blue Carbon Method beyond the Agricultural Zone

**2. Build capability in Indigenous organisations**

**3. Targeted method and organisational engagement**

- a. Fine scale spatial analysis in the Agricultural (east and west) Zones
- b. Human Induced Regeneration Method in the Rangelands (west) Zone
- c. Supporting projects in the Savanna and Desert Zones

**4. Incentivise engagement with Indigenous organisations and build negotiation capability**

**5. Highlight the premium value of Indigenous carbon**

**6. Support Indigenous engagement in emerging environmental markets**

***ICIN highly recommend that the ACCU Review Panel considers this landmark report as part of this review ([www.icin.org.au/resources](http://www.icin.org.au/resources) ).***

ICIN also contributed substantially to a Discussion Paper by the Indigenous Land and Sea Corporation to inform its National Indigenous Land and Sea Strategy which contains a summary of current Opportunities and Challenges in the carbon industry for Indigenous groups. **The paper, which can be found here (<https://www.ilsc.gov.au/wp-content/uploads/2022/05/Indigenous-participation-in-the-carbon-industry.pdf> ) is recommended to the Expert Panel.**



## Feedback on Governance of the Emissions Reduction Fund

As highlighted above, ICIN has found there are several legislative and resource barriers to supporting Indigenous landholders to access the ERF.

Our Recommendations to the ACCU Integrity Review Panel include:

### **1. Allocate sufficient time and resources and put processes in place to ensure policies are properly informed by Indigenous groups**

ICIN is supportive of this Review and the proposed National Biodiversity Market that will sit alongside the Emissions Reduction Fund. However, members are concerned by the pace of policy announcements and changes being made affecting the Indigenous carbon industry. This haste does not provide time for proper consultation and could lead to Indigenous groups missing out on a once-in-a-generation opportunity to ensure their work caring for country is properly recognised in terms of the full range of benefits brought to climate change mitigation, biodiversity conservation, cultural continuity and community wellbeing. Aboriginal and Torres Strait Islander leaders within our network have also raised fundamental questions about how their cultural IP and rights as Traditional Owners will be protected through this market, and caution that too much weight placed on a biodiversity market in the absence of stronger environmental regulations may generate poor outcomes for country given that destructive activities by colonial entities continue to this day.

### **2. De-couple the Clean Energy Regulator's (CER's) regulatory function and its role as issuer of ACCUs from its role as ACCU buyer.**

ICIN agrees with many of its partner organisations that to prevent a repeat of the issues that have led to this Review of ACCUs, improved transparency and strengthening the application and implementation of the ERF's Integrity Standards is required., ERF governance needs to be re-set to eliminate actual and perceived conflicts of interest and undue political influence:

- The Emissions reduction Assurance Committee (ERAC) needs to be fully independent and comprise subject matter experts with demonstrated commitment to the objects of the scheme (beyond broader experience in the industry).
- The rationale for any decisions or amendments made outside of existing governance frameworks or processes, e.g. in response to lobbying from vested interests, should be publicly disclosed for reasons of transparency and probity.
- Any guidance given by the CER to individual proponents in relation to legislative interpretation should be published, as should decisions to issue ACCUs based on such interpretation.

### **3. The CER should operate independently and at arm's length from the Minister.**

ICIN has observed that ad hoc political interference in ERF processes, particularly over the past two years, has at times led to perverse outcomes and hampers the ability of the Clean Energy Regulator to do its job effectively or for carbon producers to keep up with policy changes impacting on markets.

An example of this is when Minister Angus Taylor suddenly announced earlier in 2022 that suppliers of ACCUs could be released from fixed-term projects under the ERF, which had the effect of sinking the voluntary ACCU spot price from \$57/tonne to around \$25/tonne, effectively reducing the value of the market by more than half overnight. This had a direct impact on cutting revenues from ACCU

sales by Indigenous organisations that own a carbon project. This represents millions of dollars in reduced revenue that could have been used to support many projects on country including strengthening of cultural knowledge and governance, caring for country, as well as provision of services and physical infrastructure such as ranger bases.

Ministerial intervention in the Scheme without proper public consultation should be avoided in future.

#### **4. Method development priority setting should consider equity of opportunity.**

The prioritisation process set by the Minister for Climate Change should consider methods which support equitable outcomes, particularly for Indigenous landholders.

As outlined in the National Agreement on Closing the Gap, Aboriginal and Torres Strait Islander communities often face social and economic disadvantage and high levels of unemployment due to historical legacies stemming from colonisation of neglect, displacement, remoteness, differences in languages and cultures, as well as lower literacy levels, poor housing and chronic health problems.

ICIN members view accessing opportunities in the carbon industry to be a unique opportunity to provide employment to their local communities by supporting Indigenous land and sea management activities that offer jobs that are consistent with cultural obligations to care for country. Such work on country has high retention rates. Indigenous-owned carbon projects support self-determination of Indigenous communities through providing an independent source of revenue that is generated by their cultural knowledge and their environmental work caring for country. This must be recognised by the Minister for Climate Change and the Clean Energy Regulator.

#### **5. Legislative Reform of the Carbon Farming Initiative Act is needed to recognise Indigenous rights and interests in carbon and avoid breaches in international law**

**The CFI Act should be amended to**

- **recognise native title claimants (in addition to native title holders) as Eligible Interest Holders and in recognition that carbon projects have a 20–100 years lifespan.**
- **embed principles of Free, Prior and Informed Consent as a prerequisite to project approval**
- **clarify that the Crown does not have legal right and is not an Eligible Interest Holder (EIH) for exclusive possession native title land**

This is consistent with articles in the UN Declaration on the Rights of Indigenous Peoples as well as the IPBC/IPCC Joint Statement on Climate Change.

#### **6. The Australian National Registry of Emissions Units (ANREU) Account should be amended to allow for certification of copies by persons before whom a statutory declaration may be made under the Statutory Declarations Regulations 2018**

**Support equitable access by Aboriginal and Torres Strait Islander landholder groups by resourcing support for Indigenous landholders to access the ERF.**

ICIN has observed that over the past five years, the Scheme, its governance and regulation have increasingly become dominated by a small number of large, national carbon project developers and/or aggregators who have developed significant capacity and capability and shaped the system.

To level the playing field and ensure equitable access for independent participants, and considering the complexity of the scheme and barriers to entry for such (potential) proponent support could be provided through:

- A. a project start-up fund for Indigenous carbon projects to pay for feasibility studies, legal advice and to support negotiation of land-use agreements.
- B. a fund or department to support provision of project advice
- C. resourcing Native Title Representative bodies and land councils to provide legal and other advice to Indigenous organisations regarding carbon projects
- D. resourcing publicly owned accessible tools to enable landholders to create their own ACCU estimations
- E. resourcing accessible tools that support land management underpinning the carbon projects, such as the North Australia Fire Information (NAFI) service
- F. resourcing provision of free or low-cost, independent advice on carbon projects for Indigenous groups that is devoid of vested commercial interest, such as via the ICIN.

#### **7. Resource a Project Start-Up Fund for Indigenous carbon projects**

For many Indigenous landholders, access to capital is limited. Experience from the implementation of the QLD Government Land Restoration Fund and the NT Government (former) Indigenous Carbon Fund demonstrates that access to 'start-up' funds to support new governance structures, capacity building and business development of new Indigenous carbon projects is an enabler to leveraging carbon opportunities on Indigenous lands. In many instances, these start-up costs will be higher for land-based projects, with a delay before any financial returns are realised from carbon activities. These funds should be provided free of any expectation that governments or others will keep any carbon credits arising from that investment.

#### **8. Resource Native Title Representative Bodies (NTRBs) and land councils to provide carbon advice to native title holders approached to provide EIH consent**

For example, the Kimberley Land Council (KLC) provides site-specific carbon advice to native title holders and produces education materials for scheme participants both independently and through ICIN. Most recently this includes the *Carbon Projects: Eligible Interest Holder Consent* brochure<sup>1</sup> and the *ICIN Seeking Free Prior and Informed Consent from Indigenous Communities for Carbon Projects Guide*.<sup>2</sup> These resources assist to bolster the integrity of the ERF and ensure that benefits from carbon projects flow to Indigenous communities.

This was made possible in part through Government support for Indigenous carbon policy and project development, as well as fire management. We note that many other Native Title Representative Bodies did not take advantage of this opportunity, mainly because savanna fire management methods were not viable. This has meant that Indigenous stakeholders in other parts of Australia have been disadvantaged, particularly when it comes to eligible interest holder consent negotiations.

Native Title Representative Bodies play a key role in the integrity of the Emissions Reduction Fund by ensuring that the rights of native title holders and registered claimants are protected. Native Title Representative Bodies also play a critical role securing economic, cultural, and social benefits for

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<sup>1</sup> <https://www.klc.org.au/s/Carbon-Project-Eligible-Interest-Holder-Consent-booklet.pdf>

<sup>2</sup> [https://www.icin.org.au/resource\\_files](https://www.icin.org.au/resource_files)

Indigenous people by supporting the registration and management of Indigenous owned carbon projects. We therefore **recommend** that the Government provide financial support for carbon project development by native title holders, as well as financial resources for Native Title Representative Bodies to provide appropriate, localised carbon advice and educational resources for native title holders and Indigenous communities across Australia.

Providing eligible interest holder (EIH) consent to undertake an ERF project can require committing to a project for up to 100 years. Once consent has been provided there are few opportunities for it to be revoked. Making an informed decision to provide consent means judiciously balancing of economic, cultural, technical, and legal risks and benefits. Through its carbon program, the Kimberley Land Council has been able to effectively educate and advise native title holders on the opportunities and risks that eligible interest holder consent involve. Other NTRBs, not having developed in-house carbon project development experience, may lack expertise in the legal, technical, and commercial dimensions of EIH consent. This puts PBCs at a significant disadvantage in negotiations, as they are unable to source independent advice.

**9. Resource publicly available tools supporting carbon projects such as FullCam, SavCAM and NAFI to be user-friendly and accessible to Indigenous landholders.**

Tools such as FullCam must also be properly resourced and reviewed to ensure they are accessible to landholders.

For the SFM methods, the North Australian Fire Information (NAFI) service is a critical online fire mapping tool. Without NAFI, savanna fire projects face the prospect of trying to undertake sophisticated landscape scale fire management in the absence of critical remotely sensed fire information, including past fire history and the success of planned burns in remote areas (through hotspot detection and up to date mapping of fire scars). However, NAFI's development has been hampered by insecure short-term funding arrangements that fail to recognise the national scale, and long-term value of this critical service to Indigenous and non-Indigenous land managers.

**10. Remove the ability to 'conditionally' register projects on native title lands (prior to obtaining FPIC consent of Native Title holders)**

This is in line with Australia's obligations under the United Nations Declaration on the Rights of Indigenous People and practice under the *Native Title Act 1993*. The practice of only seeking approval (consent) after committing to an activity (through project registration) is poor business practice, and risks significantly undermining the integrity of the scheme. Within an Indigenous context, it undermines relationships, disempowers Traditional Owners by precluding free, prior and informed consent (FPIC), and creates a significant power imbalance. During the period between conditional project registration and the project being revoked in a case of non-consent, benefits are not being delivered and more appropriate carbon governance arrangements for the project area cannot be developed.

**11. Recognise native title claimants as Eligible Interest Holders**

The CFI Act currently provides protections for Registered Native Title Body Corporates (RNTBCs), but not registered claimants. Given that a native title determination does not create new native rights but confirms the existence of existing native title rights, registered native title claimants should be afforded the same rights as native title holders, especially as CFI projects can operate for 25–100 years. This approach would be consistent with the approach taken in the *Native Title Act 1993* (Cth), and improve project integrity, as it would ensure future rights holders have given permission (legal

right) for and consented to the future potential impact on their land, for example through the application of a carbon maintenance obligation (for a given permanence period).

This means engaging with native title claimants in the same way as with native title holders, *prior* to project registration. Otherwise, in relation to legal right, where exclusive possession native title is determined after project registration, this may affect whether the project proponent still holds the legal right. In relation to eligible interest holder consent, where native title is determined and an RNTBC established prior to the issuance of ACCUs, the RNTBC will be an eligible interest holder, and must still provide consent.

### **13. Clarify that registering sequestration projects is a Future Act**

The declaration of a sequestration project gives rise to a statutory power for the Clean Energy Regulator to issue a Carbon Maintenance Obligation (CMO) over the project. As a CMO has the power to affect native title rights and interests by granting the Clean Energy Regulator a contingent right to control activities over that land area, the declaration of a sequestration project is a Future Act. The native title rights and processes which apply will depend on the application of Part 2, Division 3 of the Native Title Act 1993 (Cth). This should apply to both exclusive and non-exclusive possession native title areas, as well as in relation to areas where claims have been registered but not yet determined, or where no claim has been made but where tenure is non-exclusive and a claim might be made in the future.

Additionally, s 24MD of the Native Title Act 1993 (Cth) requires that for acts which pass the freehold test, native title holders must be given the same procedural rights as holders of freehold title. Under the CFI, holders of freehold title must provide permission (legal right) for the project to occur (in addition to EIH consent), and therefore native title holders should be afforded the same right.

It is recommended that an Indigenous Land Use Agreement (ILUA) is the most appropriate form to document native title permission for sequestration projects, particularly considering permanence obligations, as an ILUA binds future generations. The ILUA must be obtained prior to the Future Act which is the project declaration. If an ILUA is not obtained prior to project declaration, the CER is limiting its ability to issue a CMO in the future. This risks undermining the integrity of the ERF as a whole, as the regulating body is not able to exercise its enforcement powers and thereby ensure carbon stocks remain sequestered. The approach of requiring an ILUA for sequestration projects would bring the carbon industry in line with the practice of other industries operating on native title land, including pastoralism and mining. It would also ensure compliance with the United Nations Declaration on the Rights of Indigenous People.

### **14. Consider avenues to allow non-exclusive possession native title holders to become project proponents**

While exclusive possession native title holders benefit from provisions which deem them to have the right to register projects, there is no such recognition for non-exclusive possession native title holders, making it difficult for them to participate in the ERF and generate carbon credits. The ERF should recognise the intersection of rights that are recognised by non-exclusive possession native title (such as access, protecting significant sites, gathering resources, and performing ceremonies) with ERF methods (particularly savanna burning). This would ensure that native title rights are recognised when the Clean Energy Regulator determines whether the person identified on an application for an ERF project is the *project proponent*.

## **15. Clarify that the Crown does not have legal right and is not an EIH for exclusive possession native title land**

Exclusive possession native title includes the right to possess and occupy an area to the exclusion of all others. Project proponents who hold legal right to carry out a project on the basis that the land is exclusive possession native title land should not be required to seek permission from the Crown (State/Territory government) to carry out that project.

## **16. Support consistency of application of the ERF across all State and Territory legislation**

Whilst the ERF operates under Federal legislation, it interacts with a variety of State and Territory laws.

Where the Crown is an eligible interest holder, there is greater room for coordination to ensure that States and Territories (on behalf of the Crown) do not duplicate ERF/CFI Act requirements as part of their consent processes, but develop clear, streamlined, and fit-for-purpose processes, policies, and regulatory approaches for consent.

The CFI Act should be amended to clarify its intent that, on exclusive possession native title land, the Crown has no legal right or eligible interest, even if that land is Torrens System land.

## **17. Support the Indigenous Carbon Industry Network**

The ICIN has been supported by a small amount of short-term 12-month project-based funding through the Department of Industry, Resources, Energy and Environment since 2018, ranging from \$150,000–\$230,000 per annum. This takes in contributions from the Northern Territory, Queensland and now the New South Wales Governments. An additional small amount of funding is provided by the Clean Energy Regulator toward supporting the co-design process for the Savanna Fire Management and Integrated Farm Management methods. ICIN members appreciate this support. However, the expectations of governments across Australia in terms of providing a point of contact and facilitation of complex policy issues affecting the Indigenous carbon industry far exceed those that can be provided these resources alone. To operate effectively across Australia, our annual operating costs are estimated to require \$1.5 million per annum to resource the delivery of two major national forums; provision of communication resources, to promote Indigenous carbon credits and to provide support to 35 Indigenous organisations across Australia on a range of issues and opportunities impacting their carbon projects.

ICIN recommends that the Australian Government fund the network on a more sustainable and long-term basis to ensure that it can provide high quality specialised policy advice, communications services and information and facilitation services in the future.

## **Supporting Rigour and Integrity of Methods and Projects**

The shift of method development responsibility from the Department to the CER has been generally a positive experience for the Indigenous carbon industry in terms of both communication and consultation on method co-design. We find the Clean Energy Regulator is very receptive to feedback, maintains a focus on being pragmatic and in our experience operates with a strong emphasis on integrity. However there needs to be some flexibility of timeframes to ensure that methods are delivered in a way that is both timely and well-informed.

ICIN is currently engaged by the Clean Energy Regulator to support input by Indigenous organisations into co-design of two methods

1. New Savanna Fire Management methods
2. Integrated Farm Management method

The Savanna Fire Management methods demonstrate that by supporting Indigenous-led method design, significant positive outcomes for Indigenous communities can be generated. The Savanna Fire Management methods are well-informed and based on nearly 20 years of collective scientific work by Traditional Owners across north Australia as well as carbon scientists and ecologists. Engagement with the CER regarding these methods has been generally a sound process.

*This fire management program has been successful on so many levels – culturally, economically, and environmentally. Through reinstating traditional burning practices, new generations of landowners have been trained in traditional and western fire management, hundreds of thousands of tonnes of greenhouse gas have been abated, and the landscape is being managed in the right way.* – Dean Yibarbuk, ICIN Co-Chair; Fire Ecologist and Gurrngoni Elder, West Arnhem Land

*It's not only just about burning and earning money, like people say, it's looking after your country, and all the animals and the birds, and our bush tuckers that are out there.* – the late Mr W Rioli, ICIN Director

*We burn slow, slow, slow to stop all that hot fire rushing, so it burns all over the countryside. We burn around the art sites to keep the grass lower... Fire can destroy art sites, crack all the painting in the rocks.* – Jeremy Kowan, Unguu Ranger, Wunambal Gaambera AC

## Key Resources

Further information can be found in videos informed by ICIN, here:

**Indigenous land managers apply ancient wisdom to combat climate change** (ICIN/ISFMI)

[https://www.icin.org.au/te\\_aratini\\_dubai\\_expo](https://www.icin.org.au/te_aratini_dubai_expo)

and here

**Northern Fire Management with the ERF** (Australian Government with input from ICIN)

<https://www.dcceew.gov.au/climate-change/emissions-reduction/emissions-reduction-fund/video-northern-australia-fire-management-with-the-emissions-reduction-fund-extended-version>

- 1. The method co-design timeframe should not be limited to 12 months across the board of all methods, but should be flexible depending on the method, and provide sufficient time for the method to be properly informed by Indigenous organisations.**

Over the last three years, political pressure placed on growth of ACCU supply appears to have muted integrity considerations. This has been evident in the rush to new, as yet scientifically unproven, but potentially high-volume methods which has impacted negatively in consumer and investor confidence in carbon markets.

The co-design of the Integrated Farm Management method has been a somewhat haphazard process and ICIN is very concerned that the 12-month development pipeline set by the Minister for

Climate Change may push through methods prematurely before they are ready in term of co-design as well as tools to support implementation of those methods directly by landholders.

**2. Tools supporting calculation of ACCUs using ERF methods (eg FullCam, SavBat and other models) should be made free, accessible and transparent to landholders.**

The CER should make publicly available a set of abatement calculation tools for each method (similar to SavBAT) in order to improve transparency and facilitate accessibility of the scheme for new participants.

Any bring-your-own (BYO) models or measurement approaches approved for crediting and issuance of ACCUs under the Scheme should also be publicly available and freely accessible to use for any ERF participant (e.g. web-based tools and downloadable spreadsheets, with instructions).

It is in the public interest that government-held information should be accessible to all, and that carbon service providers and carbon project developers should not monopolise provision of ACCU estimates to support a feasibility study. It is vital that Indigenous landholders have equitable access to information to support a feasibility study as third-party carbon project developers, which often take a substantial cut of revenue and often seek ownership of the project.

**3. Changes to methods must be fully transparent and protect Indigenous rights and interests in carbon.**

Variations of an existing project's methodology, as provided for under the CFI Rule, should entail the need to re-establish full legal right and Native Title EIH consents to the varied project as per project eligibility criteria. This will help maintain scheme integrity and prevent unintended negative consequences such as unapproved activities on Native Title lands. Eligible Interest Holders provide consent to a specific project proposed to be registered under a defined method by a known proponent, as presented at the time of consultation. Renewed consents should therefore be required when material aspects of a given project change, including the method.

**4. Continued investment in Method development**

Method development should be better resourced to open up opportunities for Indigenous land holders and land managers across the country and increase equity through availability of appropriate methodologies. The recent experience of an (as-yet-ongoing) four-year delay to the inclusion of the pindan vegetation type in the SFM methods (despite the science being available) is a case in point.

## **Co-Benefits and other impacts**

Carbon projects operated under the ERF have resulted in significant non-carbon benefits in the environmental / conservation, social, cultural, and economic realms. These so-called co-benefits – though often considered core benefits in Indigenous-owned projects – have thus far not been explicitly or separately valued.

The complexity of the benefits in the various categories necessitates a separate process to determine whether and how these benefits should be valued and potentially de-coupled from what would otherwise be premium ACCUs.



In general, when we use the term ‘co-benefits’ we are talking about the environmental or social outcomes of carbon projects. However, within our network and in the marketplace, there are many different views on how these outcomes should be viewed, including:

- Co-benefits should be valued, quantified, and packaged as added value for impact investors.
- These outcomes are central to Indigenous land management and caring for country.
- These outcomes are independently valued by environmental or social investment markets, and therefore should be viewed and marketed as products independent of the carbon market.

Importantly, what carbon buyers typically refer to as ‘co-benefits’ are not interchangeable with Indigenous ‘provenance’ (origin) of carbon credits, i.e. where and how the carbon credits are generated. Currently, many Indigenous-owned carbon projects are successfully marketing and selling their carbon credits for a premium price based on provenance alone, in recognition of the value of supporting Indigenous-led enterprise and self-determination of Indigenous communities. These sales do not, however, recognise additional and specific co-benefits, such as improved outcomes for wildlife, or the social benefit from the sale of carbon credits resulting in investment in remote community infrastructure

To help clarify the difference between co-benefits and Indigenous carbon credits, ICIN Members formulated the following statement:

*Carbon credits of Indigenous origin provide a premium value climate action product, delivering Indigenous led outcomes that are good for people and good for country.*

*Indigenous carbon projects are absolutely unique and one-of-a-kind. From Indigenous-led governance and design, through to implementation informed by thousands of years of land management experience, Indigenous carbon projects are implemented with a goal not just of generating carbon credits, but to increase the health and resilience of people and country in line with customary obligations of traditional owners.*

*Strong partnerships with organisations which recognise the premium value of Indigenous carbon will strengthen the industry, ensuring Indigenous provenance is synonymous with high quality carbon credits supporting healthy people and healthy country.*

*Indigenous carbon projects are accompanied by a multitude of positive environmental, socio-economic and/or cultural outcomes. Recognising and valuing these outcomes in addition to carbon is essential if offset markets are to continue to successfully support Indigenous land management activities.*

*Across the board, Indigenous carbon projects result in not only greenhouse gas abatement, but a multitude of direct and indirect beneficial environmental, socio-economic, and cultural outcomes.*

*While they may be related to a carbon project, it is important to recognise that these benefits are standalone outcomes with a distinct value.*

*Recognising the difference between Indigenous carbon credits and other beneficial outcomes, and the additional financial value of these outcomes will help to ensure that Indigenous carbon credits are not undervalued, while also supporting the opportunity for other offset markets.*

## Owning the outcomes

In discussions with non-Indigenous and mainstream carbon companies, it is increasingly apparent that Indigenous organisations are motivated by an entirely different set of values, more altruistic and holistic than their non-Indigenous for-profit counterparts. This difference sets them apart in the marketplace.

Many ICIN member organisations assert that they, and only they, have the right to communicate what outcomes their project is seeking to generate, and how this could be measured or evaluated. Therefore, it is vital that Indigenous companies can articulate these drivers and the outcomes of these projects in a clear way that is determined by them.

To help clarify expectations in relation to the use of Indigenous media and narratives in carbon sales, ICIN Members formulated the following statement:

*Stories shared by Indigenous organisations to explain their activities, values, experience, and knowledge have a discrete and significant value.*

*Indigenous organisations have a right to self-determine what part of their story they are prepared to share publicly to support a corporate partnership.*

*The stories of Indigenous organisations that own or produce carbon credits are often shared as part of carbon sales. These narratives have the potential to provide investors with significant value that is distinct and additional to the value of the carbon credit, and any other beneficial outcomes.*

*Partners seeking to use Indigenous stories, need to engage appropriately with Indigenous groups for agreed access to these resources, recognising and respecting the value of indigenous culture, obligations, and history.*

## Key drivers and investment priorities

At the recent North Australia Savanna Fire Forum (2022) discussion highlighted the key drivers of Indigenous savanna fire management projects, demonstrating that revenue from carbon projects is viewed as just one positive outcome of these projects, rather than being the sole or main driver (Figure 1).

*Indigenous people are very well placed to place a premium on the kinds of credits because it's not just about carbon per se, this is about ancient knowledge, this is about 65,000 years of connectivity, this is about biodiversity and importantly this is about the transferability of that knowledge to future generations. – Joe Morrison, CEO, Indigenous Land and Sea Corporation*

Similarly, the ICIN Member Survey (August 2019) demonstrated that the investment priorities of Indigenous carbon projects are centred around community benefit (Figure 2).

Figure 1: Key drivers of Indigenous savanna fire management projects



Figure 2: Key areas for investment of carbon project revenue (top to bottom)



### 1. Support Indigenous-owned carbon projects

It is ICIN's experience that non-carbon benefits are maximised when Indigenous groups themselves are the project proponents who have direct control and ownership of decision-making in relation to the management of their own traditional lands. Carbon projects owned by Indigenous landholders should therefore be a key objective of the Scheme.

Through its recent Constitution and membership structure, ICIN provides a point of assurance for buyers seeking genuinely Indigenous-owned carbon credits. It is currently designing a Marketing and Branding Strategy with its members that will position the ICIN brand as the form of assurance for Indigenous carbon.

### 2. Support Indigenous engagement by ICIN member organisations in discussions relating to co-benefits of carbon projects and relationships to other environmental markets.

**3. The development of any related “Indigenous co-benefits” frameworks should be Indigenous-led, via the Indigenous Carbon Industry Network (ICIN) and recognise the unique diversity and self-determination of Indigenous-owned projects.**

### Climate Active Requirements

Well-designed international offsetting schemes like Verified Carbon Standard and Gold Standard play an important role in setting internationally recognised standards for offsetting. This does not mean that companies should be able to make claims about achieving carbon neutrality or ‘net-zero’ by purchasing credits from projects located offshore. This is a colonial approach which will make it harder for developing countries to achieve their own greenhouse gas reduction goals and will artificially deflate the price of emitting greenhouse gases in Australia.

**ICIN does not support allowing Climate Active participants to meet their commitments using offsets generated by projects operating overseas.** Climate Active participants should source credits from Australian projects (whether through the ERF or a comparable scheme).

### Future of the ERF

**Build the Impacts of Climate Change into Carbon Methods and Support ‘Multiple Benefit’ Activities that both Mitigate Climate Change and Remediate Climate Impacts.**

The current CFI Act and ERF does not properly consider the impacts of climate change upon activities creating ACCUs. Currently, the risk and cost of climate impacts is borne entirely by the proponent.

For example, within the 31 Indigenous-owned savanna fire management projects operating across north Australia, land managers currently use the annual wet season cycle of grass growth and gradual curing to implement low intensity burns in the early dry season whilst the vegetation is still moist, nighttime temperatures remain low and there is a strong dew point which acts to extinguish planned low intensity fires overnight. These low intensity fires are used to reduce fuel loads and create a mosaic of burnt and unburnt country which operate as fire breaks that reduce the spread of high intensity fires that occur in the extreme fire weather conditions of the hottest late dry season.

It is highly likely that this planned and controlled early dry season fire management will become increasingly difficult under the influence of climate change. Indeed, the 2018, 2019 and 2020 fire seasons in northern Australia were the first to provide an indication of the scale of such climatic impacts. Traditional Owners in Arnhem Land and beyond are very concerned about the impacts of climate change on their ability to sustain remote livelihoods and the ability of future generations to live on and manage their traditional lands. This will only further entrench the catastrophic climate change projections for Australia’s monsoonal north including a significant worsening of seasonal fire weather conditions. As a result, projects such as the five projects registered to Arnhem Land Fire Abatement (NT) Ltd will cease to generate ACCUs, will be unable to fund essential fire management work that protects life and assets and would see the decline of a successful Aboriginal owned and operated industry that is able to provide significant employment and income outcomes for remote Aboriginal communities.

An assessment of climate resilience and exposure of the ERF, the methods, and the modelling of our federal net-zero targets, is recommended as well as examine adaptation impacts related to ERF projects, including changing baselines due to climate impacts.

Safeguard Mechanism requirements, as a large driver of offsets, need to reflect the urgency of the climate crisis, and “generous” crediting approaches need to be avoided in keeping with the overall

objective of achieving true net-zero and ultimately a climate-positive future, as well as demand-side integrity along the way.

### **Avoid Perverse Outcomes for Land and Sea Management and Support Maintenance of Country by Indigenous people**

It is worth noting that, although the CER has little expertise or jurisdiction in terms of land management, its decisions impact directly on land and sea management outcomes.

#### **ICIN Recommend that:**

- 1. The CER establish an Indigenous Reference Group made up of representatives from Indigenous organisations that own carbon projects to inform decision making processes.**
- 2. The CER supports existing Healthy Country, Indigenous Protected Area and NRM Plans.**

This includes not introducing or encouraging new weeds, encouraging native vegetation rather than plantation or non-native plantings, considering impacts on surface and ground water.

**3. ERAC should be required to consider expert advice in relation to potential adverse environmental outcomes from method development. All methodologies should be required to incorporate environmental safeguards (including prohibited and restricted activities), as informed by scientific experts.**

**4. Any perverse incentives need to be avoided and ERAC should take explicit account of the potential for any such outcomes (e.g. clearing that may be legal in the lead-up to a regeneration project).**

**5. The prevention of degradation should become a greater consideration under the Scheme, providing an avenue for rewarding good practice in land management and resulting carbon sequestration, rather than emphasising restoration.**

The set of incentives for each should continue to be examined in order to align the economics for maintaining carbon stocks with those of (legally) degrading and then restoring them.

**6. Whilst newness and additionality requirements are central to project integrity, the CFI Act should be amended to allow for longer and subsequent crediting periods in cases where an activity does not become business-as-usual but needs to be maintained on an ongoing basis**

A good example are savanna fire management projects, where the annual operational cost is prohibitive without carbon income, and the activity might cease post-permanence period endangering the long-term sustainability of climate and other environmental benefits generated.

### **Acknowledgements**

ICIN and its members thanks the ACCU Experts Panel for taking the time to read this submission, and for the opportunity to provide this feedback.

We wish to thank the 22 ICIN member organisations, in particular the Kimberley Land Council and Arnhem Land Fire Abatement NT for providing substantial input into this submission. We pay our respects to the Traditional Owners across Australia and acknowledge that sovereignty of their land and seas was never ceded.

**END**