

Climate Change Authority  
Secretariat  
2020 Review of the ERF  
Australian Government

Monday, 15 June 2020

**RE: 2020 Review of the Emissions Reduction Fund**

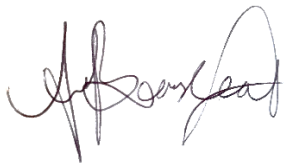
To the Secretariat,

In preparation for the meeting with ICIN representatives on Wednesday, June 17, please find responses to your questions in writing below.

Representatives from the Northern Land Council, Kimberley Land Council and Arnhem Land Fire Abatement NT will attend the meeting. These organisations have a key role in supporting savanna carbon farming projects in Western Australia and the Northern Territory.

We look forward to discussing these and other key points with you at the meeting.

Kind regards,

A handwritten signature in black ink, appearing to read 'Anna Boustead', written in a cursive style.

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## 2020 Review of the Emissions Reduction Fund

### 1. Overall performance of the ERF

#### o How is the ERF performing overall?

- The ERF has provided a good level of security which has supported new Indigenous savanna carbon farming businesses to establish over the past eight years.
- There are now 29 Indigenous-owned savanna burning projects across the north which are registered on the ERF. These projects have abated over 17.9 million hectares across north Australia. The Indigenous carbon industry has abated over 5.23 million tons of greenhouse gas emissions since 2013 from employing Indigenous ranger groups to undertake early dry season burning to prevent hot savanna wildfires.
- These projects enable Indigenous organisations to generate revenue from the sale of Australian Carbon Credit Units (ACCUs) to the total value of around \$80 million since 2013. This revenue is invested into local communities as directed by Traditional Owners, including into programs supporting land management, protection of sacred sites, community education, intergenerational exchange of traditional knowledge, cultural exchanges, training and research.
- However, the reverse auction system has suppressed the price of ACCUs to prices which are so low that in some cases they are not sustainable to support a viable business without philanthropic or government support. The costs of undertaking fire management across such vast landscapes in very remote areas are high. The strengthening voluntary market has partly compensated for this over the past few years. Corporate buyers have demonstrated a willingness to pay a significant premium for Indigenous-owned carbon credits. The ERF must ensure that its prices are fair if it is to remain an attractive buyer of carbon credits.
- The recent decision to provide for options contracts is welcome and we hope to continue to see mechanisms which provide for sales beyond biannual reverse auctions. ICIN is grateful that the Clean Energy Regulator listened to its recent request to free up the auction process to support more sales over the next 6 months by adding an additional auction in September.
- Also, the decision to support clearer tagging and tracking of ACCUs by the Clean Energy Regulator which show the time, place and method of generation is welcome and will support recognition of savanna carbon farming ACCUs as a high value product, along with better transparency of trading on the carbon market.
- ICIN has facilitated improved communication between the Clean Energy Regulator and Indigenous carbon businesses recently, by hosting the annual North Australia Savanna Fire Forum and other meetings. Good engagement by the Clean Energy Regulator in industry forums has facilitated important conversations which have informed government policy, such as the question of whether the CER should tag ACCUs generated by an Indigenous-owned proponent.

#### 2. What parts of the ERF could be improved and how?

- The reverse auction system should be opened up to support purchase of ACCUs through other mechanisms at a fair price.
- Despite the success of the Land Sector in the ERF, there are still many examples of how accounting for carbon could promote good land management practices, but the science

in this area is still in development (blue carbon, living biomass methods, soil carbon). Resourcing of Research and Development to support innovation and scientific research which accounts for the carbon abatement and sequestrated generated by good land management practices is vital to the growth of the Indigenous carbon industry. The ERF should be accompanied by a fund which support method development in the land management sector by independent scientists if carbon accounting in Australia is to continue to improve.

- The idea to provide for “methods-stacking” could support better valuing of Indigenous land and sea management, by providing for multiple carbon projects to occur in the same area (taking into account additionality).
- The ERF could be used more effectively if it was backed up by lower Safeguard Mechanism thresholds under the National Greenhouse Gas Inventory which were in force to provide more incentive for corporates to offset their carbon footprint through the purchase of ACCUs.
- However, ICIN urges the Climate Change Authority to consider the impact of allowing the generation of carbon credits from savings to pollution baselines upon the integrity of ACCUs.
- ICIN endorses the recommendations by Kimberley Land Council (historically also supported by the Northern Land Council), which seek proper recognition of the native title rights of Traditional Owners, including (please refer to KLC submission for details):
  1. *Maintain the **right of native title holders to consent to area-based carbon projects** on native title land and ensure the removal of any proposed amendments to section 28A of the Carbon Credits (Carbon Farming Initiative) Act 2011 as they relate to native title consent.*
  2. ***Remove the ability to ‘conditionally’ register** projects on native title lands (prior to obtaining Indigenous consent), thereby preventing delivery of carbon and co-benefits being delayed and land being ‘locked up’ by conditional project declarations that do not generate carbon credits; and implement legislative and policy change to ensure carbon projects can no longer be declared prior to obtaining consent from 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.*
  3. *Recognise the **registration of savanna sequestration projects as a Future Act** under the Native Title Act 1993, and require proponents to implement ILUAs prior to project registration.*
  4. *Extend **protection of native title rights and interests to native title claimants**, and recognise their consent rights.*
  5. *Clarify that **State and Territory Government Crown lands ministers and Commonwealth ministers responsible for land rights legislation do not have a legal right to undertake a project, nor an eligible interest / consent right** in relation to projects (proposed to be) registered over exclusive possession native title land that is Torrens system land (including exclusive possession native title (EPNT) pastoral leases).*
  6. *Address outstanding **uncertainties in relation to legal right** to undertake carbon projects, where there are overlaps between native title and other land interests.*
  7. *Provide a mechanism for the **participation of non-exclusive possession native title holders** in the ERF.*

**3. Maintaining integrity and optimising governance of the ERF**

**a) Do you have any views on the operation of the offsets integrity standards and the additionality provisions as key principles supporting the integrity of abatement under the ERF?**

- Both integrity and additionality must remain as key principles to support genuine abatement of greenhouse gas emissions. The methods which support our industry to generate carbon credits through early dry season burning have been developed from the results of over 20 years of independent peer-reviewed scientific research.
- It is critical that other methods can also be scrutinised, to support the overall integrity of the carbon market.
- Methods with high integrity, assured additionality and other co-benefits to the environment and communities should be prioritised by the ERF.
- Integrity includes ensuring that Indigenous people’s rights are fully recognised by carbon project proponents, particularly the right to Free, Prior and Informed Consent.

**b) Do you think the governance structures of the ERF remain fit for purpose?**

- The Department has played a greater role in developing the methods to support our industry in recent years, for example the 2018 Savanna Burning Avoidance and Sequestration Methodologies. Our industry would like to see methodology development sit outside the Department with an independent scientific body to ensure can be properly tested by industry before being implemented.
- It is vital that these structures are not vulnerable to political interference. Last year Minister Angus Taylor appointed an Expert Panel to lead a Carbon Abatement review, the results of which have only just been made available to the public. ICIN was not invited to input into this review and is concerned that the “King Review report” was not properly informed by the carbon industry nor Indigenous groups which can potentially contribute further to Australia’s carbon abatement through land management activities if the right R&D and project support was in place.
- From ICIN’s point of view, the Clean Energy Regulator is doing a great job of ensuring the integrity of ACCUs whilst remaining adaptive to ensure that rules are both practical and applicable. They have recently taken more proactive steps towards protecting the rights and interests of native title holders (through its Native Title Guidance), which is welcome, however as outlined above, there are many improvements which can be made to ensure that the carbon industry is best practice.
- A problem for Indigenous carbon businesses is that each of these institutions can be difficult to access and information sources difficult to navigate. There is a high degree of specialist knowledge needed to be able to access information about the rights and responsibilities of carbon project proponents and governance structures. This means that Indigenous groups are often reliant on third parties to access and present this information. We are grateful that both the CER and the Department have actively sought to engage Indigenous businesses through ICIN over the past few months in particular, and travelled to remote areas in support of this. This needs to be actively supported to continue if Indigenous carbon businesses are to be able to access these institutions in the same way that businesses in major capital cities can.

**4. What are your views on method prioritisation, method development and method review processes in the ERF? Please include any thoughts on how these processes could be improved, including how the expertise could be better incorporated.**

Unfortunately our industry was not properly engaged in the development of the 2018 Savanna Carbon Farming methods. Since its inception two years ago, ICIN has supported improved engagement between Indigenous carbon businesses, the Climate Change Division at the Department of Energy and the Environment, the Clean Energy Regulator and scientists engaged in development of Savanna Burning methods. This has resulted in several forums and meetings which have pointed to several key issues which are barriers to the uptake of the 2018 Savanna Burning methods by our members. Unfortunately, despite all parties acting in good faith, there has been little progress on these issues over this time. We can only assume that this is because these issues have not been prioritised or received the attention they deserve.

As the Kimberley Land Council state in their submission: *“The importance of the 2018 emissions avoidance and sequestration method to the Indigenous carbon industry cannot be overstated, with the potential for the sector to more than triple in size, significantly increasing its contribution towards Australia’s emissions target and the liquidity of the domestic offsets market as one of the leading land sector ACCU producers, while driving business opportunities in Indigenous communities. Addressing outstanding issues will unlock abatement and so positively impact abatement by eliminating uncertainty and giving proponents confidence to adopt the new methods.”*

**ICIN urges Government to immediately address the issues highlighted in submissions by our members, such as the Kimberley Land Council and Arnhem Land Fire Abatement NT Ltd, including.**

1. **Progress CFI Act amendments relating directly to the Savanna Burning Sequestration method** as a priority, noting that these essential amendments need to be decoupled from previously proposed amendments to the CFI Act which would entail a reduction in native title holder rights in relation to consent (Section 28A in particular).
  - a) Ensure a sequestration project’s net total liability (if incurred) does not include credits issued for emissions avoidance or credits that have already been relinquished;
  - b) Allow parts of a sequestration project to be removed from a project and only require sequestration credits for the carbon stored in that area to be surrendered;
  - c) Provide for projects to easily transfer between the two 2018 methods.
  
2. Clarify and explain changes, and ensure consistency, of **fuel accumulation rates (L-values)** for both coarse and heavy, and fine fuels, across referenced scientific papers, inventory, and technical guidance documents applicable to the methodologies.
  - a) The 2018 Methods introduce changes to fuel accumulation rates. The Department has indicated that this is due to updates in the science, however, there are a number of inconsistencies across published data in the referenced papers which remain unexplained.
  - b) Providing a clear timeline on inclusion in inventory and method of new L-values and any other updates will further provide industry with confidence in the 2018 Methods, which will facilitate adoption.
  
3. Extend the **5-year transition window** during which existing projects can transfer to the sequestration method and get a new 25-year crediting period.

- a) *The ‘transition window’ refers to a 5-year period (until April 2023) where existing projects who transfer to the sequestration method will be given a new 25-year crediting period for their project. The implications for projects not transitioning during this window is that crediting periods will continue, with the potential for significant misalignment between the crediting period and permanence period.*
  - b) *A longer transition window will ensure that currently successful projects can participate fully, where – especially in an indigenous context – consultation processes can be prolonged and a decision to transition should be based on free, prior and informed consent which may be difficult to achieve under time pressure.*
4. **Re-instate a *time-bound mechanism for a transition period between baseline ending and project start date***, in order to allow for project planning, capacity building, consultation and free, prior and informed consent (FPIC), without impacting the baseline and/or newness requirement.
- a) *Transition periods between the end of the baseline and commencement of the project were possible under earlier EA methods (until 2014), recognising that proponents should not be negatively impacted (through reducing baseline emission amounts) by undertaking capacity building activities prior to project registration and particularly through the often-lengthy period of project consultation and planning.*
  - b) *A transition period between baseline and project commencement could eliminate the need for conditional declarations which preclude FPIC (refer above Recommendation 2).*
5. Amend the inclusion of **prescribed weeds** in the method to reflect the science of invasive flora control (and the often-extended timeframes required) and conditions on the ground – either through removal of weed requirements until consultation take place, extension of timeframes for weed eradication in line with seasonality of the savanna, or a temporary suspension mechanism.
- a) *Under the 2018 Methods, a project area must not include an area of land that contains a relevant weed species (currently only Gamba Grass). If a relevant weed species is detected, it must be permanently removed before the end of the reporting period, or the area must be permanently removed from the project (via subdivision and returning all credits earned to date for that weed area).*
  - b) *Even under the current regime, a mechanism could be considered for areas where prescribed weeds have resulted in exclusion / excision to be re-included (possibly subject to renewed vegetation mapping), in order to avoid disincentivising reporting and to incentivise active weed control, as well as drive abatement from affected areas once they are again weed-free (if still eligible).*
6. Remove uncertainty created by **potential changes to the Technical Guidance Document (TGD)** through limiting the TGD to scientific variables, grandfathering in any changes, and clarifying thresholds for method amendments and ERAC review, in order to provide certainty to proponents to commit to sequestration and associated permanence while ensuring scheme integrity.

7. **Amend the CFI Act to allow longer maximum and subsequent crediting periods**
- a) *Currently, the CFI Act only allows one Crediting Period, which for each of the 2018 Savanna Burning Methods (and previous methods) is 25 years. There is a discretion for this Crediting Period to be extended once, with the extended duration uncertain until this occurs.*
  - b) *An important feature of savanna burning projects is that, without support, the scale of landscape-scale burning undertaken does not become business as usual. This is due to a combination of factors, the most significant being the annual operational cost, which is prohibitive without the income derived through the sale of carbon credits. As a result, these projects will always be 'additional', and as such, the application of a 25-year Crediting Period is both arbitrary, and inconsistent with the intent of long-term emissions reductions. Extended crediting periods for the emissions avoidance (EA) method and the EA component of the sequestration method would ensure the long-term sustainability of climate and other environmental benefits generated by savanna fire management.*
8. **Include 'pindan' (acacia shrubland) in the method through addition to the TGD as an eligible vegetation type.**
- a) *There are currently no registered savanna burning projects within the Dampier bioregion of the Southwest Kimberley. A primary reason for this is that the region's predominant vegetation type, Pindan (Acacia shrubland), is not considered eligible under the 2018 Methods.*

*The science is now available to include pindan in the methods, which would not only eliminate inequities arising from its exclusion, but also unlock significant economic potential and additional abatement that is being constrained by a technical oversight. The addition of pindan to the list of eligible vegetation types would potentially result in an additional six indigenous savanna burning projects and a number of non-indigenous projects becoming viable.*

## 5. Risks to abatement

### a) What are your views on the suitability of the permanence period discount?

It seems to be a reasonable discount for sequestration projects. However it is unclear what the expectations and risks are for proponents agreeing to a 20 year project once the 20 year period is complete. Consideration needs to be given to allow proponents to negotiate another contract at this point. Similarly it is unclear how a 20 or 100 year permanency period can be regulated given that this is an arbitrary time period. It is also unclear whether Land Councils in the NT can authorise legal right for a period exceeding 99 years.

### b) What are your views on the suitability of the risk of reversal buffer?

We have not received any comment from our members on this.

### c) What are your views on the risks posed to land-based abatement and the adequacy of ERF and project-level risk mitigation measures?

- Climate change impacts present a risk to future abatement from savanna fire management as it causes a trend in more extreme fire weather conditions which in turn causes hotter more widespread fires, even with fire management programs in place.
- There is currently no recognition of the impacts of climate change upon savanna burning project methodologies or in the investment model of the ERF.

- Additionally, provision of advice to carbon project risk mitigation would assist to manage this risk.
- Ensuring carbon project proponents fully understand and recognise the Native Title rights of Traditional Owners is critical, as a lack of regard for Native Title rights by a carbon project proponent could result in projects being revoked by the Clean Energy Regulator. The Kimberley Land Council note there is already evidence of this occurring in the past:  
*With Indigenous people having rights and interests in over 80% of Northern Australia, carbon projects offer significant opportunities for native title holders; however, projects implemented without Aboriginal traditional owner consultation or consent have resulted in community backlash, disempowerment, undermining of traditional practices and erosion of native title rights – at odds with broader Government policy on Indigenous rights and native title.*
- Ensuring that Free Prior and Informed Consent of Traditional Owners is sought prior to project registration is critical to managing these risks.  
*Since the ability to obtain consent after project declaration was introduced as part of the 2014 amendments to the CFI Act, experience has demonstrated that these changes have resulted in increased risk and uncertainty, with over 30% of ERF projects being registered without first obtaining consent, and many later being revoked due to a failure to obtain this consent. The practice of only seeking approval (consent) after committing to an activity (through project registration) is neither common nor best business practice, and risks significantly undermining the integrity of the scheme – as is demonstrated by recent court actions. Within an Indigenous context, it undermines relationships, disempowers Traditional Owners by precluding free, prior and informed consent (FPIC), and creates a significant power imbalance.*

**d) What are your views on the risks to contracted abatement resulting from ERF projects being concentrated geographically and by method type?**

- The application of methods to north Australia is appropriate as this reflects the geographical distribution of savanna woodland. This does not present any risk.
- Some methods which have been developed in southern Australia (eg other vegetation methods) could be applied to north Australia if the science was available to support these methods. Investing in science to support the development of carbon abatement methods is critical to the proper accounting of carbon in the landscape from land management activities.
- We note that the economic imperative to support the Indigenous carbon industry is particularly important across remote Indigenous communities, where unemployment is very high and jobs on country are scarce. This is an example of a win-win for government, supporting new and sustainable local jobs which are in line with cultural obligations to care for country and family.

**6. Enhancing outcomes**

**a) What role could the ERF play in future covid economic recovery efforts?**

- a) Allowing a “transition year” for 2020 which would put a pause on the baseline for new carbon projects which are yet to complete consultation meetings to establish Legal Right/ Eligible Interest Holder consent so that they wouldn’t be disadvantaged by a lower baseline given stalling of meetings due to COVID-19 restrictions. As stated above, including a 5 year



“transition window” would also be generally sensible at any time to provide for time and flexibility to support these consultations to take place without the pressure of risking eroding the emissions baseline.

- b) Making the ERF more accessible to sellers of carbon credits and supporting a fair, competitive price would support economic recovery of Indigenous carbon businesses.
- c) Making the ERF available to support method development, with priority given to those methods which also promote environmental, social and cultural ‘co-benefits’.

Nearly three quarters (73%) of savanna burning carbon abatement, or over 5.23 million tons of emissions (CO<sub>2</sub>-equivalent), has been generated by Indigenous carbon projects (ERF website, 2020) since 2012, equivalent to around 7% of Australia’s total annual credited carbon abatement. Over this time, the indigenous carbon industry has generated an estimated \$63 million<sup>1</sup> to \$92 million<sup>2</sup> in carbon credit revenue. Indigenous carbon businesses are able to attract a premium for their ACCUs in recognition of the multiple co-benefits delivered by Indigenous carbon projects to the environment and Indigenous communities. Revenue from the projects is directly reinvested into improved fire management, Aboriginal employment and governance and capacity building support for PBCs and Aboriginal Corporations.

ICIN recently wrote to the Emissions Reduction Minister Angus Taylor, stating that:

*The Coronavirus Pandemic has had a significant impact on the Australian economy, with leading financial institutions such as the Reserve Bank and airlines such as Qantas forecasting that its impact will be much worse than the Global Financial Crisis. Our industry will also be affected by this dramatic and unforeseen change in circumstances. It is likely to result in a much smaller voluntary market, which will impact on the way in which our members sell their carbon credits.*

*A recent survey of ICIN members showed that none of those Indigenous carbon businesses surveyed were selling solely to the Emissions Reduction Fund. Around half of those businesses surveyed were selling solely to the voluntary market, with the other half selling to a combination of the Emissions Reduction Fund and the voluntary market.*

*The ICIN seeks support from the ERF to allow Indigenous carbon businesses to respond to a rapid shift in Australia’s economy in the short-medium term by enabling Indigenous carbon businesses to maximise opportunities to sell their carbon credits to the \$2.5 billion Emissions Reduction Fund (ERF) and any other markets.*

*This could be achieved by:*

- *Ongoing availability of the ERF Options Contracts*
- *Allowing sales of carbon credits outside the Auction process.*
- *Enabling projects with a current ERF contract to make additional spot deliveries to the ERF.*
- *Enabling current ERF contract holders to transition to an options contract in order to maximise all available economic activity and employment opportunities.*

*We ask that the Australian Government support Indigenous carbon businesses to sell to the Emissions Reduction Fund by scrapping the requirement for “lowest cost abatement” and instead allow the purchase of carbon credits at a fair market price.*

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<sup>1</sup> based on the average ERF price since 2012, \$12.06, [www.cleanenergyregulator.gov.au/ERF/Auctions-results/march-2020](http://www.cleanenergyregulator.gov.au/ERF/Auctions-results/march-2020)

<sup>2</sup> based on a voluntary market spot price of \$17.50 in Jan 2020, [www.accus.com.au/](http://www.accus.com.au/)

*This would:*

- *Support Indigenous carbon businesses to weather economic impacts from the Coronavirus Pandemic, including a reduced voluntary market due to cuts to key industries.*
- *Increase the volume of ACCUs sold through the Emissions Reduction Fund*
- *Recognise the real value of ACCUs, and support a sustainable carbon industry.*
- *Deliver better financial security to all carbon businesses.*

We were pleased that the Clean Energy Regulator brought forward the next ERF auction to September in response to pressures brought by the COVID-19 crisis. It would be good to see this flexibility expanded upon in future to support more sales of ACCUs throughout the year.

**b) Should the ERF more explicitly address climate resilience and impacts? If so, how?**

- Yes. The ERF should pay more for projects which also both mitigate climate change and increase the resilience of communities and landscapes to climate change impacts, such as Indigenous land and sea management. These projects represent a ‘win-win’ for government and communities.
- The development of methods which address both mitigation and resilience by achieving better land management outcomes should be prioritised by the ERF.
- Those methods which also benefit remote Indigenous communities should be prioritised by the ERF as part of the “Closing the Gap” strategy to address Indigenous socio-economic disadvantage.
- Unfortunately, the Bureau of Meteorology projects ‘worsening fire weather’ as an impact of climate change. These climate change projections should be referred to within the methods for accounting for both abatement and sequestration as a result of savanna fire management.

**c) Is there a need for enhanced guidance on how to manage ERF projects for multiple benefits? If so, should this be part of the ERF or complementary programs and policies?**

- Yes. ERF could support the recognition of projects which generate biodiversity or social co-benefits. The Indigenous carbon industry would like to work with ERF to develop its own guidance for identifying Indigenous projects rather than the Clean Energy Regulator taking on this role, which could cause perverse outcomes.