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**Kimberley Land Council: Submission to Environment and Communications Legislation  
Committee on the Carbon Farming Initiative Amendment Bill 2014**

1. The Kimberley Land Council ('KLC') has a long history of working with the Australian Government on Indigenous cultural and natural resource management initiatives, and has actively engaged with Government in the development of the Carbon Farming Initiative ('CFI') and more recently the Direct Action Plan and Emission Reduction Fund ('ERF').
2. Carbon projects provide an opportunity for Indigenous people to engage in business opportunities that improve livelihoods and allow people to maintain and strengthen connection with country. In addition to carbon abatement, projects on Indigenous land deliver environmental benefits such as biodiversity, weed reduction and landscape linkages, and social benefits such as looking after cultural sites, strengthening connections with country and providing training and employment opportunities. Support for Indigenous participation in carbon abatement projects must be a key element of any commitment to improve economic development opportunities for Indigenous people, and the KLC strongly emphasises the need to ensure that Government policy is reflected consistently within legislation.
3. The opportunity for Indigenous communities to develop sustainable carbon businesses and realize this host of co-benefits is at risk from the proposed changes in the Carbon Farming Initiative Amendment Bill 2014 ('ERF Bill') which will create a significant barrier to Indigenous participation in carbon projects.
4. In order to enable ongoing Indigenous participation in carbon projects, the KLC recommends:
  - a. Remove proposed changes to additionality or provide further clarity – within the ERF Bill – on the application of the 'newness requirement' and 'government program requirement' to Indigenous carbon projects;
  - b. Remove the limit on number of crediting period;
  - c. Maintain existing arrangements for eligible interest holders to consent as part of the application for an eligible offset project;
  - d. Allow the public to put forward new or amended methodologies, and prioritise methodology developments that will assist Indigenous project proponents;
  - e. Introduce transparent pricing and purchasing arrangements for credits in the ERF Bill; and
  - f. Provide a mechanism within the ERF Bill for recognising the limitation of land sector and Indigenous projects to meet contractual 'make-good'.

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## **Additionality**

5. The ERF Bill introduces a number of changes to how additionality is identified. These include a ‘newness requirement’ and ‘government program requirement’ that will create significant barriers to the continuation of existing Indigenous CFI projects under the ERF, and as currently drafted will prevent the registration of possible future Indigenous projects.
6. The requirement that the project has not begun to be implemented (newness requirement) impedes the ability of existing projects to invest in long-term business decisions, and removes the ability of land sector carbon abatement projects to complement and build upon existing initiatives.
7. The newness requirement creates a perverse incentive for landowners not to engage in activities that may later become carbon projects, and in particular not to invest in long-term business decisions that would take them in this direction. Further, it is not clear how this newness test will apply in the context of existing CFI projects transitioning to the ERF. Where these projects have tried to realise efficiencies by making long-term business decisions – such as for example the purchase of assets – these projects could be precluded from participation in the ERF under these new additionality tests.
8. The requirement that the project would be unlikely to be carried out under another Commonwealth, State or Territory government program or scheme (government program requirement) creates a further barrier to the participation of Indigenous groups. It is important to differentiate between industry projects and community driven projects, recognising that in order to be viable, community driven projects – particularly Indigenous-run projects - will generally require support from other Government programs in order to establish. While the new additionality requirements appear to be aimed at other kinds of energy efficiency projects, the current wording of the ERF Bill encompasses – and could therefore exclude - Indigenous carbon projects undertaken through an amalgam of contributions.
9. The Kimberley Ranger Network is a regional cultural and natural resource management network made up of fourteen Ranger groups across the Kimberley. These Ranger groups receive funding through land management and employment programs to engage in a broad range of activities, including for example, biodiversity monitoring, cultural site management, fire management and landscape restoration, which have an array of cultural, environmental and economic benefits for Traditional Owners. Land sector carbon abatement projects offer an opportunity to complement and strengthen existing Ranger activities with projects to reduce emissions or store carbon on the land. Under the additionality requirements in the ERF Bill, these groups could be prevented from participation in carbon projects. This overlooks the fact that the funding they receive focuses on a much larger range of land management activities that do not include carbon abatement activities, and that, without funding from the ERF or CFI, they would not have the resources nor capacity to undertake carbon projects.
10. We note that the ERF Bill allows for the methodology determination to provide alternative approaches to additionality. However, under proposed changes to the process for methodology

development, proponents will have very limited control over the content of methodologies. It is undesirable that the ability of Indigenous people to participate would be reliant on the priorities and discretion of the Minister in amending methodology determinations.

11. It is recommended that the ‘common practice test’ approach to additionality – currently in place under the CFI – be reinstated. Alternatively, further clarification is required – within the ERF Bill – on how the ‘newness requirement’ will apply to Projects transitioning in from the CFI, and to land sector Projects wishing to scale-up existing activities. Clarification is also specifically required on the application of the ‘Government programs requirement’ to Indigenous projects, and this clarification should be provided within the legislation.

### **Crediting Periods**

12. The ERF Bill introduces a number of changes to crediting periods that undermine long-term sustainable business opportunities for indigenous communities through limiting projects to one crediting period. This not only removes the ability of projects to continue to participate in the Government scheme, but also removes the opportunity for projects to continue to generate credits for the purpose of the voluntary market, and in doing so also removes an important contribution to Australia’s emission reduction task.
13. For existing CFI projects, new transitional arrangements provide that the current crediting period will end on commencement of the ERF legislation and a second crediting period will begin the following day. It is noted that for ‘designated savanna projects’ this transition period is extended till 01 January. For new projects, crediting periods are limited to only one crediting period. This is a significant change from the existing CFI framework which allows projects to apply for subsequent crediting periods.
14. This change undermines business certainty and removes the opportunity for Indigenous communities to develop long-term sustainable businesses based upon carbon projects. The change puts at a significant disadvantage existing CFI projects that have made business decisions based on the assumption that future crediting periods would be available.
15. Land sector carbon abatement opportunities including, for example, savanna burning projects, deliver significant levels of abatement within the north of Australia and given the remoteness of the areas involved, are unlikely to become ‘common practice’ over the life of the project. Ongoing and long-term incentives, such as those offered by the carbon economy, will be crucial to ensuring these projects continue to deliver emissions reductions into the future. Given the high effort and expense to implement land sector projects, seven years is too short and it does not seem reasonable to restrict a project to one contract if it remains additional and is delivering abatement.
16. Further, crediting is necessary for projects to participate in the voluntary market – this becomes important when contracts expire. Limiting crediting to one period will prevent projects from selling credits outside the ERF thereby undermining a healthy voluntary market outside of government programs.

17. In order to enable long-term business certainty, facilitate ongoing emissions reductions and allow for sustainable business opportunities outside of the ERF, it is strongly recommended that the ability to apply for subsequent crediting periods be included in the ERF Bill.

### **Consent of Native Title Holders**

18. The ERF Bill introduces a number of changes to the requirements for declaration of an eligible project. One of these changes is to allow the Clean Energy Regulator to issue a conditional declaration without consents being obtained from eligible interest holders.
19. The KLC is concerned that this change will impact upon the rights of native title holders, including their right to consent to carbon sequestration projects. Through allowing projects to proceed to the stage of Declaration without obtaining the consent of native title holders, the ERF Bill undermines the ability of native title holders with an eligible interest in the project to provide *prior* consent.
20. The KLC recommends that the ERF Bill reinstate the current approach of requiring project proponents to obtain consent from eligible interest holders prior to the declaration of the eligible offsets project.

### **Methodologies**

21. Significant changes to the approach for methodology development within the ERF Bill will further limit the opportunities for new Indigenous carbon projects.
22. The top-down approach to methodology development introduced in the ERF Bill, whereby the Minister may make, vary or revoke a methodology, limits the opportunity for stakeholder input into the development and prioritisation of methodologies.
23. The KLC is concerned the current prioritisation of methodology development does not take into account participation of remote Indigenous communities. In particular, the KLC would encourage the Government to prioritise the finalisation of the savanna sequestration methodology, and to further investigate opportunities related to rangelands and feral animal management, all of which provide important opportunities for remote indigenous communities to participate in carbon projects.
24. The KLC recommends the ERF Bill directs the Minister, in prioritising methodology development, to take into account opportunities for Indigenous communities to contribute to the emission reduction task. Further, to facilitate continued innovation, the ERF Bill should allow the public to develop and propose methodologies, including variations and amendments to existing methodologies.

### **Purchasing**

25. The ERF Bill grants substantial discretion to the Regulator in relation to the purchasing of abatement. While the KLC supports some level of discretion, the lack of guidance within the

ERF Bill and associated Explanatory Memorandum in relation to how abatement will be purchased is of great concern, and undermines market certainty and the ability of project proponents to plan their participation in the ERF.

26. A major factor that will impact upon the ability of Indigenous communities to participate in the ERF is the price that they will receive for abatement. The Government has previously indicated that the benchmark price for the first auction would be published prior to the first auction. This commitment is not reflected within the ERF Bill. Without transparent and up-front information on the likely price for abatement, Indigenous communities will not be in a position to undertake the advanced planning – including feasibility assessments – required to participate in the ERF.
27. Further, the KLC remains concerned with the ERF Bills failure to take into account the extensive co-benefits provided by indigenous carbon projects.
28. Land sector projects, which represent the only real opportunity for Indigenous landholders to participate in carbon abatement activities, are significantly disadvantaged by the ERF Bills focus on ‘least cost abatement’ and failure to take into account a broad range of externalities – including co-benefits – that are of direct relevance to purchase price. Land sector projects are typically more expensive to conduct than industry-based carbon abatement activities due to higher production costs. An ERF focused purely on lowest cost abatement fails to take into account the source of abatement and provides no mechanism for valuing the co-benefits associated with land sector projects.

### **Contracts**

29. The ERF Bill contains minimal guidance in relation to purchase contracts. The KLC would like to note concerns in relation the proposed use of a standard form contract.
30. The Emission Reduction Fund White Paper stated that contracts will contain ‘make good’ provisions whereby project proponents will be required to buy credits in the event of an under-delivery on the proposed amount of abatement. This proposal will create a significant barrier to Indigenous involvement and represents significant risks for land sector projects.
31. In order to allow Indigenous participation in the ERF, the unique circumstance of Indigenous organisations must be taken into account. Small Aboriginal Corporations who wish to participate in the scheme will not have the financial capacity to take on the risk of ‘make good’ provisions.
32. Further, the design of the standard form contract must take into account the nature of land sector emission reduction and sequestration projects that are impacted by a range of phenomena outside the control of the project proponent. For example, for savanna burning projects, a late season lightning strike may result in a wildfire that substantially reduces the abatement realized by the project. For these types of projects to participate under the proposed make-good provisions, they would be required to substantially underestimate their

levels of abatement, and take on the risk of being required to make-good on abatement where impacted by an event beyond the control of the project.

33. The KLC recommends that the ERF Bill introduce provisions that recognise the need for certain Indigenous and land sector projects to deviate from standard form contracts, including make-good provisions.

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