NICC Project Submission to the Senate Standing Committee on Environment and Communications Inquiry into the Carbon Credits (Carbon Farming Initiative) Bill 2011

Submission from the National Indigenous Climate Change project team

The National Indigenous Climate Change ("NICC") project is a group of Indigenous and non-Indigenous representatives from around Australia, including the corporate sector, academia other professions who are researching and raising awareness within Aboriginal and Torres Strait Islander communities and the corporate sector about the mutual opportunities and risks associated with emerging carbon markets. Through case studies and potential pilot projects, the NICC project aims to build a roadmap for use as one of many tools for doing business with Indigenous peoples in a different way - a way that is driven and owned by Indigenous people.

Summary

Indigenous peoples' participation in carbon market opportunities is significantly influenced by legal and policy frameworks designed to mitigate the impacts of climate change. Assisting Indigenous communities to realise innovative opportunities associated with carbon markets requires action in a number of ways, including:

- protection of existing legal and moral entitlements, rights and interests that give rise to 'carbon' value – raising awareness of the limitations that conservation reserves, covenants, agreements and listings can place on demonstrating 'additionality' and in turn the generation of carbon offsets;
- legislative recognition of Indigenous forms of land tenure (expressly including all forms of Indigenous land tenure in 'secondary' or 'enabling framework' legislation' (like emissions trading regulation and/or carbon sequestration legislation));
- genuine commitment to partnerships and a different way of doing business with Indigenous peoples in Australia, particularly when it comes to land (and water) use, management and development. For example, by requiring the consent of native title holders as eligible interest holders where non-exclusive native title rights and interests have been recognised in the project area and recognising exclusive native title rights and interests as a basis for participation (entitlement to carbon rights);
- a simplified domestic variation of the Kyoto Protocol clean development mechanism to help bridge the distinct socio-economic 'gap' between Indigenous and non-Indigenous Australians as part of any carbon trading/emissions regulation. Such a mechanism would promote sustainable investment and development in Indigenous communities and promote technology and capacity transfer and foster projects that deliver cultural, economic, environmental and social outcomes; and
- policy improvements designed to bridge mutual 'knowledge gaps' between Indigenous and non-Indigenous Australians in addressing climate change and accessing opportunities through carbon markets.

Issues associated with encouraging the long-term protection of forests, ecosystems and biodiversity regions in 'developing' countries have been long debated at the international level. Lessons learned through these debates have relevance to Australia's engagement with first nations and the Indigenous estate. Just as healthy ecosystems and areas of South America, Asia and the Asia-Pacific (along with others) provide significant global environmental benefits, Indigenous peoples in Australia have managed, cultivated and cared for areas of Australia that serve an important public benefit, particularly in the face of climate change. These historic, current and future activities should be recognised by a new market and its associated policies and regulation.

Many areas of the Indigenous estate are used by the Australian Government in reporting against requirements under the Kyoto Protocol. Currently, legal and public policy measures are used to reserve and preserve these areas, including parts of the Indigenous estate, rather than market mechanisms carrying other economic incentives. While conservation reserves, agreements and listings may well be a negotiated 'end product' of free and fair engagement with Indigenous Australians, these benefits should not be acquired by 'stealth'. A 'conservation outcome' can be arrived at via a more equitable and respectful pathway that enables Indigenous communities to determine the future of their traditional landscapes in a way that meets their cultural, social, environmental and economic aspirations.

Recommendations:

- Native title is included as an eligible interest under the Bill.
- Greater consistency and clarification in relation to the treatment of native title rights and interests.
- Provisions requiring the engagement of Indigenous experts for decisions and advice relating to projects on Indigenous owned or controlled lands. This includes consideration of methodologies for projects.
- Development of an Indigenous co-benefit standard for projects, which deliver cultural, environmental, social and economic benefits to Indigenous peoples.
- Linkages and incentives for investment in projects owned or partnered by Indigenous groups.
- Meaningful links for Indigenous carbon projects to fixed/flexible emissions trading scheme and therefore higher commercial value international markets.

Carbon Credits (Carbon Farming Initiative) Bill 2011

The Carbon Credits (Carbon Farming Initiative) Bill 2011 ("the Bill") lays positive foundations for Indigenous participation in emerging carbon markets, however, more is needed. In particular, consistent treatment of native title and improved recognition of broader 'land rights land' interests should be set out as well as express recognition of native title and land rights land as 'eligible interests' for the purposes of carbon sequestration projects on any Crown land.

The Bill establishes definitions of Crown Land, Freehold Land Rights Land, Native Title Land and Land Rights Land. Crown Land is defined to mean land that is the property of the Commonwealth, State or Territory or a statutory authority of the Commonwealth, State or Territory. For the purposes of the definition of Crown Land under the Bill, it is immaterial whether the land is subject to a lease, licence, covered by a reservation, proclamation etc, held on trust for the benefit of another person or subject to native title.

A different process will need to be followed depending on whether the type of interest in relation to land held by an Indigenous group falls into one of these definitions.

In relation to Freehold Land Rights Land, the Bill provides that consent is not needed from the Crown for a carbon sequestration project to become an eligible project. This is contrasted with the broader category of Land Rights Land, where consent(s) from Commonwealth, state and/or territory Ministers will be needed (under Crown lands legislation as well as potentially under the legislation which provides the Indigenous group with their land rights interests in land).

In relation to native title, the process to be followed in trying to qualify a project under the proposed legislation differs depending on whether the exclusive or non-exclusive native title rights and interests are held. For exclusive native title interests, the Bill clarifies that the holders of those interests are deemed to hold the requisite carbon sequestration right and excludes this situation from requiring consent of the relevant Crown land Minister for the project to be eligible. In contrast, non-exclusive

native title holders will need to demonstrate their entitlement to the relevant 'carbon sequestration right' and have this confirmed by certification in accordance with the Bill.

While these measures confirm pathways for Indigenous peoples to participate in potential carbon market opportunities, the Bill and other initiatives present an opportunity to grow these pathways and opportunities. Native title rights and interests, as a legal burden on the Crown's radical title, should be included as 'eligible interests' under the Bill. This confirms the status of native title holders as rights holders who must be consulted and provide consent to carbon sequestration projects on their country, along with Crown land Ministers.

The 'special' process for native title holders to effectively assign responsibility to a third party via an Indigenous Land Use Agreement is a useful mechanism, however, it requires groups to make a decision at the outset about whether they want to assign a project (or consent to a third party undertaking a project on their country). The flexibility enjoyed by other freehold or leasehold rights owners is not afforded to native title holders, including groups who hold exclusive native title rights and interests.

Further the requirement for a native title holding group to have their Registered Native Title Body Corporate (or Prescribed Body Corporate) be the project proponent (and therefore eligible offsets entity) means that a project cannot be assigned to a third party once established. Offsets generated on native title land must be held in a 'special account' on trust for native title holders. The prescribed process proposed in the Bill has the potential to create inadvertent commercial (including tax) issues for native title holders. The potential impacts of this 'special treatment' of native title interests under the Bill need to be carefully considered and discussed with Indigenous groups (beyond native title representative bodies). Further, where there will be potential restrictions on the commercial use (assignability) or attractiveness of 'native title land credits', groups should be compensated.

Australian Carbon Credit Units ("ACCUs") will be issued in relation to an Eligible Offsets Project.

Criteria for declaring an Eligible Offsets Project include all of the following:

- the project passes the 'additionality test' set out in the Bill; and
- the applicant is the project proponent (person responsible for carrying out the project and who has the legal right to carry out the project and, for carbon sequestration projects (as opposed to emissions avoidance projects) the person who holds the applicable carbon sequestration right); and
- the applicant is a recognised offsets entity; and
- if all or part of a carbon sequestration project involves Crown land, Ministerial certification is needed that the applicant holds the applicable carbon sequestration right; and
- if all or part of a carbon sequestration projects each person (other than the proponent) who holds an 'eligible interest' in the project area has consented in writing to the application for declaration of an eligible offsets project.

For Torrens system land rights land (where there is a lease to Indigenous peoples) the various Crown land Ministers hold an eligible interest. This is also the case for Crown land, except that the Bill expressly removes the consent requirement in relation to exclusive possession native title land.

The Bill proposes that an offsets project passes the additionality test if:

- it is of a kind specified in the regulations; and
- it is not required by or under a law of the Commonwealth, or a state or territory.

The Domestic Offsets Integrity Committee ("DOIC") advises the Minister on projects that should or should not be included in the regulations for the purposes of this test. In recommending the addition of a project the Minister will consider whether the project is not common practice in the relevant industry or relevant environment in which the project will be carried out. This 'common practice' consideration is similar to the 'business as usual' approach taken by other carbon standards, including aspects of the

Kyoto protocol. Essentially the 'business as usual' additionality approach means that a project will not be recognised under the standard unless it will generate carbon credits in addition to what would otherwise occur.

The additionality test under the Bill is extremely significant to Indigenous peoples, as discussed in more detail below. In assessing projects on Indigenous owned or controlled areas, the DOIC should engage with and seek the advice of Indigenous experts on project methodologies and, where relevant, consideration of the scope of common practice for the purposes of the 'additionality test'.

Finally, the linking of credits (ACCUs) generated under the Carbon Farming Initiative ("CFI") to a fixed/flexible emissions trading system must include opportunities for Indigenous peoples and projects on Indigenous owned or controlled land.

According to the November 2010 Carbon Farming Initiative Consultation Paper (the "CFI Consultation Paper") key principles that have guided the development of the CFI scheme, include:

- Ensuring environmental integrity – credits that represent genuine and additional emissions abatement will have a higher market value and help address climate change; and
- Enabling broad participation – clear and simple rules will keep administrative costs low and ensure that farmers and Aboriginal and Torres Strait Islander and other land owners and managers can benefit from the scheme.

These principles are supported, however care must be taken to ensure these simple and clear rules do not inadvertently disadvantage, or prevent participation from, Aboriginal and Torres Strait Islander peoples. For example, and as discussed in more detail below, Indigenous participation will be disproportionately restricted, relative to owners and managers of non-Indigenous private land holdings, by the 'additionality' requirement. The conditional nature of Indigenous land return favoured by most governments (shared management arrangements, conservation covenants or reserves (including Indigenous Protected Areas), means that sequestration activities on a significant percentage of land may not satisfy the additionality requirement and therefore may not qualify under the proposed CFI scheme.

The CFI scheme is intended to provide a source of domestic offsets under the National Carbon Offset Standard ("NCOS"). These offsets will be classified as non-Kyoto abatement (abatement that is not counted towards Australia's Kyoto Protocol target – "non-Kyoto CFI credits") and Kyoto abatement ("Kyoto CFI credits"). Because Kyoto CFI credits will be generated from abatement that is counted towards Australia's target and are therefore relevant to a 'compliance' market, they are likely to be of greater economic value. The demand for non-Kyoto CFI credits will be voluntary market buyers.

The CFI mechanisms should be carefully designed to balance integrity and broad participation, as well as consistency with other key scheme requirements. In addition, or as an alternative, disincentives and hurdles for Indigenous peoples need to be addressed by incentive measures. The CFI provides an opportunity to introduce a simplified domestic variation of the Kyoto Protocol clean development mechanism to help bridge the widely acknowledged socio-economic 'gap' between Indigenous and non-Indigenous Australians and promote intercultural exchange of expertise.

The proposed CFI will see specially marked "Kyoto" CFI credits are issued for abatement that is recognised under Australia's Kyoto Protocol target. All CFI credits would be recognised as eligible under the NCOS for use by Australian businesses seeking to voluntarily offset their emissions or become carbon neutral. To assist investment in otherwise 'non-Kyoto CFI credits' of high biodiversity and broader community value, the CFI should include a mechanism that enables the 'scheme administrator' or relevant body to recognise and 'exchange' a specific 'gold' or higher class of CFI credit with a tradeable unit under any domestic Kyoto-compliant market. Enabling this recognition will promote triple bottom line outcomes, including projects that deliver social, cultural, economic and environmental benefits in communities.

Government monitoring and any restrictions on abatement projects should include triggers for the protection and management of impacts on Aboriginal and Torres Strait Islander cultural heritage as well as issues such as the allocation of prime agricultural land, water availability or biodiversity.

Integrity standards are supported to ensure confidence in the market and environmental outcomes achieved by offsets traded in accordance with the CFI. However, in order to broadly engage Aboriginal and Torres Strait Islander peoples, integrity standards must be inclusive, flexible and accommodate Aboriginal and Torres Strait Islander peoples' cultural priorities and sensitivities.

Issues for Aboriginal and Torres Strait Islander peoples

The recognition of native title represents, among other important things, the resilience of Indigenous peoples and their cultures and a successful resistance to the full acquisition and 'foreign' management of their territories. Many Indigenous peoples' territories have been, and will continue to be, preserved, protected and/or sustainably utilised. An alignment in future aspirations between Indigenous peoples and governments has often led to conditional land return or conservation agreements or requirements in relation to these areas. This distinct history means that caring for country activities on a significant number of Indigenous owned or controlled areas may not be 'in addition to what would otherwise occur' and may therefore fail the 'additionality' test proposed in the Bill and currently required by NCOS.

The CFI Consultation Paper confirms that landscape conservation or restoration that has been funded under previous or existing government programs and secured (for example with a covenant or agreement) would not be considered additional even if environmental covenants or contracts protecting these areas are removed or cancelled. Similarly, activities that require ongoing funding, such as feral camel management and savannah fire management, would likely be considered once government funding ceases.

As a result of the potential "additionality" issues, a number of government funded/facilitated projects may not qualify under the CFI. Depending on the circumstances and approach taken by the Government to the CFI 'additionality test', this could include Indigenous Protected Areas (IPAs). According to the Australian Government Department of Sustainability, Environment, Water, Population and Communities website, the National Reserve System ("NRS") includes over 9,300 protected areas, a total area of about 98,487,000 ha (which is about 12.8% of Australia, or an area slightly bigger than South Australia).[1] Indigenous protected areas ("IPA"s) include over 23% of the NRS – over 22,652,000 ha. Even with a variable per hectare sequestration capacity, the potential biodiversity improvement and carbon sequestration value of this area is extremely significant. However 'additionality' requirements under the CFI and other voluntary standards (including NCOS) mean it will become increasingly important for Indigenous groups to consider the potential carbon value of areas of country before agreeing to an IPA or similar conservation arrangement. While the IPA program provides funding and opportunities of its own – from an economic perspective, Aboriginal and Torres Strait Islander peoples will need access to all relevant information before making conservation commitments. This is likely to contribute to 'either/or' tensions between economic development and conservation aspirations in some communities. It emphasises the need to consider Indigenous tenure and land use issues in determining which projects will be included in the 'positive list' for additionality under the Bill, and how this is achieved. This 'positive list' mechanism could be used to address the additionality barrier, for projects on Aboriginal and Torres Strait Islander country, whether commenced or proposed.

Additionality and appropriate tenure issues for Indigenous groups are of critical importance. In Victoria, the recent Traditional Owner Settlement Act 2010 ("TOSA") requires a grant of Aboriginal land to be coupled with an agreement with the State of Victoria for the ongoing conservation and management of the area as public land. The explanation memorandum for the TOSA notes the intention of Aboriginal title is to "…*effectively remain public land, despite its granting in fee simple to the traditional owner group entity*." The scheme operates on the proviso that, although the underlying legal ownership in the land transfers to the traditional owner group entity, the beneficial use and enjoyment of the land "…*should, … , remain with the Crown, and the State's laws should continue to apply to the land as if it*

[1] < www.environment.gov.au/parks/nrs > accessed 13 Jan 2011.

were Crown land." Legislative arrangements such as these further complicate Indigenous people's access to emerging carbon market opportunities.

The need for permanence in carbon sequestration projects is understood, however it also presents issues that are unique to Indigenous communities. To address the need for permanence, the CFI proposes, among other measures:

- a carbon maintenance obligation that would require future landowners to maintain carbon stocks if the project is not properly transferred and the proponent becomes insolvent, goes into receivership or dies; and
- that scheme obligations would need to be noted on land title (not providing the Commonwealth Government with an interest in the land as it is intended only to ensure that future interest holders in the land are given notice of scheme obligations).

As raised in comments about participation in reforestation projects under previous carbon trading proposals (egg: CPRS), on-titling (recording of interests on land titles) presents an issue with native title and other forms of Indigenous land tenure. The CFI Consultation Paper conceded this issue, noting that the requirement to register or record scheme obligations on land title raises an issue for Indigenous interests in land and water that are not a 'freehold' or equivalent interest. Further some forms of Aboriginal land require the consent of Ministers to create and/or register long-term interests on title.

It would be a cruel turn of events for the recognition of unique communal, inalienable rights and interests (often exclusive rights and interests) in relation to an area of Australia, to be excluded as a basis for participation in carbon markets. For decades the restriction on Indigenous peoples' ability to alienate interests in their land has been a barrier to participation in economic activities and now, when the opposite is desired (if not required), certain forms of Indigenous land tenure and rights and interests are burdened as a restricted or excluded basis for participation.

Native title rights and interests in country should be viewed as a distinct asset in the context of carbon sequestration and biodiversity conservation.

Holders of exclusive native title rights and interests are currently recognised in a class of interest holders able to participate in the CFI under the Bill (as holders of the requisite rights to carbon). This position is strongly supported. While non-exclusive native title can be more of a grey area, these rights and interests should be similarly recognised by the CFI. The scheme presents an opportunity to require the consent of <u>all</u> eligible interest holders for a project area, including non-exclusive native title-holders, in order for other interest holders to deal with their rights in carbon.

Most Australian States and Territories have legislated to provide a basis for the legal recognition of carbon rights in trees and natural resources products. The nature of these carbon rights varies across jurisdictions. There is inconsistency in relation to the land on which these carbon rights may be created (private or public/Crown land) and whether these carbon rights create an interest in land.

Many of these regimes appear to be based on the misunderstanding that the Crown enjoys *plenum dominium* in respect of all land. This overlooks a central principle of native title: that, at sovereignty, the Crown acquired radical title, 'burdened' by native title.

It is common for 'carbon sequestration' legislation to provide that a carbon right can only be created by the person who is the registered proprietor of a freehold or leasehold estate in land (or otherwise reside with the Crown). This requirement restricts Indigenous peoples' ability to use traditional knowledge, rights and cultural understandings as a basis for participating in emerging economic opportunities. This approach encourages a dependency on governments to provide for Indigenous peoples' participation in formal economic market opportunities.

Co-benefits

The CFI scheme should allow information to be included on the database about the biodiversity and other co-benefits associated with a project. This will assist offset buyers who have a preference for such projects to exercise choice in sourcing a product that meets their social, cultural, economic and

environmental priorities. It also enables the promotion, marketing and/or public reporting of offsets sourced from projects which carry the broadest and highest benefit for all Australians.

The CFI Consultation Paper notes that governments are working to develop a method for assessing and rating (or accrediting) the value of "co-benefits" associated with abatement projects. Proponents of abatement projects which deliver broader biodiversity and cultural benefits could advertise co-benefits associated with their projects in order to sell their credits at a premium price.

UN Declaration on the rights of Indigenous peoples

Fundamental rights and freedoms set out in the *United Nations Declaration on the Rights of Indigenous Peoples* ("the Declaration") support the participation of Indigenous peoples in climate change strategies and responses. The Declaration also recognises that respect for Indigenous knowledge; cultures and traditional practices contribute to sustainable and equitable development and proper management of the environment.[2]

The Declaration provides that Indigenous peoples:

- have the right to practice and revitalise their cultural traditions and customs;[3]
- have the right to participate in decision-making in matters which would affect their rights;[4] and
- have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources.[5]

Australia's response should not ignore the objects of existing domestic legislation or international instruments to which it is a party (or to which it has signaled it is likely to become a party).[6]

In the context of development opportunities, the following examples outline ways in which Indigenous people may contribute, informally and formally, to environmental services (in this case through carbon abatement projects). These examples illustrate some of the tangible and intangible assets of Indigenous communities that may be realised through meaningful and respectful partnerships and investment.

The first example is the West Arnhem Land Fire Abatement Project ('WALFAP'), a carbon offset project in western Arnhem Land in the Northern Territory. The West Arnhem Fire Management Agreement ('Agreement') provides the basis for a strategic fire management project to offset greenhouse gas emissions from a Liquefied Natural Gas plant in Darwin Harbour.[7] Under the Agreement, private industry will contribute a minimum of $1 million per year to the project over 17 years.

The WALFAP reduces greenhouse gas emissions by adapting traditional fire management practices in country that is prone to unchecked wildfires. Unmitigated wildfires contribute to approximately 40 per cent of the Northern Territory's greenhouse gas emissions.[8] The WALFAP has direct and collateral

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[2] *United Nations Declaration on the Rights of Indigenous Peoples*, The Declaration includes an affirmation that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind.
[3] Ibid art 11 (1). This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
[4] Ibid art 18.
[5] Ibid art 25.
[6] See, eg, Australian Labor Party, *2007 National Platform, Chapter 13 – Respecting Human Rights and Fair Go for All* (2007) 212 <http://www.alp.org.au/download/now/2007_platform_chapter13.pdf> at 18 August 2008, which sets out that 'Labor will endorse the UN Declaration on the Rights of Indigenous Peoples and be guided by its benchmarks and standards.'
[7] *West Arnhem Land Fire Management Agreement* (2006) Agreements, Treaties and Negotiated Settlements Project <http://www.atns.net.au/agreement.asp?EntityID=3638> at 5 September 2008. See also Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2007* (2007) Australian Human Rights Commission, Chapter 12 <http://www.hreoc.gov.au/social_justice/nt_report/ntreport07/chapter12.html> at 5 September 2008.
[8] Northern Territory Government, Media Release 24 August 2006 - Scrymgour, M, Minister for the Environment: "*Multi-Million Dollar Arnhem Land Greenhouse Gas Fire Sale*." Available at: http://newsroom.nt.gov.au/index.cfm?fuseaction=viewRelease&id=283&d=5 See also: Russell-Smith, J., Emissions abatement opportunities from Savanna burning, Paper presented at Workshop

ecological benefits, by reducing the net greenhouse gas emissions from wildfire and by conserving environmental and cultural values in the adjacent World Heritage-listed Kakadu National Park[9]. WALFAP employs local Aboriginal land management rangers and facilitates and supports the transfer of Indigenous knowledge between generations as elders work with young people as part of the project.

The Darwin Liquefied Natural Gas plant agreed to offset greenhouse gas emissions from the plant as part of its licensing arrangements with the Northern Territory Government.[10] As such, the Agreement enables industry to address permit requirements in a manner designed to achieve economic, social and environmental outcomes. Carbon and biodiversity offset projects clearly has application in the northern savanna region and elsewhere in Australia.

Indigenous peoples in Australia have long performed activities, which generate commodity and non-commodity services (for all Australians) from the natural environment.[11] Many environmental services performed by Indigenous peoples are not 'new' to federal, State and Territory governments. Government departments and agencies have been involved in joint and cooperative management arrangements with Indigenous peoples for some time. However, the current threats of climate change and associated 'low carbon' context creates the need to more appropriately value these services and provide adequate financial and regulatory infrastructure to enable access to, and growth of, new opportunities.

'Patch' burning of the Martu people in the northwestern section of the Western Desert is another example of a broader public benefit arising from traditional practices. The Martu people are native title holders over a large determination area in Western Australia. In this example, discussed in work of the former Desert Knowledge CRC and others[12], women undertake burning activities, which assists hunting by revealing tracks and dens of small burrowing animals.[13] The mosaic of burnt areas resulting from the women's use of fire has the collateral benefit of mitigating wild fires in the summer months and sustaining the biodiversity of this area of the Western Desert.[14] The preservation of certain trees and shrubs increases the capacity of the ecosystem to maintain carbon sequestration.[15]

A common issue identified in relation to both the WALFAP and Martu examples is the vulnerability of these projects to changes in policy and support structures.[16] This reiterates the need for binding and meaningful rights surrounding engagement processes. Land rights (and water rights) are reoccurring and key issues underpinning meaningful engagement and participation in development opportunities for Indigenous peoples. In Australia, these foundations remain unstable, despite suggestions by Justice Woodward in 1974, some 34 years ago, that the provision of adequate land rights was one way to facilitate economic development in Indigenous communities.[17]

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for greenhouse emissions offsets programs, Melbourne, July 2007 as cited in Chapter 12 of the Aboriginal and Torres Strait Islander Social Justice Commissioner's Native Title Report 2007, available at: http://www.hreoc.gov.au/social_justice/nt_report/ntreport07/chapter12.html

[9] Chapter 12 of the Aboriginal and Torres Strait Islander Social Justice Commissioner's Native Title Report 2007, available at: http://www.hreoc.gov.au/social_justice/nt_report/ntreport07/chapter12.html

[10] The project is a carbon-offset project – providing a service for a fee under the Agreement. It is important to note that the Agreement is not a "carbon trading" agreement. Darwin Liquefied Natural Gas cannot 'trade' the credits as reduction units they were a requirement made for a development application (as such, 'Additionality' would be hard if not impossible to demonstrate). For further information see: the Tropical Savannas CRC: http://savanna.ntu.edu.au/information/arnhem_fire_project.html and Chapter 12 of the Aboriginal and Torres Strait Islander Social Justice Commissioner's Native Title Report 2007, available at: http://www.hreoc.gov.au/social_justice/nt_report/ntreport07/chapter12.html

[11] Campbell, D; Davies, J; and Wakerman, J. *Realising economies in the joint supply of health and environmental services in Aboriginal central Australia*. Desert Knowledge CRC Working Paper 11, September 2007

[12] Ibid. at p 9., also cited by these authors: Bird D W, Bird R B and Parker C H. 'Aboriginal burning regimes and hunting strategies in Australia's Western Desert'. *Human Ecology*, vol 33 no. 4, pp 443-63.

[13] Campbell, D; Davies, J; and Wakerman, J. *Realising economies in the joint supply of health and environmental services in Aboriginal central Australia*. Desert Knowledge CRC Working Paper 11, September 2007

[14] Ibid.

[15] ibid.

[16] In particular, the centralization of essential infrastructure - away from small remote outstations in favour of larger settlements. See: Campbell, D; Davies, J; and Wakerman, J. *Realising economies in the joint supply of health and environmental services in Aboriginal central Australia*, p 17. Desert Knowledge CRC Working Paper 11, September 2007. See also: Gerritsen, R. "Constraining Indigenous Livelihoods and Adaptation to Climate Change in SE Arnhem Land, Australia". Paper for the International Expert Group Meeting on Indigenous Peoples and Climate Change. 2007/WS.7 Available at: http://www.un.org/esa/socdev/unpfii/en/EGM_CS08.html (accessed 18 August 2008).

[17] Woodward J*, Aboriginal Land Rights Commission*, Second Report, AGPS, Canberra, 1974

At present it is possible to use communal freehold rights under various forms of land rights legislation, freehold land grants as part of native title settlement packages[18] and/or Indigenous Land Corporation properties as a basis for participating in emerging environmental market opportunities. However, clearer incentives and greater certainty in carbon trading frameworks will level the negotiating platform for many Indigenous groups wanting to participate in emerging economic development opportunities that meet their cultural and social aspirations. It is essential that new regulations preserve the existing rights and interests of Indigenous peoples in Australia and use the space created by these rights and interests to grow future opportunities.

Specialised expertise and knowledge

Indigenous people have a 'special interest' in this issue, not only because, through their physical and spiritual relationships with land, water and associated ecosystems, they are particularly vulnerable to climate change, but also because they have a specialised ecological and traditional knowledge relevant to finding the 'best fit' solutions to climate change.

Landscapes, wetlands, forests and other vegetation are used to indicate 'country' (land ownership and use rights) as well as provide nourishment, medicines, tools and other resources for Indigenous peoples. Trees, vegetation, animals and insects are used as bio-indicators for the timing of practices and seasons. As such, natural and biological resources in Australia are enmeshed with Indigenous land, cultural and intellectual property rights.

The importance of traditional knowledge is promoted in international instruments, including the *Convention on Biological Diversity*,[19] which recognises the importance of Indigenous peoples' traditional knowledge in the conservation and sustainable use of bio diverse ecosystems.

One of the purposes of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) – which embodies some of Australia's international obligations under the *UNCBD* – is to promote a partnership approach to environmental protection and biodiversity conservation through recognising and promoting Indigenous peoples' role in, and knowledge of, the conservation and ecologically sustainable use of biodiversity.[20]

Greater engagement is needed with the knowledge and expertise of Indigenous Australians in devising comprehensive mitigation and adaptation responses to climate change. More specifically, in the context of the Bill and CFI scheme, it is in the interests of all Australians that this specialised knowledge be engaged by decision-makers when considering carbon project methodologies and associated eligibility of projects for voluntary or 'compliance' market carbon-trading.

The CFI presents an opportunity to grow support for Indigenous participation in carbon markets by ensuring the legal and policy infrastructure does not discount the needs, interests and responsibilities of Indigenous peoples. Doors must be left open and pathways created for respectful partnerships with Indigenous communities wanting to participate in this emerging area of the economy. It is hoped the comments, suggestions and observations set out in this submission assist in realising this opportunity.

Joe Ross

(Thanks to Emily Gerrard for assistance with this submission)

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[18] See the settlement agreement package for the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk Peoples Application for determination of native title in Victoria in which freehold title to certain parcels of land was transferred back to the traditional owners; *Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk native title determinations: what they mean for the Wimmera region*, National Native Title Tribunal, Commonwealth of Australia 2005. Available at: http://www.nntt.gov.au/publications/WJJWJ_Determination.html viewed 28 May 2007. See also the Agreements, Treaties and Negotiated Settlements database, Indigenous Studies Program, University of Melbourne: http://www.atns.net.au/agreement.asp?EntityID=3126 For examples of specific legislative land grants see: *Aboriginal Land (Manatunga Land) Act 1992* (Victoria); and *Aboriginal Lands Act 1991* (Victoria).

[19] Opened for signature 5 June 1992, 31 ILM 818, (entered into force 29 December 1993) ('*UNCBD*')

[20] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s3.