



Australian Government

Department of the Environment and Energy

Dr Gordon de Brouwer PSM
Secretary

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Ms Christine McDonald
Committee Secretary
Senate Environment and Communications Legislation Committee
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CANBERRA ACT 2600

Dear Ms McDonald

Thank you for your invitation to provide a submission to the Senate Environment and Communications Legislation Committee on the Carbon Credit (Carbon Farming Initiative) Amendment Bill 2017.

The Department of the Environment and Energy is the Australian Government Department responsible for maintaining the effective operation of the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

About the Emissions Reduction Fund

The *Carbon Credits (Carbon Farming Initiative) Act 2011* (the Act) provides the legislative basis for the Emissions Reduction Fund. The Fund provides a broad range of opportunities to reduce emissions and to store carbon (otherwise known as *sequestering* carbon) across the economy. The Fund is helping Australia meet its emissions reduction targets. There are three parts to the Fund:

1. **Crediting:** businesses, land managers, local governments, farmers, Indigenous groups and others can earn Australian Carbon Credit Units for projects that reduce emissions or sequester carbon.
2. **Purchasing:** The Government has allocated \$2.55 billion for purchasing Australian Carbon Credit Units. Each Australian Carbon Credit Unit represents one tonne of emissions reductions delivered.
3. **Safeguard Mechanism:** Ensures emission reductions purchased by the Government are not offset by significant increases above business-as-usual levels elsewhere in the economy.

Under the Fund, projects must be conducted in accordance with an approved method. Methods are legislated rules that specify how projects are to be conducted, reported and verified. There are currently 33 methods available for use across Australia in all sectors. Each method must be endorsed by the independent Emissions Reduction Assurance Committee before being made by the Minister for the Environment and Energy. The Committee ensures methods only incentivise emissions reduction or sequestration activities that are real and go beyond business as usual activity.

The Fund is implemented by the Clean Energy Regulator. Its responsibilities include purchasing Australian Carbon Credit Units on behalf of the Government. The Regulator has held five auctions to date. From the first four auctions, the Government has contracted to purchase 178 million carbon credits to be delivered over the next ten years, at an average price of \$11.83. The results from the fifth auction, held on 5 and 6 April 2017, will be published on 13 April 2017.

Purpose of the Bill

The Carbon Credits (Carbon Farming Initiative) Amendment Bill 2017 proposes to amend the Act to improve the operation of the Emissions Reduction Fund. The proposed amendments relate to projects that reduce emissions by undertaking early dry season burns in savanna landscapes of northern Australia which reduce the size and intensity of wild fires that would otherwise occur in the late dry season. These are referred to as *savanna fire management projects* in this submission.

There are currently 53 savanna fire management projects contracted by the Government, which represent 8 per cent of all Australian Carbon Credits Units contracted, or 13.8 million tonnes of emissions reductions. More than 70 savanna fire management projects are registered under the Fund. This includes projects without contracts. From the first four auctions, the estimated contract value of all savanna fire management is \$163 million (based on the average price of \$11.83 achieved across the first four auctions).

Savanna fire management projects have been supported by consecutive governments since the Act came into effect in 2011. The Commonwealth Scientific and Industry Research Organisation (CSIRO), Charles Darwin University, other universities, as well as Indigenous and pastoral groups, also support the science behind, and benefits from these projects.

In addition to the emissions reductions achieved by savanna fire management projects, the projects can deliver positive environmental, cultural, social and economic outcomes for regional and remote communities across northern Australia, particularly Indigenous communities. For example, the Fish River project, 200 kilometres south-west of Darwin – a collaboration between Indigenous Land Corporation and Traditional Owner groups – is reducing fire emissions through traditional Indigenous burning knowledge combined with modern technologies to implement cool early dry season planned burns. This project generates employment, training and revenue for Indigenous communities. The project reduces risk to people and property from wildfires and helps protect culturally significant indigenous sites, biodiversity and threatened species such as the Northern Quoll and Gouldian Finch.

The Department is developing a new method that will provide further opportunities for proponents to earn carbon credits and to earn revenue both from reducing emissions and

storing carbon (sequestering carbon) in organic debris by undertaking early dry season savanna burns in northern Australia. The Bill will facilitate the operation of projects that register under this method by making minor and technical amendments to the Act to:

- facilitate the transfer of projects which have been registered under existing methods to the new method. This will allow them to earn carbon credits by both reducing emissions and sequestering carbon in organic debris by undertaking early dry season savanna burns.
- make it easier for a proponent to voluntarily remove an area of land from their project and ensure carbon credits required to be returned to the Government only relate to the area of land being removed. This will streamline administrative processes for proponents if they need to change their project because their circumstances change.
- ensure the requirement to return carbon credits to the Government if a proponent exits the Fund applies only to credits earned from sequestration and not carbon credits earned from avoiding emissions. This removes the potential for project proponents to be subjected to unfair penalty provisions.
- clarify that state and territory government Crown lands ministers and Commonwealth ministers responsible for land rights legislation do not have consent rights for projects conducted on exclusive possession native title land. This is consistent with the *Racial Discrimination Act 1975* and the original intent of the Act.

The Bill also corrects an error in the Act which imposes an unintended requirement on savanna fire management projects and other land based emissions avoidance projects to obtain consent from third parties, such as banks with a mortgage over the land and state ministers for most Crown land. The consent requirement was established for projects that store carbon in the landscape, as these projects must make a long term commitment to maintain the carbon for up to 100 years. It was never the intention that projects that avoid emissions, such as savanna fire management projects under the current methods, would require consent from third parties, as they do not impose similar long term legal obligations. Such consent requirements do not apply in the case of other emissions avoidance projects, such as projects that combust methane gas at landfills or projects that reduce emissions by upgrading to more efficient industrial equipment. Correcting this error, which was the unintended result of amendments made in 2014, ensures the provisions in the Act are more closely aligned with its original intent.

Over 20 registered savanna fire management projects, which have been conditionally approved, are subject to unintended requirements to obtain consent from third parties. This includes projects conducted by Indigenous corporations, pastoralists and carbon service providers. Projects that fail to obtain these consents risk being revoked, and consequently will not be able to reduce emissions and earn revenue. The Bill needs to take effect by July 2017 to avoid contracted projects being revoked.

The Department has consulted with parties with an interest in the issues set out in the Bill. In response to representations from savanna fire management projects impacted by the unintended consent requirement, the Government previously introduced an amendment to correct the error through the Omnibus Repeal Day (Spring 2015) Bill 2015. The amendment was reviewed as part of the Senate Finance and Public Administration Legislation

Committee's consideration of the Omnibus Bill, without comment. The Parliament was dissolved before the amendments could be considered by the Senate.

Through the development of the new savanna sequestration method, the Department held discussions with savanna fire management proponents in Darwin. During this consultation, participants reiterated the need to remove the requirement that savanna fire management projects obtain consent from third parties. They also identified other aspects of the Act that would impede the operation of a method enabling the storage of carbon in savanna landscapes.

In February 2017, the Department invited submissions and discussion on an information paper that the Department provided to carbon service providers, non-governmental organisations, project proponents and state and territory governments describing possible amendments to the Act. The information paper identified options to address the unintended consent requirements and other measures presented in the Bill. The consultation revealed broad support for the amendments, with support received from proponents subject to the unintended consent requirements.

The Department received submissions from some groups who argued that consent requirements can provide an additional check to help ensure that all parties with an interest in land-based projects are appropriately consulted before projects proceed. The Department considers the appropriate way to address this issue is by ensuring potential project proponents clearly establish their legal right to undertake the project, rather than using consent requirements in a way that was not intended, and which does not apply to other emissions avoidance projects.

The Department is continuing work on the development of the savanna sequestration method. This includes working with project proponents and others to consider how the interests of all parties can be accounted for in the legislative framework of the Fund, including more clearly establishing legal right and considering whether any other guidance, information or project notification requirements are needed.

Yours sincerely

Gordon de Brouwer

10 April 2017