Chief Executive
GPO Box 4396
Darwin NT 0801

Tel 08 8999 6172
Fax 08 8941 1491

mike.burgess@nt.gov.au

Our Ref:

Your Ref:

Director
Carbon Farming Initiative
Emerging Policy Section, Land Division
Department of Climate Change and Energy Efficiency
GPO Box 854
CANBERRA ACT 2601

Dear Dr Rohan Nelson

CARBON FARMING INITIATIVE

Thank you for the opportunity for the Northern Territory Government to provide comment on the "*Design of the Carbon Farming Initiative*" consultation paper and the exposure draft of the "*Carbon Credits (Carbon Farming Initiative) Bill 2011"*.

The Northern Territory Government views the development of the Carbon Farming Initiative (CFI) as a very valuable step towards establishing effective markets in carbon sequestration and abatement, reduction of greenhouse gas emissions, and in meeting Australia's international commitments on climate change.

The Northern Territory is a pioneer in this area through the West Arnhem Fire Abatement Project (WALFA), having established both the science base and operational capacity in remote landholding groups. Getting to this point has required sustained effort over 15 years.

As with other developing opportunities in the Northern Territory, WALFA is notable in its delivery of emissions reduction, increased bio-sequestration, employment and training opportunities in remote and disadvantaged areas, and biodiversity conservation benefit. This program has demonstrated a capacity in this jurisdiction to engage in complex policy, science and management challenges in this discipline, notwithstanding under-developed national policy settings. In this regard, we welcome the progress apparent in the draft CFI scheme, and seek to ensure that this scheme can facilitate and catalyse comparable and innovative projects in the Territory.

It is noted the Carbon Farming Initiative (CFI) is a voluntary scheme, which is designed to be compatible with a future mandatory carbon abatement scheme. The design of the scheme and the legal framework is critical to delivering a workable scheme that achieves the intended objectives of leveraging investment into achieving environmental objectives.

Many aspects of the scheme are sensible and likely to be effective but there are also many important issues that have been presented ambiguously or, on an initial examination, appear unworkable. Others appear likely to unnecessarily inhibit participation.

Establishing environmental markets requires investor confidence and a reference price for the commodity which is free of un-necessary volatility. In designing the CFI, need to consider lessons from similar schemes for example the European ETS. Also NSW Greenhouse Gas Abatement Scheme, in the first instance was overly administrative around burden of proof and methodology (around energy efficiency) and a remedy in the extreme which ultimately resulted in commodity price and market collapse.

While the CFI is supported and it is anticipated that there are positive benefits for the Northern Territory, the short consultation period is of concern, as it does not reflect the time required to review such a complex policy area. Appropriate consultation and time are needed in order to achieve the required buy-in and confidence of government, agricultural, farming, pastoral and indigenous groups, as well as withstand public scrutiny.

Important issues that may be decisive regarding participation are left to subordinate instruments or other discretions. It is therefore essential the present formal consultation process be continued, so as to encompass careful framing of the operational detail of the scheme. We would welcome the opportunity to discuss the issues raised here well before the important details of the draft Bill and regulations are finalised.

I seek the Australian Government's undertaking the Northern Territory receive advance copies of regulations and specifically those sections relating to handling methodologies and the administration of the scheme. And the NT has an opportunity to comment on practicality, especially in areas where they require specific supporting actions from the states and territories.

Please find attached Northern Territory's comments noting our concerns are around:

- indigenous participation and Native Title;
- administrative aspects of the scheme;
- the application of the principles of additionality and permanence; and
- methodology development and application.

Yours sincerely

MIKE BURGESS

Date

Australian Government

Submission Template
Design of the Carbon Farming Initiative

Overview

This submission template should be used to provide comments on the consultation paper outlining the proposed design of the Carbon Farming Initiative.

Contact Details

Name of Organisation:	Northern Territory Government

Confidentiality

All submissions will be treated as public documents, unless the author of the submission clearly indicates the contrary by marking all or part of the submission as 'confidential'. Public submissions may be published in full on the Department of Climate Change and Energy Efficiency website, including any personal information of authors and/or other third parties contained in the submission. If any part of the submission should be treated as confidential then please provide two versions of the submission, one with the confidential information removed for publication.

A request made under the *Freedom of Information Act 1982* for access to a submission marked confidential will be determined in accordance with that Act.

Do you want this submission to be treated as confidential? ☐ **Yes** ☒ **No**

Submission Instructions

Submissions should be made by **close of business 21 January 2011**. The Department reserves the right not to consider late submissions.

Where possible, submissions should be lodged electronically, preferably in Microsoft Word or other text based formats, via the email address – **CFI@climatechange.gov.au**.

Submissions may alternatively be sent to the postal address below to arrive by the due date.

Emerging Policy Section, Land Division
Department of Climate Change and Energy Efficiency
GPO Box 854
CANBERRA ACT 2601

Scheme design principles

The two principles proposed are supported as necessary and appropriate. The principle relating to environmental integrity should attempt to reduce the likelihood of carbon farming resulting in perverse environmental detriment. The proposition that rules must be kept clear and simple is strongly supported. The Scheme should seek to maximise beneficial impact, through making the scheme as simple and widely applicable as possible.

Recommendation 1: That development of the CFI is approached with a view to maximising opportunities for genuine and durable abatement and sequestration through landholder participation, and through Australian leadership on land management issues.

Scheme coverage

The list of eligible abatement activities includes many of great relevance to north Australia. Savanna fire management, revegetation, avoided deforestation, reduced methane emissions from livestock and increased soil carbon are of particular importance. The approach to some issues that are not dealt with adequately in the consultation paper (e.g. offsets for enteric fermentation from feral ruminant animals and feral management) are indirectly clarified in the exposure draft of the Bill. Approaches to some other issues remain unclear (e.g. fertiliser use, marine based sequestration).

There is some disparity between language in the consultation paper in regard to sequestration in soils, with the paper referring to agricultural soils and the draft Bill to soil without the qualifier. It should be made clear that carbon sequestration in soils on any lands used for any purpose is eligible.

Whilst the consultation paper and the draft Bill pick up many elements of the language of the convention, Kyoto Protocol, IPCC guidelines etc, in other areas new language is deployed, with revegetation and forest management and afforestation (not mentioned in the consultation paper) perhaps being captured under the Bill's sequestration offsets banner. Ambiguity about coverage is undesirable and should be corrected, otherwise uncertainty may lead to delayed uptake and/or perverse outcomes.

While prescriptive in some areas, the draft Bill leaves much to regulations and other subordinate instruments that will determine eligibility to participate. In some places the treatment implies that Australia will be prepared to look at new possibilities and not be constrained by some of the peculiar international over-prescriptions that constrain many potentially useful opportunities. In this context, it is noted that recognition of opportunities with savanna fire was substantially delayed by uncritical acceptance of scientifically-flawed IPCC analysis.

Ambiguity about intent may compromise the consultative process. For example, the consultation paper and draft Bill, while listing *avoided deforestation* provide no specific guidance on approaches to recognition of actions to protect and manage existing forests (and other wooded) sites while forgoing other development opportunities. There are also additional less orthodox opportunities to apply management interventions to prevent forest losses (avoid deforestation) from saline intrusion into large areas of wetland forest.

The NT wishes to contribute to the development of options and methodologies (as it is presently doing for savanna fire) in avoided deforestation but, before investing resources, seeks assurance that eligibility will not be subject to unnecessarily onerous and ultimately counter-productive conditions.

The proposal to administer offsets eligible under the National Carbon Offsets Standards through the CFI is supported, provided this does not prevent accreditation of projects under international standards where this is desirable to permit trade earlier than might be permitted under the CFI.

Recommendation 2: That CFI coverage be clarified and discussions be held as soon as possible with State and Territory jurisdictions regarding the Australian Government's preliminary thinking on scope and approaches to additionality for revegetation (including forest management), afforestation, and avoided deforestation. Tenures on which carbon sequestration in soils will be covered should be clarified.

Sale of units

The Bill has two purposes. The first is establishing the mechanism for the creation of various types of carbon credit Units. The second purpose is the "downstream" management of these units. The primary interest of the Territory as a land holder and land regulator lies in the Credit production processes. These are found primarily in ss 10 – 136.

A brief outline of the Unit production process is as follows: A project proponent applies to have a project deemed an eligible offset project. The determination is made on the basis of a methodology determination and the additionally test. The proponent of an eligible offset project can then apply for a certificate of entitlement in relation to the project at the end of each reporting period (financial year). The certificate of entitlement then leads to the issue of the relevant types of carbon credit units. It is these units that are the tradeable commodity administered under the balance of the Bill.

Issues in Unit Production

With this outline in mind the following matters appear relevant to the unit production process in the Territory:

The applicant for an eligible offset project must be the project proponent who is defined as a person who "has the legal right to carry out the project".

The application as an eligible offset project for sequestration (biomass carbon sinks forestry/land management) projects must be consented to by each person with an "eligible interest" - a Land Titles Office registered interest in the land and also the Territory in respect of Crown Land (including the pastoral estate).

Once land is the subject of an eligible offset (sequestration) project if the obligations under the project are not maintained the land may be made subject to an order requiring it be used in a particular manner to maintain benchmark sequestration levels. The orders may last for up to 100 years.

The paper notes that demand is expected to come from both international compliance and voluntary markets, and provides a range of mechanisms for sales into international as well as domestic markets. These provisions to extend the reach of Australian offsets are most welcome. The text here does not deal directly with backdating of such arrangements. However, in a subsequent section on crediting (page 18) it is indicated that the CFI's first reporting period could not be backdated earlier than July 2010. In officer-level discussions, DCCEE personnel have also indicated that Australia will not undertake to deploy mechanisms to allow Australian projects to demonstrate additionality and so be accredited under international standards like the Voluntary Carbon Standard, which does permit substantially longer backdating[1].

The effect is that project developers positioned to sell credits generated before July 2010 (or July 2011 depending on timing of CFI recognition) will be denied the opportunity to do so. The potential for backdating should be explored as early adopters of carbon friendly technologies should not miss out on the opportunities offered by the scheme.

[1] VCS (2010) Voluntary carbon standard VCS 2011: public consultation document. VCS Association. pp. 23. Accessed at http://www.v-c-s.org/vcs2011.html in August 2010.

Regional Communities, Water and Biodiversity

The CFI will offer opportunities for land owners to participate in a carbon economy which has not existed in the past when some land owners already made decisions about their economic futures. Existing agreements which prevent these opportunities being taken up will therefore disadvantage Indigenous and any other land owners which are bound by them. The suggestion that best land uses will arise through a process embedded in existing regulatory frameworks is unlikely.

Integrity standards

High standards must underpin Australian offsets so that they genuinely contribute to abatement and attract premium prices. Most of the elements of the integrity equation presented in the consultation paper are necessary. However, high standards and international recognition are not synonymous. Australia should be prepared to seek positive change in international settings, including approaches to assessing durability of offsets and additionality to ensure participation is not stifled. As noted earlier in regard to savanna fire, there will be times when it is necessary to challenge error or misunderstanding in IPCC approaches. This cannot reasonably be left to project proponents but is clearly a function of government, which should not accede to settings that are known to be in error, mismatched to Australian conditions, or otherwise counter-productive.

Additionality

The attempts to simplify process, such as the "positive" additionality list, are important and potentially useful. However the suggestions for early recognition as "positive" omit those activities most relevant to northern Australia. On the stated criteria - of achieving abatement while not resulting in "increases in agricultural activity or business profitability" - activities like savanna burning, reductions in stocking rates and avoided deforestation would appear to qualify in many settings in north Australia. The NT would welcome the opportunity to discuss this specific issue and other applications of the flexibility displayed here, while protecting the commitment to real and achievable abatement.

One statement made in the context of additionality requires further clarification. Namely, "(l)andscape conservation or restoration that has been funded under previous or existing government programs and secured, for example with a covenant or contract, could 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 savanna fire management, would likely be considered once government funding ceases" (page 11).

This incorrectly implies that government funding for conservation objectives automatically equates to funding for emissions abatement or carbon sequestration. For example, it is possible to protect elements of the environment from fire in ways and for purposes that bear no resemblance to the collaborative, landscape-scale projects necessary to drive reliable abatement of non-CO_2 gases.

The issue here should be to prevent double payment for the same operational work rather than detailing over-prescribed concepts of additionality. This example illustrates well a difficulty with some aspects of the consultation paper and the draft legislation: at one extreme there is the

potential to treat isolated orthodox projects as "always additional" and, at the other, putting a set of the integrated and less orthodox projects at risk of being treated as "never additional".

In officer-level discussions it has been argued that the cited statements from the consultation paper should not be treated literally. Some work has already begun on drafting methodologies to deal with the potential for double-payment for operational work and it is essential that doubt be eliminated and the statements as written repudiated.

Additionality Test

The requirement for additionality proposed under section 39 of the Bill may prevent the current parks and conservation areas throughout the NT being included as potential carbon farming projects. This would be on the basis that the land was already used for the purpose of conservation and that there is nothing “additional” to that being performed at the commencement of the Initiative. These areas would also fail in the additionality test if the conservation area was established or managed under a law of the Commonwealth, State or Territory.

Existing conservation areas including environmental covenanted pastoral land and parks under the *Northern Territory Parks and Wildlife Conservation Act* (NT) or *Parks and Reserves (Framework for the Future) Act* (NT) would fail the additionality test. This would prevent the Indigenous participation that the Territory intends to promote through, for example, joint managed parks or existing Ecolink partners. The additionality test should be revisited and consideration be given to participation by Indigenous land holders and other parties who currently own land that is the subject of environmental conservation.

The CFI Discussion Paper states that ‘domestic buyers of CFI credits could include companies that have offsetting obligations under state government regulations’ (page 8 of annotated discussion paper). The draft Carbon Credits Bill states that ‘an offsets project passes the additionality test if the project is not required to be carried out by or under a law of the Commonwealth, a State or Territory’ (clause 39(2)(b)).

As drafted, it is arguable that clause 39(2)(b) could be interpreted in an overly restrictive and perverse manner that runs counter to the intent stated in the discussion paper. The additionality test needs to clearly distinguish between a regulatory requirement of government for an entity to offset greenhouse gas emissions (such as may be conditioned in an environmental approval or licence to operate) and a regulatory requirement to undertake a specific land management activity or project, whether it be for greenhouse gas abatement or other purposes. The former regulatory requirement would not impact on project additionality as it does not specify that a particular land management activity or project be undertaken.

This is an issue for the Northern Territory – parties subject to an Environment Protection Licence under the *Waste Management and Pollution Control Act* may be required to commit to offset commitments as part of regulatory approvals.

The Additionality Test appears to be overly restrictive and needs further consideration in relation to activities mandated or required to be carried out under C/S/T law. This could potentially rule out many valid and valuable projects that may be required as conditions of environmental, licence or other approvals and may have a perverse and unhelpful impact. The requirement to show that projects are not financially viable without the credits may also favour riskier and wholly unviable projects and approaches rather than providing an impetus to projects that may generate profits but carry elements of risk that would make them unattractive in the normal course of business without the credit component. Genuine business as usual, double-dipping,

double-counting and actions that are required by all under legislation, should remain as grounds for exclusion.

Additionality and REDD

The compliance market is defined by the United Nations Framework for Climate Change Convention (UN-FCCC). Nations vary in the extent to which they include emissions for Land Use, Land Use Change and Forestry (LULUCF) in their national emissions inventories (and hence what is counted in their Kyoto targets). Australia insisted on inclusion of land clearing in its inventory, and reductions in land clearing since 1990 have been instrumental in Australia's capacity to meet its Kyoto commitments, while still expanding use of fossil fuels.

In this context, the United Nations Collaborative initiative on Reducing Emissions from Deforestation and forest Degradation (UN-REDD) in developing countries. UN-REDD takes on some significance, as an effort to create a financial value for the carbon stored in forests, offering incentives for developing countries to reduce emissions from forested lands and invest in low-carbon paths to sustainable development.

“REDD-plus” goes beyond deforestation and forest degradation, and includes co-benefits from conservation, sustainable management of forests and enhancement of forest carbon stocks. REDD-plus calls for activities with serious implications directed towards the local communities, indigenous people and forests which relate to reducing emission from deforestation and forest degradation. Australia has again been active in promoting REDD concepts and has provided substantial funds to advance the concept overseas.

Of concern is the Australian Government’s approach to additionality both with respect to the 1990 baseline and the unique circumstance of the Northern Territory with respect to LULUCF and avoided deforestation. As noted earlier, Australia's International Forest Carbon Initiative has a goal to provide "developing countries, and their forest-dependent Indigenous and local communities, with a real incentive to conserve their forests and meet their economic and development aspirations". Unfortunately the CFI as drafted does too little to set up similar outcomes in Australia in general and the Territory in particular. It is clearly inconsistent for Australia to devote much effort to international forest protection through financial incentives and yet to be reticent about how it will approach the same issues in its own under-developed regions.

The requirement for additionality, as proposed under section 39 of the Bill, may prevent the current parks and conservation areas throughout the NT being included as potential carbon farming projects. This would be on the basis that the land was already used for the purpose of conservation and that there is nothing “additional” to that being performed at the commencement of the Initiative.

These areas would also fail in the additionality test if the conservation area was established or managed under a law of the Commonwealth, State or Territory. This interpretation of additionality is unreasonably severe in that it assumes incorrectly that funding for conservation automatically achieves adequate emissions abatement.

This is demonstrably wrong given, for example, that our largest and best known national parks (including Commonwealth parks) remain major emitters from excessive late dry season fire. Steps going well beyond standard reserve management practice are needed to control fire for reliable emissions reduction.

Existing conservation areas including environmental covenanted pastoral land and parks under

the *Northern Territory Parks and Wildlife Conservation Act* (NT) or *Parks and Reserves (Framework for the Future) Act* (NT) would fail the additionality test. This would prevent the Indigenous participation that the Territory intends to promote through, for example, joint managed parks or existing Ecolink partners. However, paradoxically this is the qualifying test under UN-REDD.

The additionality test should be revisited and consideration be given to participation by Indigenous land holders and other parties who currently own land that is the subject of environmental conservation.

There is also a concern around the onerous administrative approach around the requirement for and estimation of an historical 1990 baseline, noting land clearing in the NT occurred in only a few and known regions and was interrupted through the introduction of the National Vegetation Law.

Recommendation 5: Need to more sensibly resolve issues relating to additionality and beneficial actions.

Recommendation 6: That statements regarding disqualification from participation in carbon markets at sites receiving funding for conservation work be formally withdrawn. If some qualifier is considered essential, they might be replaced with more accurate statements regarding the obligation to avoid double payment for the same operational work generating credits.

Permanence

The CFI includes provisions to ensure that all credits issued for bio-sequestration projects represent permanent abatement. For example, the CFI will require that if the storage is not maintained for 100 years, any permits issued may have to be relinquished (or handed back), and if not, statutory covenants may apply to the land (called carbon maintenance orders).

Stored carbon can also be re-released to the atmosphere, reversing the abatement benefit, not only through an intentional change in the land use but also through fire.

The issue is a combination of the upfront provision of ACCUs and also the practicality of the 100 year rule.

Carbon Maintenance Obligation

This is likely to require a caveat to be registered on land title to ensure that persons acquiring the property are aware of the liability. This may impact on the value of the property for sale, effecting state stamp duties etc. Need to consider that where a lease is terminated / forfeited how this is carried forward as Caveats on the title.

Permanence

The permanence of biological carbon stores should be considered on a regional basis and in the context of the natural environmental threats to stored carbon.

The proposal for a fixed risk of reversal buffer of 5% for carbon sequestration projects has merit in reducing complexity. But it is unclear how other project types will deal with failure or poor performance here or in the section on *Crediting* (page 18). For example, in northern Australia the baseline for savanna fire is likely to be a yearly average of emissions over 10 years, so that a relevant measure of performance will be average annual abatement over a substantial period

rather than in any particular year.

However awaiting determination of an average presents challenges for funding work in the early years. There should also be recognition that in central Australia there will be problems in accounting for e.g. fire management benefits because of the decadal or more scale of climatic variation and its influence on fuel loads and fire events. This will require very long periods for discriminating trends. The risks of basing credits and sales of them on year-to-year performance could be managed by including some non-sequestration projects in the risk of reversal buffer mechanism at a similar rate (5%), or managing risk entirely within projects. The NT's tentative preference is for projects to manage such risk, although suggestions about other approaches would be welcomed.

For example 30% of total credits be made available for avoided deforestation in the first 2 years to provide for early development of infrastructure and training, with the remainder being paid in equal annual increments over the next 18 years to provide for maintenance.

Where carbon maintenance obligations are established, mechanisms such as a caveat to be registered on land title to ensure that the persons acquiring the property are aware of the liability may be required.

Crediting period for avoided deforestation

The paper proposes that risk of reversal for avoided forestation is dealt with by releasing credits over a period of 20 years, much shorter than the quoted 100 year period for permanence. This presumably represents a compromise between decadal or longer return periods for destructive fires in southern Australia and the reasonable expectation of landholders to enjoy - during their lifetime - the benefits of setting aside land for carbon storage. However, it makes little sense in northern Australia where even severe fires and storms progressively degrade but rarely completely destroy entire forests in a single event or even series of events. To encourage Indigenous and other landowners with limited financial backing to participate, a larger proportion of total credits could be made available earlier in north Australian projects.

Recommendation 7:
No provisions should be made in regulations until there has been opportunity to work through the options with Australian Government and relevant NTG officers, in the context of developing a methodology for savanna burning abatement. This issue is also relevant to determination of sensible crediting periods.

Leakage

It is agreed that leakage risks are highly context-specific, making it difficult to prescribe much more than the obligation to take them into account. The proposition that leakage should be dealt with predominantly in methodology determinations is endorsed.

Scheme processes

The number of steps/approvals etc would appear at first glance to have a significant administrative burden, particularly in terms of ongoing accounting. This is likely to reduce the liquidity and the integrity of the market.

Project approval

Saleable offsets credits require clear property rights. However on Indigenous lands held under various forms of communal title, comprehensively formalising ownership may be an expensive and time-consuming process. For emissions avoidance projects like savanna burning for reduced non-CO_2 gases - where results are immediate, not susceptible to reversal, and place no long term restrictions on use of land - it is suggested that certification from a responsible land council or prescribed body corporate to the effect that all relevant landholders have been consulted and are in agreement should suffice. Distributing benefits and the like will be a matter for those authorities and project participants. For projects that require very long term commitments as to future use, such as avoided deforestation, full land use agreements and specific recognition of carbon rights under relevant law would be required. This proposition would appear to accord with the definition of project proponent (s5) and criteria for declaration (s25) in the draft Bill.

Indigenous held land

In regard to the specific question (page 16) regarding rights of Indigenous title holders, including holders of native title rights providing exclusive possession, the proposal to treat Indigenous land similarly to other forms of freehold title is supported. It would be useful for the legislation to confirm that exclusive native title holders and other categories of Indigenous land have rights to benefit from, and manage land for, carbon storage. The opportunities for land tenures that are not readily comparable to freehold title should be explored. The Territory is presently considering how other native title interests should be dealt with, particularly in respect of Crown land under lease such as pastoral leases.

The person with the legal right to carry out the project in relation to Aboriginal (ALRA) Land would be the Land Trust or a long term lessee.

Treatment of Native Title. Native title is held differently to other land interests, is often held by large groups, and cannot be registered on a Torrens system. For this reason, it requires separate provisions in the CFI. We would like to ensure that exclusive native title holders have, as far as possible, the same opportunities as other landholders to participate in sequestration projects.

Carbon rights. It is not certain whether exclusive possession native title includes the right to benefit from carbon or to manage vegetation for the purpose of carbon sequestration. As a consequence, holders of exclusive possession native title might need to seek a court determination to confirm their carbon rights before they could gain approval for a scheme bio-sequestration project. This could be difficult, costly and time consuming.

In order for the scheme to operate in the Northern Territory, it will be necessary to develop a mechanism to recognise the property in, and ownership of, carbon that exists in respect to an area of land. Most jurisdictions in Australia have legislated, or are in the process of legislating, to clearly recognise carbon as a proprietary interest in land, and for its ownership to be a registrable interest on title as distinct from the ownership of the land. The CFI creates carbon

property rights. However, it is uncertain how it will interact with existing carbon rights legislation, or where, in the case of the Territory, there is an absence of existing carbon rights legislation.

Such legislation can also provide for the registration of 'carbon covenants' to ensure compliance with maintenance obligations and procedures for transfers or dealings concerning carbon registered land. It is strongly recommended that the Territory consider introducing a similar vehicle for the recognition and registration of carbon rights which would complement the Carbon farming Initiative or any other voluntary or mandatory carbon offset scheme.

The commitment to providing new economic opportunities for Aboriginal and Torres Strait Islander land holders is welcome and supported. The failure to cover Indigenous land issues and how the complexities of Indigenous land ownership will be accommodated in the scheme, though, is not acceptable. The Bill and Paper should not be released until this is attended to and dealt with in both.

Pastoral lease

Where land is held under pastoral lease and the pastoral lessee wishes to undertake a carbon farming project, this would not be a pastoral purpose under the *Pastoral Land Act* (NT) and would require the approval of the Pastoral Land Board. The ownership of the bio-carbon in a carbon farming project (as distinct from vegetation for pastoral purposes) would ordinarily vest in the Territory. Any transfer or dealing with that bio-carbon would require the consent of the Territory as an eligible interest.

In terms of the control of bio-carbon in a carbon farming initiative on pastoral leases, it would appear that the lessee and Territory enjoy shared control. However, it should be noted that where non-exclusive native title exists over the pastoral land, the native title holders do not have any control or right of participation in the project. The participation of indigenous communities in carbon farming initiatives on pastoral land is likely to be reduced to that of employment (where available) or in advice as to appropriate land management practices.

Given that Territory does exercise some control in this area it would be a matter of policy for government to consider whether it should require adequate levels of indigenous participation in any program contemplated in relation to pastoral leases. It would be open to the Territory to require indigenous involvement when authorising carbon farming activities on pastoral leases.

On the pastoral estate it is unclear but would appear to be the pastoral lessee but only with the relevant approval under the *Pastoral Land Act* (PLA) and the Territory's consent as the holder of an eligible interest. It would not appear that the holders of the standard Pastoral Estate native title rights would need to consent (interest not registered with Land Titles Office). It would be open to the Territory to require indigenous involvement when authorising carbon farming activities. Carbon farming activities could not be undertaken without the consent of the pastoral lessee.

Notwithstanding the potential for the additionality criteria to prevent inclusion of established Parks under the scheme, it would appear that, in relation to Parks, the applicant would be the Conservation Land Corporation and the consent of the Territory (but not necessarily non-exclusive native title holders) would be necessary.

Enforcement of obligations would override Territory law (and ALRA) thus once consent to carbon farming is given the prospect of loss of control of land management by the Territory and Aboriginal Land Trusts is very real.

Recommendation 8: That CFI law provide for recognition of carbon rights of Indigenous land owners and holders of exclusive possession native title interests.
Recommendation 9: The implications of pastoral and other leases of Crown land in the NT and the development of projects needs to be assessed.

Register of offset projects; and co-benefits

Providers of carbon offsets will often seek to deliver environmental and social benefits that extend beyond emissions reduction and carbon storage. The Territory supports in principle the proposition that details of such co-delivered benefits be available in formal project records. It will be necessary to ensure that recording of associated benefits does not prevent their future sale into other environmental markets. As noted earlier, there are, for example, many ways to achieve fire abatement, and delivering optimal conservation benefits as well as emissions abatement will require careful additional design and additional effort, sometimes at the expense of maximum carbon returns.

Recommendation 9: The NTG supports the proposal to encourage the listing and quantification of environmental and other co-benefits, and the indication that methodologies to rate these will be developed.

Crediting periods

Providing capacity to set modest crediting periods is a fundamentally sound idea because it will help providers and regulators to cope with the challenge of the new through regular reviews. It offers options to innovate but manage uncertainly by revising approaches as experience is gained. The creators and operators of the World Bank Prototype Carbon Fund emphasise that an important contribution of the fund to international processes was learning by doing[2], which obviously requires mechanisms for rigorous review.

However the proposed default crediting period of 3 years is far too short for sound projects with well-considered methodologies backed by good science, and may prejudice the substantial investment necessary to establish projects. Rate of change in established, well understood, project types is unlikely to be sufficiently rapid to warrant fundamental review in 3 years. We suggest a minimum of 5 years and preferably longer, combined with potential for the regulator to agree with proponents to schedule reviews of aspects of novel methodologies and levels of abatement recognised during the crediting period.

Early adopters of carbon-friendly technologies should not be penalised by not being able to claim credits once the scheme has commenced and a project is deemed eligible, if supporting evidence can be provided. Under the draft Bill the Administrator may only declare a subsequent crediting period for an eligible offsets project. The merits of powers to make a retrospective declaration should also be considered.

Recommendation 10: That the draft Bill provide for a minimum crediting period of 5 years together with mechanisms for conservative early estimates of novel approaches and (by agreement with project proponents) within-crediting-period review of novel methodologies.

[2] World Bank (2010) 10 years of experience in carbon finance. Insights from working with the Kyoto mechanisms. Accessed at www.carbonfinance.org under Publications and Reports on 7 September 2010.

Crediting

The consultation paper indicates that backdating of crediting periods for the CFI could not be earlier than July 2010 and then only for projects approved prior to July 2011. We consider this unreasonable because:

(1) for some projects like savanna fire, abatement is readily calculated back to 2005 from records already held and assembled in auditable databases, which could be made available to the regulator
(2) project developers have acted on signals from government given prior to July 2010[1] about intent to establish domestic offsets
(3) the program design does not appear to permit accreditation and trade under international voluntary standards that allow greater back-dating of recognition of credits.

Recommendation 11a: That CFI legislation include potential to backdate crediting periods to accommodate projects where achievement is clearly demonstrable before July 2010.

and/or

Recommendation 11b: That to overcome additionality difficulties that will otherwise arise in respect of offset credits of emissions counted towards Australia's Kyoto target, the Australian Government commit to surrender equivalent AAUs for projects seeking and obtaining accreditation under international standards (like the VCS).

Reporting

Reporting by exception while projects are under way should be considered, rather than annual mandatory reporting for projects which are proceeding as approved.

This should probably be considered more carefully and perhaps be reworded. Reporting is the means by which claims for issue of credits are made. It will be necessary to de-couple claims for credits from reporting if the interests of providers in getting credits regularly are to be maintained. However this will represent a high risk for regulators and investors, because they could continue issuing credits for projects that have stopped operating.

Businesses already have a high level of reporting requirements (tax office, shareholders etc). Reporting obligations should be simple and easily complied with, rather than eliminating annual reporting.

Methodology approval

Section 9: Methodology approval

The process for approving methodologies appears appropriate in general. The number of steps/approvals etc would appear at first glance to have a significant administrative burden, particularly in terms of ongoing accounting. This is likely to reduce the volume of credits in the market. Developed methodologies should be able to be understood by anyone with a high school education.

The proposal to protect commercially valuable information (e.g. in savanna fire projects, region-specific information on fuel loads gathered by project proponents) or location specific (customary) approaches in fire use and management is also supported.

Agency support to develop methodologies is also welcome. In our view, pressing needs for north and central Australia are:

- savanna fire - abatement of non-CO_2 gases (in progress) in areas of high and highly seasonal rainfall
- processes and methodologies for management-driven trend resolution in regions with erratic climates (e.g. central Australia);
- savanna fire - enhanced carbon sequestration;
- fire management and carbon sequestration in soils;
- savanna fire - abatement of non-CO_2 gases (in progress) in areas of lower and highly variable rainfall ;
- avoided deforestation, including that related to impacts of sea-water rise on coastal forests;
- feral animal management - abatement of non-CO_2 gases
- feral animal management - enhanced carbon sequestration in recovering vegetation and soils.

Carbon Measurement Methodology

- The reasons for requiring that methodologies expire are not made fully clear in the Paper or Bill. Expiration of methodologies, especially if they are subject to elaborate approvals processes and become the basis for significant commercial investment in market-based, cost-effective and efficient green house gas emission reductions would reduce confidence and certainty and impede continued investment. The availability and adoption of new methodologies, processes and technologies for current projects should be merit-based, market driven and the subject of negotiation with project proponents. It should not be a mandatory requirement. There is clearly no certainty that new processes and technologies of superior merit would emerge in project and commercial investment timeframes for all of the methodologies implemented.
- The methodology approvals requirements and processes look to be enormous and do not appear to be strictly necessary to achieve the objectives of the scheme. Common acceptable methodologies in similar circumstances may emerge over time and their documentation, assessment and publication could be an ongoing, developing responsibility of the Administrator, rather than an up-front responsibility of project proponents and developers.

'Paucity' of data on water and soil types in northern Australian.

- Among others, water and soil types will be important considerations in carbon farming initiatives in the NT and the fact that a knowledge gap exists needs to be addressed. It is

strongly recommended that close attention is paid to the work of groups such as the Northern Australian Land and Water Taskforce and the North Australian Ministerial Forum (NAFM) during CFI's formative period and roll out. Note that the NAMF will have an Expert Advisory Panel and an Indigenous Sustainable Development Forum and these will be useful contacts with a view to collaboration.

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Recommendation 12: That priority be given to funding and other support for savanna fire (non-CO2 gases and enhanced carbon sequestration);fire management and carbon sequestration in soils; avoided deforestation (through active management including that related to impacts of sea water rise on coastal forests); and feral animal management (methane emissions abatement and revegetation).

Taxation treatment of credits
no comment

Any additional comments

CFI is supported

The Northern Territory Government views development of the CFI as a very valuable step towards establishing effective markets in carbon, and in reduction of GHG emissions. Most aspects of the scheme are sensible and likely to be effective. Regulations made under the act and administrative processes will be as important for participation of northern Australians as the act itself, which in some places enables as much as prescribes.

In order to benefit from the carbon economy, prerequisite actions need to be put in place around the establishment of a carbon offset commodity:

- Legal separation of carbon commodity from the land title and defined property rights. Currently the Northern Territory does not have carbon rights legislation.
- Methodologies to measure the carbon commodity (similar to a weights and measurement framework), resulting in a fungiblity between markets and activity (abatement, sequestration, mitigation).
- Market rules and administration is at an appropriate level and balanced to minimise costs of participation while ensuring the integrity of the market.
- Application of the methodologies are standardised, developed, and paid for by the scheme administrator.

As demonstrated by a number of environmental trading schemes, the success of the CFI scheme and the meeting of objectives will depend on:

- Administrative requirements not a barrier to scheme participation.
- Administration focused on achieving the objectives of the scheme and result in projects that deliver actual bio-sequestration or abatement of emissions.
- The liquidity of the market and market strike price of ACCU, which is a function of cost of participation and the ease of applying the methodologies.

Above all, the scheme must result in the delivery of practical and cost effective carbon sequestration and emissions abatement projects to reduce greenhouse gas pollution in the atmosphere.

Objective of the CFI Scheme

- The objects and the design principles in the Bill and the Consultation Paper do not align and are too narrow. They should go to providing market-based, cost-effective and efficient green house gas emission reductions and to efficient scheme design involving reasonable program administration, and minimum costs, complexity and administrative effort for project developers and administrators – “red tape minimisation".
- The scheme integrity in design and implementation as outlined is supported providing that red tape is minimised commensurate with reasonable integrity outcomes.
- Important issues that may be decisive regarding participation are left to subordinate instruments or other discretion. It is therefore essential that the present formal consultation process be continued to encompass careful framing of the operational detail of the scheme. We would welcome the opportunity to discuss the issues raised here well before the important details of the draft Bill and regulations are finalised.

The Bill and consultation

- There are still a number of sections of the Bill that are not complete. That, together with the absence of a number of the key regulations required, has reduced the ability to assess the whole scheme effectively. An outline even of the key regulations at this stage would assist.
- A full COAG regulatory impact assessment is normally a mandatory requirement for proposals such as this and a full RIS should be part of the documentation available during this consultation period.
- Concerns about the inadequacies of the consultative process have been advised by the DCCEE.
- While we have sought to outline issues in this submission regarding the scheme design, the NT has concerns with the Bill as it is written, in particular, the administrative complexity.
- NT requests the opportunity for ongoing consultation and opportunity to comment on practicality, especially in areas where they require specific supporting actions from the states and territories.

Administration of the Scheme

- The scheme outlined in the Bill and the Paper do not minimise red tape. Simplifications to the design structures and approvals requirements would improve the approach from a bureaucratic perspective and place the emphasis back on achieving market-based, cost-effective and efficient green house gas emission reductions in the broader farming sector – which is where it should be.
- The requirement for recognised offsets entity approval seems excessive as a separate step. Applicant assessments could and should be a routine part of project approvals processes.
- It is highly likely that many initial projects will be very different depending, for example, on proponent interests and skills, objectives, the nature of the emissions being targeted, prior history and past practices, available infrastructure, macro and micro- climate and the bio-geographic regional characteristics involved. Common pre-approved methodologies, except at the very general level, are likely to be less than commonly and immediately applicable to optimised local projects. Overall best practice may emerge from the continued implementation of local projects and this may over time inform a wider cohort of project proponents on best practice and reasonable project administration.
- In the initial phases, the scheme could focus on projects and project approvals, with entity and methodology approvals treated as sub-components. This would significantly reduce the red tape and complexity in the Bill and focus the attention on projects to reduce or avoid sector greenhouse gas emissions using market-based, cost-effective and efficient methods, which should be the priority objective.
- The recognition of prior efforts and project outcomes by early adopters and other transitional matters require significantly more consideration and appropriate inclusion. Failure to do so may substantially penalise current and planned projects about to be implemented.
- There is a concern that the complexity of the red tape implied in the Bill may substantially delay and become an impediment for current project plans moving to implementation and have a negative impact on current efforts to reduce or avoid greenhouse gas emissions at least until the proposed arrangements and requirements are fully clear and certain and all of the complex approvals required are secured
- those fees would be applied cannot be assessed at this stage and a separate business impact analysis will be required when the details are available.

- All decisions by the Administrator, DOIC and the Minister should be time bound.

Registration of projects on title

- The Bill provides that the Registrar-General 'may' register an eligible carbon offset project and maintenance obligations on the land title register. The Northern Territory *Land Title Act* allows the Registrar-General to keep information that is considered necessary in relation to land under the record of administrative interests. The Registrar-General is also required to register any other information that maybe required to be registered by another Act.
- This should be sufficient for the purposes of the requirement under the Bill. However, consideration will need to be given as to whether maintenance obligations and carbon offset projects should be registered as an encumbrance to the title, or simply as an administrative interest to alert prospective purchasers that the title is the subject of a carbon offset project.

Protection of Intellectual Property

- The confidentiality and protection of intellectual property and commercial know-how provisions in the Bill do not appear adequate in the context of publication of methodology and project details. These aspects should be developed further to ensure the timely development of market-based, cost-effective and efficient green house gas emission reductions projects.

Other Issues

- The reference to the non-transferability of certificates of entitlement in Section 18 is not readily understandable and may require further explanation.
- Government contributions to or involvement in projects should not be an automatic disqualifier for projects. The conclusions in the draft NT submission on additionality are supported as well.
- The basis for the selection of some of the scheme's parameters, for example, the 3 year crediting period, permanence periods for carbon maintenance obligations, the 20 year period for crediting for avoided deforestation, the 5% risk reversal buffer and its application to only one category of projects, leakage components to be included and their limited application and the requirement for annual reporting for a particular category of projects, all require explanation and justification. The impact of alternative parameters should also be assessed in the Paper.
- The 3 year crediting period is not generally commercially feasible for longer term quality projects and may introduce short-termism in the way proponents propose and implement projects.

Registry Management and other Administrative issues

- There are many commercial operations that provide registry management, administration and maintenance of services. It is not clear, but there should be capacity in the Bill for the registry services functions to be provided by a commercial provider.
- While quite well polished in many places, the Bill's drafting, from our perspective, is in places repetitive, inefficient and excessive. It could and should be written more simply; additionally, the significant use of repeated sections with few variations should be restructured to improve understanding and reduce its length. In addition, all refusals should be accompanied with reasons for that refusal.
- The finalised Bill should require all Ministerial Directions to be gazetted.

- Proof-of-identity and application processes should be integrated with the current action to reform business-related government processes such as BOS, ABLIS and ABN-BN which provide relevant services and systems.

Assistance to Participants

- To many potential participants, CFI and related enterprise development will be a complex issue. This applies particularly but certainly not exclusively to Indigenous land owners – where legislative requirements, as noted above, can introduce an increased degree of complexity. It is critical that CFI be most clearly articulated, that on-the-ground assistance is readily available and that this is not something administered remotely from Canberra. There will have to be a permanent and competent technical and administrative CFI presence in the NT as soon as possible. There is potential for collaborative NTG / AG arrangements here. Grant funding and / or low interest loans should be available.
- Information on (1) how to become involved (and to withdraw), (2) the different activities possible under the CFI umbrella and (3), the benefits and costs of becoming involved in CFI has to be made available with the potential audience in mind. This does not have to be restricted to textual material. Training and accreditation has to be considered, once again with the backgrounds of possible participants in mind.