Northern Territory Government

DEPARTMENT OF **THE CHIEF MINISTER** www.nt.gov.au

Acting Chief Executive
GPO Box 4396
Darwin NT 0801

Tel 08 8999 5178
Fax 08 8941 1491
Our Ref: DOC2001/1767

Committee Secretary
Senate Standing Committee on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600
Australia
Via Email: ec.sen@aph.gov.au

Dear Mr Palethorpe,

CARBON FARMING INITIATIVE

Thank you for the opportunity for the Northern Territory Government to provide a submission to the Senate Inquiry into the *Carbon Credits (Carbon Farming Initiative) Bill 2011; Carbon Credits (Consequential Amendments) Bill 2011 and Australian National Registry of Emissions Units Bill 2011.*

The NTG supports the introduction of the Carbon Farming Initiative (CFI) and the development opportunities it promises. It is a 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 CFI is welcome recognition of the scope for land management to make a major contribution to national and international climate change action.

It is particularly welcome in the Northern Territory as we have the skills and experience and therefore potential to play a major role. 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 carbon farming opportunities under development in the Northern Territory, WALFA is notable in its delivery of emissions reduction, increased bio-sequestration, indigenous 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 including under-developed national policy settings.

The Northern Territory's Climate Change Policy includes a commitment to promoting "carbon farming " over large areas, through better management of fire and grazing and minimising land clearing. The CFI has the potential to strongly support and complement Territory policy and capability.

I have enclosed the Northern Territory Government's submission to the Department of Climate Change and Energy Efficiency's *Design of the Carbon Farming Initiative*" consultation paper and the exposure draft of the "*Carbon Credits (Carbon Farming Initiative) Bill 2011"* as background to this submission.

The Northern Territory still has concerns with the following aspects of Bill:

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

We note some amendments to the exposure draft in the Bill; however, the Territory still has concerns with a number of CFI policy and administration design features that in implementation have the potential to be complex and become a barrier to participation, particularly by Indigenous landholders. These concerns include:

- crediting periods;
- non-transferability of securities;
- prior recognition;
- discouragement of sound and appropriate smaller projects because of the complexity and structural requirements – less red tape is vital;
- opportunities for larger firms to arbitrage substantial value, based on superior and more complete market and scheme knowledge and approvals status, at the expense of smaller firms, individual land owners and NGOs; and
- regional capacity to support and help implement the scheme in the Territory especially regional and remote areas, including Indigenous communities, available expertise in government , consultancies and private development firms in the NT.

The Territory also has concern with definitions and subtle ambiguities which when applied to the NT context may not be applicable to NT conditions and have the potential to become exclusionary, particularly regarding native forest protection and additionality provisions.

It is also noted the Bill provides the broad outline; however, the yet unseen Regulations will define and detail the conditions. The consultation process where the Territory would most like to have input, that is the Regulations, is being developed separately and in isolation which has the potential to further limit participation by the Territory.

Protection of native forests - avoided deforestation

The Territory has released an exposure draft of legislation for managing land clearing that provides context for robustly establishing additionality for avoided deforestation or related projects.

Wrt to avoided deforestation and the crediting period of less than 20 years, it is noted the capacity proposed will allow projects to obtain more credits early. This will be important in savannas and other rangelands to provide the capital needed to improve sequestration and its security or to protect wetland forests from saline intrusion.

The Bills' definition of native forest excludes large areas of woodland in the NT with very substantial carbon storage capacity and the Territory seeks clarification on the intent. Is it intended that action to prevent clearing of woody non-forest vegetation be recognised? Not with standing the definition of native forest, there would appear to be no obstacle to extending native forest crediting arrangements to native woodlands protection projects.

The Territory seeks:

- eligibility for native woodlands to have the same eligibility and treatment as native forests;
- flexible application to allow landholders (and especially Indigenous landholders) to receive a reasonable proportion of credits early for necessary investment in infrastructure;
- support to develop approaches to additionality in avoided deforestation that encourage landholder participation in Territory conservation initiatives like Ecolink;
- assurance that native forest/woodland protection projects will be eligible to also receive credits for enhanced sequestration through active management (e.g. of fire frequency in savannas) that does not change the character of the forest or woodland;
- assurance that conservation areas that are established under a law of the Territory (including those pre-1 July 2010) are eligible to participate in the scheme or, at the very least, a provision that enables the Administrator or Minister to retrospectively declare an eligible project at his or her discretion where evidence of abatement consistent with the Bill's requirements and approved methodologies is available.

Backdating

Clause 27(16) of the Bill provides for the backdating of a project commencement to no earlier than 1 July 2010. The Territory's jointly managed framework for parks presents a potential for large scale native forest conservation and Indigenous participation. Given that these parks were declared pre 01 JUL 2010 and created by Northern Territory statute, they would not be eligible for participation in the scheme, and this is of concern to the Territory.

A number of Indigenous savanna fire projects were also operating in the Territory before this date, as were other projects established in response to commitments by the Rudd Government that Indigenous participation would be facilitated.

The Territory seeks:

- consideration of further backdating of declarations of Indigenous savanna fire projects initiated in response to government statements of support where evidence of abatement consistent with CFI methodologies is available.
- alternatively, a provision that enables the Administrator or Minister to retrospectively declare an eligible project at his or her discretion where evidence of abatement consistent with approved methodologies is available.

Additionality and conservation

The cause for concern regarding "Additionality" is the lack of recognition of parks and conservation areas as eligible project areas and already used for the purpose of conservation and established under State, Commonwealth or Territory law, and the need to distinguish between (non "land specific") regulatory requirements to offset and regulatory requirement to undertake specific land management.

The Bill requires evidence the project is not financially viable without credits and does not recognise projects that go beyond standard conservation practice in management of parks and conservation areas.

In the consultation paper, the position was taken that any site receiving support for conservation works supported by contract would be ineligible to participate in the CFI. This has caused and will continue to create uncertainty and lead to exclusion of State, Territory and Commonwealth conservation initiatives until a clear unambiguous and positive statement of intent is made.

While the Government has made welcome undertakings to "clarify the interaction between new projects created as a result of CFI" and "pre-existing" landscape restoration and conservation activities, it is a missed opportunity not to have included a clear positive statement of direction in the Bill.

While DCCEE officers have indicated that more considered approaches will be possible, with dropping of a financial additionality test, the ambiguity remains. In the absence of the correction of the position taken in the original consultation paper, confidence is weakened in the favourable undertakings from recent consultation.

In the absence of clarity on this issue (eligibility of existing programs) communities contributing to national conservation goals through arrangements like Indigenous Protected Areas and other conservation agreements will be effectively punished by early action and denied of access to the CFI.

The Territory seeks assurance that in developing regulations and methodologies that:

- the differing drivers and carbon management techniques (for example between targeted conservation actions and the management of carbon in savanna landscapes) will be recognised in all CFI projects;
- carbon projects comprising complementary biodiversity and resource conservation measures will be included in the definition of a CFI project;
- these recognise the commercialisation of savanna fire projects in rangelands is only possible with multiple benefits, and carbon offsets alone would be insufficient.

Permanence

The cause for NT concern around permanence is with the upfront provision of Australian Carbon Credit Units (ACCUs) and the practicality of applying the 100 year rule rather than the requirement of a carbon maintenance obligation and record on title.

The NT argues the strict requirement of one hundred (100) year permanence rule for sequestration is ill matched to both Australian and Northern Territory conditions. The logic of a strict definition rather than a statistical or stochastic approach is of the most concern. DCCEE officers have suggested that some tweaking of risk of reversal buffers may be considered, but this may not go far enough to overcome landholder concerns.

The NT argues the 100 year rule approach is an over-reaction to the flaws in some international arrangements and specifically the CDM approach. It is observed the International carbon market has a perception of risk around the current definition of the temporary credits approach under the Clean Development Mechanism. The NT argues the CDM approach could benefit from a revised and improved policy design, implementation and marketing, rather than rejection of the concept.

The moral hazard of the 100 year approach is to condemn a landowner who actively sequesters carbon for 99 years to have contributed nothing to emissions management in that period. It also establishes a legal requirement to predict the optimal management of land for carbon benefits a century hence. This approach is neither practical nor consistent with the reality of land conservation experience, particularly under climate change - impacted environment in a century's time. The 100 year rule will not provide the guarantee the Bill is seeking to provide.

Further this approach would most certainly exclude disadvantaged Indigenous landholders holding communal title, who may wish to access the relatively modest returns from the voluntary carbon market. The barrier to participation is not that the carbon will be stored in the landscape for the long term, but rather for Indigenous communities the symbolism of "locking up" the principal asset and also benefit accruing to present owners while creating financial liabilities for several generations of their descendants will be resisted and will therefore be a barrier to participation.

Consequently, the objective of and government commitment to Indigenous obligations to pursue sustainable development will be defeated.

The Territory seeks

- Development of options including better designed long-term (but not permanent) credits and arrangements for "collective permanence" rather than site by site assessment, to better reflect land management experience and supported by statistical approach and reduced risk through a collective CFI portfolio approach.
- more realistic systems that recognise the importance of long term (multi-decadal but not forever) sequestration for the objective of providing flexibility in Australia's move to a low carbon future.

The Territory's preference is that provisions for security of sequestration be fundamentally changed. If the 100 year permanence criterion is to be retained, the Territory seeks assurance that:

- nothing will be done in the Act or Regulations to prevent discretion being used to set credit relinquishment for all or part of a project site lower than the number issued, to protect the option to take proper account of the contribution made to meeting Australia's emissions management targets when sequestration is maintained for an extended period;
- criteria framed for determining relinquishment quanta under Part 7 of the Carbon Credits (Carbon Farming Initiative) Bill recognise the contribution that long-term (multi-decadal) sequestration makes to Australia's GHG management options and performance;
- the 100-year permanence obligations under the Bill will require Commonwealth Ministerial approval under the Aboriginal Land Rights (Northern Territory) Act due to the project's effect on the land for a period in excess of 40-years;
- declarations of sequestration projects do not explicitly require 100 year commitments but note the requirement to relinquish all or part of issued credits if future management decisions reduce carbon storage for the project site as a whole;
- review of the Act in 2014 will allow for design of more realistic and relevant approaches to security of sequestration.

<u>Recognition of ACCUs under a carbon price mechanism</u>

The NT Government notes the role Carbon Offsets credits (ACCUs) created under the Carbon Credits (Carbon Farming Initiative) Bill will play in a compliance scheme is subject to further consultation.

It is noted the Government has provided indicative support for the recognition of CFI credits in compliance systems; however, the NT argues it is essential that such credits, irrespective of when they were generated, be able to offset future liability provided they can be shown to have been consistent with a methodology approved under the CFI.

The Territory strongly supports:

- full recognition of CFI-type credits generated and properly accounted under arrangements consistent with CFI-approved methodologies as meeting future liabilities under a carbon price mechanism.

Capping CFI Carbon Offset Credits

Confusion exists around the intention of the Government to intervene in the market around the liquidity of credits and therefore price.

Professor Garnaut's Climate Change Review Update 2011 papers discusses the potential to restrict the number of offset credits available. The associated CFI Bills' explanatory memorandum suggests and refers to processes designed to avoid "flooding the market" and depressing prices. DCCEE officers refer to public statements indicating the Government has no present intention to place limits on CFI credits.

The Territory seeks:

- The lessons of the renewable energy certificate market be adhered to and the vulnerability of industry and investment to stop-start policy interventions by Government policy recognised.
- An undertaking the Northern Territory Government is adequately consulted with regard to such interventions.

Time restriction on exchange of Kyoto ACCUs

The NT Government assumes the Bill's deadline of 01 JUL 2013 for exchange of Kyoto ACCUs for assigned amount, removal or emissions reduction units is matched to the commitment period under the Protocol. It is not clear, why law establishing arrangements that will not be reviewed until 2014, makes no provision for future exchanges for internationally-recognised units.

The Territory seeks:

- clarification of intentions post-Kyoto regarding exchange of ACCUs to provide access to international compliance markets.

Recognition of other voluntary schemes

The CFI's tight restrictions on backdating is in conflict with other international schemes like the Voluntary Carbon Standard. It has been indicated that Australia would not take the action necessary to ensure additionality of credits issued under such schemes in respect of emissions counted towards Australia's Kyoto targets.

The net effect is domestic projects denied recognition of "old" credits under the CFI are blocked from pursuing other options on international voluntary markets. This appears unnecessary and inequitable.

The Territory seeks:

- support to allow further backdating or to facilitate access to other schemes like the Voluntary Carbon Standard.

Native Title Provisions

With reference to the native title provisions in clauses 43 (9) – (11) (Explanatory Memorandum [4.48] – [4.54]) which makes provision for post determination exclusive possession native title, the NT Government does not have an issue with this, other than to state it is largely irrelevant, as there would be less than 1000 ha of post determination exclusive possession native title and they are located in town settlements with low potential for carbon farming.

Clause 43(11) allows for regulations to be made for processes in relation to a "prescribed interest" (presumably non-exclusive) native title. The Explanatory Memorandum says it is very complicated [4.51] and so will be dealt with in the Regulations. The treatment of non-exclusive native title is crucial to virtually all of the (non aboriginal Land Rights Act (ALRA)) Territory and therefore needs to be addressed in the Act and not left to the Regulations, and for relevant future act procedures of the Native Title Act apply.

The NT has a differing interpretation of the application of the Racial Discrimination Act (RDA) (Explanatory Memorandum [4.52]). The Bill allows a veto (ie a requirement to consent) to **all** Torrens registered interest holders; therefore, to allow a project to proceed with less than a veto for native title holders may offend the RDA.

The question is raised: why does the Bill allow ***all*** Torrens registered interest holders a veto? Why should the holder of an easement over a portion of a Lot be allowed to refuse consent to a project that has no effect on the use of the easement? If the answer is administrative convenience, it is argued alternative treatments be found.

The NT seeks:

- That the treatment of non-exclusive native title is crucial to virtually all of the (non ALRA) Territory and the position should be made clear in the Act and not left to the Regulations.
- Only affected interests holders need consent to a proposed project and therefore have a right to veto.

Yours sincerely

ROD APPLEGATE

8th April 2011