Melbourne Law School

Centre for Resources, Energy and Environmental Law
Working Paper Series
ISSN 2200-0453

Melbourne Law School

Carbon in Country: Legal Pathways and Barriers to Indigenous Participation in Australia's Carbon Market Through Savanna Fire Management Under the Carbon Farming Initiative

Working Paper No. 3

Linda Hansen

September, 2015

CARBON IN COUNTRY: LEGAL PATHWAYS AND BARRIERS TO INDIGENOUS PARTICIPATION IN AUSTRALIA'S CARBON MARKET THROUGH SAVANNA FIRE MANAGEMENT UNDER THE CARBON FARMING INITIATIVE

Linda Hansen*

INTRODUCTION

Savannas constitute the 'most fire-prone vegetation on earth', producing approximately 10% of all global greenhouse gas ('GHG') emissions.[1] They are also a major contributor of GHG emissions in Australia, particularly in its north.[2] Linked to the area in which these fires occur live a large proportion of Australia's Indigenous people, who are also some of the most socially and economically disadvantaged people in the country.

This paper will critique legal pathways and barriers to Indigenous participation in Australia's carbon economy, focusing on savanna burning under the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) ('CFI') in northern Australia. It will first provide background context on the region's savanna environment, its history of fire management and the treatment of savanna burning in climate change law. It will then explain the characteristics of the Indigenous population and estate in northern Australia, to enable understanding the legal analysis which follows. The paper argues that management of savanna fires through the CFI is presenting new positive pathways for Indigenous people in northern Australia to simultaneously (re)-engage with their land, reduce GHG emissions and participate in emerging carbon markets. Two particularly successful examples of such projects in the Northern Territory ('NT') will be discussed.

However, focusing on the CFI and native title law, the paper will contend that many legal barriers still exist to enabling full Indigenous participation in Australia's carbon market. In relation to the CFI, these cover the complexity of the tenure and carbon sequestration right provisions, the 'newness requirement', the lowest-cost abatement design of the Emissions Reduction Fund ('ERF') and resource issues. The interaction between the CFI and native title law is particularly onerous in largely excluding non-exclusive possession native title holders from participating in the CFI. The paper concludes that these barriers will need to be fully

* BA(Hons)/LLB(Hons) (Syd). This working paper was submitted for assessment by the author in the Melbourne Law Masters subject 'Climate Change Law' coordinated by Associate Professor Margaret Young and Dr Damien Lockie. The author can be contacted at lhansen@student.unimelb.edu.au.

[1] Jeremy Russell-Smith, 'Managing Fire-prone Savannas for Carbon and Community Benefits' [Spring 2013] *Australian Forest Grower* 15, 15.

[2] Ibid.

addressed by future policy and legal frameworks in order to properly engage Australia's northern Indigenous people in the nation's carbon economy.

I AUSTRALIA'S NORTHERN SAVANNA ENVIRONMENT, BURNING REGIMES AND CLIMATE LAW

A *The Savanna Environment*

Australia's savanna lands are located in some of the most remote regions of northern Western Australia ('WA'), the NT and Queensland ('QLD'), stretching 'from Broome to Townsville'[3] and covering approximately 25 per cent of the total Australian continent.[4]

Located in a tropical region, the Australian savanna environment experiences an annual cycle of wet and dry seasons. Periods of heavy rainfall (December-March) in which savanna grass grows abundantly, followed by an intense, hot dry season (April-November) which cures the grass, make the area extremely fire-prone each year.[5]

In 2013, 'prescribed' savanna burning produced 1.67 per cent of Australia's overall greenhouse gas ('GHG') emissions and 26.3 per cent of the NT's overall emissions. [6] It is consistently estimated that savanna fires (including wildfires) are likely to produce approximately 40-50 per cent of all GHG emissions annually in the NT.[7] In some particularly harsh fire seasons, carbon emissions from savanna fires could contribute more than a third of the nation's total emissions.[8]

B *Savanna Burning Historically*

It is purported that approximately '70 per cent of Australia's plants need or tolerate fire', and that understanding this was critical to the success of Indigenous land management in

[3] Karen J Vella et al, 'Viewpoint: Social and Economic Dimensions of Involving Savanna Communities in Carbon Management Systems' (2005) 53 *Australian Journal of Botany* 741, 742.
[4] Scott Heckbert et al, 'Spatially Explicit Benefit-Cost Analysis of Fire Management for Greenhouse Gas Abatement' (2012) 37(6) *Austral Ecology* 724, 726; Scott Heckbert et al, 'Indigenous Australians Fight Climate Change with Fire' (Nov 2011) 2(6) *Solutions* 50, 51.
[5] Heckbert et al, 'Indigenous Australians Fight Climate Change with Fire', above n 4, 51.
[6] Australian Government Department of Environment, *National Greenhouse Gas Inventory* (2013) Australian Greenhouse Emissions Information System <www. http://ageis.climatechange.gov.au/NGGI.aspx>.
[7] Northern Australian Indigenous Land and Sea Management Alliance, *Carbon* (2012) <http://www.nailsma.org.au/programs/carbon>; Peter J Whitehead et al, 'The Management of Climate Change through Prescribed Savanna Burning: Emerging Contributions of Indigenous People in Northern Australia' (2008) *Public Administration and Development* 374, 374; Michael O'Donnell, 'Native Title – A Right to Burn and Fire the Land? Savanna Burning and the Carbon Farming Initiative in Northern Australia' (2013) 30 *Environmental and Planning Law Journal* 533, 554.
[8] Russell-Smith, 'Managing Fire-prone Savannas for Carbon and Community Benefits', above n 1, 15.

Australia prior to colonisation: 'except in the Wet, people could burn grass at almost any time, knowing it would re-shoot green'.[9]

Indigenous people living in the northern savanna regions pre-colonisation traditionally used fire as a 'key tool in the customary production system', and burnt the land on a regular basis for the purposes of hunting, signalling, access and ceremonial activities.[10] Burning was undertaken in a very systematic, controlled way, and would depend on, for example, the level of moisture left in the grass, the location of the fire and wind direction.[11] Different rules and cultural practices applied to burning according to gender.[12] Burning occurred throughout the dry season, 'for a diverse range of ecological…and pervasive social values – burning was not undertaken to conserve biodiversity *per se*'.[13] Nevertheless, people were still conscious of the effect of burning on maintaining different habitats, how fire made the land more productive and how it could be used to encourage re-growth.[14]

With colonisation in northern Australia (from 1870 onwards)[15] came the removal of Indigenous groups from their traditional lands, as pastoral leases and agriculture dominated government policy across the north.[16] Policies of assimilation saw Indigenous people living in missions and government settlements, unable to access or work traditional lands.[17] This resulted in a loss of traditional fire management and increase in European fire practices, which regarded fire as 'antagonistic' to land management, and was centred on a policy of avoidance and prevention.[18] Contemporary observers at the time were critical of traditional

[9] Bill Gammage, *The Biggest Estate on Earth: How Aborigines Made Australia* (Allen & Unwin, first published 2011, 2012 ed) 1, 107.
[10] Garry D Cook, Sue Jackson and Richard J Williams 'A Revolution in Northern Australian Fire Management: Recognition of Indigenous Knowledge, Practice and Management' in Ross A Bradstock, A Malcolm Gill and Richard J Williams (eds), *Flammable Australia: Fire Regimes, Biodiversity and Ecosystems in a Changing World* (CSIRO publishing 2012) 293, 294.
[11] Dean Yibarbuk, 'Introductory Essay: Notes on Traditional Use of Fire on Upper Cadell River' in Marcia Langton, *Burning Questions: Emerging Environmental Issues for Indigenous Peoples in Northern Australia* (Centre for Indigenous Natural and Cultural Resource Management Northern Territory University, 1998) 1, 3.
[12] Ibid 3-4.
[13] Jeremy Russell-Smith et al, 'Contemporary Fire Regimes of Northern Australia, 1997-2001: Change Since Aboriginal Occupancy, Challenges for Sustainable Management' (2003) 14 *International Journal of Wildland Fire* 283, 290 ('*Contemporary Fire Regimes*').
[14] Russell-Smith et al, 'Contemporary Fire Regimes' above n 13, 290; Petronella Vaarzon-Morel and Kasia Gabrys, 'Fire on the Horizon: Contemporary Aboriginal Burning Issues in the Tanami Desert, Central Australia' (2009) 74 *GeoJournal* 465, 469.
[15] Cook, Jackson and Williams, above n 10, 297.
[16] Ibid 295.
[17] Ibid 297.
[18] Ibid 295.

Indigenous fire burning practices, (incorrectly) viewing them as 'uncontrolled' and 'random'.[19]

The differing attitudes are best summarised by an Indigenous traditional owner from Arnhem Land:

> *Most people know fire as something very dangerous that can destroy the environment or habitats or buildings or people.*
>
> *The secret of fire in our traditional knowledge is that it is a thing that brings the land alive again. When we do burning the whole land…is reborn.*[20]

Since the late 1970s, attitudes to Indigenous fire management and ecological management more broadly have changed. Indigenous land management practices are being slowly incorporated into the 'prevailing western ecological conservation paradigm'.[21] Indigenous people are playing more active roles in management of national parks and other protected areas, and being more widely consulted with regard to environmental laws and policy.[22] Nevertheless, these processes have been criticised as taking place within an assimilationist framework, rather than one aimed at on-going Indigenous community sustainability.[23]

The effects of colonisation on fire management in Australia's north have been far-reaching, and the area now experiences extensive late dry-season wildfires, with little active fire management.[24] Although bushfires in Australia's south feature more prominently in the media, fires in Australia's north occur much more regularly and across more vast tracks of land.[25] For example, it has been estimated that in the period from 1997-1999, 75 per cent of the northern savanna environment was burnt by wildfires.[26]

C *Savanna Fires and Climate Change Law*

[19] Cook, Jackson and Williams, above n 10, 296; Richard A Gould 'Uses and Effects of Fire among Western Desert Aborigines of Australia' (1971) 8(1) *Mankind* 14, 22.
[20] Yibarbuk, above n 11, 1.
[21] Lee Godden, 'Native Title and Ecology: Agreement-making in an Era of Market Environmentalism', in Jessica K Weir (ed), *Country, Native Title and Ecology* (ANU E Press, 2012) 105, 107.
[22] Cook, Jackson and Williams, above n 10, 297-301; Godden, above n 21, 107.
[23] Ibid 111.
[24] Jeremy Russell Smith et al, 'Contemporary Fire Regimes' above n 13, 290.
[25] Ibid 283-284.
[26] Ibid 284.

The *United Nations Framework Convention on Climate Change*[27] ('UNFCCC'), and the *Kyoto Protocol to the United Nations Framework Convention on Climate Change*[28] ('Kyoto Protocol') have underpinned international climate law for the past 20 years.[29] The Kyoto Protocol treats emissions from prescribed savanna burning as agricultural and obliges Australia to report on these in its annual greenhouse inventory.[30] Carbon dioxide emissions from burning are not counted, as they are effectively cancelled out when regrowth occurs and the carbon is re-instated in the vegetation.[31] Rather, nitrous oxide and methane emissions are reportable.[32] These are significant sources of GHG emissions from savanna fires.[33]

The treatment of land-use emissions in a post-Kyoto Protocol international climate agreement has been heavily debated in the lead up to the Conference of the Parties scheduled for Paris in late 2015.[34] Agriculture emissions, Land Use Land Change and Forestry ('LULUCF') and Reducing Emissions through Decreased Deforestation and Forest Degradation ('REDD+') are all inter-related concepts and likely to feature prominently in any new agreement.[35] Where savanna burning, and Indigenous rights, will sit and be treated in any new agreement remains to be seen.

This paper focuses on the treatment of savanna burning at the domestic level through the CFI legislation, discussed in detail below.

II THE INDIGENOUS NORTH

A *The Indigenous Estate*

In order to understand how Indigenous people in northern Australia fit within the legal requirements of the CFI and can participate in the carbon market, it is necessary to first understand the type and extent of landholdings they have.

---

[27] *United Nations Framework Convention on Climate Change*, opened for signature 4 June 1992, 1771 UNTS 107 (entered into force 21 March 1994).
[28] *Kyoto Protocol to the United Nations Framework Convention on Climate Change,* opened for signature 16 March 1998, 2303 UNTS 148 (entered into force 16 February 2005) (*'Kyoto Protocol'*).
[29] Alexander Zahar, Jacqueline Peel and Lee Godden, *Australian Climate Law in Global Context* (Cambridge University Press, 2013) 19.
[30] *Kyoto Protocol* Art 3.1, Annex A; Intergovernmental Panel on Climate Change, *2006 IPPC Guidelines for National Greenhouse Gas Inventories, Volume 4: Agriculture, Forestry and other Land Use* (Institute for Global Environmental Studies, 2006) 6.2.4, 6.22.
[31] Ibid.
[32] Ibid.
[33] Scott Heckbert et al, 'Indigenous Australians Fight Climate Change with Fire', above n 4, 50.
[34] Stephen Leonard, *Forests and Land Use in a New Climate Agreement to Take Centre Stage at Bonn* (28 May 2014) REDD+ Safeguards <http://reddplussafeguards.com/?p=965>.
[35] Ibid.

Australia's Indigenous estate is referred to by Indigenous people as 'country'.[36] Indigenous people are well-known to have very strong spiritual, cultural and ancestral links to their land in Australia.[37]

The Indigenous estate comprises a complex set of landholdings and land interests.[38] The extent of the legal interest, access and control that Indigenous people have over their land depends on the type of tenure held, and this varies significantly across Australia.[39]

Altman identifies five key historic processes in Australia's Indigenous land rights history that have led to the diverse range of Indigenous landholdings in the present day. These are:

1. The creation of Aboriginal reserves in the protectionist era (from around 1880-1940);
2. State-based land rights legislation passed since the 1960s;
3. Land legislation which allowed transfer of ownership or granting of leases to Indigenous groups (such as lands trust grants, or the ability for Indigenous groups in NSW to own and leaseback national parks);
4. Land acquisition programs since the late 1960s (such as the role of the Indigenous Land Corporation ('ILC')); and
5. The development of native title law (discussed below).[40]

For example, in the NT, the Indigenous estate includes native title land, land subject to native title agreements, freehold land rights land, Aboriginal community living areas, as well as any leases that may be held over Crown land or pastoral land.[41] Aboriginal Land Councils or native title organisations operating under these laws can also purchase freehold land on the market and add to their estate.

B *Native Title*

[36] Jessica K. Weir, 'Country, Native Title and Ecology' in Jessica K. Weir (ed), *Country, Native Title and Ecology* (ANU E Press, 2012) 1, 2.
[37] See, for example Luke Taylor 'Connections of Spirit: Kuninjku Attachments to Country' in Jessica K Weir (ed), *Country, Native Title and Ecology* (ANU E Press, 2012) 21.
[38] J.C. Altman, G.J. Buchanan and L. Larsen, 'The Environmental Significance of the Indigenous Estate: Natural Resource Management as Economic Development in Remote Australia' (Discussion Paper No 286/2007, Centre for Aboriginal Economic Policy Research, ANU) 2.
[39] Ibid 5.
[40] Ibid 5, 49.
[41] Jeremy Dore et al, 'Carbon Projects and Indigenous Land in Northern Australia' (2014) 36 *The Rangeland Journal* 389, 397.

Native title recognition since the High Court's decision in *Mabo v State of Queensland [No 2]* ('*Mabo*')[42] has undoubtedly had a major impact on the Indigenous estate, and providing Indigenous people with rights to access, negotiate and carry out activities on their traditional lands. As it is such an important part of allowing Indigenous participation in the CFI, and is quite unique and complex in nature, a brief overview is warranted.

Native title is legal recognition of Indigenous peoples' traditional 'laws, customs and connections with their land and waters'.[43] It is not a common law land tenure, but a *sui generis* interest in land.[44] The Court's decision in *Mabo* that at the time of colonization, Australia was not empty but occupied and managed by Indigenous people, meant that traditional Indigenous rights and interests in land 'survived' sovereignty and the Crown's acquisition of 'radical title' to all land in Australia, provided certain valid Crown acts (most commonly the grant of freehold) did not 'extinguish' it. [45]

Native title can consist of either exclusive possession or non-exclusive possession title. The former allows Indigenous traditional owners to enjoy full possession and access to their lands to the exclusion of all others.[46] It can only be granted over unallocated Crown land, or certain types of Indigenous held land.[47] Non-exclusive possession native title land is shared rights in land, most commonly with pastoral lessees, and contains no right to control access to, or use of, the land.[48]

Since the decision of *Western Australia v Ward*[49] in 2002, native title is also viewed as a 'bundle of rights and interests in relation to land'.[50] The nature of these rights will depend on the traditional laws and customs of the native title group that can be proven to have continued

[42] *Mabo v State of Queensland [No 2]* (1992) 175 CLR 1.
[43] Weir, above n 36, 6; *Native Title Act 1993* (Cth) s 223.
[44] Dore et al, above n 41, 392.
[45] Emily Gerrard, 'Towards a Carbon Constrained Future: Climate Change, Emissions Trading and Indigenous Peoples' Rights in Australia', in Jessica K. Weir (ed), *Country, Native Title and Ecology* (ANU E Press, 2012) 135, 149.
[46] National Native Title Tribunal, *Native Title: An Overview* (October 2009), 2 <http://www.nntt.gov.au>; *Native Title Act 1993* (Cth) s 225(e).
[47] National Native Title Tribunal, above n 46, 2.
[48] National Native Title Tribunal, above n 46, 2; Kimberly Land Council, *What is Native Title?* (2014) <http://www.klc.org.au/native-title/what-is-native-title>.
[49] *Western Australia v Ward* [2002] HCA 28.
[50] Gerrard, above n 45, 151.

unbroken since colonisation.[51] Examples include rights to camp and rights to hunt, fish and gather.[52]

The *Native Title Act 1993* (Cth) ('NTA'), enacted after *Mabo*, now sets out the rules and processes relating to native title. It sets out a process for making native title claims,[53] when native title will be extinguished,[54] how 'future acts' or developments can occur over native title land,[55] and gives rights to negotiate in certain situations to native title holders.[56]

C *Indigenous Demographic Profile*

In 2011 the Indigenous population of Australia was approximately 548,368 people or 2.5 per cent of the total population. Of this, 56,776 (roughly 10 per cent) lived in the NT, where they made up 26.8 per cent of the total population there.[57] Data shows that in non-urban areas of the NT 70 per cent of the population is Indigenous, whilst in very remote Australia (which covers around 75 per cent of Australia's total landmass) Indigenous groups make up almost half the population.[58]

There is not one 'comprehensive national data set or map' that illustrates all of the exact land holdings of this population.[59] Data from the ILC suggests that in 2006, the Indigenous estate constituted 16 per cent of Australia's total land area, and 44.8 per cent of NT land.[60] Given the amount of positive native title determinations finalised since then (67 in 2007[61] versus 251 in 2015[62]) these figures are now likely to be even greater. Other research suggests that the Indigenous estate currently comprises around 20 per cent of Australia's total land

[51] National Native Title Tribunal, above n 46, 2.
[52] Kimberly Land Council, above n 48.
[53] *Native Title Act 1993* (Cth) ss 60A-79.
[54] Ibid ss 13A-23JA.
[55] Ibid ss 24AA-44G.
[56] Ibid ss 25-44.
[57] Australian Bureau of Statistics, *2011 Census Quick Stats* (28 March 2013) <http://www.abs.gov.au/websitedbs/censushome.nsf/home/data>.
[58] Altman, Buchanan and Larson, above n 38, 4.
[59] Altman, Buchanan and Larson, above n 38, 1.
[60] Ibid 6, 9.
[61] Ibid 13.
[62] National Native Title Tribunal, *Statistics* (7 July 2015) <http://www.nntt.gov.au/Pages/Statistics.aspx>.

mass, [63] but when other interests such as those recognised through negotiated Indigenous agreements are factored in, the interests rise to 'well over half of Australia's land area'.[64]

Unfortunately, the people charged with responsibility for such vast, remote areas of land are some of the most severely disadvantaged in Australia, in terms of their socio-economic status, suffering from high rates of health problems, lack of basic infrastructure, lack of educational and employment opportunities, various addictions, housing problems and dependency on government welfare.[65] Remote Indigenous Australians have been compared to those living in third world developing countries, with more than 40 per cent living below the poverty line.[66] Life expectancy in these areas is very low, with only 8 per cent of people living beyond 55 years of age.[67] As Whitehead et al have noted:

> *the very people positioned by their connections with land and their knowledge and interests to contribute most directly to the delivery of fire and related environmental services are often poorly equipped to manage their engagement with the demands of mainstream commercial operations.*[68]

D *Australia's Indigenous People and Climate Change*

The Fifth Assessment Report of the Intergovernmental Panel on Climate Change emphases the detrimental impacts of climate change on Indigenous communities across the world,[69] and Australia's Indigenous people are no exception to this. Sea level rises pose threats to Indigenous homes and livelihoods in coastal areas in particular, [70] whilst other communities will suffer from extreme weather events such as 'heatwaves, wind speeds, storm surges and

---

[63] Karissa Preuss and Madeline Dixon, '"Looking After Country Two-Ways": Insights into Indigenous Community-Based Conservation from the Southern Tanami' (2012) 13(1) *Ecological Management and Restoration* 2, 2.

[64] R Hill et al, 'Indigenous Land Management in Australia: Extent, Scope, Diversity, Barriers and Success Factors' (Report, CSIRO Ecosystem Sciences, 2013) 19.

[65] L Petheram et al, '"Strange Changes": Indigenous Perspectives of Climate Change and Adaptation in NE Arnham Land (Australia)' (2010) 20 *Global Environmental Change* 681, 682, 685; J C Altman, 'Alleviating Poverty in Remote Indigenous Australia: the Role of the Hybrid Economy' (Topical Issue Paper No 10, Centre for Aboriginal Economic Policy Research, ANU, 2007) 2 <http:www.anu.edu.au/caper/>.

[66] Altman, above n 65, 1, 2.

[67] Altman, above n 65, 2.

[68] Whitehead et al, above n 7, 380.

[69] See generally L Olsson et al, 'Chapter 13: Livelihoods and Poverty' in Field et al (eds) *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2014) <https://ipcc-wg2.gov/AR5/images/uploads/WGIIAR5-Chap13_FINAL.pdf>.

[70] Owen Cordes-Holland, 'The Sinking of the Strait: the Implications of Climate Change for Torres Strait Islanders' Human Rights Protected by the ICCPR' (2008) 9(2) *Melbourne Journal of International Law* 405, 408.

cyclones, storms and bushfires'.[71] In addition is the particular threat of climate change to places of cultural heritage and identity. It is argued that 'the devastation of sacred sites, burial places and hunting and gathering spaces, not to mention a changing and eroding landscape, cause great distress to Indigenous peoples'.[72]

The consequences of the extent of the socio-economic problems facing remote Indigenous communities in Australia is that for many people, the realities of simply managing daily life will take priority over concerns about the impacts of climate change on their communities.[73] Therefore, addressing climate change impacts on Indigenous communities in Australia will need to be linked to simultaneously addressing wider socio-economic concerns and adaptive capacities facing communities as well.[74]

Adaptation and abatement measures taken by Indigenous people will ideally be relevant to Indigenous cultures and traditions, by led and managed by Indigenous people, and provide relevant co-benefits deemed important by communities, such as employment, education, training and re-engagement with traditional lands. It will be seen from the case studies discussed further below that savanna burning projects offer such opportunities to remote Indigenous communities.

III LEGAL PATHWAYS TO THE CARBON MARKET

A *CFI: Overview*

The CFI commenced in 2011 and was designed to provide opportunities for the land sector, (which produces approximately 18 per cent of total GHGs in Australia),[75] to participate in carbon markets.[76] In 2014, the CFI was subject to significant legislative amendment to allow for the integration of the current federal government's new ERF into it.[77] Further changes

[71] Emily Gerrard, 'Impacts and Opportunities of Climate Change: Indigenous Participation in Environmental Markets' 3 *Land, Rights, Laws: Issues of Native Title* (Issue Paper No 13, Native Title Research Unit, April 2008), 11, citing Allen Consulting Group 'Climate Risk and Vulnerability: Promoting an Efficient Adaptation Response in Australia' (Report, Australian Greenhouse Office, Department of Environment and Heritage, March 2005) <http://www.sfrpc.com/Climate%20Change/4.pdf>.
[72] Gerrard, above n 71, 12.
[73] Petheram et al, above n 65, 685, 687.
[74] Petheram et al, above n 65, 687; Douglas K Bardsley and Nathanael Wiseman, 'Climate Change Vulnerability and Social Development for Remote Indigenous Communities of South Australia' (2012) 22 *Global Environmental Change* 713, 715, 719-721.
[75] Dore et al, above n 41, 390.
[76] Ibid 389.
[77] *Carbon Farming Initiative Amendment Act 2014* (Cth).

were again introduced in 2015 though the *Carbon Credits (Carbon Farming Initiative) Rule 2015* (Cth) ('CFI Rule').

The Act sets up a 'scheme' for issuing Australian carbon credit units ('ACCUs') in relation to certain types of 'eligible offset projects'.[78] One ACCU is equivalent to one tonne of carbon dioxide equivalent stored or avoided by a project.[79] ACCUs are tradeable commodities,[80] and can be sold to the Australian government through the ERF or on the secondary carbon market, either in Australia or overseas.[81]

The CFI provides for two types of 'offsets projects' – carbon sequestration projects and emissions avoidance projects.[82] Projects must adhere to pre-approved methodologies to gain credits under the scheme.[83] In addition, projects must be additional,[84] the project proponent must have the legal right to carry out the project and they must pass a 'fit and proper person' test.[85] To ensure the integrity of the scheme, there are also provisions regarding reporting and notification,[86] and ongoing compliance.[87]

Recent amendments to the legislation mean that now:

- Carbon sequestration project proponents are no longer required to hold the legal carbon sequestration *right* in the land subject to the project, but are instead only required to gain the *consent* of that carbon right holder to the project;[88] and
- Projects must meet the 'newness requirement', being not already required under any Australian law or funded under any Australian government program.[89]

B *ERF: Overview*

[78] *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth), s 4 (*'CFI Act'*).
[79] Clean Energy Regulator, *About the Emissions Reduction Fund* (13 July 2015) <http://www.cleanenergyregulator.gov.au/ERF/About-the-Emissions-Reduction-Fund>.
[80] *CFI Act* s 4.
[81] Clean Energy Regulator, *About the Emissions Reduction Fund* (13 July 2015) <http://www.cleanenergyregulator.gov.au/ERF/About-the-Emissions-Reduction-Fund>; O'Donnell, above n 7, 555.
[82] *CFI Act* s 5 (definition, 'offsets project').
[83] *CFI Act* s 27(4)(b).
[84] *CFI Act* s 27(4)(d).
[85] *CFI Act* s 27(4)(e)-27(4)(f), s5.
[86] *CFI Act* ss 75-85.
[87] *CFI Act* Part 17.
[88] *CFI Act* ss 28A, 43; Clean Energy Regulator, *Moving from the Carbon Farming Initiative to the Emissions Reduction Fund: Getting Started*, 8 <http:/www.cleanenergyregulator.gov.au>; Explanatory Memorandum, Carbon Farming Initiative Amendment Bill 2014 (Cth) 22 ('*Explanatory Memorandum CFI Amendment Bill*').
[89] *CFI Act* s27(4A); *Explanatory Memorandum CFI Amendment* Bill, above n 88, 22-23, 31.

The ERF is the centrepiece of the current Australian government's Direct Action Plan on climate change.[90] It came into effect following the repeal of the cap and trade scheme set up by the previous government under the *Clean Energy Act 2011* (Cth).[91]

The ERF is the new vehicle for the purchase of credits gained from CFI projects by the government.[92] It involves project proponents submitting sealed bids to the Clean Energy Regulator ('CER') in a reverse auction, with the lowest-cost projects being purchased by the government.[93] Bids must be below a benchmark price,[94] and meet a minimum project size based on emissions savings.[95] Successful bidders then enter into pre-agreed contracts (for terms of either seven or 10 years) with the CER for the delivery of payments.[96]

The first auction carried out under the ERF occurred in April 2015.[97] The government entered into 107 abatement contracts with 43 contractors covering 144 projects, with an average price of $13.95 per tonne of abatement.[98] Of this total, only two Indigenous savanna burning projects were granted.[99] By comparison, three contractors were awarded 75 per cent of contracts, and two methods (avoided deforestation and landfill gas) dominated over 80 per cent of contracted abatement.[100] Clearly, the evidence so far suggests that Indigenous savanna project proponents are 'finding it difficult to compete'.[101]

C *CFI: Savanna Burning*

[90] Department of Environment, *Repealing the Carbon Tax* <http://www.environment.gov.au/climate-change/repealing-carbon-tax>.
[91] *Clean Energy Legislation (Carbon Tax Repeal) Act 2014* (Cth); *Explanatory Memorandum CFI Amendment Bill*, above n 88, 7.
[92] Aboriginal Carbon Fund, *Emissions Reduction Fund – What it Means for Aboriginal Carbon Projects* (16 February 2015) <http://aboriginalcarbonfund.com.au/erf-what-it-means-for-aboriginal-carbon-projects/>.
[93] Department of Environment, *The Emissions Reduction Fund: Purchasing* (2014) <http://www.environment.gov.au/climate-change/emissions-reduction-fund/publications/factsheet-emissions-reduction-fund-purchasing>; *Explanatory Memorandum CFI Amendment Bill*, above n 88, 6.
[94] Department of Environment, above n 93.
[95] Clean Energy Regulator, *Emissions Reduction Fund: Auction Guidelines*, 2 <http://www.cleanenergyregulator.gov.au/DocumentAssets/Documents/ERF%20auction%20guidelines.pdf>
[96] Department of Environment, above n 93; *Explanatory Memorandum CFI Amendment Bill*, above n 88, 6.
[97] Clean Energy Regulator, *Auction Results: April 2015* (25 May 2015) <http://www.cleanenergyregulator.gov.au/ERF/Published-information/auction-results/auction-results-april-2015>.
[98] Ibid.
[99] Clean Energy Regulator, *Carbon Abatement Contracts Table* (16 July 2015) <http://www.cleanenergyregulator.gov.au/ERF/Published-information/auction-results/auction-results-april-2015/Carbon-Abatement-Contracts-table>; Jeremy Dore, 'Who's winning at the ERF auction?' on *Aboriginal Carbon Fund* (26 May 2015) <http://aboriginalcarbonfund.com.au/blog/2015/5/26/whos-winning-at-the-erf-auction>.
[100] Dore, above n 99.
[101] Ibid.

Similar to its classification under the Kyoto Protocol, savanna burning is defined in the CFI as an 'agricultural emissions avoidance project'.[102] By virtue of the 2015 CFI Rule, it is now also defined as an 'area-based emissions avoidance project'.[103] The CER, who administers the CFI, advises that for sequestration projects and area-based emissions avoidance projects such as savanna burning, the consent of those with relevant land interests in a project area must be gained before the end of the first reporting period for the project,[104] whereas previously such consent was only required for sequestration projects.[105] Eligible interest holders from whom consent will be required are set out at sections 44-45A of the CFI and include carbon right holders and land owners.

There are currently three savanna fire burning methodologies approved under the CFI; two relating to the reduction of GHGs through early dry season burning, and one related to emissions abatement through savanna fire management.[106] The first two apply to areas with over 1000ml annual rainfall, and relate to GHG emissions saved by carrying out patch burning early in the dry season, in order to avoid uncontrolled, widespread wildfires later in the dry season.[107] The third methodology extends early dry season burning down to areas with over 600ml annual rainfall.[108] In addition, a sequestration methodology for savanna burning is being developed and may be approved by 2016.[109]

D *CFI: Indigenous Beneficial Provisions*

Indigenous leaders have described the carbon offsets market in Australia as representing 'the largest opportunity in history to drive sustainable poverty alleviation in Aboriginal communities'.[110] The CFI, being focused on land-based reduction opportunities, is currently the most direct route for Indigenous Australians into the carbon market.[111]

---

[102] *CFI Act* ss 5, 53(1).
[103] *Carbon Credits (Carbon Farming Initiative) Rule 2015* (Cth), Rule 50(a).
[104] Clean Energy Regulator, *Eligible Interest Holder Consent* (17 June 2015) <http://www.cleanenergyregulator.gov.au/ERF/Choosing-a-project-type/Opportunities-for-the-land-sector/eligible-interest-holder-consent>; *CFI Act* s28A.
[105] *CFI Act* s 27(4)(k) (repealed by *Carbon Farming Initiative Amendment Act 2014* (Cth) s 105).
[106] Clean Energy Regulator, *Savanna Burning Methods* (15 June 2015) <http://www.cleanenergyregulator.gov.au/ERF/Choosing-a-project-type/Opportunities-for-the-land-sector/Savanna-burning-methods>
[107] Aboriginal Carbon Fund, *Savanna Burning* (9 April 2015) <http://aboriginalcarbonfund.com.au/savanna-burning/>.
[108] Ibid.
[109] Ibid.
[110] Cathy J. Robinson et al, 'Australia's Indigenous Carbon Economy: A National Snapshot' (May 2014) 52(2) *Geographical Research* 123, 124.
[111] Ibid.

Carbon abatement projects through the CFI clearly were not envisaged as a 'future act' at the time the NTA was drafted, meaning that the NTA does not give any specific protections or rights to native title holders for carbon projects on their land.[112]

Rather than try to 'squeeze' native title carbon farming rights under the future act provisions of the NTA, the CFI legislation quite innovatively went back to 'first principles' and approached native title on a non-discrimination basis instead,[113] by conferring beneficial rights to enable easier participation.[114]

The beneficial provisions provide that:

- native title holders have an 'eligible' interest in land, similar to other land holders, requiring their consent for projects on their land;[115]
- exclusive-possession native title holders hold the applicable carbon sequestration right in the land and have the legal right to carry out the project;[116]
- individual native title holders do not need to register separately as project proponents, accruing potential individual liability and struggling to pass the fit and proper person test, but rather, the Registered Native Title Body Corporate ('RNTBC') (who usually holds the native title land on trust or as an agent for the group) is deemed to be the project proponent;[117]
- any carbon credits earned from CFI projects will not be issued unless the RNTBC for the group has set up a special native title registry account under the CFI,[118] and be held on trust by the RNTBC for all native title holders;[119] and
- native title holders can 'transfer' their carbon sequestration right to a third party and allow them to undertake a project in relation to their land through a negotiated agreement process under the NTA.[120] This provision is important as the NTA does not otherwise allow for native title holders to transfer their interests in land, and

[112] Dore et al, above n 41, 393.
[113] Lisa Strelein and Toni Bauman, 'Interview with Lisa Strelein: Reflections on the 20th Anniversary of Mabo', in Toni Bauman and Lydia Glick (eds), *The Limits of Change: Mabo and Native Title 20 Years On* (Australian Institute of Aboriginal and Torres Strait Islander Studies, 2012) 396, 398.
[114] Replacement Explanatory Memorandum, Carbon Credits (Carbon Farming Initiative) Bill 2011 (Cth), 43.
[115] *CFI Act* ss 28A and 45A.
[116] *CFI Act* ss 43(9)(f), 46(1).
[117] *CFI Act* s 46.
[118] *CFI Act* ss 48, 49(4)(b).
[119] *CFI Act* s 50(2).
[120] *CFI Act* s 43(10).

may therefore provide an opportunity for payment to native title holders who cannot otherwise carry out projects themselves. [121]

E *Indigenous Participation in the CFI to Date*

There are currently 33 savanna projects operating in northern Australia.[122] Of these, 14 projects are Indigenous owned or controlled, with four in WA, four in the NT and six in QLD.[123] At least one of these projects (the West Arnhem Land Fire Abatement Project ('WALFA'), discussed below) was developed and has succeeded outside of the CFI.[124]

The two case studies below illustrate the success that Indigenous savanna projects have experienced both under the CFI and the voluntary market.

1 *Case Study One: WALFA*

The WALFA project was developed in 1996, well before the CFI was envisaged, and has been heralded both as 'the original savanna project'[125] and because it laid the groundwork in testing the ability of early dry season savanna burning to reduce GHG emissions, and the roles that Indigenous people could play in achieving this.[126]

WALFA is a private payment for eco-services agreement on the voluntary carbon market between a large corporate (Darwin Liquefied Natural Gas Pty Ltd ('DLNG'), a subsidiary of multinational Conoco Phillips), the NT government, traditional Indigenous land owners and the NT Land Council (an Indigenous organisation).[127]

Under the terms of the contract, DLNG agreed to pay $1 million per year for 17 years into the project as part of the conditions of their licensing arrangements for a gas plant in the NT.[128] In return, '30 Indigenous people are paid to undertake fire management that will produce GHG offsets'.[129]

---

[121] Dore et al, above n 41, 393.
[122] Aboriginal Carbon Fund, *Savanna* Burning, above n 107.
[123] Ibid.
[124] United Nations University, *A Carbon Guide for Northern Indigenous Australians* (UNU Institute of Advanced Studies, 2009), 33.
[125] Altman, Buchanan and Larsen, above n 38, 42; Aboriginal Carbon Fund, *Indigenous Projects* (5 May 2015) <http://aboriginalcarbonfund.com.au/indigenous-projects/>.
[126] Whitehead et al, above n 7, 375, 377.
[127] James Fitzsimons et al, 'Insights into the Biodiversity and Social Benchmarking Components of the Northern Australian Fire Management and Carbon Abatement Programmes' (2012) 13(1) *Ecological Management and Restoration* 51, 52; Altman, Buchanan and Larsen, above n 38, 42.
[128] Gerrard, above n 71, 9.
[129] Altman, Buchanan and Larsen, above n 38, 42.

The project combines traditional fire management practices with modern western science in order to achieve emissions reductions.[130] It has consistently exceeded its stated annual reduction goal of 100,000 tonnes of carbon dioxide emissions equivalent.[131]

Importantly, besides reducing GHG emissions, the project has been successful in providing culturally relevant and stable, long-term employment and training to Indigenous people in an area where there are otherwise very few such opportunities,[132] and providing an opportunity to re-engage with traditional fire management practices on traditional land. The project was attractive to Indigenous participants due to the 'opportunity to bring Aboriginal managers and management back to "orphaned country"',[133] and to the private sector because of the opportunity to build its corporate social responsibility profile through 'economic, social and environmental outcomes'.[134]

Finally, the project sets a positive example for future voluntary carbon market agreements between Indigenous groups and the private sector,[135] and may be of particular relevance and interest to those who have been unable to secure government contracts under the ERF scheme.

2 *Case Study Two: Fish River*

The Fish River project was the first Indigenous savanna project approved under the CFI.[136] The property on which the project is taking place is owned by the ILC, and is located on 1800km^2 land south of Darwin.[137]

Fish River is another example of a project carried out collaboratively between groups, being the ILC, traditional owners, Indigenous land management groups and nature conservation groups.[138]

---

[130] United Nations University, above n 124, 32.
[131] Heckbert et al, 'Indigenous Australians Fight Climate Change with Fire' above n 4, 51.
[132] Fitzsimons et al, above n 127, 52.
[133] Whitehead et al, above n 7, 376.
[134] Gerrard, above n 71, 10.
[135] United Nations University, above n 124, 33.
[136] Mark Dreyfus, 'Australia's First Savanna Burning Project Approved under the Gillard Government's Carbon Farming Initiative' (Media Release, MD47/12, 2 November 2012) <http://www.ilc.gov.au/Home/Media/Media-Releases/Fish-River>.
[137] Dreyfus, above n 136; Aboriginal Carbon Fund 'Indigenous Carbon 2013: State of Play in the Indigenous Carbon Industry' (Report, Aboriginal Carbon Fund, 2013) 8 <http://aboriginalcarbonfund.com.au/indigenous-carbon-reports/>.

Prior to the project commencing, 69 per cent of the property was badly damaged by late season wildfire annually.[139] Early dry season burning has now reduced this to three per cent.[140] Again, the project uses a combination of 'traditional burning practices with the latest satellite tracking and mapping technologies' and provides employment opportunities to local Indigenous people.[141]

A local Indigenous ranger on the project summarises the benefits to Indigenous communities as follows:

> *When you look at it you know, all we're doing is using the old, incorporating it with the new and now we're sort of deriving a dollar value from what we used to do in the past…*
>
> *…I think it's extremely important for our mob to sort of get meaningful employment on our own land, you know like to actually live on your own country where you've sort of grown up and then draw a wage from working on your country and maintaining it, looking after it – there's no better outcome for you.*[142]

As a result of the emission reductions achieved, the ILC received 25,884 ACCUs in 2013, which were then sold to a large multinational (Caltex) for around $500,000.[143] Today, almost 50,000 ACCUs have been earned by the project.[144] Revenue earned from sale of the ACCUs is being invested back into the local Indigenous community to improve employment and training.[145]

IV LEGAL BARRIERS TO THE CARBON MARKET

A *Barriers under the CFI*

1 *Tenure Complexities*

---

[138] Dreyfus, above n 136; Indigenous Land Corporation, *Fish River Carbon Credits: Meet your Carbon Liability While Making a Difference to the Lives of Indigenous Australians* <http://www.fishriver.com.au/FishRiver/media/Items/Files/Fish-River-ACCUs-brochure.pdf>.
[139] Dreyfus, above n 136.
[140] Ibid.
[141] Ibid.
[142] Australian Broadcasting Corporation, 'The Indigenous Fire Project Generating Carbon Credits: Fish River Station Sells Carbon Credits to Caltex', *7.30 NT*, 18 June 2013 (John Daly) <http://www.abc.net.au/news/2013-06-14/the-indigenous-fire-project-generating-carbon/4756114>.
[143] Aboriginal Carbon Fund, 'Indigenous Carbon 2013: State of Play in the Indigenous Carbon Industry', above n 137, 8.
[144] Indigenous Land Corporation, above n 138.
[145] Ibid.

Despite the success of the case studies outlined above, it is clear that there are still significant barriers to increasing Indigenous participation in Australia's carbon markets.

One of the major barriers to participating in the CFI is the sheer complexity of navigating the legal land tenure requirements that apply to carrying out CFI projects.[146] Although the CFI is federal legislation, it is based on the land laws applying in each different state and territory of Australia, as well as (federal) native title laws and emerging (state) laws regarding carbon sequestration rights.[147] It is under this myriad of laws that Indigenous CFI project proponents must show a legal right to carry out a project and the consent of others with eligible interests in the land to the project.[148]

Dore et al use the example of the Fish River Project in the NT to highlight how some of these tenure complexities have arisen in Indigenous savanna projects to date. In that project, the ILC's interest in the land was derived from a perpetual Crown lease held under NT legislation, meaning Crown consent to the project was required.[149] This land was also subject to an undetermined native title claim.[150] Crown lands legislation requires that any activities which occur under Crown leases must be in accordance with the purpose of the lease; in this case 'grazing and ancillary'.[151] Negotiations with the Crown were required before parties could conclude that savanna fire management of the land was an 'ancillary' purpose.[152] It was not known whether the CER, in approving the project, enquired into this conclusion when granting consent to the project.[153]

It is clear from this example that many complexities in relation to one parcel of land can arise for Indigenous groups. Indigenous land tenures can overlap with other land interests (including other Indigenous interests, as at Fish River) which may require negotiations, involving time, expertise and cost. Further, native title *claims* over land are not dealt with expressly under the CFI and can add complexity and uncertainty, particularly in the 'gaps' between a claim being made and determined, or determined but not yet having a registered RNTBC to act on behalf of native title holders.[154] In such cases, project proponents will need

[146] Dore et al, above n 41, 389.
[147] Ibid.
[148] *CFI Act* s5 ('project proponent'), s28A.
[149] Dore et al, above n 41, 399.
[150] Ibid.
[151] Ibid.
[152] Ibid.
[153] Ibid.
[154] Ibid, 395.

to consider whether native title claimants' consent should be sought ahead of any possible determination of native title. Native title claimants will need to be informed and consider any likely long-term effects on the land (ie, a carbon maintenance obligation) and whether any 'future act' rights are triggered under the NTA.[155] In the absence of a RNTBC, further consideration will need to be given by all as to whether the procedures for giving consent under the NTA have been properly followed.[156]

Carbon sequestration rights also give rise to complexity. Project proponents previously needed to obtain separate carbon rights in the land to carry out sequestration projects, but this requirement is now repealed.[157] Nonetheless, knowing who holds the carbon sequestration right is still relevant as the consent of those with these rights is needed for projects to progress.[158]

Unfortunately, state rules regarding carbon sequestration rights vary greatly. The NT has not enacted separate legislation dealing with carbon rights in land,[159] and thus project proponents must navigate the rules about who holds the applicable carbon sequestration right as set out in s 43 of the CFI Act.

By contrast, in WA, anybody can register the right to the carbon in land regardless of whether they have any other interest in the land; the legislation is 'tenure blind'.[160] Registration of the carbon right requires consent from any registered interest holders, but native title holders do not fall within this category.[161] Therefore, Indigenous groups in WA will be required to make enquiries and ascertain whether anyone holds this right in relation to their land and negotiate their consent before proceeding with a project, involving additional time and, potentially, costs.

In QLD, native title holders are not deemed landowners under the *Land Act 1994* (QLD), meaning unlike those with other types of interest in land, they cannot 'vest' carbon rights in themselves or grant it to others.[162] This is potentially discriminatory legislation open to challenge.[163] Whilst exclusive possession native title holders will be deemed to have the

[155] Ibid.
[156] Ibid.
[157] Ibid 391.
[158] *CFI Act* s43; Dore et al, above n 41, 391-92.
[159] Dore et al, above n 41, 396.
[160] Ibid 394; *Carbon Rights Act 2003* (WA), s5.
[161] Ibid 399; *Transfer of Land Act 1893* (WA), s104B.
[162] Ibid, 396; *Land Act 1994* (QLD) ss 373R, 373S, 373U.
[163] Ibid.

carbon sequestration right pursuant to s 43(9) of the CFI, non-exclusive possession native title holders remain unprotected by state legislation.

These issues are not insurmountable, but the complexity of them, in addition to the extra time and money required to deal with them, may present significant barriers to participation for under-resourced, inexperienced and remote Indigenous communities.

2 *Newness Requirement*

Recent changes to the CFI legislation have been introduced around the additionality test, which may impact on Indigenous savanna projects gaining funding under the ERF. Additionality is an important climate change law concept derived from Kyoto Protocol principles, and seeks to ensure that emission reductions which would have occurred in the normal course of events (outside specific climate change reduction programs) are not 'double-counted' in countries' total emission reductions estimates.[164]

Under the previous CFI legislation, to pass the additionality test a project was required to go beyond 'common practice', be included on a 'positive list' and not be required by law to be carried out.[165] The amended legislation now requires that the project be new ('newness requirement') and not required or funded under another government program.[166]

Although the explanatory memorandum to these amendments seeks to reassure project proponents that 'it is not the Government's intention to prevent proponents from obtaining funding or in-kind support from multiple sources where this is necessary for the project',[167] Indigenous groups and advocates are concerned about these amendments due to the fact that savanna (and other) projects have to date required funding from numerous sources, including government funding, in order to be financially feasible and operate under the CFI scheme.[168]

---

[164] O'Donnell, above n 7, 556.
[165] *Explanatory Memorandum CFI Amendment Bill*, above n 88, 29.
[166] *CFI Act* s 27(4A)-27(4E); *Explanatory Memorandum CFI Amendment Bill,* above n 88, 31.
[167] *Explanatory Memorandum CFI Amendment Bill*, above n 88, 31.
[168] Aboriginal Carbon Fund, Submission to the Department of Environment, *Carbon Farming Initiative Amendment Bill 2014*, 2 <http://static1.squarespace.com/static/518cb4d9e4b082221e51d3b8/t/53aac14de4b0d1517c5ebdc7/1403699533701/Aboriginal+Carbon+Fund+amendment+bill+24+June+2014.pdf>; Kimberly Land Council, Submission to Environment and Communications Legislation Committee, *Carbon Farming Initiative Amendment Bill 2014*, [5]-[9] <http://www.aph.gov.au/DocumentStore.ashx?id=7c83017a-e37b-4e4c-aa96-3b377709d6bc&subId=253660>; Law Council of Australia, Submission to Senate Standing Committees on Environment and Communications, *Carbon Farming Initiative Amendment Bill 2014,* 27 June 2014, [20]-[22] <http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/docs-2800-2899/2851_-_Carbon_Farming_Initiative_Amendment_Bill_2014.pdf>.

In addition there is equal concern that some CFI projects already established under other government-led programs, such as the Caring for Country program, Indigenous Protected Area programs, or co-management agreements may not be classified as 'new'.[169]

It remains to be seen whether the CER will use its discretion not to award such projects contracts under the ERF, noting also that the CER does not publish reasons for decisions.[170]

3 *Design of the ERF*

Whilst the CFI was originally designed to 'facilitate' Indigenous participation in carbon markets,[171] the ERF which now sits under it arguably does not.

Indigenous organisations surveyed about carbon markets viewed them as opportunities that explicitly aimed 'to deliver cultural, conservation and amenity outcomes to local Indigenous communities'.[172] However, although this may be the result of successful ERF bids, the ERF is solely focused on pursuing lowest cost options, without consideration of other co-benefits that may arise through ACCU purchases.

Co-benefits is the concept of delivering environmental projects in a way that can also achieve multiple other sustainable benefits to communities, such as cultural, health, social and employment benefits.[173] Co-benefits from CFI projects could 'generate mutual gains for Indigenous people, corporate enterprises and Australian governments.'[174] ACCUs from projects with co-benefits could attract premium prices in carbon markets.[175] Co-benefits were originally envisaged as playing a role in CFI projects,[176] however this has not eventuated to date.

Focusing only on lowest cost abatement projects does not correspond well at all with the type of economy that Altman argues is likely to best support successful projects in remote

[169] Law Council of Australia, above n 168, [22].
[170] Dore et al, above n 41, 399.
[171] Explanatory Memorandum, Carbon Credits (Carbon Farming Initiative) Act Bill 2011 (Cth), [4.6].
[172] Robinson et al, above n 110, 128.
[173] Robinson et al, above n 110, 124.
[174] Hill et al, above n 64, 16.
[175] Cathy J Robinson et al, 'Draft Indigenous Co-Benefit Criteria and Requirements to Inform the Development of Australia's Carbon Farming Initiative' (Report, CSIRO, 2011) 4 (*'Draft Indigenous Co-Benefit Criteria'*)
[176] Robinson et al, above n 110, 124; Robinson et al, 'Draft Indigenous Co-Benefit Criteria', above n 175, 4; Australian Government Department of Sustainability, Environment, Water, Population and Communities, *Indigenous Carbon Farming Fund: Capacity Building and Business Support Stream, Grant Application Guidelines Round One* (2011), 6 <http://www.environment.gov.au/cleanenergyfuture/icff/pubs/icff-program-guidelines.pdf>; *CFI Act* s 168(1)(o)(i).

Indigenous Australia, the 'hybrid economy'.[177] This economy is not just focused solely on the market, but on overlaps between the market, the state and Indigenous customary (non-market) components.[178] It 'emphasises that the customary or non-market sector has a crucially important role to play in addressing Indigenous poverty', and may be more successful at engaging Indigenous people in economic development than a 'mainstreaming' assimilationist approach to market participation.[179] Altman argues that because this hybrid economy that thrives in remote Australia is so poorly understood by policy and law-makers, 'important Indigenous contributions remain unquantified and unrecognised in mainstream calculations of economic worth, which focus on the market economy'.[180]

By taking a very narrow approach to how contracts will be awarded, and giving no consideration to the unique characteristics of the remote Indigenous economy and opportunities for co-benefits, the ERF denies opportunities to both abate carbon and alleviate burdens on Indigenous communities. With only a maximum of 80 per cent of bids being awarded contracts,[181] at least 20 per cent of Indigenous carbon projects and community opportunities will be forgone. Indigenous projects not awarded ERF contracts seem far less likely to proceed than those in other sectors, especially given other recent cuts to Indigenous CFI funding (see below).

Further, studies have shown that abatement through savanna burning is comparatively cheaper than other abatement measures, being priced at around $15 tonne.[182] As Whitehead et al argue, 'there are few, if any, competing lower cost options for regional communities engaging with the mainstream economy'.[183] With only two savanna projects gaining contracts at the recent ERF auction,[184] this suggests that the government is missing out on the opportunity of abating large amounts of emissions by one of the cheapest avenues possible, and directing resources into more expensive abatement options instead.

4 *Resource Issues*

The results of a 2011-2012 survey of 62 Indigenous organisations across Australia on participation in carbon markets clearly indicated that Indigenous groups are very interested in

[177] Altman, above n 65, 1.
[178] Ibid 4.
[179] Ibid 1.
[180] Altman, above n 65, 7-8; Hill et al, above n 64, 38.
[181] Clean Energy Regulator, *Emissions Reduction Fund: Auction Guidelines,* above n 95, 6.
[182] Whitehead et al, above n 7, 378.
[183] Ibid.
[184] Clean Energy Regulator, *Carbon Abatement Contracts Table,* above n 99.

the opportunities offered by the carbon market.[185] However, 15 per cent of those surveyed required more information, 24 per cent required more resources, and 56 per cent indicated a need for both.[186] Many Indigenous organisations have no specific land management unit within them to pursue carbon market opportunities, and only one organisation had a specific climate change unit.[187]

Under the CFI, only RNTBCs can consent to projects or participate in them on behalf of native title groups.[188] RNTBCs are essentially corporate-like structures and 'key governance institutions' which manage native title rights and interests on behalf of native title holders in accordance with the NTA.[189] Whilst RNTBCs have particular strengths as institutions,[190] and in theory are well placed for this role, in reality there is concern about their ability to manage complex CFI projects. Commentators have noted that the 'lengthy and fraught process of meeting the legal requirements of proving native title has detracted focus away from the post-determination environment', with RNTBCs being inadequately funded and resourced to manage their roles effectively.[191]

Funding provided to support Indigenous projects under the CFI, the $22 million Indigenous Carbon Farming Fund, together with other funds accessible by Indigenous groups (the Biodiversity Fund and the Extension and Outreach Program) have all been cut and wound up by the current government, with funds being returned to the main budget.[192] As noted by commentators, the lack of funding given to Indigenous organisations 'responsible for managing the 20% of Australia with such outstanding conservation significance and important management challenges represents a policy failure'.[193]

[185] Robinson et al, above n 110, 126.
[186] Ibid.
[187] Ibid, 127-128.
[188] *CFI Act* ss 45A, 46.
[189] Tran Tran et al, 'Changes to Country and Culture, Changes to Climate: Strengthening Institutions for Indigenous Resilience and Adaptation: Final Report' (Report, National Climate Change Adaptation Research Facility, 2013), 2.
[190] Ibid 47.
[191] Ibid.
[192] Aboriginal Carbon Fund, *Clean Energy Future Funding* (1 February 2014) <http://aboriginalcarbonfund.com.au/clean-energy-future-funding/>.
[193] Bardsley and Wiseman, above n 74, 721 citing R Hill and L Williams, 'Indigenous Natural Resource Management: Overcoming Marginalisation Produced in Australia's Current NRM Model' in M Lane, C Robinson and B Taylor (eds) *Contested Country: Local and Regional Natural Resources Management in Australia* (CSIRO, 2009) 161-178.

Indigenous groups need to be able to access a wide variety of funds to make their projects feasible.[194] Lack of access to resources and funding means lack of information and technical expertise, and is one of the major barriers to Indigenous participation in the CFI.[195]

B *CFI Interaction with Native Title Law*

One of the biggest barriers to participating in projects under the CFI is that faced by non-exclusive possession native title holders, who receive no deemed legal rights or interests under the CFI, in stark contrast to exclusive possession native title holders.[196] Therefore, these native title holders must rely on their native title determination and content of their native title rights to otherwise show they have the legal right to carry out the project.[197] In other words, they need to show a native title right to carry out carbon farming projects and participate in modern, commercial carbon markets.

This flags an immediate problem since, as discussed above, native title law is based on proving an ongoing connection to traditional cultures and customs as they were at colonisation. This 'frozen rights approach'[198] may not be an issue for proving a traditional native title right to burn fire, but clearly, carbon rights and markets did not exist conceptually or at law until much more recently.

Academic opinion on whether courts are likely to recognise a native title right to carbon, and to participate in commercial activities including carbon markets, is divided. Native title has been held to include a right to take resources from land for non-commercial purposes,[199] and courts have viewed 'incidental economic advantage[s]' arising from sale of traditionally made items as consistent with the exercise of native title rights.[200] However, the courts have generally been reluctant to determine native title interests of a commercial manner.[201]

---

[194] Aboriginal Carbon Fund, Submission to the Department of Environment, above n 168; Kimberly Land Council, above n 168, [5]-[9]; Law Council of Australia, above n 168, [20]-[22].
[195] Robinson et al, above n 110, 129.
[196] Dore et al, above n 41, 394.
[197] Ibid 394.
[198] Altman, Buchanan and Larsen, above n 38, 15.
[199] *Lardil, Yangkaal, Gangalidda and Kaiadilt Peoples v Queensland* [2008] FCA 1855; *Ngadjon-Jii People v Queensland* [2007] FCA 1937; *King v Northern Territory* (2007) 162 FCR 89; *Ward v Western Australia (No 4)* [2006] FCA 1848; *Rubibi Community v Western Australia (No 7)* [2006] FCA 459; *Mundraby v Queensland* [2006] FCA 436 all cited in *Banjima People v State of Western Australia* (No 2) [2013] FCA 868, [759].
[200] *Neowarra v State of Western Australia* [2003] FCA 1402, 341.
[201] O'Donnell, above n 7, 557-558; Gerrard, above n 71, 7.

As this paper contends, it is now well accepted that for many Indigenous communities, fire has traditionally been used for a variety of reasons, including land management.[202] However, the courts' consideration of a native title right to burn the land has been limited, and a right to burn fire for commercial purposes is 'fraught with jurisprudential difficulties'.[203]

In *Western Australia v Ward* ('*Ward*') the High Court expressed doubt about whether a native title right to burn land could co-exist with a pastoral lease, and thought the right would probably have been extinguished.[204] As a consequence, Courts have only recognised rights to light fires for domestic purposes, not land management, environmental purposes or hunting.[205] Further, *King v Northern Territory*[206] clarified that the term 'domestic purposes' does not include a right to use fire to 'regenerate the country'.[207]

Dore et al rely on the High Court decision of *Akiba on behalf of the Torres Strait Islander Regional Seas Claim Group v Cth ('Akiba')*[208] to argue that there is potential for recognition of native title rights to carry out CFI projects and profit from carbon in the land.[209]

Akiba involved a native title claim over land and waters in the Torres Strait.[210] The Commonwealth and QLD argued that native title rights to fish were extinguished by state legislation restricting commercial activities without licence.[211] In the original determination of the claim in the Federal Court, Finn J held that the (non-exclusive) native title included 'the right to take marine resources for trading or commercial purposes'[212] because 'the evidence establishes beyond question that the Islanders sold marine resources for money… this was done regularly and systematically…the Islanders were, and are, trading fish."[213]

[202] O'Donnell, above n 7, 533.
[203] Ibid 533, 557.
[204] *Western Australia v Ward* (2002) 213 CLR 1, 131 [194].
[205] O'Donnell, above n 7, 557 citing *Lardil, Yangkaal, Gangalidda & Kaiadilt Peoples v Queensland* [2008] FCA 1855; *Kowanyama People v Queensland* [2009] FCA 1192; *Daniel v State of Western Australia* [2003] FCA 1425; *Ward v Western Australia* [2006] FCA 1848.
[206] *King v Northern Territory* (2007) 162 FCR 89.
[207] *King v Northern Territory* (2007) 162 FCR 89, 99, cited in O'Donnell, above n 7, 557.
[208] *Akiba on behalf of the Torres Strait Islander Regional Seas Claim Group v Commonwealth of Australia* (2013) 250 CLR 209 ('*Akiba*').
[209] Dore et al, above n 41, 394.
[210] *Akiba v State of Queensland (No. 2)* (2010) 204 FCR 1, 22-24 [18]-[22].
[211] *Akiba* 223 [16].
[212] *Akiba v State of Queensland (No. 2)* (2010) 204 FCR 1, 14 [16] (Court Issued Summary).
[213] *Akiba v State of Queensland (No. 2)* (2010) 204 FCR 1, 134-135 [528].

The High Court upheld this and held that regulation of an activity by law does not necessarily extinguish native title rights, though it may regulate the exercise of them.[214] The Court stated:

> *A broadly defined native title right such as the right "to take for any purpose resources in the native title areas" may be exercised for commercial or non-commercial purposes. The purposes may be well defined or diffuse. One use may advance more than one purpose. But none of those propositions requires a sectioning of the native title right into lesser rights or "incidents" defined by the various purposes for which it might be exercised.*[215]

The case therefore is a landmark one in that it confirms that native title can include commercial activities and distinguishes rights from their exercise. However, the success of the case may also be confined to its particular facts. In *Banjima People v State of Western Australia*[216] the Federal Court disallowed a wide native title right to take resources for any purposes, distinguishing the facts of that case from *Akiba.* Justice Barker held that:

> *Unlike the position in Akiba (No 3), it is not open to conclude on the evidence in this case that the claimants were entitled to take all manner of resources from the claim area. Evidence of trade in resources…is limited.*[217]

Applying the findings of the Court in *Akiba* in relation to the exercise of rights versus the nature of rights themselves, it may be argued that if a native title right to burn fire to manage the land were found to exist (which for non-exclusive possession native title holders seems unlikely following *Ward*), trade of ACCUs arising incidentally from the exercise of this right may be possible. However, if a Court were to confine *Akiba* to its facts again, the more likely outcome would be a finding that traditional rights to burn country were not traded, nor commercial in nature.

One hope for non-exclusive possession native title holders is that the current review of the NTA[218] results in an easier pathway for all native title holders to the recognition of commercial rights arising from native title. The Australian Law Reform Commission has recommended that the definition of native title in the NTA include a statement that native

[214] *Akiba* 240 [63]-[64], 241-242 [67], 244 [75].
[215] *Akiba* 221 [21].
[216] *Banjima People v State of Western Australia* (No 2) [2013] FCA 868.
[217] Ibid [783].
[218] See Australian Law Reform Commission, *Connection to Country: Review of the Native Title Act 1993 (Cth)* Final Report No 126 (2015).

title rights may comprise rights that can be used for any purpose, including commercial purposes.[219] Whether this recommendation is incorporated into any new amendments to the Act, and how it may be interpreted, remains to be seen.

In the meantime, as O'Donnell argues:

> *Given the jurisprudential difficulties with establishing a right to carbon and a right to burn the land more generally as a native title right and interest it seems unlikely that [non-exclusive possession native title holders] will ever benefit from the CFI Act as currently drafted.*[220]

V CONCLUSION

This paper has illustrated that savanna burning under the CFI is presenting new opportunities for remote Indigenous communities in northern Australia to participate in carbon markets, abate GHG emissions, gain culturally relevant skills and employment and re-engage with traditional land management practices. The CFI legislation itself has been particularly facilitative in achieving this for exclusive possession native title holders.

However, for other Indigenous land interest groups, many barriers to participation still exist. Land tenure complexities and carbon sequestration rights under the CFI must be navigated, projects must be new and unfunded elsewhere by government, proponents need to compete in a mainstream market economy which ignores other key project benefits, and resource deficiencies overcome. For non-exclusive possession native title holders in particular, the slow reluctance of the courts to acknowledge a right to trade or benefit commercially from traditional rights has undoubtedly impeded participation to date.

Solutions to these barriers must be addressed by future policy and law makers in order to encourage higher rates of Indigenous participation in carbon markets. In particular, more regard should be had to the hybrid economy of Indigenous communities, so that traditional cultural non-market contributions to the economy are fully valued in future climate change policy decisions. A separate channel under the ERF for Indigenous projects which recognises the co-benefits arising from them, provides increased funding and aims to contract all viable projects should be explored. Finally, it is hoped that the current review of the NTA will

[219] Ibid, 30 [recommendation 8.1].
[220] O'Donnell, above n 7, 559.

produce more equitable rights and options for non-exclusive possession native title holders to participate in the growing carbon economy.

Early dry season savanna burning offers immense opportunities for Australia to address climate change and provide better futures for remote Indigenous communities. Ensuring the success of Australia's Indigenous savanna projects is critical, as other nations around the world await their results and hope to emulate them.[221] Indigenous people have a key role to play in reducing Australia's GHG emissions, if our laws and policies will let them.

[221] United Nations University and the Australian Government, *Overview of the International Savanna Fire Management Initiative* (UNU Institute of Advanced Studies <http://www.unutki.org/downloads/File/UNU_Overview_Savanna-Fire_Management.pdf>.

REFERENCE LIST

A *Articles/Books/Reports*

Aboriginal Carbon Fund 'Indigenous Carbon 2013: State of Play in the Indigenous Carbon Industry' (Report, Aboriginal Carbon Fund, 2013) <http://aboriginalcarbonfund.com.au/indigenous-carbon-reports/>

Altman, J C, 'Alleviating poverty in remote Indigenous Australia: the role of the hybrid economy' (Topical Issue Paper No 10, Centre for Aboriginal Economic Policy Research, ANU, 2007) 2 <http:www.anu.edu.au/caper/>

Altman, J.C., G.J. Buchanan and L. Larsen, 'The Environmental Significance of the Indigenous Estate: Natural Resource Management as Economic Development in Remote Australia' (Discussion Paper No 286/2007, Centre for Aboriginal Economic Policy Research, ANU)

Australian Law Reform Commission, *Connection to Country: Review of the Native Title Act 1993 (Cth)* Final Report No 126 (2015)

Bardsley, Douglas K, and Nathanael Wiseman 'Climate Change Vulnerability and Social Development for Remote Indigenous Communities of South Australia' (2012) 22 *Global Environmental Change* 713

Cook, Garry D, Sue Jackson and Richard J Williams 'A Revolution in Northern Australian Fire Management: Recognition of Indigenous Knowledge, Practice and Management' in Ross A Bradstock, A Malcolm Gill and Richard J Williams (eds), *Flammable Australia: Fire Regimes, Biodiversity and Ecosystems in a Changing World* (CSIRO publishing 2012) 293

Cordes-Holland, Owen, 'The Sinking of the Strait: the Implications of Climate Change for Torres Strait Islands' Human Rights Protected by the ICCPR' (2008) 9(2) *Melbourne Journal of International Law* 405

Dore, Jeremy et al, 'Carbon Projects and Indigenous Land in Northern Australia' (2014) 36 *The Rangeland Journal* 389

Fitzsimons, James et al, 'Insights into the Biodiversity and Social Benchmarking Components of the Northern Australian Fire Management and Carbon Abatement Programmes' (2012) 13(1) *Ecological Management and Restoration* 51

Gammage, Bill, *The Biggest Estate on Earth: How Aborigines Made Australia* (Allen & Unwin, first published 2011, 2012 ed)

Gerrard, Emily 'Impacts and Opportunities of Climate Change: Indigenous Participation in Environmental Markets' 3 *Land, Rights, Laws: Issues of Native Title* (Issue Paper No 13, Native Title Research Unit, April 2008)

Gerrard, Emily, 'Towards a Carbon Constrained Future: Climate Change, Emissions Trading and Indigenous Peoples' Rights in Australia', in Jessica K. Weir (ed), *Country, Native Title and Ecology* (ANU E Press, 2012) 135

Godden, Lee, 'Native Title and Ecology: Agreement-making in an Era of Market Environmentalism', in Jessica K Weir (ed) *Country, Native Title and Ecology* (ANU E Press, 2012) 105

Gould, Richard A, 'Uses and Effects of Fire among Western Desert Aborigines of Australia' (1971) 8(1) *Mankind* 14

Heckbert, Scott et al, 'Indigenous Australians Fight Climate Change with Fire' (Nov 2011) 2(6) *Solutions* 50

Heckbert, Scott et al, 'Spatially Explicit Benefit-Cost Analysis of Fire Management for Greenhouse Gas Abatement' (2012) 37(6) *Austral Ecology* 724

Hill, R et al, 'Indigenous Land Management in Australia: Extent, Scope, Diversity, Barriers and Success Factors' (Report, CSIRO Ecosystem Sciences, 2013)

Hill, R and L Williams, 'Indigenous Natural Resource Management: Overcoming Marginalisation Produced in Australia's Current NRM Model' in M Lane, C Robinson and B Taylor (eds) *Contested Country: Local and Regional Natural Resources Management in Australia* (CSIRO, 2009) 161

O'Donnell, Michael, 'Native Title – A Right to Burn and Fire the Land? Savanna Burning and the Carbon Farming Initiative in Northern Australia' (2013) 30 *Environmental and Planning Law Journal* 533

Olsson, L et al, 'Chapter 13: Livelihoods and Poverty' in Field et al (eds) *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2014) <https://ipcc-wg2.gov/AR5/images/uploads/WGIIAR5-Chap13_FINAL.pdf>

Petheram, L et al, '"Strange Changes": Indigenous Perspectives of Climate Change and Adaptation in NE Arnham Land (Australia)' (2010) 20 *Global Environmental Change* 681

Preuss, Karissa and Madeline Dixon '"Looking after Country Two-Ways": Insights into Indigenous Community-Based Conservation from the Southern Tanami' (2012) 13(1) *Ecological management and restoration* 2

Robinson, Cathy J et al, 'Australia's Indigenous Carbon Economy: A National Snapshot' (May 2014) 52(2) *Geographical Research* 123

Robinson, Cathy J et al, 'Draft Indigenous Co-Benefit Criteria and Requirements to Inform the Development of Australia's Carbon Farming Initiative' (Report, CSIRO, 2011)

Russell-Smith, Jeremy 'Managing Fire-prone Savannas for Carbon and Community Benefits' [Spring 2013] *Australian Forest Grower* 15

Russell-Smith, Jeremy et al, 'Contemporary Fire Regimes of Northern Australia, 1997-2001: Change since Aboriginal Occupancy, Challenges for Sustainable Management' (2003) 14 *International Journal of Wildland Fire* 283

Strelein, Lisa and Toni Bauman, 'Interview with Lisa Strelein: Reflections on the 20th Anniversary of Mabo', in Toni Bauman and Lydia Glick (eds) *The Limits of Change: Mabo and Native Title 20 Years On* (Australian Institute of Aboriginal and Torres Strait Islander Studies, 2012) 396

Taylor, Luke, 'Connections of Spirit: Kuninjku Attachments to Country' in Jessica K Weir (ed) *Country, Native Title and Ecology* (ANU E Press, 2012) 21

Tran, Tran et al, 'Changes to country and culture, changes to climate: Strengthening institutions for Indigenous resilience and adaptation: Final Report' (Report, National Climate Change Adaptation Research Facility, 2013)

United Nations University, *A Carbon Guide for Northern Indigenous Australians* (UNU Institute of Advanced Studies, 2009)

Vaarzon-Morel, Petronella and Kasia Gabrys, 'Fire on the Horizon: Contemporary Aboriginal Burning Issues in the Tanami Desert, Central Australia' (2009) 74 *GeoJournal* 465

Vella, Karen J et al, 'Viewpoint: Social and Economic Dimensions of Involving Savanna Communities in Carbon Management Systems' (2005) 53 *Australian Journal of Botany*

Weir, Jessica K, 'Country, Native Title and Ecology', in Jessica KWeir (ed) *Country, Native Title and Ecology* (ANU E Press, 2012) 1

Whitehead, Peter J et al, 'The Management of Climate Change through Prescribed Savanna Burning: Emerging Contributions of Indigenous People in Northern Australia' (2008) *Public Administration and Development* 374

Yibarbuk, Dean 'Introductory Essay: Notes on Traditional Use of Fire on Upper Cadell River', in Marcia Langton *Burning Questions: Emerging Environmental Issues for Indigenous Peoples in Northern Australia* (Centre for Indigenous Natural and Cultural Resource Management Northern Territory University, 1998) 1

Zahar, Alexander, Jacqueline Peel and Lee Godden, *Australian Climate Law in Global Context* (Cambridge University Press, 2013)

B *Cases*

Akiba on behalf of the Torres Strait Islander Regional Seas Claim Group v Commonwealth of Australia (2013) 250 CLR 209

Banjima People v State of Western Australia (No 2) [2013] FCA 868

Daniel v State of Western Australia [2003] FCA 1425

King v Northern Territory (2007) 162 FCR 89

Kowanyama People v Queensland [2009] FCA 1192

Lardil, Yangkaal, Gangalidda and Kaiadilt Peoples v Queensland [2008] FCA 1855

Mabo v State of Queensland [No 2] (1992) 175 CLR 1

Mundraby v Queensland [2006] FCA 436

Neowarra v State of Western Australia [2003] FCA 1402

Ngadjon-Jii People v Queensland [2007] FCA 1937

Rubibi Community v Western Australia (No 7) [2006] FCA 459

Ward v Western Australia (No 4) [2006] FCA 1848

Western Australia v Ward (2002) 213 CLR 1

C *Legislation*

Carbon Credits (Carbon Farming Initiative) Act 2011 (Cth)

Carbon Farming Initiative Amendment Act 2014 (Cth)

Carbon Rights Act 2003 (WA)

Clean Energy Legislation (Carbon Tax Repeal) Act 2014 (Cth)

Land Act 1994 (QLD)

Native Title Act 1993 (Cth)

Transfer of Land Act 1893 (WA)

D *Treaties*

Kyoto Protocol to the United Nations Framework Convention on Climate Change, opened for signature 16 March 1998, 2303 UNTS 148 (entered into force 16 February 2005)

United Nations Framework Convention on Climate Change, opened for signature 4 June 1992, 1771 UNTS 107 (entered into force 21 March 1994)

E *Other*

Aboriginal Carbon Fund, *Clean Energy Future Funding* (1 February 2014) <http://aboriginalcarbonfund.com.au/clean-energy-future-funding/>

Aboriginal Carbon Fund, *Emissions Reduction Fund – What it Means for Aboriginal Carbon* Projects (16 February 2015) <http://aboriginalcarbonfund.com.au/erf-what-it-means-for-aboriginal-carbon-projects/>

Aboriginal Carbon Fund, *Indigenous Projects* (5 May 2015) <http://aboriginalcarbonfund.com.au/indigenous-projects/>

Aboriginal Carbon Fund, *Savanna Burning* (9 April 2015) <http://aboriginalcarbonfund.com.au/savanna-burning/>

Aboriginal Carbon Fund, Submission to the Department of Environment, *Carbon Farming Initiative Amendment Bill 2014* <http://static1.squarespace.com/static/518cb4d9e4b082221e51d3b8/t/53aac14de4b0d1517c5ebdc7/1403699533701/Aboriginal+Carbon+Fund+amendment+bill+24+June+2014.pdf>

Australian Broadcasting Corporation, 'The Indigenous Fire Project Generating Carbon Credits: Fish River Station Sells Carbon Credits to Caltex', *7.30 NT*, 18 June 2013 (John Daly) <http://www.abc.net.au/news/2013-06-14/the-indigenous-fire-project-generating-carbon/4756114>

Australian Bureau of Statistics, *2011 Census Quick Stats* (28 March 2013) <http://www.abs.gov.au/websitedbs/censushome.nsf/home/data>

Australian Government Department of Environment, *National Greenhouse Gas Inventory* (2013) Australian Greenhouse Emissions Information System <www.http://ageis.climatechange.gov.au/NGGI.aspx>

Australian Government Department of Sustainability, Environment, Water, Population and Communities, *Indigenous Carbon Farming Fund: Capacity Building and Business Support Stream, Grant Application Guidelines Round One* (2011), <http://www.environment.gov.au/cleanenergyfuture/icff/pubs/icff-program-guidelines.pdf>

Clean Energy Regulator, *About the Emissions Reduction Fund* (13 July 2015) <http://www.cleanenergyregulator.gov.au/ERF/About-the-Emissions-Reduction-Fund>

Clean Energy Regulator, *Auction Results: April 2015* (25 May 2015) <http://www.cleanenergyregulator.gov.au/ERF/Published-information/auction-results/auction-results-april-2015>

Clean Energy Regulator, *Carbon Abatement Contracts Table* (16 July 2015) <http://www.cleanenergyregulator.gov.au/ERF/Published-information/auction-results/auction-results-april-2015/Carbon-Abatement-Contracts-table>

Clean Energy Regulator, *Eligible Interest Holder Consent* (17 June 2015) <http://www.cleanenergyregulator.gov.au/ERF/Choosing-a-project-type/Opportunities-for-the-land-sector/eligible-interest-holder-consent>

Clean Energy Regulator, *Emissions Reduction Fund: Auction Guidelines* <http://www.cleanenergyregulator.gov.au/DocumentAssets/Documents/ERF%20auction%20guidelines.pdf>

Clean Energy Regulator, *Moving from the Carbon Farming Initiative to the Emissions Reduction Fund: Getting Started* <http:/www.cleanenergyregulator.gov.au>

Clean Energy Regulator, *Savanna Burning Methods* (15 June 2015) <http://www.cleanenergyregulator.gov.au/ERF/Choosing-a-project-type/Opportunities-for-the-land-sector/Savanna-burning-methods>

Department of Environment, *Repealing the Carbon Tax* <http://www.environment.gov.au/climate-change/repealing-carbon-tax>
Explanatory Memorandum, Carbon Farming Initiative Amendment Bill 2014 (Cth)

Department of Environment, *The Emissions Reduction Fund: Purchasing* (2014) <http://www.environment.gov.au/climate-change/emissions-reduction-fund/publications/factsheet-emissions-reduction-fund-purchasing>

Dore, Jeremy 'Who's winning at the ERF auction?' on *Aboriginal Carbon Fund* (26 May 2015) <http://aboriginalcarbonfund.com.au/blog/2015/5/26/whos-winning-at-the-erf-auction>

Dreyfus, Mark, 'Australia's First Savanna Burning Project Approved under the Gillard Government's Carbon Farming Initiative', (Media Release, MD47/12, 2 November 2012) <http://www.ilc.gov.au/Home/Media/Media-Releases/Fish-River>

Indigenous Land Corporation, *Fish River Carbon Credits: Meet your Carbon Liability While Making a Difference to the Lives of Indigenous Australians* <http://www.fishriver.com.au/FishRiver/media/Items/Files/Fish-River-ACCUs-brochure.pdf>

Intergovernmental Panel on Climate Change, *2006 IPPC Guidelines for National Greenhouse Gas Inventories, Volume 4: Agriculture, Forestry and other Land Use* (Institute for Global Environmental Studies, 2006)

Kimberly Land Council, Submission to Environment and Communications Legislation Committee, *Carbon Farming Initiative Amendment Bill 2014* <http://www.aph.gov.au/DocumentStore.ashx?id=7c83017a-e37b-4e4c-aa96-3b377709d6bc&subId=253660>

Kimberly Land Council, *What is Native Title?* (2014) <http://www.klc.org.au/native-title/what-is-native-title>

Law Council of Australia, Submission to Senate Standing Committees on Environment and Communications, *Carbon Farming Initiative Amendment Bill 2014*, 27 June 2014, <http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/docs-2800-2899/2851_-_Carbon_Farming_Initiative_Amendment_Bill_2014.pdf>

Leonard, Stephen, *Forests and Land Use in a New Climate Agreement to Take Centre Stage at Bonn* (28 May 2014) REDD+ Safeguards <http://reddplussafeguards.com/?p=965>

National Native Title Tribunal, *Native Title: An Overview* (October 2009) <http://www.nntt.gov.au>

National Native Title Tribunal, *Statistics* (7 July 2015) <http://www.nntt.gov.au/Pages/Statistics.aspx>

Northern Australian Indigenous Land and Sea Management Alliance, *Carbon* (2012) <http://www.nailsma.org.au/programs/carbon

Replacement Explanatory Memorandum, Carbon Credits (Carbon Farming Initiative) Bill 2011 (Cth)

United Nations University and the Australian Government, *Overview of the International Savanna Fire Management Initiative* (UNU Institute of Advanced Studies <http://www.unutki.org/downloads/File/UNU_Overview_Savanna-Fire_Management.pdf>

BIBLIOGRAPHY

A *Articles/Books/Reports*

Aboriginal Carbon Fund 'Indigenous Carbon 2013: State of Play in the Indigenous Carbon Industry' (Report, Aboriginal Carbon Fund, 2013) <http://aboriginalcarbonfund.com.au/indigenous-carbon-reports/>

Altman, J C, 'Alleviating poverty in remote Indigenous Australia: the role of the hybrid economy' (Topical Issue Paper No 10, Centre for Aboriginal Economic Policy Research, ANU, 2007) 2 <http:www.anu.edu.au/caper/>

Altman, J C, G J Buchanan and L Larsen, 'The Environmental Significance of the Indigenous Estate: Natural Resource Management as Economic Development in Remote Australia' (Discussion Paper No 286/2007, Centre for Aboriginal Economic Policy Research, ANU)

Anderson, Alan, Garry Cook and Dick Williams 'Savanna Burning: The Ecology and Economy of Fire in Tropical Savannas' (2012) 37 *Austral Ecology* 633

Australian Law Reform Commission, *Connection to Country: Review of the Native Title Act 1993 (Cth)* Final Report No 126 (2015)

Bardsley, Douglas K, and Nathanael Wiseman 'Climate Change Vulnerability and Social Development for Remote Indigenous Communities of South Australia' (2012) 22 *Global Environmental Change* 713

Bauman, Toni and Lydia Glick (eds) *The Limits of Change: Mabo and Native Title 20 Years On* (Australian Institute of Aboriginal and Torres Strait Islander Studies, 2012)

Benndorf, R et al, 'Including Land Use, Land-Use Change, and Forestry in Future Climate Change Agreements: Thinking Outside the Box' (2007) 10 *Environmental Science & Policy* 283

Bird, Douglas W, Rebecca Bliege Bird and Christopher H Parker, 'Aboriginal Burning Regimes and Hunting Strategies in Australia's Western Desert' (2005) 33(4) *Human Ecology* 443

Bird, Douglas W, Rebecca Bliege Bird and Christopher H Parker, 'Women Who Hunt with Fire: Aboriginal Resource Use and Fire Regimes in Australia's Western Desert' (2004) 1 *Australian Aboriginal Studies* 90

Bird Rose, Deborah (ed), *Country in Flames: Proceedings of the 1994 Symposium on Biodiversity and Fire in North Australia* (Biodiversity Unit, Department of the Environment, Sport and Territories and the North Australia Research Unit, Australian National University, 1995)

Bliege Bird, R et al, 'The "Fire Stick Farming" Hypothesis: Australian Aboriginal Foraging Strategies, Biodiversity, and Anthropogenic Fire Mosaics' (2008) 105(39) *PNAS* 14796

Bradstock, Ross A, A Malcolm Gill and Richard J Williams (eds), *Flammable Australia: Fire Regimes, Biodiversity and Ecosystems in a Changing World* (CSIRO publishing 2012)

Cook, Garry D, Sue Jackson and Richard J Williams 'A Revolution in Northern Australian Fire Management: Recognition of Indigenous Knowledge, Practice and Management' in Ross A Bradstock, A Malcolm Gill and Richard J Williams (eds), *Flammable Australia: Fire Regimes, Biodiversity and Ecosystems in a Changing World* (CSIRO publishing 2012) 293

Cordes-Holland, Owen, 'The Sinking of the Strait: the Implications of Climate Change for Torres Strait Islands' Human Rights Protected by the ICCPR' (2008) 9(2) *Melbourne Journal of International Law* 405

Cullen-Unsworth, Leanne Claire et al, 'A Research Process for Integrating Indigenous and Scientific Knowledge in Cultural Landscapes: Principles and Determinants of Success in the Wet Tropics World Heritage Area, Australia' (2012) 178(4) *The Geographic Journal* 351

Cuskelly, Katrina, 'Legal Frameworks for Regulating Biosequestration in Australia' (2011) 28 *Environmental and Planning Law Journal* 348

Dore, Jeremy et al, 'Carbon Projects and Indigenous Land in Northern Australia' (2014) 36 *The Rangeland Journal* 389

Durrant, Nicola, 'Legal Issues in Carbon Farming: Biosequestration, Carbon Pricing, and Carbon Rights' (2011) 2 *Climate Law* 515

Ens, Emilie J et al, 'Australian Approaches for Managing 'Country' using Indigenous and Non-Indigenous Knowledge' (2012) 13(1) *Ecological Management & Restoration* 101

Fitzsimons, James et al, 'Insights into the Biodiversity and Social Benchmarking Components of the Northern Australian Fire Management and Carbon Abatement Programmes' (2012) 13(1) *Ecological Management and Restoration* 51

Gammage, Bill, *The Biggest Estate on Earth: How Aborigines Made Australia* (Allen & Unwin, first published 2011, 2012 ed)

Gerrard, Emily, 'Climate Change and Human Rights: Issues and Opportunities for Indigenous People' (2008) 14(2) *UNSW Law Journal Forum* 67

Gerrard, Emily 'Impacts and Opportunities of Climate Change: Indigenous Participation in Environmental Markets' 3 *Land, Rights, Laws: Issues of Native Title* (Issue Paper No 13, Native Title Research Unit, April 2008)

Gerrard, Emily, 'Towards a Carbon Constrained Future: Climate Change, Emissions Trading and Indigenous Peoples' Rights in Australia', in Jessica K. Weir (ed), *Country, Native Title and Ecology* (ANU E Press, 2012) 135

Goddard, Moira, 'Not Enough Substance in the Carbon Farming Initiative' (2011) *Australian Forest Grower* 5

Godden, Lee, 'Native Title and Ecology: Agreement-making in an Era of Market Environmentalism', in Jessica K Weir (ed) *Country, Native Title and Ecology* (ANU E Press, 2012) 105

Gould, Richard A, 'Uses and Effects of Fire among Western Desert Aborigines of Australia' (1971) 8(1) *Mankind* 14

Griggs, Dave et al, 'Indigenous Voices in Climate Change Adaptation: Addressing the Challenges of Diverse Knowledge Systems in the *Barmah-Millewa*' (Final Report, National Climate Change Adaptation Research Facility Monash University, 2013)

Heckbert, Scott et al, 'Indigenous Australians Fight Climate Change with Fire' (Nov 2011) 2(6) *Solutions* 50

Heckbert, Scott et al, 'Spatially Explicit Benefit-Cost Analysis of Fire Management for Greenhouse Gas Abatement' (2012) 37(6) *Austral Ecology* 724

Hill, R et al, 'Indigenous Land Management in Australia: Extent, Scope, Diversity, Barriers and Success Factors' (Report, CSIRO Ecosystem Sciences, 2013)

Hill, R and L Williams, 'Indigenous natural resource management: overcoming marginalisation produced in Australia's current NRM model' in M Lane, C Robinson and B Taylor (eds) *Contested Country: Local and Regional Natural Resources Management in Australia* (CSIRO, 2009) 161

Hohne, Niklas et al, 'The Rules for Land Use, Land Use Change and Forestry under the Kyoto Protocol – Lessons Learned for the Future Climate Negotiations' (2007) 10 *Environmental Science & Policy* 353

Hughes, Camilla 'One Land: Two Laws – Aboriginal Fire Management' (1995) 12 *Environmental and Planning Law Journal* 37

Lane, M, C Robinson and B Taylor (eds), *Contested Country: Local and Regional Natural Resources Management in Australia* (CSIRO, 2009)

Langton, Marcia *Burning Questions: Emerging Environmental Issues for Indigenous Peoples in Northern Australia* (Centre for Indigenous Natural and Cultural Resource Management Northern Territory University, 1998)

Lohmann, Larry, 'Carbon Trading, Climate Justice and the Production of Ignorance: Ten Examples' (2008) 51 *Development* 51

Macintosh, Andrew and Lauren Waugh 'An Introduction to the Carbon Farming Initiative: Key Principles and Concepts' (2012) 29 *Environmental and Planning Law Journal* 439

Northern Australia Land and Water Taskforce, *Northern Australia Land and Water Science Review 2009: Chapter Summaries* (Department of Infrastructure, Transport, Regional Development and Local Government, 2009)

O'Donnell, Michael, 'Native Title – A Right to Burn and Fire the Land? Savanna Burning and the Carbon Farming Initiative in Northern Australia' (2013) 30 *Environmental and Planning Law Journal* 533

Olsson, L et al, 'Chapter 13: Livelihoods and Poverty' in Field et al (eds) *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2014) <https://ipcc-wg2.gov/AR5/images/uploads/WGIIAR5-Chap13_FINAL.pdf>

Petheram, L et al, '"Strange Changes": Indigenous Perspectives of Climate Change and Adaptation in NE Arnham Land (Australia)' (2010) 20 *Global Environmental Change* 681

Preuss, Karissa and Madeline Dixon '"Looking after Country Two-Ways": Insights into Indigenous Community-Based Conservation from the Southern Tanami' (2012) 13(1) *Ecological management and restoration* 2

Richards, Anna E et al, 'Savanna Burning, Greenhouse Gas Emissions and Indigenous Livelihoods: Introducing the Tiwi Carbon Study' (2012) *Austral Ecology* 1

Ricketts, Taylor H et al, 'Indigenous Lands, Protected Areas, and Slowing Climate Change' (2010) 8(3) *PLOS Biology* 1

Robinson, Cathy J et al, 'Australia's Indigenous Carbon Economy: A National Snapshot' (May 2014) 52(2) *Geographical Research* 123

Robinson, Cathy J et al, 'Draft Indigenous Co-Benefit Criteria and Requirements to Inform the Development of Australia's Carbon Farming Initiative' (Report, CSIRO, 2011)

Rosano, Michele and Dermot Duncan, 'The Australian Carbon Farming Initiative: Early Developments Ongoing Challenges' (2012) 38 *The Otemon Journal of Australian Studies* 69

Ross, Joe and Emily Gerrard, 'Climate Change: Issues Facing Indigenous Australians' (2008) 7(8) *Indigenous Law Bulletin* 7

Russell-Smith, Jeremy, 'Managing Fire-prone Savannas for Carbon and Community Benefits', [Spring 2013] *Australian Forest Grower* 15

Russell-Smith, Jeremy et al, 'Aboriginal Resource Utilization and Fire Management Practice in West Arnhem Land, Monsoonal Northern Australia: Notes for Prehistory, Lessons for the Future' (1997) 25(2) *Human Ecology* 159

Russell-Smith, Jeremy et al, 'Contemporary Fire Regimes of Northern Australia, 1997-2001: Change since Aboriginal Occupancy, Challenges for Sustainable Management' (2003) 14 *International Journal of Wildland Fire* 283

Russell-Smith, Jeremy et al, 'Fire and Savanna Landscapes in Northern Australia: Regional Lessons and Global Challenges' (2003) 12 *International Journal of Wildland Fire* 2

Russell-Smith, Jeremy, Peter Whitehead and Peter Cooke, *Culture, Ecology and Economy of Fire Management in North Australian Savannas: Rekindling the Wurrk Tradition* (CSIRO Publishing, 2009)

Salick, Jan and Anja Byg, *Indigenous Peoples and Climate Change* (Tyndall Centre for Climate Change Research, 2007)

Schlamadinger, B et al 'A Synopsis of Land Use, Land-Use Change and Forestry (LULUCF) under the Kyoto Protocol and Marrakech Accords' (2007) 10 *Environmental Science & Policy* 271

Schlamadinger, Bernhard et al 'Options for Including Land Use in a Climate Agreement post-2012: Improving the Kyoto Protocol Approach' (2007) 10 *Environmental Science & Policy* 295

Sheehan, John, 'Indigenous Carbon Property Rights' (Conference Paper, 16th Annual Pacific Rim Real Estate Society Conference, 25 January 2010) <http://www.prres.net/papers/Sheehan_Indigenous_Carbon_Property_Rights.pdf>

Strelein, Lisa and Toni Bauman 'Interview with Lisa Strelein: Reflections on the 20th Anniversary of Mabo', in Toni Bauman and Lydia Glick (eds) *The Limits of Change: Mabo and Native Title 20 Years On* (Australian Institute of Aboriginal and Torres Strait Islander Studies, 2012) 396

Taylor, Luke, 'Connections of Spirit: Kuninjku Attachments to Country' in Jessica K Weir (ed) *Country, Native Title and Ecology* (ANU E Press, 2012) 21

Taylor, Luke et al (eds), *The Power of Knowledge, The Resonance of Tradition* (Aboriginal Studies Press, 2005)

Tran, Tran et al, 'Changes to country and culture, changes to climate: Strengthening institutions for Indigenous resilience and adaptation: Final Report' (Report, National Climate Change Adaptation Research Facility, 2013)

United Nations University, *A Carbon Guide for Northern Indigenous Australians* (UNU Institute of Advanced Studies, 2009)

Vaarzon-Morel, Petronella and Kasia Gabrys, 'Fire on the Horizon: Contemporary Aboriginal Burning Issues in the Tanami Desert, Central Australia' (2009) 74 *GeoJournal* 465

Van Oosterzee, Penny, 'The Integration of Biodiversity and Climate Change: A Contextual Assessment of the Carbon Farming Initiative' (2012) 13(3) *Ecological Management & Restoration* 238

Veland, Siri et al, 'Procedural Vulnerability: Understanding Environmental Change in a Remote Indigenous Community' (2013) 23 *Global Environmental Change* 314

Vella, Karen J et al, 'Viewpoint: Social and Economic Dimensions of Involving Savanna Communities in Carbon Management Systems' (2005) 53 *Australian Journal of Botany*

Weir, Jessica K, 'Country, Native Title and Ecology', in Jessica K Weir (ed) *Country, Native Title and Ecology* (ANU E Press, 2012) 1

Weir, Jessica K (ed), *Country, Native Title and Ecology* (ANU E Press, 2012)

Whitehead, Peter J et al, 'The Management of Climate Change through Prescribed Savanna Burning: Emerging Contributions of Indigenous People in Northern Australia' (2008) *Public Administration and Development* 374

Williams, R J et al, 'Carbon Accounting, Land Management, Science and Policy Uncertainty in Australian Savanna Landscapes: Introduction and Overview' (2005) 53 *Australian Journal of Botany* 583

Yibarbuk, Dean 'Introductory Essay: Notes on Traditional Use of Fire on Upper Cadell River', in Marcia Langton *Burning Questions: Emerging Environmental Issues for Indigenous Peoples in Northern Australia* (Centre for Indigenous Natural and Cultural Resource Management Northern Territory University, 1998) 1

Yirarbuk, D et al, 'Fire Ecology and Aboriginal Land Management in Central Arnhem Land, Northern Australia: A Tradition of Ecosystem Management' (2001) 28 *Journal of Biogeography* 325

Zahar, Alexander, Jacqueline Peel and Lee Godden, *Australian Climate Law in Global Context* (Cambridge University Press, 2013)

B *Cases*

Akiba on behalf of the Torres Strait Islander Regional Seas Claim Group v Commonwealth of Australia (2013) 250 CLR 209

Banjima People v State of Western Australia (No 2) [2013] FCA 868

Daniel v State of Western Australia [2003] FCA 1425

King v Northern Territory (2007) 162 FCR 89

Kowanyama People v Queensland [2009] FCA 1192

Lardil, Yangkaal, Gangalidda and Kaiadilt Peoples v Queensland [2008] FCA 1855

Mabo v State of Queensland [No 2] (1992) 175 CLR 1

Mundraby v Queensland [2006] FCA 436

Neowarra v State of Western Australia [2003] FCA 1402

Ngadjon-Jii People v Queensland [2007] FCA 1937

Rubibi Community v Western Australia (No 7) [2006] FCA 459

Ward v Western Australia (No 4) [2006] FCA 1848

Western Australia v Ward (2002) 213 CLR 1

C *Legislation*

Carbon Credits (Carbon Farming Initiative) Act 2011 (Cth)

Carbon Farming Initiative Amendment Act 2014 (Cth)

Carbon Rights Act 2003 (WA)

Clean Energy Legislation (Carbon Tax Repeal) Act 2014 (Cth)

Land Act 1994 (QLD)

Native Title Act 1993 (Cth)

Transfer of Land Act 1893 (WA)

D *Treaties*

Kyoto Protocol to the United Nations Framework Convention on Climate Change, opened for signature 16 March 1998, 2303 UNTS 148 (entered into force 16 February 2005)

United Nations Framework Convention on Climate Change, opened for signature 4 June 1992, 1771 UNTS 107 (entered into force 21 March 1994)

E *Other*

Aboriginal Carbon Fund, *Clean Energy Future Funding* (1 February 2014) <http://aboriginalcarbonfund.com.au/clean-energy-future-funding/>

Aboriginal Carbon Fund, *Emissions Reduction Fund – What it Means for Aboriginal Carbon* Projects (16 February 2015) <http://aboriginalcarbonfund.com.au/erf-what-it-means-for-aboriginal-carbon-projects/>

Aboriginal Carbon Fund, *Indigenous Projects* (5 May 2015) <http://aboriginalcarbonfund.com.au/indigenous-projects/>

Aboriginal Carbon Fund, *Savanna Burning* (9 April 2015) <http://aboriginalcarbonfund.com.au/savanna-burning/>

Aboriginal Carbon Fund, Submission to the Department of Environment, *Carbon Farming Initiative Amendment Bill 2014* <http://static1.squarespace.com/static/518cb4d9e4b082221e51d3b8/t/53aac14de4b0d1517c5ebdc7/1403699533701/Aboriginal+Carbon+Fund+amendment+bill+24+June+2014.pdf>

Australian Broadcasting Corporation, 'The Indigenous Fire Project Generating Carbon Credits: Fish River Station Sells Carbon Credits to Caltex', *7.30 NT*, 18 June 2013 (John Daly) <http://www.abc.net.au/news/2013-06-14/the-indigenous-fire-project-generating-carbon/4756114>

Australian Bureau of Statistics, *2011 Census Quick Stats* (28 March 2013) <http://www.abs.gov.au/websitedbs/censushome.nsf/home/data>

Australian Government Climate Change Authority, *Carbon Farming Initiative Review: Issues Paper* (October 2014) <www.climatechangeauthority.gov.au>

Australian Government Department of Environment, *National Greenhouse Gas Inventory* (2013) Australian Greenhouse Emissions Information System <www. http://ageis.climatechange.gov.au/NGGI.aspx>

Australian Government Department of Sustainability, Environment, Water, Population and Communities, *Indigenous Carbon Farming Fund: Capacity Building and Business Support Stream, Grant Application Guidelines Round One* (2011), <http://www.environment.gov.au/cleanenergyfuture/icff/pubs/icff-program-guidelines.pdf>

Clean Energy Regulator, *About the Emissions Reduction Fund* (13 July 2015) <http://www.cleanenergyregulator.gov.au/ERF/About-the-Emissions-Reduction-Fund>

Clean Energy Regulator, *Auction Results: April 2015* (25 May 2015) <http://www.cleanenergyregulator.gov.au/ERF/Published-information/auction-results/auction-results-april-2015>

Clean Energy Regulator, *Carbon Abatement Contracts Table* (16 July 2015) <http://www.cleanenergyregulator.gov.au/ERF/Published-information/auction-results/auction-results-april-2015/Carbon-Abatement-Contracts-table>

Clean Energy Regulator, *Eligible Interest Holder Consent* (17 June 2015) <http://www.cleanenergyregulator.gov.au/ERF/Choosing-a-project-type/Opportunities-for-the-land-sector/eligible-interest-holder-consent>

Clean Energy Regulator, *Emissions Reduction Fund: Auction Guidelines* <http://www.cleanenergyregulator.gov.au/DocumentAssets/Documents/ERF%20auction%20guidelines.pdf>

Clean Energy Regulator, *Moving from the Carbon Farming Initiative to the Emissions Reduction Fund: Getting Started* <http:/www.cleanenergyregulator.gov.au>

Clean Energy Regulator, *Participating in the Emissions Reduction Fund: A Guide to Reducing Greenhouse Gas Emissions through Early Dry Season Savanna Burning Method* <http://www.cleanenergyregulator.gov.au/ERF/Choosing-a-project-type/Opportunities-for-the-land-sector/Savanna-burning-methods/Reduction-of-greenhouse-gas-emissions-through-early-dry-season-savanna-burning>

Clean Energy Regulator, *Savanna Burning Methods* (15 June 2015) <http://www.cleanenergyregulator.gov.au/ERF/Choosing-a-project-type/Opportunities-for-the-land-sector/Savanna-burning-methods>

Department of Environment, *Repealing the Carbon Tax* <http://www.environment.gov.au/climate-change/repealing-carbon-tax>

Explanatory Memorandum, Carbon Farming Initiative Amendment Bill 2014 (Cth)

Department of Environment, *The Emissions Reduction Fund: Purchasing* (2014) <http://www.environment.gov.au/climate-change/emissions-reduction-fund/publications/factsheet-emissions-reduction-fund-purchasing>

Dore, Jeremy 'Who's winning at the ERF auction?' on *Aboriginal Carbon Fund* (26 May 2015) <http://aboriginalcarbonfund.com.au/blog/2015/5/26/whos-winning-at-the-erf-auction>

Dreyfus, Mark, 'Australia's First Savanna Burning Project Approved under the Gillard Government's Carbon Farming Initiative', (Media Release, MD47/12, 2 November 2012) <http://www.ilc.gov.au/Home/Media/Media-Releases/Fish-River>

Indigenous Land Corporation, *Fish River Carbon Credits: Meet your Carbon Liability While Making a Difference to the Lives of Indigenous Australians* <http://www.fishriver.com.au/FishRiver/media/Items/Files/Fish-River-ACCUs-brochure.pdf>

Intergovernmental Panel on Climate Change, *2006 IPPC Guidelines for National Greenhouse Gas Inventories, Volume 4: Agriculture, Forestry and other Land Use* (Institute for Global Environmental Studies, 2006)

International Indigenous Peoples Forum on Climate Change, *Statement to the ADP, Bonn* (3 June 2015) <http://www.forestpeoples.org/sites/fpp/files/news/2015/06/IIPFCC%20Submission%20to%20the%20ADP.pdf>

Kimberly Land Council, Submission to Environment and Communications Legislation Committee, *Carbon Farming Initiative Amendment Bill 2014* <http://www.aph.gov.au/DocumentStore.ashx?id=7c83017a-e37b-4e4c-aa96-3b377709d6bc&subId=253660>

Kimberly Land Council, *What is Native Title?* (2014) <http://www.klc.org.au/native-title/what-is-native-title>

Law Council of Australia, Submission to Senate Standing Committees on Environment and Communications, *Carbon Farming Initiative Amendment Bill 2014*, 27 June 2014, <http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/docs-2800-2899/2851_-_Carbon_Farming_Initiative_Amendment_Bill_2014.pdf>

Leonard, Stephen, *Forests and Land Use in a New Climate Agreement to Take Centre Stage at Bonn* (28 May 2014) REDD+ Safeguards <http://reddplussafeguards.com/?p=965>

National Native Title Tribunal, *Native Title: An Overview* (October 2009) <http://www.nntt.gov.au>

National Native Title Tribunal, *Statistics* (7 July 2015) <http://www.nntt.gov.au/Pages/Statistics.aspx>

Northern Australian Indigenous Land and Sea Management Alliance, *Carbon* (2012) <http://www.nailsma.org.au/programs/carbon

Replacement Explanatory Memorandum, Carbon Credits (Carbon Farming Initiative) Bill 2011 (Cth)

United Nations University and the Australian Government, *Overview of the International Savanna Fire Management Initiative* (UNU Institute of Advanced Studies <http://www.unutki.org/downloads/File/UNU_Overview_Savanna-Fire_Management.pdf>