



Environmental
Defenders Office

**Submission on implementing the recommendations
from the Independent Review of Australian Carbon
Credit Units**

10 October 2023

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

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Submitted to:

[ACCU Review Implementation Team](#)

Department of Climate Change, Energy, the Environment and Water

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Acknowledgement of Country

The EDO recognises First Nations Peoples as the Custodians of the land, seas, and rivers of Australia. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present, and emerging, and aspire to learn from traditional knowledge and customs so that, together, we can protect our environment and cultural heritage through both Western and First Laws. In providing submissions, we pay our respects to First Nations across Australia and recognise that their Countries were never ceded and express our remorse for the deep suffering that has been endured by the First Nations of this country since colonization.

Executive Summary

Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on the Independent Review of Australian Carbon Credit Units (**ACCU**) Discussion Paper. EDO agrees that for the public to maintain confidence in the ACCU Scheme (formerly the Emissions Reduction Fund), a robust and transparent institutional framework is essential.¹

EDO is of the view carbon offsetting using ACCUs must only be utilised as a last resort, once emissions have been reduced and mitigated, rather than the default option used to justify continued and increasing emissions. However, ACCUs may play a role in offsetting residual emissions in hard to abate sectors, and for this purpose carbon credit generating schemes must be robust, trustworthy, and actually provide the emissions reductions they purport to.

While EDO remains concerned about the ongoing role of carbon offsets in national emissions reduction policy, it is clear that demand for ACCUs will only increase as a result of the Safeguard Mechanism reforms. As such, it is imperative that the ACCU Scheme and the ACCUs it generates have integrity, and represent real and additional emissions abatement. It is clear from publicly available evidence and submissions made to the Independent Review that the ACCU Scheme has been failing in this respect.

Anything less is greenwashing and will undermine public confidence in the operation of the Scheme, the Safeguard Mechanism, and ultimately achievement of Australia's domestic and international emissions commitments.

Noting that the Independent Review of Australian Carbon Credit Units did not adequately address all issues regarding the integrity of the ACCU Scheme, this submission considers how the Scheme can best be reformed according to the science to ensure integrity, transparency, and efficacy in emissions abatement. Importantly, this requires changes to the Scheme above and beyond the implementation of recommendations from the Independent Review.

This submission addresses the proposed ACCU Scheme Principles, transparency and governance proposals, the role of the Integrity Commission in overseeing method development, and the need for First Nations Peoples' consent, and makes **13 recommendations**.

¹ Department of Climate Change, Energy, the Environment and Water, *ACCU Review Discussion paper* (25 August 2023) 4 (**Discussion Paper**).

Summary of Recommendations:

- 1. The integrity of ACCU Scheme methodologies must continue to be assessed and improved beyond the recommendations in the Chubb Review.**
- 2. The ACCU Scheme Principles should be mandatory and applied in the legislation.**
- 3. Each ACCU Scheme Principle must include detail about the standards and procedures required to achieve the desired outcome.**
- 4. The ACCU Scheme principles should explicitly include key elements of the Offsets Integrity Principles to guide and ensure consistency in decision-making.**
- 5. Full and public transparency provisions should be adopted to ensure public confidence in the ACCU Scheme, particularly as it relates to the Safeguard Mechanism demand.**
- 6. ACCU holding information should be published in full on an easily accessible public platform, with strictly limited criteria for withholding of information.**
- 7. The CFI Act be amended to provide for third party enforcement and review rights.**
- 8. The proponent-led method and module development approaches must be subject to scrutiny by a well-resourced Integrity Committee comprised of independent scientific experts.**
- 9. Methods which have been replaced or varied must not be used by ongoing projects.**
- 10. Public consultation on methods should be ensured by legislative requirements for directly engaging any communities potentially affected or impacted by the resulting projects, with statutory minimum timeframes for consultation embedded in the legislation.**
- 11. A limit to changes under the modular approach should be contained in the CFI Act (e.g. barring substantive change) and supplemented by published guidance from the Integrity Committee.**
- 12. To uphold scheme integrity and ensure projects are achieving the real and additional abatement required by the OIS and CFI Act, there must be mechanisms in place for the maintenance of methods so that they are up to date with the latest technologies and scientific knowledge. Compulsory periodic reviews, conducted by the Integrity Committee and required under the Act would ensure methods continue to comply with OIS.**
- 13. The CFI Act should be amended to require free, prior and informed consent (FPIC) of First Nations communities prior to any project taking place on or impacting First Nations land or cultural heritage.**

Introduction

Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on the Independent Review of Australian Carbon Credit Units (**ACCU**) Discussion Paper. As outlined in EDO's [submission](#) to the Independent Review of Australian Carbon Credit Units conducted by Professor Ian Chubb AC and the independent panel (**Chubb Review**), we have a strong interest in the role and implementation of the ACCU Scheme in the context of Australia's policy response to climate change.²

Broadly, EDO is concerned the ongoing and increasing use of carbon offsets undermines the urgent task of reducing fossil fuel emissions at the source, to limit global warming consistent with Australia's international commitments.³ Offsetting must only be utilised as a last resort, once emissions have been reduced and mitigated, rather than the default option used to justify continued and increasing emissions. However, carbon credits may play a role in offsetting residual emissions in hard to abate sectors, and for this purpose credit generating schemes must be robust, trustworthy, and actually provide the emissions abatement they purport to.

Currently, ACCUs are often used as a basis for many companies net zero emissions plans. In order for consumers and investors to understand the basis of such claims it is vital for ACCUs to have integrity and produce real emissions reductions. Anything less is greenwashing, and undermines efforts to rapidly cut greenhouse gas emissions and transition to a more sustainable economy by allowing companies to falsely claim they are taking action, when in reality they are continuing business as usual. Greenwashing also erodes public trust in all sustainability-related products, and carbon credits of various types have frequently come under scrutiny for enabling this kind of action by corporate actors.⁴

Further, the integrity of ACCUs, and the Scheme as a whole, is pivotal given the role ACCUs will continue to play in Australia's sole mandatory emissions reduction policy – the Safeguard Mechanism (contained in the *National Greenhouse and Energy Reporting Act 2007*). With new limits and stricter baselines recently implemented under the Safeguard Mechanism reforms, but without any limit on the number of ACCUs that a facility may use to meet those baselines, any low integrity ACCUs risk undermining Australia's domestic emissions reduction efforts altogether.

EDO is therefore focused on ensuring the ACCU Scheme has integrity as a whole, but also that individual methodologies and projects result in real and additional emissions abatement. This submission addresses:

² [EDO submission to the Independent Review of Australian Carbon Credit Units \(30 September 2022\)](#).

³ Additional concerns relating to the efficacy of carbon offsets include questions about the ability of carbon credits to represent real and equivalent offsets for fossil fuel emissions, including the risk to permanence of natural carbon storage as the climate changes, as well as inherent difficulties in quantifying tonne-for-tonne abatement as compared to fossil fuel emissions.

⁴ The Guardian, *Revealed: more than 90% of rainforest carbon offsets by biggest certifier are worthless, analysis shows* (19 January 2023) <https://www.theguardian.com/environment/2023/jan/18/revealed-forest-carbon-offsets-biggest-provider-worthless-verra-aoe>, ABC News, *Insider blows whistle on Australia's greenhouse gas reduction schemes*, (24 Mar 2022) <https://www.abc.net.au/news/2022-03-24/insider-blows-whistle-on-greenhouse-gas-reduction-schemes/100933186>.

- **the recommendations from the Chubb Review**
- **the proposed ACCU Scheme Principles**
- **transparency of the Scheme**
- **functions of the Integrity Committee in relation to method development; and**
- **First Nations Peoples' consent for projects.**

Recommendations of the Independent Review of Australian Carbon Credit Units

The Department is seeking views on the implementation of the Chubb Review recommendations, as well as some additional proposed changes to the *Carbon Credits (Carbon Farming Initiative) Act 2011* (**CFI Act**) based on previous consultations. However, EDO remains concerned that the Chubb Review did not adequately address all issues regarding the integrity of the ACCU Scheme.

In analysis of the evidence presented to the Chubb Review, as well as significant and unresolved public concerns by experts involved with the Scheme,⁵ it is clear the ACCU Scheme does not appear to be 'essentially sound'.⁶ While implementation of the Chubb Review recommendations is important, EDO makes the following comments on further necessary work for the Department's consideration:

- **Unaddressed problems:** The Review does not address all the issues regarding the integrity of methodologies and rules. For example, the Australian Academy of Science found numerous flaws in the methods and governance procedures for avoiding deforestation, human induced regeneration of native forests, combusting methane from landfills, and carbon capture and storage, which are not adequately addressed in the Review's recommendations.⁷ Experts have also highlighted integrity problems in the ACCU Scheme, which are not resolved by the recommendations. Not least is the concern that the recommendations do not address existing projects registered under the flawed methods, and existing projects could continue to generate ACCUs despite the multiplicity of integrity problems identified.⁸
- **Carbon capture and storage:** The Review found that the carbon capture and storage (**CCS**) method will play an important role in addressing climate change. The IPCC Sixth Assessment Report (**AR6**) has confirmed that carbon capture and storage involves "technological, economic, institutional, ecological-environmental, and socio-cultural barriers," and that rates of deployment are far below those needed to limit global warming

⁵ Andrew Macintosh et al, *Tortured recommendations, incomplete and unsubstantiated findings: an analysis of the report of the Independent Review of Australian Carbon Credit Units* (15 February 2023) https://law.anu.edu.au/sites/all/files/analysis_of_the_report_of_the_independent_review_of_australian_carbon_credit_units_final_150223.pdf (**Analysis of the Independent Review**).

⁶ Independent Review of Australian Carbon Credit Units, *Final Report* (December 2022) 2 (**Chubb Review**).

⁷ Australian Academy of Science, *Review of Four Methods of Generating Australian Carbon Credit Units: Report for the Department of Climate Change, Energy, the Environment and Water* (2022) <https://www.dcccew.gov.au/sites/default/files/documents/review-four-methods-generating-australian-carbon-credit-units.pdf>.

⁸ Analysis of the Independent Review, 4.

to 1.5C.⁹ Furthermore, carbon capture projects in Australia have been underperforming by about 50 per cent, and most new projects continue to rely on nature based credits to offset emissions, not CCS.¹⁰ As it stands and for the foreseeable future, CCS does not offer a solution for mitigating emissions, meaning the focus must remain on emissions reduction as a priority. EDO disputes the Review's findings on CCS.

- **Revoked, improved and new methods:** EDO supports the recommendation from the Chubb Review to revoke the avoided deforestation method, due to the findings about the integrity of this method. We also welcome the implementation of improved evidentiary standards to demonstrate carbon abatement under the human-induced regeneration method. In addition, we are pleased that the human-induced regeneration method and the native forest from managed regrowth method are due to expire on 31 March 2024. No new applications to register projects under these methods should be accepted in the meantime, and the Department should investigate options for scaling back projects already registered under these methods. However, we are concerned that the new Integrated Farm and Land Management method under development will include similar activities to the human induced regeneration method and the native forest managed regrowth methods. Accordingly, EDO seeks further details about the new Integrated Farm and Land Management method that will replace the expired methods. We would also like more details about the proposed Savanna Fire Management method and the varied Landfill gas method.
- **Offset integrity standards:** EDO welcomes the recent amendments that were made to the CFI Act, including requirements that the Minister be satisfied new methods or method variations comply with the offset integrity standards.¹¹ However, we are concerned that there have been no changes made to the offset integrity standards themselves when these have led to the development of flawed methods with questionable abatement integrity.
- **Additional integrity issues:** EDO also notes that commitments to implement the Review's recommendations relating to accreditation of carbon service providers,¹² evidence of project co-benefits,¹³ and legislative integration of a carbon industry code of conduct,¹⁴ are not addressed in this Discussion Paper. EDO supports the implementation of these important recommendations and looks forward to further consultation.

Given the importance of the scheme for Australia's emissions reduction efforts, and need to avoid enabling corporate greenwashing, EDO urges the Federal Government to continue assessment and improvement of ACCU methodologies and additional Scheme integrity measures.

⁹ IPCC Sixth Assessment Report (AR6), VIII, Summary for Policymakers.

¹⁰ IEEFA, *If Chevron, Exxon and Shell can't get Gorgon's carbon capture and storage to work, who can?* (26 April 2022) <https://ieefa.org/articles/if-chevron-exxon-and-shell-cant-get-gorgons-carbon-capture-and-storage-workwho-can>.

¹¹ *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) s 106(4AA), s 114(2AA).

¹² Department of Climate Change, Energy, the Environment and Water, *Independent Review of Australian Carbon Credit Units: Implementation Plan* (June 2023) 20 (**Implementation Plan**).

¹³ Chubb Review, 28 – 29.

¹⁴ Chubb Review, 20.

Recommendation:

- 1. The integrity of ACCU Scheme methodologies must continue to be assessed and improved beyond the recommendations in the Chubb Review.**

Proposed ACCU Scheme Principles

EDO supports the introduction of ACCU Scheme principles to inform and guide decision making alongside the current Offsets Integrity Standards in the CFI Act. The Offset Integrity Standards (**OIS**) are critical for the trusted and effective operation of the ACCU Scheme, and the new ACCU Scheme Principles will add another layer of guidance to ensure transparent operation and administration of the Scheme as a whole.

However, EDO is concerned about the application of these new principles and has identified gaps in their content. The lack of detail and guidance as to how the ACCU Scheme principles will be applied and implemented also means their efficacy as guiding criteria is limited.

Application of the ACCU Scheme Principles

The current proposal is for the principles to ‘guide how the ACCU Scheme is administered rather than met or complied with as is the case for the offsets integrity standards’.¹⁵ For example, the Discussion Paper notes that not all principles will need to be met when decisions are being made.¹⁶ It is therefore not clear how they will collectively lead to higher integrity of the Scheme when they are non-binding, do not have to be applied consistently, and no compliance needs to be demonstrated.

However specific examples are given as to how principles *may* apply, for example:

- method developers would be asked how their method addresses the ACCU Scheme Principles;
- The Carbon Abatement Integrity Committee (**Integrity Committee**) would consider how new method proposals, method variations, or modules address the ACCU Scheme Principles;
- The ACCU Scheme Principles would be included in the matters the Minister could consider when asked to decide whether to make or vary a method; and,
- Proposed methods or method variations would need to reflect the ACCU Scheme Principles relevant to them but would not be required to demonstrate compliance.

EDO recommends the principles be operationalised through the CFI Act - with specific provisions explicitly requiring application of the principles, such as in these examples above. Further consideration will need to be given to proposed legislation to operationalise these requirements.

Content of the ACCU Scheme Principles

We recommend each principle provide details about the standards and procedures required to achieve the desired outcome. For clear operation of the principles, and for the principles to be

¹⁵ Discussion Paper, 5.

¹⁶ Discussion Paper, 6.

functional measures of assessment rather than vague guiding statements, more details are needed. For example:

- The principle of ‘integrity’ must specify that for the ACCU Scheme to truly have integrity, ‘realness’ requires accurate and appropriate measurement of emissions and removals directly attributable to the relevant project; and that ‘additionality’ means credits are not issued for reductions that would have happened anyway.¹⁷ For example, criticisms of the human induced regeneration method have identified that much of the tree growth assumed to be the result of project activities and for which ACCUs have been credited, are actually the result of natural processes (e.g. rainfall) rather than reducing grazing pressure.¹⁸ The project activities are therefore not resulting in additional emissions abatement when compared to the baseline.
- The integrity principle should also define what is required to achieve a ‘rigorous approach to design’, and what is required of ‘continuous improvement’. This could include a requirement that the carbon abatement project applies current best practice, that the method is regularly revised to align with scientific developments, and that methods which have been found to be low integrity cannot be used to generate new ACCUs.
- The principle of ‘practicality’ should define what is required to achieve ‘high abatement outcomes’, and provide guidance on determining whether a project has ‘usable and implementable activities’.
- The principle relating to environmental and regional sustainability needs to provide criteria about how projects must contribute to ‘enhanced land management and resilience to climate change’. Similarly, this principle needs to outline what is required for an abatement project to ‘avoid adverse impacts’, and what these might include.

EDO notes that some concepts in the Offsets Integrity Standards are proposed not to be replicated in the ACCU Scheme Principles, such as no double counting or additionality. EDO is of the view these concepts are so integral to the functioning of a carbon crediting scheme and offset system that they should be explicitly included in the principles to guide decision-making across the ACCU Scheme, particularly at the method development stage.

Recommendations:

- 2. The ACCU Scheme Principles should be mandatory and applied in the legislation.**
- 3. Each ACCU Scheme Principle must include detail about the standards and procedures required to achieve the desired outcome.**
- 4. The ACCU Scheme Principles should explicitly include key elements of the Offsets Integrity Principles to guide and ensure consistency in decision-making.**

¹⁷ Analysis of the Independent Review, 5.

¹⁸ The Conversation, *Australia’s central climate policy pays people to grow trees that already existed. Taxpayers – and the environment – deserve better* (July 15, 2022) <https://theconversation.com/australias-central-climate-policy-pays-people-to-grow-trees-that-already-existed-taxpayers-and-the-environment-deserve-better-186900>.

Transparency of the ACCU Scheme

Greater transparency of the ACCU Scheme is critical, and will improve public confidence in the Scheme. EDO welcomes the publication of Carbon Estimate Areas information per the amendments to the CFI Act,¹⁹ and supports the publication on the Project Register information about the location of all projects, and an improved description of project activities.²⁰ It is not surprising that absent this information, experts and the public lacked confidence in the operation of the Scheme.

The proposal to publish a de-identified record of EOIs submitted for consideration by the Integrity Committee on new methods is also supported, alongside a summary of why the EOI was accepted or rejected.²¹ This summary should clearly articulate the criteria against which EOIs were assessed, including the ACCU Scheme Principles, OIS, and CFI Act requirements.

ACCU holding information should be published in full, particularly given the increased importance of the ACCU market subsequent the Safeguard Mechanism reforms and expected growth in demand. Not only will this support public confidence to a greater extent, but will assist in price determination, understanding co-benefits, and availability of ACCUs. EDO recommends option one be adopted.²² This information should be made available on an easily accessible platform for community observation, and withholding of information should only be on the basis of the three strict criteria detailed in the Discussion Paper. These should be embedded in the legislation.

In addition, EDO also recommends the CFI Act be amended to provide for third party enforcement and review rights. Third party enforcement is the ability of community members to enforce breaches of the law (e.g., including conditions or method requirements applicable under the Act), and is an integral part of environmental law regimes around the country. Including these provisions increases accountability and is an important compliance and enforcement safeguard, and will bolster the transparency of, and trust in, the ACCU Scheme as a whole.

Recommendations:

- 5. Full and public transparency provisions should be adopted to ensure public confidence in the ACCU Scheme, particularly as it relates to the Safeguard Mechanism demand.**
- 6. ACCU holding information should be published in full on an easily accessible public platform, with strictly limited criteria for withholding of information.**
- 7. The CFI Act be amended to provide for third party enforcement and review rights.**

¹⁹ *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) s 168.

²⁰ Discussion Paper, 11 – 12.

²¹ Discussion Paper, 9

²² Discussion Paper, 13.

Proponent-led method development and Integrity Committee functions

The replacement of the Emissions Reduction Assurance Committee with a new Integrity Committee is a critical reform, and EDO supports the establishment of the new independent expert committee tasked with assuring method integrity. However, despite a commitment in the Independent Review of Australian Carbon Credit Units: Implementation Plan (**Implementation Plan**) to ‘consult on the specific requirements for members of the Integrity Committee that could be legislated’, and the legislative amendments required to establish the Integrity Committee,²³ the Discussion Paper only deals with proposed functions.

For the Committee to properly fulfil its functions as set out on page 36 of the Discussion Paper, the appropriate expertise for this role is critical. This is particularly important given the proposed new proponent led method development process (discussed below). As such, EDO recommends the Department prioritise the identification and retention of independent scientific experts to serve on the Committee, or such experts be retained to provide advice on method development, as soon as possible. With multiple methods (such as the Integrated Farm and Land Management Method) currently in development, it’s important this recommendation is quickly implemented.

Method development

EDO welcomes the proposal for the Integrity Commission to provide assurance on the integrity of emissions reduction methods. However, we believe that the proposed proponent led method development may create a conflict of interest in developing methods that create a genuine reduction in emissions. The development of methods by industry stakeholders and carbon service providers may be geared towards advancing the interests of the carbon industry, rather than creating methods which ensure real and additional emissions reductions. However, if this development model progresses, the role of the Integrity Commission becomes even more important.

An EOI for a new method or module should be required to adhere to the CFI Act, the OIS, and all the ACCU Scheme Principles, as must further development stages of the method. Proponents should not be able to cherry pick which of the principles, ostensibly introduced to ensure integrity, will apply to their proposed method or module. This should also be the case for method variations, and any new methods currently under development. The Integrity Commission, as noted above, must have sufficient expertise to assess the proposed methods, and the ability to retain additional independent expert advice to develop and review methods to ensure the genuine reduction of emissions.

Public consultation on methods is similarly important, and EDO supports the proposal the independent Integrity Committee and secretariat will manage public consultations. EDO recommends legislative requirements for directly engaging any communities potentially affected or impacted by the resulting projects, and that statutory minimum timeframes be embedded in the legislation.²⁴

²³ Implementation Plan, 8.

²⁴ E.g. as per *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) s 123D (2).

Modules

The modular approach, while providing flexibility for proponents, decreases the level of oversight for method alterations and removes changes from Parliament's purview. EDO is concerned this approach may make the integrity of the methods difficult to monitor, and lead to a reduced level of oversight. This further emphasises the importance of the Integrity Committee, as it will be able to independently approve method modules which meet the OIS. Clear limits on what type of change could be allowed under the modular approach (before a method requires variation) is required, and no alterations that would be significantly or substantively change project requirements should be allowed. A limit to changes under the modular approach should be contained in the CFI Act (e.g. barring substantive change) and supplemented by published guidance from the Integrity Committee.

Maintenance and variation of methods

To uphold scheme integrity and ensure projects are achieving the real and additional abatement required by the OIS and CFI Act, there must be mechanisms in place for the maintenance of methods so that they are up to date with the latest technologies and scientific knowledge. Compulsory periodic reviews, conducted by the Integrity Committee and required under the Act would ensure methods continue to comply with OIS.

Currently the CFI Act allows projects to continue to use the version of the method in place when a project starts for the length of that crediting period regardless of if that method is varied or replaced. This raises significant integrity issues given the problems identified with existing methods, including the possibility abatement is being incorrectly calculated or attributed and that credits can be granted for seven years or 25 years in the case of CCS. This is clearly a risk to the operation of the Scheme. EDO agrees that if there are serious integrity concerns with a method, quickly moving proponents onto a varied method may be required to prevent reputational risks to the ACCU Scheme.²⁵ EDO supports the proposal the CFI Act stipulate transitional provisions for method variation or replacement, and will seek to provide input on the drafting of these provisions.

Similarly, where a method is set to expire and a proponent seeks to reinstate it for the same activities, the same rules and assessment as would be required for a new method for to be registered should apply, including the application of the ACCU Scheme Principles and the OIS.

Recommendations:

- 8. The proponent-led method and module development approaches must be subject to scrutiny by a well-resourced Integrity Committee comprised of independent scientific experts.**
- 9. Methods which have been replaced, varied, or expired must not be used by ongoing projects.**
- 10. Public consultation on methods should be ensured by legislative requirements for directly engaging any communities potentially affected or impacted by the**

²⁵ Discussion Paper, 34.

resulting projects, with statutory minimum timeframes for consultation embedded in the legislation.

11. A limit to changes under the modular approach should be contained in the CFI Act (e.g. barring substantive change) and supplemented by published guidance from the Integrity Committee.

12. To uphold scheme integrity and ensure projects are achieving the real and additional abatement required by the OIS and CFI Act, there must be mechanisms in place for the maintenance of methods so that they are up to date with the latest technologies and scientific knowledge. Compulsory periodic reviews, conducted by the Integrity Committee and required under the Act would ensure methods continue to comply with OIS.

Consent by First Nations communities

EDO strongly supports the recommendation from the Chubb Review that the ACCU Scheme must be aligned with the principles of free, prior and informed consent (**FPIC**), enshrined in articles 19 and 32 of United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**).²⁶ FPIC is the right of Indigenous Peoples to give or withhold consent to any project that may affect them or their lands, and, if consent is granted, to negotiate conditions for the design, implementation and monitoring of projects.²⁷ UNDRIP was adopted by the United Nations General Assembly on 13 September 2007 and endorsed by Australia on 3 April 2009. Implementation of FPIC is critical for all types of projects which take place on First Nation people's lands and waters, or impact or affect the interests of First Nations peoples.

EDO is concerned by comments in the Discussion Paper that state that appropriately consulting with Native Title holders can be time consuming, and could delay or limit projects.²⁸ Comprehensive, iterative and culturally appropriate consultation processes are not a 'nice to have' in relation to projects taking place on, or impacting, Native Title land, but a crucial part of any environmental approvals process and a well-established principle of international law. As such, EDO supports the full implementation of the Chubb Review recommendation, such that FPIC principles are enshrined directly in the CFI Act, and the CFI Act should be amended to remove the option to conditionally register ACCU projects on Native Title lands.²⁹ Projects should not be registered if FPIC is not obtained by the relevant Native Title body, and the registered body should have the ability to withdraw consent at any time.

Further, EDO remains concerned that the CFI Act does not make provision for consent to be obtained from First Nations people where there is no finalised Native Title determination. Consent must be obtained from First Nations people, regardless of whether a Native Title claim has or has not been successful – where there are either tangible, or intangible, cultural heritage values in the area. In such cases, FPIC must also apply.

EDO supports the proposal that greater resources be provided to ensure First Nations communities can access resources and support to freely participate in the ACCU Scheme, share in co-benefits, and ensure informed consent.

Recommendation:

13. The CFI Act should be amended to require FPIC of First Nations communities prior to any project taking place on or impacting First Nations land or cultural heritage.

Conclusion

With the recent changes to the Safeguard Mechanism, which will incentivise significantly increased demand for ACCUs, the integrity of the ACCU Scheme is more important than ever. The implementation of the Chubb Review recommendations is therefore essential, and should be completed rapidly.

However, further work must continue to be done to ensure transparency and efficacy, for example through thoroughly addressing ongoing concerns with existing methodologies and projects registered under replaced methods, resourcing and quickly enabling the Integrity Commission to fulfil its role, and ensuring that stricter integrity requirements, including the ACCU Scheme Principles, are appropriately enshrined in legislation.

Thank you for the opportunity to make this submission.

Please do not hesitate to contact our office should you have further enquiries.