KIMBERLEY LAND COUNCIL

15 September 2025

Productivity Commission
Locked Bag 2, Collins St East
Melbourne VIC 8003

Kimberley Land Council submission on the 'Investing in cheaper, cleaner energy and the net zero transformation' interim report

1. The Kimberley Land Council (**KLC**) is an Aboriginal organisation established in 1978 for the purpose of working for and with Traditional Owners to get back Country, care for Country and get control of the future. The KLC's mandate is driven by its broad membership of Kimberley Aboriginal people and delivered by an executive board of culturally and regionally representative directors.

2. Since 2015 the KLC has facilitated the registration and operation of Indigenous carbon projects on behalf of native title holders and other Kimberley Aboriginal people, including those holding pastoral leases. All projects supported by the KLC are owned directly by Traditional Owners (via the relevant prescribed body corporate (**PBC**) / Aboriginal Corporation). All revenue from these projects goes back to the proponents, is re-invested, and contributes directly to the regional economy, Aboriginal employment, PBC governance and capacity development, as well as ongoing and improved project operations and the co-benefits generated as a result.

3. Kimberley Aboriginal people have long-held aspirations for economic development that produces intergenerational wealth and is consistent with development that sustains and conserves lands, seas and waterways for future generations. These aspirations were the focus of seminal meetings of Kimberley people convened by the KLC in the 1990s to discuss economic development. As a result of these meetings, the KLC and Waringarri Resource Centre published the Crocodile Hole Report in 1991 and the KLC published The Kimberley: Our Place, Our Future in 1998.

4. A clear theme through both of these reports – a theme that remains unchanged – is that Aboriginal people in the Kimberley want economic development, and they want it on their terms. In the introduction to the Our Place, Our Future report, Kurijinpi McPhee, then-chair of the KLC, states: "[T]he meeting recognised that we all want economic development in the Kimberley region. But we want development that does not damage the unique society, environment and cultures of the Kimberley. And we want development that provides substantial local economic benefit to all the peoples of the region."[1] Aboriginal organisations no longer want to be mere stakeholders in projects occurring on their lands. They can and should be equity partners or outright owners of projects.[2]

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[1] Kimberley Land Council, *The Kimberley: Our Place, Our Future*, Kimberley Land Council, Broome, 1998, p 3.
[2] For further information on the KLC's views on economic development and empowerment, see https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Aboriginal_and_Torres_Strait_Islander_Affairs/Economicself-determinati/Submissions number 83.

5. Renewable energy is a rapidly growing sector in Australia and globally, being essential to the transition to a 'net zero' economy, which "will be among the largest and fastest economic transformations in history".[3] The Kimberley, with its large land mass and abundant sunlight and other natural resources, has the potential to be a key location for this transformation. Future clean energy projects and other net zero initiatives in the region represent a huge opportunity for Kimberley Aboriginal people.

Draft Recommendation 1.2
The Safeguard Mechanism should cover more industrial facilities and carbon leakage provisions should be improved

6. This draft recommendation raises the question of whether agriculture should be included in the Safeguard Mechanism. A major barrier to Indigenous land management and natural capital approaches to land management in the rangelands has been a failure to fully account for externalities relating to pastoral land use, such as carbon emissions and habitat and water degradation.[4]

7. The KLC supports the Safeguard Mechanism being broadened to cover agriculture. Including agriculture in the Safeguard Mechanism would:

    a. Create an incentive for more diversified land use on the pastoral estate

    b. Create an incentive for 'hybrid economies'[5] where native title co-exists with the pastoral estate

    c. More fully account for the value of Australia's rangelands.

    This would not only increase the sustainability of the pastoral industry in Australia, but it would also reduce Australia's greenhouse gas emissions by maintaining profitability while reducing livestock numbers and impacts.

8. Regardless of whether agriculture is covered by the Safeguard Mechanism, reducing the Safeguard threshold may have flow on effects for reporting under the National Greenhouse and Energy Reporting (**NGER**) scheme. Any changes should be accompanied by adequate resources, frameworks and guidance to support any broader base of NGER reporters.

9. An additional approach would be to restore confidence in Climate Active, which has seen a number of participants exit due to criticisms of the scheme.[6] The lack of avenues for voluntary climate action in the corporate sector will dampen climate action regardless of Safeguard Mechanism coverage.

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[3] Net Zero Australia, *Mobilisation report: How to make net zero happen*, Net Zero Australia, 2023, p 12.
[4] Russell-Smith, J. and Sangha, K.K. (2018) 'Emerging opportunities for developing a diversified land sector economy in Australia's northern savannas', The Rangeland Journal, 40(4), p. 315. Available at: https://doi.org/10.1071/RJ18005.
[5] Altman, J. (2022) 'Indigenous Australians and Their Lands: Post-Capitalist Development Alternatives', in S. Alexander, S. Chandrashekeran, and B. Gleeson (eds) Post-Capitalist Futures. Singapore: Springer Singapore (Alternatives and Futures: Cultures, Practices, Activism and Utopias), pp. 141–151. Available at: https://doi.org/10.1007/978-981-16-6530-1_13.
[6] Cropp, R. (2025) 'Corporates go cold on carbon neutral scheme', *Australian Financial Review*, 17 June. Available at: https://www.afr.com/companies/energy/corporates-go-cold-on-carbon-neutral-scheme-20250616-p5m7sh (Accessed: 12 August 2025).

10. To improve the effectiveness of Climate Active and ensure it continues to support Australia's transition to a low-emissions economy, the Government should:

- Retain and strengthen the program, aligning it with best-practice net zero guidance and international standards, including the mitigation hierarchy and nature-related financial disclosure frameworks.

- Clarify offset eligibility and integrity requirements, ensuring that only high-integrity credits are used and that participants are incentivised to reduce emissions before offsetting.

- Reframe the certification language, transitioning from 'carbon neutral' to 'net zero' to better reflect global expectations and avoid greenwashing risks.

- Support demand-side integrity, particularly for Indigenous Australian Carbon Credit Units (**ACCU**s), which have delivered significant climate and community benefits and rely on stable voluntary market demand.

11. Climate Active remains a critical tool for engaging the private sector in Australia's climate response. With targeted reforms, it can continue to drive voluntary ambition, support high-integrity carbon markets, and complement regulatory mechanisms such as the Safeguard Mechanism.

Draft Recommendation 1.4
Apply frameworks to achieve targets at least cost

Maintaining access to high-integrity ACCU – method development

12. Australia's transition to net zero will require a reliable supply of carbon offsets in the short and medium term with only 24 per cent of at-source emissions reduction technologies cheaper than ACCUs, and only 50per cent cheaper than \$100/tCO_2e.[7] The Government must provide support to the carbon farming industry to generate this supply.

13. The new proponent-led method development process will see significant Indigenous involvement in new methods. The KLC encourages the Government to support high-integrity ACCUs which recognise the significant property rights in carbon held by Indigenous people, rather than allowing deadlock to arise due to the failure of carbon service providers to live up to principles of free, prior and informed consent (**FPIC**).

14. The reformed Emissions Reduction Assurance Committee (**ERAC**) has performed admirably in identifying new methodology determinations which will increase supply of ACCUs. Of note are two proposals led by Indigenous organisations and supported by the KLC:

- Management of feral ungulates in wetlands (Northern Australian Indigenous Land and Sea Management Alliance (**NAILSMA**))

- Northern Arid Zone savanna fire management (Indigenous Desert Alliance and KLC).

[7] Carbon Market Institute and Westpac (2025) Evolving Markets, Emerging Solutions. 2025. p.22 Available at: https://carbonmarketinstitute.org/app/uploads/2025/04/Carbon-Market-Report-2025-FINAL.pdf.

15. To date, the Department of Climate Change, Energy, Environment and Water (**DCCEEW**) has not provided resources for method development, despite this forming part of the Chubb Review recommendations relating to proponent-led method development.[8] This stands in stark contrast to method development under the *Nature Repair Act 2023* (Cth) (**NRA**), where funding has been provided.

16. We have also observed that staffing of the NRA methods teams has been significantly higher than ACCU Scheme methods teams. The NRA is a nascent market, and we expect ACCU Scheme projects to anchor participation in that market through method-stacking. It is crucial that the Government recognises the significant cross-linkages between the schemes, to avoid compromising both its net zero and nature positive ambitions.

Indigenous rights and interests in carbon

17. Native title holders' right to access and manage land and its resources is well established, and the right to take resources of the land for any purpose (including commercial purposes) has been affirmed multiple times since it was first recognised in *Akiba on behalf of the Torres Strait Regional Seas Claim Group v Commonwealth* (2013). This year, the High Court ruled against the doctrine that native title was "inherently defeasible" and yielded to Crown interests in *Commonwealth of Australia v Yunupingu*. This means legal right to manage carbon stocks may extend far beyond the 28 per cent of Australia conservatively identified in the Indigenous Carbon Industry Network's (**ICIN**) mapping of Indigenous rights and interests in carbon.[9]

18. Based on misunderstandings of the nature of native title holders' rights and interests in carbon, and failing to uphold even basic tenets of FPIC, carbon service providers have registered ACCU Scheme projects on areas of land where Indigenous people have a right to manage carbon stocks, in the absence of any engagement with native title holders. These providers have failed to engage with native title holders before settling commercial terms with non-Indigenous landholders, which leaves little opportunity to rectify the mistake when it is discovered. As suggested by Sharma, native title holders now understand that they maximise their bargaining power when they leverage statutory reporting deadlines to try to negotiate a fair share of benefits.[10]

19. Despite native title holders' legal rights to carbon, the Clean Energy Regulator has registered these projects. As of August 2025, there are:

    - 163 projects registered conditional on the consent of native title holders
    - 46 projects with less than a year to obtain consents
    - 25 projects which have not obtained consents from native title holders before the end of their

[8] Chubb, I. et al. (2022) 'Independent Review of ACCUs'. p. 13. Department of Climate Change, Energy, the Environment and Water. Available at: https://www.dcceew.gov.au/sites/default/files/documents/independent-review-accu-final-report.pdf.

[9] Grace, P. and Holmes, J. (2022) Mapping the Opportunities for Indigenous Carbon in Australia. Darwin: Indigenous Carbon Industry Network. Available at: https://assets.nationbuilder.com/icin/pages/182/attachments/original/1664240300/Mapping_the_opportunities_ABRIDGED_WEB.pdf?1664240300.

[10] Sharma, S. (2023) 'Carbon farming - leveraging native title rights and interests', First Nations Law Bulletin, 1(2), pp. 23–25.

first reporting period

- 20 projects registered conditional on eligible interest holder consents from native title holders which have passed the latest possible date they could report (conservatively including delaying the start date for the project by 18 months under section 69 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth)).

20. In Western Australia, ACCU generation has been frustrated by the WA Government's insistence that it has an interest in projects on exclusive possession native title land. Exclusive possession native title includes the right to possess and occupy an area to the exclusion of all others. Project proponents who hold legal right to carry out a project on the basis that the land is exclusive possession native title land should not be required to seek permission from the Crown to carry out that project.

21. The Chubb Review recommended a number of steps[11] to embed FPIC into the ACCU Scheme. These recommended steps would go some way to alleviating this impasse to ensure supply of high-integrity ACCUs for use in the Safeguard Mechanism. However, the Government has not yet taken these steps. Without legislative reform, achieving net zero will be much more challenging, and there is also the risk of numerous court proceedings to determine the nature of native title holders' rights to ACCUs generated as a result of projects on Indigenous land.

Draft Recommendation 2.1
Reform national environment laws

22. The KLC has engaged actively in proposed reforms to national environmental laws. However, consultation on the proposed laws has stalled over the past 12 months. The KLC's most recent submission on nature positive laws makes a number of points substantially relevant to the Productivity Commission's recommendations[12].

23. Best-practice principles for engagement with Indigenous people in the ACCU Scheme[13] and renewable energy projects already exist.[14] These are notable for being developed by Indigenous organisations. They are more practical and realistic and provide more certainty for developers than similar non-Indigenous industry standards such as the Carbon Industry Code of Conduct or Government guidance such as the Clean Energy Regulator's native title guidance, which has failed to guide carbon service providers in Indigenous engagement. National environmental standards relating to Indigenous engagement should

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[11] Chubb, I. et al. (2022) 'Independent Review of ACCUs'. p. 27. Department of Climate Change, Energy, the Environment and Water. Available at: https://www.dcceew.gov.au/sites/default/files/documents/independent-review-accu-final-report.pdf.

[12] https://www.aph.gov.au/DocumentStore.ashx?id=7d14f050-4e62-4555-a520-e23adce53c0d&subId=752998

[13] Indigenous Carbon Industry Network (2020) 'Seeking free, prior and informed consent from Indigenous communities for carbon projects: A best practice guide for carbon project developers'. Indigenous Carbon Industry Network. Available at: https://assets.nationbuilder.com/icin/pages/34/attachments/original/1746587388/ICIN_Seeking_FPIC_from_Indigenous_communities_for_Carbon_Projects_Guide_FINAL_Feb_2020.pdf?1746587388.

[14] First Nations Clean Energy Network (2022) 'Aboriginal and Torres Strait Islander Best Practice Principles for Clean Energy Projects'. First Nations Clean Energy Network. Available at: https://assets.nationbuilder.com/fncen/pages/183/attachments/original/1680570396/FNCEN_-_Best_Practice_Principles_for_Clean_Energy_Projects.pdf?1680570396 (Accessed: 12 August 2025).

be developed using these foundations, with appropriate co-governance models.[15]

24. While there is significant supply-side interest in the NRA, it is still unclear how this will be met by demand for biodiversity certificates. Allowing the use of biodiversity certificates as offsets under the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) would provide more certainty for landholders and service providers looking to operate in natural capital markets. Noting this, any proposal to allow the use of offsets (via the NRA or a state scheme) would require detailed rules to ensure that offsets are 'like-for-like".

25. Of particular importance for Kimberley Aboriginal people would be the principle that environmental losses could not be offset by nature repair actions outside of their Country (for instance, it would not be appropriate to offset a mine in one native title area through restoration actions in another native title area). Special consideration should also be given to Traditional Owners' particular rights and responsibilities to Country, to ensure that any offsets were delivered by the right people, in the right way.

Draft Recommendation 3.1
Set up a climate risk information database covering all climate hazards

26. As climate change intensifies and fire risk increases across Australia, the need for accessible, real-time fire data has never been more critical. The North Australian Fire Information (**NAFI**) website (https://firenorth.org.au/) provides free, satellite-derived fire mapping that is essential to land managers, Indigenous ranger groups, conservation organisations, and carbon project developers across northern Australia. NAFI data is a foundational input in the calculation of emissions reductions for savanna fire management ACCU projects, which deliver both environmental and economic benefits in some of the country's most remote regions.

27. Despite its national significance, NAFI operates on a modest budget of $800,000 per year and delivers major public-good outcomes including disaster risk reduction, emissions abatement, and regional economic development. This tool is far too important to Australia's communities, environment, and climate goals to be left facing ongoing funding uncertainty. Long-term, secure investment in NAFI is essential.

Conclusion

28. Thank you for the opportunity to provide this submission. If you have any questions about the submission, please contact policy@klc.org.au.

Yours sincerely,

[redacted]

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Chief Executive Officer

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[15] Hill, R. *et al.* (2012) 'A Typology of Indigenous Engagement in Australian Environmental Management', *Ecology and Society*, 17(1). Available at: http://www.jstor.org/stable/26269005 (Accessed: 17 October 2024).