

Environment, Natural Resources and Energy Law (ENREL) Research Unit
Adelaide Law School, The University of Adelaide
Ligertwood Building, North Terrace, Adelaide SA 5005

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Dear Climate Change Authority Secretariat,

ENREL Submission on the Climate Change Authority's Review of International Offsets

Thank you for the opportunity to participate in this consultation process about international carbon markets and Australia's use of emissions offsets that have been generated overseas. Thank you too for the extension we received for this submission.

We are legal researchers in the Environment, Natural Resources and Energy Law (**ENREL**) Research Unit at the Adelaide Law School. We have included brief research profiles for each of the researchers that have contributed to this submission, at the end of the document.

ENREL has recently embarked on a scoping project about regulatory frameworks for biodiversity and carbon offsetting in Australia, funded in part with a seed grant from The University of Adelaide's Environment Institute. We are in the early stages of reviewing a substantial amount of scholarship on the development and operation of regulatory frameworks for offsetting, both in Australia and internationally. Unfortunately, we are not in a position at this point to formulate authoritative views on many of the detailed 'Guiding Questions' set out in the Authority's Consultation Paper. However, we would like to take this opportunity to draw attention to key components of the substantial volume of literature that we are exploring, and to summarise some of the key messages that we have identified at this stage.

To that end, we have set out summary messages and submissions in the pages that follow, and attached a small number of reports and papers that provide more detailed, supporting analyses. We argue that the attachments are extremely relevant to this consultation and should be considered as part of the Authority's deliberations.

Please do not hesitate to contact us if you have any questions about this submission. We would welcome any opportunity to participate in the Authority's inquiry on this topic, and in future inquiries that the Authority may conduct about governing emissions offsets in Australia.

Your sincerely



Dr Phillipa McCormack and Dr Alexandra Wawryk
Co-directors, ENREL, Adelaide Law School, The University of Adelaide

1. BACKGROUND

The federal government has sought advice from the Climate Change Authority about the principles and criteria that ought to apply to the future use of international offsets for a range of reasons, including:

- under the Government’s Climate Active program;
- to inform the development of Australia’s Indo-Pacific Carbon Offsets Scheme;
- to account for Australia’s emission reduction targets; and
- for ‘other policies and programs’, as relevant.

These different purposes may, at a granular level, raise different kinds of considerations for relying on internationally generated offsets and may require different governance standards and criteria. Nevertheless, there are design, implementation and oversight considerations that we submit ought to apply ‘across the board’, including:

- ‘best-practice’ legislated standards for assessing the quality of international offsets;
- integrity principles embedded and operationalised at scheme, methodology and project levels;
- rigorous transparency, accountability, review and enforcement mechanisms; and
- a clear legislative and policy position on the implications of climate change for accrediting international offsets, and for enforcing them in the context of climate-related damage and loss.

We have organised our submission under two overarching considerations, which we suggest are crucial to an effective, rigorous scheme operating in a time of rapid, anthropogenic climate change: **governance integrity**, and **climate justice and resilience**. Our submission addresses these considerations, in turn.

2. GOVERNANCE INTEGRITY

The Authority has already acknowledged the need to ensure the integrity of Australia’s international offsets framework. For example, the Consultation Paper notes that:

Experience from the operation of carbon markets to date has emphasised the importance of thorough accreditation, governance and verification standards and institutional arrangements to ensure that offsets genuinely reduce emissions, and do not represent false claims.¹

We agree with the Authority that this issue – of both *actual* integrity and *perceptions* of integrity – is fundamental. We have observed expressions of concern in recent weeks about the integrity of Australia’s domestic offsets market, by experts that are highly-qualified, well-respected and closely connected to the development and operation of that market; and the implications of those concerns for the reputation of Australia’s domestic market.²

¹ Consultation Paper, p 4.

² E.g. Long, ‘Potential conflicts of interest abound in Australia’s carbon credits market’ <<https://www.abc.net.au/news/2022-04-02/carbon-credit-conflicts-of-interest-in-clean-energy-regulator/100952758>> (2 April 2022); and academic reports on these topics: Macintosh, A., Butler, D., Ansell, D. (2022) *Measurement Error in the Emissions Reduction Fund’s Human-induced Regeneration (HIR) Method*. The Australian National University, Canberra; and Macintosh, A. (2022) *The Emissions Reduction Fund’s Landfill Gas Method: An Assessment of its Integrity*. The Australian National University, Canberra.

With those concerns in mind, we urge the Authority to prioritise the development of a framework that ensures that eligible international offsets do, in fact, contribute to reducing global emissions. We also urge the Authority to ensure that accreditation of international offsets is not tainted or perceived to be affected by shortfalls in integrity and effectiveness, such as those that have been alleged with respect to Australia’s domestic market.

To support the Authority in that task, we highlight the following issues and information for the Authority’s attention.

2.1 Design a scheme with clear and ‘best practice’ legislated standards for assessing offset quality (relevant to Question 5 of the Guiding Questions)

2.1.1 Identifying existing ‘best practice’ standards

Others have already invested a great deal of time and energy researching and describing ‘best practice’ for legislating and assessing the quality of offsets, both domestic and international. For example, Broekhoff and Spalding-Fecher³ have synthesised recent research on the factors that influence the environmental integrity of carbon crediting schemes – that is, in line with Article 6 of the Paris Agreement, the factors that ensure that these schemes do *not* result in an increase in global emissions. They identify four factors that influence environmental integrity in a scheme when relying on international carbon credits. These factors are : (1) how the scheme accounts for international transfers; (2) the quality of units from carbon market programs; (3) the ambition and scope of the mitigation targets of the transferring country; and (4) incentives or disincentives for future mitigation action.⁴ We recommend the authors’ findings to the Authority, as useful evidence about how to demonstrate that a scheme is robust and has high levels of integrity.

We also draw the Authority’s attention to the work of The Environmental Defense Fund, World Wide Fund for Nature-United States and the Oeko-Institut (Institute for Applied Ecology), who have developed the Carbon Credit Quality Initiative (**the CCQ Initiative**).⁵ In their first report, published in 2020 and titled ‘What makes a high-quality carbon credit?’, the CCQ Initiative engaged with complex questions about assessing additionality, establishing robust baselines and addressing concerns about environmental integrity.⁶ In late-March 2022, the CCQ Initiative released a revised version of its second major report, defining a rigorous methodology against which the quality of carbon credits can be assessed.⁷ This methodology is designed to be applied by independent experts; and it supports the achievement of the Principles and Rules relevant to Article 6 of the Paris Agreement. This methodology could therefore be used as a basis for auditing international offsets and designing rigorous, legislative standards for the new Australian schemes.

We summarise the Quality Objectives and criteria from the CCQ Initiative’s second report (excluding the detailed sub-criteria) in Table 1. A copy of the full report can be found at Attachment 3.

³ Derik Broekhoff & Randall Spalding-Fecher, ‘Assessing crediting scheme standards and practices for ensuring unit quality under the Paris Agreement (2021) 12(6) *Carbon Management* 635-648 (**Attachment 1**).

⁴ *Ibid*, p 635.

⁵ See <<https://carboncreditquality.org>>.

⁶ *Ibid*; EDF, WWF-US and Oeko-Institute e.V., *What makes a high-quality carbon credit? Phase 1 of the “Carbon Credit Guidance for Buyers” project: Definition of criteria for assessing the quality of carbon credits* (June 2020) (**Attachment 2**).

⁷ EDF, WWF-US and Oeko-Institute e.V., *Methodology for assessing the quality of carbon credits* (21 March 2022, version 2.0) (**Attachment 3**).

Table 1. CCQ Initiative Quality Objectives and criteria

Qualitative Objective and criteria for measurement
1. Robust determination of the GHG emission impact of the mitigation activity 1.1 Additionality 1.2 Vulnerability 1.3 Robust quantification of emissions reductions and approvals
2. Avoiding double-counting of emissions reductions or removals 2.1 Robust registry and project database systems 2.2 Avoiding double issuance 2.3 Avoiding double use 2.4 Avoiding double claiming
3. Addressing non-permanence 3.1 Significance of non-permanence risks 3.2 Robustness of the carbon crediting program’s approaches for addressing non-permanence risks
4. Facilitating a transition towards net zero emissions 4.1 Enhancing adoption of low, zero or negative emissions technologies and practices
5. Strong institutional arrangements and processes of the carbon crediting program 5.1 Overall program governance 5.2 Transparency 5.3 Robust third-party auditing
6. Environmental and social impacts 6.1 Robustness of the carbon crediting program’s environmental and social safeguards 6.2 Sustainable development impacts of the project type or project 6.3 Contribution to improving adaptation and resilience
7. Host country ambition 7.1 Host country commitment to the global temperature goal 7.2 Stringency and coverage of the host country’s current NDC 7.3 Ability of the carbon crediting approach to enable the host country to use part of the emission reduction to achieve its own NDC

We argue that the objectives detailed by the CCQ Initiative represent a ‘best practice’ approach to avoiding adverse impacts from carbon offsets, including because they explicitly take into account non-carbon benefits (ToR(b)). On the question of non-carbon benefits, we draw the Authority’s attention to Objective 6 in the table above and in the CCQ Initiative Report (pp 97-107). Objective 6 assesses environmental and social safeguards, sustainable development impacts and the contribution that carbon offsets make to adaptation and resilience, in assessing carbon offset quality.⁸

- I. We support the Authority’s proposal in the Consultation Paper that legislative objectives and criteria (whether in primary or delegated legislation) are necessary for rigorous assessments of the quality of offsets generated overseas, for use in the Australian offset market.**

⁸ See also, Michaelowa et al, ‘Overview and comparison of existing carbon crediting schemes’ (2019, Climate Perspectives Group, Nordic Environment Finance Corporation and the Nordic Initiative for Cooperative Approaches) (**Attachment 4**).

II. We submit that the standards for assessing the quality of these offsets should either be based on the CCQ Initiative’s methodology, or should be able to be demonstrated to be *equal to or more rigorous than the CCQ Initiative’s methodology.*

2.1.2 Negative emission technologies

Negative emission technologies are technologies that aim to draw carbon dioxide directly from the atmosphere, to be stored long term or permanently in land or ocean-based sinks.⁹ These technologies are playing an increasingly-important role in international climate change policy. In its latest report, the IPCC has made it clear that large-scale carbon dioxide removal is needed (in addition to deep and rapid reduction in greenhouse gas emissions at-source) to limit global warming to 1.5-2°C as set out in Article 2 of the Paris Agreement, and to achieve net-zero emissions.¹⁰ As such, negative emission technologies will need to be developed and implemented at a rapidly-increasing pace and scale over coming decades. However, these technologies present a number of challenges, including the risk of causing potentially negative environmental impacts in their own right.¹¹ As such, Australia needs to take a considered approach to such technologies and the role they will play in any offset schemes.

Many negative emission technologies are in the early stage of development, and are yet to be proven effective at scale. Offset methodologies have a potentially important role to play in incentivising the development and uptake of negative emission technologies. Some researchers have suggested that offset buyers should gradually shift their purchasing towards offsets with methodologies that involve carbon removal/sequestration and increased levels of permanence, given the urgency of responding to global climate change.¹² For example, the 2020 report from the CCQ Initiative proposes that offsets should ‘facilitate the transition towards net zero emissions’, including by ‘enhancing adoption of low, zero or negative emissions technologies’, and demonstrating the commitment of the country from which the offset is sourced, to the Paris Agreement goals.¹³

Generally speaking, we support the development of methodologies for negative emissions technologies. However, negative emissions technologies should not be a substitute for deep and rapid decarbonisation.¹⁴ Mechanisms must therefore be developed to ensure that the inclusion of

⁹ For an overview, see Minx et al, ‘Negative emissions – part 1: research landscape and synthesis (2018) 13:063001 *Environ. Res. Lett.* doi: 10.1088/1748-9326/aabf9b. See also J Brian Matthews et al (eds) ‘Annex VII Glossary’ in Valerie Masson-Delmotte et al (eds) *Climate Change 2021: The Physical Science Basis. Contributions of Working Group I of the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (IPCC, 2021), A VII 9-10, 40.

¹⁰ Jim Skea et al, ‘Climate Change 2022: Mitigation of Climate Change, Summary for Policymakers’ (IPCC, 2022) C.11 available at <<https://www.ipcc.ch/report/ar6/wg3/>>. Minal Pathak et al, ‘Working Group III Contribution to the IPCC Sixth Assessment Report (AR6) Technical Summary’ (IPCC, 2022) TS-94 available at <https://report.ipcc.ch/ar6wg3/pdf/IPCC_AR6_WGIII_FinalDraft_TechnicalSummary.pdf>.

¹¹ See National Research Council, ‘Climate Intervention: Carbon Dioxide Removal and Reliable Sequestration’ (National Academies Press, 2015) available at <<https://nap.nationalacademies.org/catalog/18805/climate-intervention-carbon-dioxide-removal-and-reliable-sequestration>>.

¹² CCQ Initiative, above n 6; Carbon Market Watch, ‘Above and beyond carbon offsetting: Alternatives to compensation for climate action and sustainable development’ (Policy Briefing, December 2020) (**Attachment 5**).

¹³ CCQ Initiative, above n 6.

¹⁴ See Shinichiro Asayama, ‘The Oxymoron of Carbon Dioxide Removal: Escaping Carbon Lock-In and yet perpetuating the Fossil Status Quo?’ (2021) *Front. Clim.* Available at <<https://www.frontiersin.org/articles/10.3389/fclim.2021.673515/full>>.

negative emission technologies in Australia’s international offset accreditation schemes does not have the perverse effect of detracting from conventional mitigation strategies, at-source. Australian schemes must incorporate explicit legislative standards that ensure that internationally-generated offsets deploying negative emission technologies are, in fact, contributing to global emission reductions and limiting or avoiding negative externalities.

Australia should also develop clear guidelines on what types of negative emission technologies are recognised under internationally accredited offset schemes. In doing so, it should clearly differentiate between technologies that seek to deliver a net reduction in carbon emissions, versus those that merely capture carbon dioxide at source without further reducing atmospheric levels of CO₂ (i.e. carbon capture and storage technologies for coal, gas and hydrogen production).¹⁵ Despite Article 6 mechanisms being designed as technology-neutral, a relatively uncontroversial starting point would be to ensure that Australian schemes for accrediting international carbon offsets *explicitly exclude* credits generated from industries reliant on fossil fuels that will not deliver a net reduction in atmospheric CO₂, including carbon capture and storage projects for oil, gas and coal and any other non-renewable energy sources.¹⁶ This may be expressed in different ways including, for example, by ‘restricting the scope to avoid crediting for activities inconsistent with a 1.5°C pathway and preventing “lock-in” effects of high-carbon technologies’.¹⁷

Negative emission projects focusing on ‘direct’ capture and permanent storage of greenhouse gas emissions – whether by engineered means (ie Direct Air Capture technologies¹⁸) or natural means (ie reforestation, afforestation and blue carbon restoration)¹⁹ – may be appropriate inclusions in international offsetting arrangements, provided additionality, co-benefits and other appropriate safeguards are in place.²⁰ However, the potential trade-offs associated with negative emission technologies, such as competing land use and impacts on biodiversity and ecosystems²¹ will also need to be considered when accrediting these emerging technologies under Australia’s international offset schemes. Different negative emission technologies present different types and degrees of risk in this regard.²² It is therefore not appropriate to adopt a ‘one size fits all’ approach to assessing negative emission technologies for inclusion under an international offset scheme. They should instead be assessed on a case-by-case basis.

III. We urge the Authority to adopt a definition of negative emission technologies that differentiates between technologies that will deliver a net reduction on CO₂, as opposed to technologies that merely capture CO₂ at source. The Authority should explicitly exclude from

¹⁵ See Samantha Eleanor Tanzer and Andrea Ramírez, ‘When are negative emissions negative emissions?’ (2019) 12 *Energy & Environmental Science* 1210, 1211.

¹⁶ Michaelowa et al 2019, above note 8, found that most crediting schemes in 2019 already explicitly excluded certain technologies, at 44.

¹⁷ Michaelowa et al 2019, above note 8, at 44.

¹⁸ See <<https://www.iea.org/reports/direct-air-capture>>.

¹⁹ European Parliament, ‘Carbon dioxide removal: Nature-based and technological solution’ (2021) *Briefing Towards Climate Neutrality* 4-5, available at: <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/689336/EPRS_BRI\(2021\)689336_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/689336/EPRS_BRI(2021)689336_EN.pdf)>.

²⁰ See e.g. CCQ Initiative Report 2022, Objective 6, above n 7.

²¹ E.g. McCormack PC, McDonald, Brent, ‘Governance of land-based negative-emission technologies to promote biodiversity conservation: lessons from Australia’ (2020) 10(2) *Climate Law* 123-150 (**Attachment 6**); Kerryn Brent et al, ‘Carbon Dioxide Removal Geoengineering’ (2018) 92(10) *Australian Law Journal* 830.

²² See Rob Bellamy and Oliver Geden, ‘Govern CO₂ Removal from the ground up’ (2019) 12(11) *Nature Geoscience* 874.

Australia's international offset schemes the accreditation of technologies that merely seek to capture CO₂ from source when associated with fossil fuel extraction and consumption.

- IV. Other negative emission technology projects that meet the best practice standards for contributing to global emission reductions while also achieving local, social and environmental co-benefits, should be assessed against legislated quality standards on a case by case basis, rather than being assessed as eligible for trade into Australia on a category basis.

2.2 Establish scheme-level integrity principles, consistent with overarching standards and expectations of good governance (relevant to Guiding Questions 5(a) and 9 and ToR(d))

The new Paris Agreement Principles and Rules highlight the need for scheme-level considerations that ensure an offsets scheme is actually contributing to the goal of climate change mitigation.²³ Some have suggested that a fundamental problem with domestic schemes, such as the Australian Emissions Reduction Fund, is the failure to reflect – through principles set out in delegated legislation – the relevant legislative standards and criteria, meaning that those principles are not incorporated in decision-making.²⁴ The same challenge needs to be addressed in any scheme to accredit international offsets. We set out below a number of issues that integrity principles should address.

2.2.1 Avoid double-counting and perverse incentives

Carbon Market Watch has highlighted a risk under the Paris Agreement, now that all countries have emissions reduction targets, that international carbon offsetting could contribute to 'double-counting', particularly where offsets are purchased by corporations or other private entities and counted by those entities *as well as* by a government, in its NDCs.²⁵ The report notes:

The concept of additionality ...needs to be considered under a new lens in light of the Paris Agreement. Any support received by a country to reduce its emissions [ie through private purchases of international carbon offsets] could simply replace what the host country has committed to achieving anyway. ...there are clear and realistic scenarios under which the reductions achieved through the voluntary market will simply reduce a country's... own efforts and hence replace what would have happened anyway.²⁶

The CCQ Initiative Report also identifies a need to consider at a scheme level how to deal with perverse incentives, an important consideration that has been resolved to some extent in the context of national abatement schemes – lessons that the design of Australia's international accreditation framework will need to learn from and build upon.²⁷

²³ Paris Agreement Principles set out at page 13 of the Consultation Paper; and see EDF 2020 and Oxford 2020.

²⁴ See Baxter 2017.

²⁵ Carbon Market Watch, above n 12, Attachment 5.

²⁶ Ibid, 6.

²⁷ E.g. Lambert R Schneider, 'Perverse incentives under the CDM: an evaluation of HFC-23 destruction projects' (2011) 11(2) *Climate Policy* 851-64; Lambert Schneider and Anja Kollmuss, 'Perverse effects of carbon markets on HFC-23 and SF₆ abatement projects in Russia' (2015) 5 *Nature Climate Change* 1061, discussing an early popular offsetting method of capturing industrial gas waste, noting that the cost-effectiveness of this method may have incentivised some companies to increase gas production so they had more waste to capture and destroy.

2.2.2 Monitoring, Reporting and Verification

Michaelowa et al note, in their 2019 report comparing carbon crediting schemes around the world (including Australia's scheme at the time), that existing schemes 'vary in their approaches to verification: some do not require it, some are verified by a public entity, some by accredited auditors'.²⁸ Consistent public reporting and independent verification of carbon credit performance is crucial to the integrity of these schemes, and to Australia's capacity to accurately report on its achievement against its NDCs to the global community. We recommend Michaelowa et al's report to the Authority, particularly its comparison of the schemes developed by other countries and its summary of the monitoring, reporting and verification standards in place at the time. Australia should strive to be a world-leader in the level of ambition and public accountability imposed in its international offset accreditation process.

We also support Michaelowa et al's conclusion that:

Defining specific crediting periods according to technologies and project types could enhance the stringency of the mechanisms, even if this approach has not been implemented yet. Furthermore, it is advisable to align crediting periods with NDC implementation and review cycles.²⁹

Academics have recently raised concerns about the administration of Australia's domestic Emissions Reduction Fund, including concerns that relate to the integrity of decision making about offsets.³⁰ The new scheme for accrediting international offsets must not replicate the limitations and problems that underpin these concerns, including with the application of specific methodologies.

2.2.3 Accountability and enforcement

Arrangements for accrediting offsets generated overseas should seek to avoid any actual or perceived accountability and enforcement shortfalls, such as those that have recently been alleged concerning Australia's domestic framework.³¹ Avoiding any actual or perceived gaps/shortfalls will: (a) enhance confidence in the scheme and its regulator, including among stakeholders such as offset providers and investors, and in the broader Australian community; and (b) bolster Australia's domestic and international reputation for climate action and offset market integrity, improving the legitimacy and trustworthiness of the nation's claims to achieving emission reduction targets to address global climate goals.

The Stockholm Environment Institute, in its Working Paper on whether Joint Implementation of carbon markets under the Kyoto Protocol had reduced greenhouse gas emissions³² assessed, among other things, the governance arrangements in place to improve accountability and transparency in the EU trading scheme, including across national borders. The international aspects of this report are relevant to the Authority's current inquiry, so we have extracted the following section about the kinds of governance procedures that promote engagement, accountability and environmental integrity, for the Authority's consideration. The full report can be found as Attachment 7 to this submission.

²⁸ Michaelowa et al 2019, above note 8, see summary table at pp 3-4, Attachment 4.

²⁹ Ibid, p 44.

³⁰ See above n 2.

³¹ Ibid.

³² Anja Kollmuss, Lambert Schneider and Vladyslav Zhezherin, *Has Joint Implementation reduced GHG emissions? Lessons learned for the design of carbon market mechanisms* (Stockholm Environment Institute, Working Paper No 7: 2015) (**Attachment 7**).

A1.10 Features supporting environmental integrity: transparency, stakeholder consultations and appeals procedures

Virtually all steps in the new project cycle of the draft Joint Implementation rules [under the Kyoto Protocol] require... that rules, documents and decisions are made public:

- The host Party decisions regarding registration of Joint Implementation activities and issuance of Emissions Reduction Units have to be made public through the UNFCCC Secretariat and rejections have to be justified.
- All Joint Implementation rules a country develops will have to be made public and be provided to the UNFCCC secretariat in English.
- All approved baselines, registered JI activities and activities under consideration will have to be made public through the UNFCCC Secretariat.

These requirements should notably improve transparency. Although transparency is an important component for ensuring environmental integrity, by itself it is not sufficient to ensure that Joint Implementation projects have high environmental integrity [...].

Stakeholder involvement and appeals possibilities are other features that can strengthen environmental and social integrity. Local and global stakeholder consultations are a requirement under the Clean Development Mechanism [...].

The draft changes to the Joint Implementation rules propose the inclusion of both a local and global stakeholder consultation and appeals procedures. Public comments can be made during the Joint Implementation registration process but not during the verification process. Adding such a commenting period during the verification process may help identify instances where emission reductions have not been determined correctly due to e.g. post-registration changes in calculation approaches or changes in project implementation.

Furthermore, we recommend to set out key steps of the stakeholder consultation in the draft Joint Implementation rules and to explicitly require that Accredited Independent Entities should verify the consideration of stakeholder comments, to ensure that the concerns that have been raised are sufficiently addressed. As the experience with the Clean Development Mechanism has shown, without specific rules on how local stakeholder consultations have to be conducted and how the raised concerns have to be addressed, these consultations are often insufficient to enable local communities to provide input which then is sufficiently addressed.

Two appeals processes are proposed in the draft Joint Implementation rules:

- A procedure for appealing decisions taken by the Joint Implementation Supervisory Committee to be determined [...] under which any Joint Implementation Supervisory Committee decision can be appealed by “affected stakeholders”
- Host country national procedures for appealing decisions, in accordance with national legislation, by the designated focal point regarding the registration of Joint Implementation activities [...].

We recommend that appeals procedures should be established at both levels, given that decisions are taken at both levels according to the new project cycle. Affected stakeholders could then appeal to the institution that took the relevant decision against which the appeal is raised (e.g. rejection of a request for registration). Overall, transparency, stakeholder consultations and appeals processes are important aspects that can help ensure the quality of a programme and the units that are issued.

Anja Kollmuss, Lambert Schneider and Vladyslav Zhezherin, *Has Joint Implementation reduced GHG emissions? Lessons learned for the design of carbon market mechanisms* (Stockholm Environment Institute, Working Paper No 7: 2015)

- V. **We submit that the Authority should adopt rigorous transparency, engagement and appeals processes in keeping with the recommendations of the Stockholm Environment Institute.**

2.3 Brief submissions on the issue of vintage (relevant to Qn 7 of the Guiding Questions and ToR(e))

We note that units that are older than 2021 are not eligible to be traded internationally under the Paris Agreement. Nevertheless, establishing new scheme rules will mean that, over time, questions about vintage units will continue to emerge. We highlight the findings in Broekhoff et al 2019, who suggests that offsets with an older vintage are not necessarily a problem, unless:

- The vendor has been trying but failing to sell them for a long time (so there may be quality issues); or
- The offset project has been operating for several years without actually selling any offsets (so there may be financial additionality problems, since clearly the project is somehow financially viable without the offset revenue).³³

- VI. **We submit that Australia’s schemes should align with the Paris Rulebook, explicitly excluding international offsets created before 2021 from being traded in the Australian market.**
- VII. **Given that the Australian offsetting schemes will age, the Authority should ensure that legislative and policy objectives are expressed in a way that excludes trade in internationally-generated offsets exhibiting one or both of the characteristics identified by Broekhoff et al.**

3. Climate justice, resilience and adaptation

The Australian Government must design a framework for accreditation of international offsets that recognises the relationship between carbon offsets and the implications of a changing climate, including climate hazards and extreme weather events such as catastrophic wildfire, flooding and storms. Accrediting international offsets could create opportunities for important co-benefits that enhance the capacity of communities and ecosystems to build resilience to a changing future. However, the security of offsets may also be threatened by extreme events that are increasingly common as a result of climate change.

The Australian Government must develop a policy or guideline for its response to climate events, ensuring that offsetting projects deliver co-benefits for communities and environments overseas, many of which will be particularly vulnerable to the impacts of climate change. The framework for accrediting international offsets must also include guidelines for the treatment of offset projects that are compromised or destroyed by, for example, extreme weather events, before the end of the relevant permanence period. This will require attention to (a) the kinds of offsets that are accredited under Australia’s international offset schemes; and (b) the ways that Australia will respond to damage or the destruction of offsets from increasingly common climate-related extreme events.

3.1 International offsets must promote climate justice, resilience and adaptation

Given that many of the offsetting projects to be considered for this scheme will come from the developing world, including the Indo-Pacific region, where climate resilience is typically lower and

³³ Broekhoff, D., Gillenwater, M., Colbert-Sangree, T., and Cage, P., ‘Securing Climate Benefit: A Guide to Using Carbon Offsets’ (2019, Stockholm Environment Institute & Greenhouse Gas Management Institute), available at: <Offsetguide.org/pdf-download/>, at 34 (**Attachment 8**).

justice concerns are particularly pressing, we submit that climate justice and enhanced resilience and adaptation should form core planks of the government’s framework for accrediting carbon offsets generated overseas. In the conclusion of their report, Michaelowa et al note that:

As we are witnessing with the developments in the CDM and private sector standards, sustainable development contributions in crediting schemes are becoming more relevant. This trend is currently neglected in the negotiating texts but is likely to gain importance through restrictions introduced by credit buyers.³⁴

The Consultation Paper notes that a well-functioning carbon market can promote the production of:

a range of co-benefits – for example, providing an extra revenue source for local communities or farmers to finance emissions reduction activities that also improve the productivity, resilience and environmental health of their land.³⁵

Supporting the Authority’s recognition of the role of co-benefits, Broekhoff and Spalding-Fecher investigated whether existing schemes meet ‘unit quality’ standards under Article 6 by incorporating the requisite safeguards and sustainable development benefits. They found that it is both necessary, and relatively easy, to provide ‘explicit and appropriate standards, criteria, and procedures for ensuring that mitigation activities do not cause environmental or social harm’, but that half of the schemes they assessed did not yet include such standards, criteria and procedures.³⁶

The Consultation Paper also notes that:

The Government has indicated that projects under the [Indo-Pacific Carbon Offsets Scheme] should also endeavor to deliver co-benefits which contribute to United Nations Sustainable Development Goals.³⁷

We submit that the indication that the Government ‘*should endeavour* to deliver co-benefits’ is insufficient. Not only should internationally generated offsets *not* cause social and environmental harm, but those credits should not be acceptable for trade in Australia unless they achieve *at least* one measurable, verifiable benefit to the community that is producing the offset *in addition* to the carbon emissions reduction that would be sold in Australia. That is, all internationally accredited offsets traded in Australia should be producing a carbon benefit that has value in the Australian market *and* a local benefit that accrues to the project owner or the broader community in the area in which the offset is produced. Including requirements for co-benefits in international offset accreditation, particularly co-benefits that enhance climate justice and resilience, will help to ensure that Australia’s offsetting activities do not occur at the expense of community well-being in less-developed countries.

We suspect that some may argue that an offset that generates multiple co-benefits will simply fall into a category of ‘premium’ offsets that generate a higher price, in a way that will incidentally (and without heavy-handed regulation) improve development outcomes, including in the Indo-Pacific region. We disagree with this sentiment and urge the Authority to take a more rigorous and principled stance on the Indo-Pacific Scheme and the assessment of international offsets more generally. The idea of generating benefit-transfers to local communities is fundamental to community development theories and, if embedded in Australia’s schemes, could help to avoid destructive approaches to offsets where, for example, agricultural or community assets in

³⁴ Michaelowa et al, above note 8, 45.

³⁵ Consultation Paper, p 4.

³⁶ Broekhoff and Spalding-Fecher, above n 3, Table 1g.

³⁷ Consultation Paper, p 5.

developing nations are converted to fast-growing trees for carbon offsetting, while also ensuring that Australian markets do not profit from accessing offsets that undermine climate justice and resilience elsewhere.

- VIII. We submit that offsets should only be eligible for accreditation in Australia if they will produce at least one co-benefit relating to sustainability or climate resilience in the country where they are generated, in addition to climate mitigation benefits.**

3.2 Australia must develop a clear policy approach and relevant legal mechanisms for responding to international offsets that are damaged or destroyed by extreme events such as floods, fires and storms

Climate research has warned, for decades, of increasingly frequent and extreme weather events.³⁸ Ongoing changes to the global climate will have substantial implications for the potential permanence of international (and domestic) offsets. It would be remiss of the Australia Government to proceed with international accreditation of overseas offsetting projects where (a) the project does not have a clear, long-term and proactive disaster risk reduction plan, and (b) without Australian government guidance for assessing and adjusting offsetting arrangements where an offset is damaged, delayed or destroyed as a result of extreme weather events.

These kinds of risks are, of course, covered to some extent by ‘non-permanence’ clauses. However, the increasing pace and scale at which extreme events are occurring, the particular exposure of low-income countries mean that closer attention needs to be paid to the framing and implementation of non-permanence clauses so that they do not exacerbate existing inequities in development, resilience and climate justice.

- IX. The Australian Government must articulate how the damage or destruction of international offsets, by the kinds of extreme events that will be much more likely as a result of climate change, are to be addressed in these schemes.**

Proactive planning for increasingly-likely extreme event scenarios will help to ensure that the Australian Government can support offset providers in developing countries when disasters hit, including through the provision of international development aid, support for disaster recovery, and by helping to avoid penalties being imposed under offsetting schemes.

This is the conclusion of our formal submission.

Thank you again for the opportunity to submit our perspectives to this important inquiry.

³⁸ Hans-O. Pörtner et al, ‘Summary for Policymakers’ in *Climate Change 2022: Impacts, Adaptation and Vulnerability, contribution of Working Group II to the Sixth Assessment Report of the IPCC* (Cambridge University Press, 2022), available at: <https://report.ipcc.ch/ar6wg2/pdf/IPCC_AR6_WGII_FinalDraft_FullReport.pdf>.

3. WHO WE ARE: ENREL, ADELAIDE LAW SCHOOL

The Environment, Natural Resources and Energy Law (ENREL) Research Unit is a specialist research unit at The University of Adelaide, bringing together researchers with expertise on legal and policy issues relating to climate change, natural resources and energy, environment and conservation, heritage protection and land use planning. ENREL researchers provide independent perspectives to policy reviews and inquiries, and work with government, industry and community stakeholders to engage, inform and generate momentum to implement and improve the laws, policies and institutions that govern Australia's rich natural and cultural heritage.

You can find more details about ENREL, including its key researchers and focus projects, at the ENREL webpage: <https://law.adelaide.edu.au/research/environmental-and-natural-resources-law-research-unit-enrel>.

ENREL researchers working on carbon offset research questions and who have contributed to this submission, include:

Dr Phillipa McCormack is a Postdoctoral Research Fellow in the Adelaide Law School and Co-Director of ENREL. She researches in environmental law and governance with a particular focus on conservation and climate adaptation laws. In 2019, Phillipa was part of a team consulting to the Commonwealth Government on negative emissions technologies and governance frameworks; and has published on Australia's regulatory framework for bioenergy with carbon capture and storage and its implications for biodiversity conservation as the climate changes (McCormack, McDonald and Brent, 2020, below). Phillipa is on the Editorial Board of the practitioner journal *Australian Environment Review*; a Review Editor for *Frontiers in Climate: Climate Law & Policy*; and a member of the Australian Forum for Climate Intervention Governance.

Dr Alex Wawryk received First Class degrees in Economics and Law, and a PhD in Law, from the University of Adelaide, Australia. She is a senior lecturer at the University of Adelaide Law School, and teaches Contract Law, Climate Change Law, Environmental Law, and Mining and Energy Law. Her areas of research include renewable energy law, petroleum law, and mining and environmental law. She is a Co-director of ENREL, and is an associate editor for OGEL, a specialist on-line database for Oil, Gas and Energy Law. Alex is a barrister and solicitor of the Supreme Court of South Australia. She was Chairperson of the Management Committee of the Environmental Defenders Office (SA) Inc, 2018-2019, and is a member of the IUCN Specialist Group on Energy Law, the Australian Resources and Energy Law Association, and the Institute for Mining, Energy and Resources at the University of Adelaide.

Adjunct Professor Rob Fowler has worked in the field of environmental law for over forty years, both in Australia and internationally. In his academic role, he served as the Chair of the IUCN Academy of Environmental Law (IUCNAEL) (2008-2012). He also was a member of the Board of the South Australian Environment Protection Authority (2011 – 2017). Rob has also been involved extensively in a voluntary capacity with the environmental movement in Australia, including as a Vice President of the Australian Conservation Foundation (1985-89 and 2012-15); President of Conservation SA (2010-14); and Chair of the South Australian Environmental Defender's Office (2001-2009). He also was the Convener of, and a contributor to, the Australian Panel of Experts in Environmental Law (APEEL), which produced the *Blueprint for the Next Generation of Environmental Laws in Australia* (2017). He currently serves as the representative of conservation interests on the Lake Eyre Basin Community Advisory Committee (since 2018).

Dr Kerry Brent is a senior lecturer at the University of Adelaide Law School, researching the governance of climate intervention technologies, including negative emissions technologies and solar radiation management technologies. Kerry teaches in climate change law, law of the sea, environmental law, international law and tort law. Kerry holds an LLB with first class honours and an BA from the University of Newcastle, and in 2017 was awarded her PhD from the University of Tasmania. Kerry is co-deputy director of the Australian Forum for Climate Intervention Governance and co-chair of the Australia and New Zealand Society for International Law Oceans and International Environmental Law Interest Group.

Ms Margaret Castles is an accredited mediator and the director of the Clinical Legal Education program at Adelaide Law School, with more than two decades of experience researching, designing, and implementing work-based learning in legal clinics and with student externships. She coordinates sophisticated, simulated case study-based workshops into a program designed to transition students from the law school to professional life, through theory, practice, and reflection. Her research focus is on justice access and integrating practice into legal education, and she researches and publishes broadly across these themes.

PCM led the design and drafting of this submission, KB and RF contributed content and revisions while MC and AW edited and revised the submission.

4. SCHEDULE OF ATTACHMENTS

NOTE: these documents are too large to transmit to the Authority as PDFs, in a single email, so we have included a hyperlink to each document in the table below. We are happy to send a zipped folder of PDF documents if the Authority would prefer.

No.	Full reference for each Attachment	Hyperlink to the document
1	Derik Broekhoff & Randall Spalding-Fecher, 'Assessing crediting scheme standards and practices for ensuring unit quality under the Paris Agreement' (2021) 12(6) <i>Carbon Management</i> 635-648	https://www.sei.org/publications/assessing-crediting-scheme-standards-ensuring-unit-quality-paris-agreement/
2	EDF, WWF-US and Oko-Institute e.V., <i>What makes a high-quality carbon credit? Phase 1 of the "Carbon Credit Guidance for Buyers" project: Definition of criteria for assessing the quality of carbon credits</i> (June 2020)	https://carboncreditquality.org/resources.html
3	EDF, WWF-US and Oko-Institute e.V., <i>Methodology for assessing the quality of carbon credits</i> (21 March 2022, version 2.0)	https://carboncreditquality.org/resources.html
4	Michaelowa et al, 'Overview and comparison of existing carbon crediting schemes' (2019, Climate Perspectives Group, Nordic Environment Finance Corporation and the Nordic Initiative for Cooperative Approaches)	https://www.nefco.int/wp-content/uploads/2019/05/NICA-Crediting-Mechanisms-Final-February-2019.pdf
5	Carbon Market Watch, 'Above and beyond carbon offsetting: Alternatives to compensation	https://carbonmarketwatch.org/publications/above-and-beyond-carbon-offsetting-alternatives-to-

	for climate action and sustainable development' (Policy Briefing, December 2020)	compensation-for-climate-action-and-sustainable-development/
6	McCormack PC, McDonald, Brent, 'Governance of land-based negative-emission technologies to promote biodiversity conservation: lessons from Australia' (2020) 10(2) Climate Law 123-150	https://brill.com/view/journals/clla/10/2/article-p123_123.xml?language=en
7	Anja Kollmuss, Lambert Schneider and Vladyslav Zhezherin, <i>Has Joint Implementation reduced GHG emissions? Lessons learned for the design of carbon market mechanisms</i> (Stockholm Environment Institute, Working Paper No 7: 2015)	https://www.sei.org/publications/has-joint-implementation-reduced-ghg-emissions-lessons-learned-for-the-design-of-carbon-market-mechanisms/
8	Broekhoff, D., Gillenwater, M., Colbert-Sangree, T., and Cage, P., 'Securing Climate Benefit: A Guide to Using Carbon Offsets' (2019, Stockholm Environment Institute & Greenhouse Gas Management Institute)	< Offsetguide.org/pdf-download/ >