



Law Council
OF AUSTRALIA

Legal Practice Section

26 May 2020

Climate Change Authority
John Gorton Building,
King Edward Terrace,
PARKES ACT 2600

By email: submission@climatechangeauthority.gov.au

Dear Sir/Madam

2020 REVIEW OF THE EMISSIONS REDUCTION FUND

1. The Australian Environment and Planning Law Group (**the AEPLG**)¹ of the Law Council of Australia's Legal Practice Section welcomes the opportunity to make a submission to the Climate Change Authority in relation to the 2020 Review of the Emissions Reduction Fund (**ERF**). .
2. The AEPLG notes that the aim for any climate policy should be the reduction of emissions in line with Australia's 2030 Paris Agreement goals, at the lowest possible cost. The AEPLG also notes that for the last two decades, Australia's approach to emissions reduction policy has been inconsistent and subject to constant debate and uncertainty. If Australia is to meet its 2030 goals, and set more ambitious reduction goals as required by the Paris Agreement, Australian governments of all persuasions must work together on an economy-wide approach to emissions reduction and support the long term investment required to deliver on our emissions reduction commitments in an environmentally responsible manner.
3. To this end, the AEPLG observes that the ERF is one of the few examples of policy stability, having originated as part of the former Gillard Government's climate change policy package and has been maintained and expanded by successive Australian governments. However, the ERF (together with the Renewable Energy Target and related instruments) is not sufficient in the medium to long term to be the main driver for emissions reduction in Australia, and governments must continue to use all levers at their disposal to encourage and support innovation and pursue lower emissions targets.
4. The AEPLG notes that this limited review of the ERF is being conducted by the Climate Change Authority within the broader policy development being undertaken by the Department of Industry, Science, Energy and Resources through the Technology Investment Roadmap and that the Department separately commissioned an expert panel to examine additional sources of low cost abatement which delivered its report

¹ The Law Council of Australia is a peak national representative body of the Australian legal profession. It represents the Australian legal profession on national and international issues, on federal law and the operation of federal courts and tribunals. The Law Council represents 60,000 Australian lawyers through state and territory bar associations and law societies, as well as Law Firms Australia.

in February 2020 (**the King Report**).² The AEPLG notes that the Australian Government has accepted most of the recommendations of the expert panel, including those dealing with the scope and operation of the ERF.³

5. The AEPLG makes the following brief comments and observations for this review:

(a) Maintaining integrity and optimising governance

- The AEPLG considers that the additionality requirements for projects registered under the ERF are essential to deliver on the fundamental objective of the ERF to encourage the reduction of Australia's greenhouse gas emissions. Emissions reductions that are required as a condition of government approvals (and thus are paid for by the project proponent) or are being undertaken anyway should not be supported (ultimately) through the application of government funds, in a sale of Australian Carbon Credit Units (**ACCUs**) via the reverse auction process.
- If, as some have suggested, the additionality requirements create a barrier for technology innovation then other mechanisms should be developed to support the technology development rather than diluting the integrity of the ERF.

(b) Managing risks to abatement

- The AEPLG notes the concept of the 'risk of reversal buffer' and the need to acknowledge the loss of carbon storage due to natural occurrences. However, the AEPLG queries whether a flat 5 per cent calculation is a sufficient acknowledgement of the risks of carbon loss due to extreme weather events that are made more likely, or more frequent, as a result of climate change.
- Approved methodologies under the ERF that have a higher exposure to the impacts of climate change should explicitly address climate change risk and the AEPLG queries whether such methodologies should have a higher risk of reversal buffer to better reflect the risk that climate change presents.

(c) Other comments

- The AEPLG notes that the King Report has recommended that carbon capture and storage and/or carbon capture, utilisation and storage be capable of generating ACCUs under the ERF. Research and development of this technology is being explored in a variety of forums, and notwithstanding its application to the Gorgon gas and condensate project in Western Australia, is yet to be commercially deployed on a wide scale. Given the purchasing component of the ERF relies largely on government budget allocations, the AEPLG queries whether a carbon capture methodology would deliver sufficient value for money in terms of overall benefits to Australia's emissions reduction targets combined with the environmental benefits that other methodologies can provide. In other

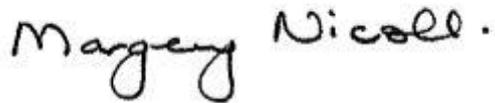
²King, G (Chair); *Report of the Expert Panel examining additional sources of low cost abatement* (14 February 2020)

³ Australian Government response to the Final Report of the Expert Panel examining additional sources of low-cost abatement ('the King Review') (May 2020)

words, given the limited amount of money that is available under the ERF to support emissions reduction technologies, the AEPLG queries whether that money is better spent on supporting a more diverse range of methodologies and projects that not only capture or avoid greenhouse gas emissions, but also deliver a range of social and environmental benefits.

6. The AEPLG would welcome the opportunity to discuss this submission with the Department. In the first instance, please contact AEPLG Chair, Robyn Glindemann on robyn.glindemann@lantegy.com.au.

Yours sincerely

A handwritten signature in black ink that reads "Margery Nicoll." The signature is written in a cursive, slightly slanted style.

Margery Nicoll
Acting Chief Executive Officer