Wilinggin Aboriginal Corporation
P.O. Box 453
37 Rowan St, Derby W.A. 6728
ICN: 4690 ABN: 17427543951

28 February 2024

ACI Code of Conduct - Independent Review
Carbon Market Institute (CMI)
Via online submission & email: code.administrator@carbonmarketinstitute.org

SUBMISSION RE: INDEPENDENT REVIEW OF THE AUSTRALIAN CARBON INDUSTRY CODE OF CONDUCT

Wilinggin Aboriginal Corporation (WAC) is pleased to hereby provide our submission in relation to the *Independent Review of the Australian Carbon Industry Code of Conduct*.

WAC represents the interests of the Ngarinyin People, the Traditional Owners of Wanjina-Wunggurr Wilinggin Country in the Central North Kimberley, an area almost the size of Tasmania and incorporating a large Indigenous Protected Area (IPA).

For the past ten years, the WAC fire team, rangers and Traditional Owners have successfully been operating savanna fire carbon projects on Wilinggin Country, including the Wilinggin Fire Project and Ngallagunda Fire Project, and providing support to the Nyaliga Fire Project. The projects have been supported by the Kimberley Land Council (KLC) and the Australian Wildlife Conservancy (AWC), amongst other partners. WAC also recently registered a collaborative project with the pastoral leaseholders over Ellenbrae Station. These projects leverage traditional knowledge alongside modern science and technologies, providing a model for how carbon projects – when delivered by or in close collaboration with Traditional Owners – can be the catalyst for not only commercial success but the delivery of a number of non-climate environmental, social and economic benefits to the community.

WAC staff have also had involvement and, therefore, can share applied experience in Code development and review, method development and savanna fire carbon project development, all of which both from a service provider, participant, and eligible interest holder perspective.

In addition to this submission, please note WAC's support for the submissions by the Indigenous Carbon Industry Network (ICIN) of which we are a member, as well as the Kimberley Land Council's submissions both from 2020 and in relation to this current review. Please also note ICIN's guidance document "*Seeking free, prior and informed consent from Indigenous communities for carbon projects: a best practice guide for carbon project developers"* available via the ICIN website.

Should you have any questions or require clarification in relation to our submission, please do not hesitate to contact WAC via email at csed@wilinggin.com.au, please cc admin@wilinggin.com.au.

Kind regards,

KRISTINA KOENIG
Conservation Strategy and Economic Development Manager

SECTION 1 – Code requirements and current scope

- Overall, regulatory requirements (including after proposed amendments of the CFI Act) still fall short of best practice *implementation* requirements for the carbon industry, including those set out in international (voluntary) standards and more fundamental documents like the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). This is where the Code should 'fill the gap'.
- Unfortunately, current Code requirements do not preclude signatories from effectively continuing sub-optimal (and sometimes unethical) practices, as long as they can demonstrate minimum 'reasonable' / 'best effort'; this is the reason many Native Title rep bodies have not signed onto the Code – it simply doesn't go far enough.
- By way of a specific example, FPIC processes should have to be demonstrated in practice, not just through generic procedural documents provided by Code signatories; this means demonstrated and consistent project-level adherence to required (and often publicly claimed) processes and procedures.
    - Code requirements should cover the need to be transparent in relation to any and all aspects of a project, and not omit detail or technical matters under the guise of using "simple language".
- Noting the planned removal of current provisions for conditional registrations without Native Title holder consent (or at least consultation and some form of preliminary approval) from the legislation, the Code should also require renewed Native Title consents for project variations, including but not limited to method and proponent changes (noting that this may also be legislated in future).
    - One additional requirement could be written confirmation by the PBC of having had the chance and means to obtain independent legal and or financial support before providing in-principle / preliminary approval – *see below*.
- For the avoidance of doubt, any suggestion of paying registered native title body corporates / PBCs in order to facilitate engagement risks eroding not just integrity but the governance arrangements fundamental to the native title sector.

SECTION 2 – Administration of the Code

- Complaints processes, random audits and enforcement all need to be strengthened and communicated to industry 'outsiders' who may not even be aware of Code requirements but be heavily impacted by breaches.
    - The latter entails a need for better education about, and capacity-building in relation to, the Code.
- It is WAC's view that administration independent of CMI would make Code governance more transparent and remove any actual or perceived conflicts of interest.
- Public reporting on a regular basis, including any compliance actions undertaken, would further support this objective.
- The Code needs to clarify definitions used to make them less ambiguous and more intuitive not only for signatories but all stakeholders.

SECTION 3 – Strategic matters for the Code

- The Code needs to acknowledge and address conflicts of interest between companies that are both proponents and service providers in their dealings with Traditional Owners and (other) landholders.
- For projects *not* owned by Traditional Owners (i.e. the relevant PBC), there need to be provisions for independent advice (i.e. not from a party with a vested interest in the project) in order to ensure FPIC, ideally through a requirement on third-party developers to demonstrate that independent legal and financial advice was made available (e.g. through provision of funding) to the Native Title holding party.
    - This implies flipping around the tick box approach from suggesting eligible interest holders / impacted parties 'seek advice' to a 'need to ensure that advice has been provided'.
    - The same could/should apply in relation to pastoralists signing up to contracts with developers, all of which goes to levelling the playing field and combatting the skewed industry structure we're seeing, driven by the dominance of large national developers / aggregators.

- In relation to FPIC, the Code needs to acknowledge and require signatories to be acutely aware and accepting of the fact that consent is both a process (and an ongoing process at that) as well as a potential outcome; however, consent rights also mean a legitimate right to say no. There is no entitlement to project consents being given by Native Title holders.
- There may be room for the Code to require compliance with minimum contracting standards that may be set out by ICIN, covering not only consent matters, but also confidentiality, IP and marketing of the 'story' related to a project, as well as any communication relating to alleged co-benefits, so as to ensure fair project agreements with landholders and PBCs / Indigenous Traditional Owners.
    - ICIN needs to be resourced to provide such input, and support the further development of the Code.
- Co-benefits should never be claimed without the knowledge and explicit written approval and support from those Indigenous communities / Native Title holders those benefits are being claimed *about*, and under complete transparency in relation to premium pricing derived from such claims. I.e. it is not the Code's role to verify such so-called Indigenous co-benefits being claimed by non-Indigenous proponents, which instead should be verified through direct written confirmation by the relevant Indigenous group and the native title holders for the area, before the proponent can claim such benefits; it is the Code's role to ensure this happens.
- On a final note, it is important to be cognisant and avoid any unintended consequences in relation to service providers delivering support, advice and capacity-building when they are Native Title rep bodies *without a vested interest* in projects, or Related Corporations to the proposed proponent (e.g. a PBC or Traditional Owner group giving advice to a specific community corporation), where they could unintentionally be captured by requirements for regulation and accreditation under the Code.