Submission Template: Emissions Reduction Fund draft method determination

[Insert name of the method determination on which you are commenting]

Overview
This submission template should be used to provide comments on a draft Emissions Reduction Fund method determination.

Contact Details

Name of Organisation: Insurance Choice t/as EnviroSure
Name of Author: Anthony Milton Saunders
Phone Number: 0412158919
Email: anthony.saunders@insurancechoice.com.au
Website: www.environmentalinsurance.com.au
Date: 17/09/2014

Confidentiality
All submissions will be treated as public documents, unless the author of the submission has requested that the submission not be published on the grounds that its publication could reasonably be expected to substantially prejudice the commercial interests of the author or another person. Public submissions will be published in full on the Department of the Environment’s website, including any personal information of authors and/or other third parties contained in the submission. If any part of the submission should be treated as confidential then please provide two versions of the submission, one with the confidential information removed for publication.

A request made under the Freedom of Information Act 1982 for access to a submission marked confidential will be determined in accordance with that Act.

Do you want this submission to be treated as confidential? □Yes □No

Submission Instructions
Submissions should be made by close of business on the day the public consultation period closes for the draft method determination. This date will be specified on the Department’s website: www.environment.gov.au. The Department reserves the right not to consider late submissions.

Where possible, submissions should be lodged electronically, preferably in Microsoft Word or other text based formats, via the email address – EmissionsReductionSubmissions@environment.gov.au

Submissions may alternatively be sent to the postal address below to arrive by the due date.

ERF Governance, ERF Division
Department of the Environment
GPO Box 787
CANBERRA ACT 2601
A common excuse for companies that have caused adverse environmental impact where they were self-insured is that they were not aware that insurance existed to cover their potential liabilities.

At a meeting I attended at the Australian Land and Groundwater Association last year when the subject was related to Landfill Gas and Coal Mining and CSG, I asked the question to a presenter “do you purchase insurance to cover your environmental externalities?” to wit the convenor of the meeting stated that:

- It is up to the entities to decide if they need to buy insurance cover
- There is no exposure it is measured and managed
- The government has not made it mandatory

To the third response I believe that the government cannot afford to have to clean up more contaminated land when the annual cost of the contaminated land sector to the government already exceeds $8 Billion per annum.

If the drafts highlighted the difficulties or limitations experienced in obtaining Environmental Insurance such may pave the way for a greater level of research into environmental externality assessment and insurance.

Example of what happens without Environmental Insurance:

The Deepwater Horizon incident in the Gulf of Mexico conducted by BP avoided environmental protection measures that would need to be undertaken to obtain environmental insurance cover. If investment in the costs of precautionary risk management outweighs the profits then “self-insurance” is unable to provision for the worst case environmental impact scenarios.

I believe therefore that if these projects are insured for their future potential adverse environmental impact then we would not need to ask the question if the method is likely to cause a financial liability back to the Australian Government.
Specific comments – please insert your specific comments below, listed against the part of the draft method determination to which they apply.

Note: In some cases the draft Explanatory Statement may flag specific issues for consideration by stakeholders.

<table>
<thead>
<tr>
<th>Draft method determination reference</th>
<th>None of the drafts references insurance covering potential fortuitous and adverse environmental impact</th>
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<tbody>
<tr>
<td>[insert reference to relevant part of draft method determination]</td>
<td>Each draft provides a method of determination in the chosen field and entities involved are not insured for their environmental externalities but &quot;self-insured&quot;. As “self-insured” would appear to bear no corporate social responsibility to have to account for environmental externalities, self-insurance should not be an acceptable form of environmental security.</td>
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Do you consider projects that would apply the draft method are likely to cause significant adverse environmental, economic and/or social impacts?

If so, what existing frameworks (such as regulatory frameworks or policies) are in place to address any such impacts?

Please refer to the definition of Environmental Insurance as published last year by Lexis Nexis in the International Environmental Law Community and the International Insurance Law Community where in it defines and explains the responsibility of any entity is to protect the environment “as a fact” and as a fact, if Environmental Insurance is (at least) purchased it will underscore that scope of liability that is not insurable ergo a liability to the government.

All projects considered therefore that would apply to the draft are at risk of causing adverse environmental impact unless an Environmental Insurance cover or quotation has been arranged which will identify the fortuitous components of the environmental externalities that are insurable leaving expected losses quantified and accountable.

Hence, the existing framework (Section 26 Corporations Act) being the corporate social responsibility of any entity to cover their environmental and insurable financial exposures should be adapted and that the government has a responsibility to not allow projects to proceed where any entity is conducting its business "self-insured".