



Australian
Carbon Industry
Code of Conduct

FOUNDATION YEAR TWO

Code Administrator **Annual Report**

November 2020



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1 CEO's Foreword



The Carbon Market Institute in its capacity as the Code Administrator is pleased to present the second Annual Report on the Australian Carbon Industry Code of Conduct (the Code). The Code is the first of its kind in global carbon markets and has become a vital part of the internationally respected integrity and assurance measures of the Australian carbon market.

This Report marks the successful completion of the two-year Foundation Stage of the Code, during which 14 Signatories committed to upholding best practices in Australia's evolving carbon industry.

These 14 Signatories – two Advisory Services and 12 Project Developers – all received Foundational or Full Compliance in the second year of the Code's operation. 79% received Full Compliance, compared to 58% in Foundation Year 1. This uptick is just one example of the Code's impact to date, which is also characterised by zero repeat breaches from Signatories from Year 1 to Year 2. Signatories have either resolved or committed to a process for resolving all breaches, and all complaints were resolved during the compliance year.

Following an in-depth Independent Review of the Code, the Administrator is now in a year of transition. As we assess and implement the Review's 46 recommendations, we will seek to integrate with numerous other carbon market regulatory and administrative changes already underway. This will see a development of the Code Administrator's capacity in preparation for the Operational Stage from 1 July 2021. From that date, the remit, mandate, and influence of the Code will expand significantly.

Since the conclusion of the FY19-20 compliance year, an additional six Signatories have joined the Code – which represents 67% growth of Signatories from the end of Foundation Year 1 to date. These 20 Signatories have accounted for 38% of projects registered and 40% of ACCUs issued under the Emissions Reduction Fund since the Code's inception on 1 July 2018. On conservative estimates, Code Signatories now account for almost half of land sector projects registered since the Code began.

With this rate of growth and the transition initiatives detailed in this report, the 2020-21 year will be a crucial period. We will engage with Signatories, industry and government, to ensure the Code continues to be a tool for raising best practice standards for carbon market participants and the Australian community.

This year will also be vital to the ongoing operational sustainability of the Code with the introduction of new 'Industry Supporter' and 'Government Partner' Categories, enabling greater interaction with State and Federal governments, and the growing corporate demand-side of the market.

Signatories' support of the Code to date is greatly appreciated. This support enables the growth of an industry integral to Australia's climate change mitigation efforts but also providing significant employment, social, Indigenous, and environmental benefits.

We look forward to working with Signatories, supporters and the broader community in the coming transition year for the administration of the Carbon Industry Code of Conduct.

A handwritten signature in black ink, appearing to read 'John Connor'.

John Connor
Chief Executive Officer
Carbon Market Institute



2 Introduction

On 1 July 2018, the Carbon Market Institute (CMI) began implementation of one of the world's first voluntary national carbon industry Codes of Conduct, designed to promote market integrity and consumer protection. Led by CMI and developed with input from a wide range of industry, community and government stakeholders, the Code:

- a) aims to promote best practice within Australia's carbon reduction and carbon sequestration industry and has been developed in accordance with the Australian Competition and Consumer Commission (ACCC) voluntary industry code of conduct guidelines.
- b) provides guidance and accountability for industry practitioners and service providers undertaking carbon offset projects including under the Australian Government's Emissions Reduction Fund (ERF) and other Voluntary Offset Schemes, such as the Gold Standard and Verified Carbon Standard.
- c) commenced on 1 July 2018, and eleven organisations were announced as Foundation Signatories, including some of Australia's largest carbon market players.
- d) commits Signatories to developing and conducting their business in line with industry best practice and interacting with clients and other stakeholders in a professional and ethical manner.
- e) is a core participation requirement for the Queensland Government's Land Restoration Fund (LRF), has been endorsed by the Chair of the Clean Energy Regulator (CER), and is being examined by other state governments.

"South Pole is pleased to be part of the Australian Carbon Industry Code of Conduct, continuing our active involvement in developing carbon markets since 2006. We believe that transparency and integrity are crucial to ensure that carbon markets continue to drive down global emissions and provide social co-benefits to vulnerable populations."

South Pole Australia – Code Signatory

2.1 Administration

The Code is administered by CMI. Following an Independent Review ('the Review') of the Code, received in April 2020, CMI accepted advice to continue as the Code Administrator. The Independent Review report can be found on the Administrator's website. CMI has since begun a process to distinguish CMI from its functions as the Code Administrator, for the purposes of mitigating potential conflicts of interest, ensuring appropriate confidentiality, and building trust between the Administrator and stakeholders. This is detailed further in section 5.

The Code Administrator is also responsible for:

- a) providing guidance to all Signatories about the operation and requirements of the Code, covering carbon offset, sequestration and abatement activities ('projects') that have started from 1 July 2018;
- b) managing the administration process relating to Signatories;
- c) reviewing compliance with the Code;
- d) overseeing promotion of the Code;
- e) developing training and supporting material on the Code to assist Signatories in complying with the Code;
- f) overseeing updates to the Code following independent review processes;
- g) handling complaints in accordance with the process for handling complaints and alleged breaches;
- h) preparing an annual report on the Code's operations.

As per section 1.6 of the Code, the Foundation Stage ended on 30 June 2020. The Operational Stage of the Code will commence in full on 1 July 2021, requiring that the Administrator's responsibility extend to: establish and fund



an independent Code Review Panel; undertake compliance audits and initiating enquiries into compliance; investigate complaints and breaches; and enforce sanctions.

To ensure appropriate consideration, industry engagement and implementation of the above requirements, the Code Administrator will use this first year of the Operational Stage, between 1 July 2020 and 30 June 2021, as a transitional year, during which the Administrator will continue to develop the Code, with changes operational for the Signatory compliance year (FY22) from 1 July 2021.

2.2 Implementation

The Code has been implemented in a staged manner, which was designed to:

- a) allow industry sufficient time to familiarise with Code requirements during the Foundation Stage; and
- b) ensure the Code Administrator has sufficient funding to effectively implement the significant administrative requirements of the Operational Stage and build a platform for continual improvement of industry best practice and to meet ACCC standards for voluntary codes of practice.

Following two successful Foundation years, and the Independent Review, the Transition Year commenced on 1 July 2020. The 12-month transitional period over FY20-21 will allow the Code Administrator to:

- a) design, fund and implement approved recommendations of the Independent Review in a staged manner; and
- b) where relevant, consult Signatories and other industry stakeholders on the Independent Review recommendations and their implementation.

As stipulated in section 3.1 of the Code, various elements of the Code will only come into effect from the commencement of the Operational Stage, from 1 July 2021. This includes the Code Administrator:

- a) monitoring Code compliance, including carrying out compliance audits and initiating inquiries into compliance;
- b) investigating complaints and breaches;
- c) enforcing sanctions;
- d) establishing a Code Review Panel;
- e) referring cases to the Code Review Panel.

3 Signatories

3.1 Signatory Categories

The launch of the Code at the 2nd Carbon Farming Industry Forum in Brisbane in 2018 saw the introduction of eleven Foundation Signatories within three months. These Signatories have shown early support for the Code of Conduct and their commitment to the establishment of industry best practice, transparency and accountability.

The eleven organisations that became Foundation Signatories in Year 1 of the Code are: Aboriginal Carbon Foundation, AgriProve, AI Carbon, Alterra (now Carbon Conscious Investments), Carbon Farmers of Australia, Climate Friendly, CO2 Australia, Corporate Carbon Advisory, GreenCollar, Market Advisory Group and Select Carbon. Tasman Environmental Markets also became a Signatory in the first year of the Code.

Signatories Killin Management and Natural Carbon joined in the FY19-20 compliance year, and Biodiverse Carbon, Carbon Conscious Investments, Carbon Count, Carbon Link, RegenCo, Carbon Neutral and South Pole Australia have since become Signatories in the FY20-21 compliance year. This represents 67% growth of Signatories from the end of Foundation Year 1 to date.



Table 1: Code Signatory Annual Growth

	Foundation Year 1 (FY19)	Foundation Year 2 (FY20)	Transition Year (FY21)*
Foundation Signatories	11	11	11
Signatories	1	3	9
Total Signatories	12	14	20
Annual Growth	-	+17%	+43%

* As at date of publication

“The ACI Code of Conduct underpins the integrity of the Carbon Industry, ensuring our market remains strong and high functioning. Carbon Link is committed to upholding the code and providing ethical service to clients and stakeholders in line with industry best practice. As a Code signatory, our clients can have confidence that Carbon Link will deliver a service that is informed by the best science, resulting in high quality credits”.

Carbon Link – Code Signatory

3.2 Signatory Types

The Code currently applies to project developers, agents, aggregators and advisers who act as scheme participants and/or provide advice and services to clients regarding registration, implementation and management of carbon projects. It covers all types of projects undertaken within the ERF and other Voluntary Offset Schemes in Australia.

There are two main types of Signatory: Advisory Services and Project Developers. As at the end of the FY19-20 compliance year, there were two Advisory Services Signatories and 12 Project Developer Signatories. There are three sub-categories of Project Developers:

- 1) Category 1 for developers contractually involved with 15 or more projects at the time of application;
- 2) Category 2 for developers contractually involved with between 5-14 projects at the time of application;
- 3) Category 3 for developers contractually involved with less than 5 projects at the time of application.

The number of Signatories per type and category for the compliance year is shown below in Table 2.

Table 2: Code Signatories by Type

Signatory Type	FY20 Compliance Year Signatories
Advisory Services	2
Project Developer - Category 1	5
Project Developer - Category 2	1
Project Developer - Category 3	6

As directed by Independent Review recommendations 9 and 44, the Administrator will consider further the definition of Signatory and Supporter categories for update and expansion in the current transitional year.



4 Compliance in Foundation Year 2

4.1 Administrator's Approach to Self-audit Compliance

The Code sets up a framework for Australia's carbon industry to monitor, review and define industry best practice for carbon project developers, agents, aggregators and advisers and represents the minimum standards that all Signatories agree to meet. During the Foundation Stage, the Code Administrator determined whether these standards had been met by each Signatory by reviewing Annual Report self-audit checklists¹. The Annual Report self-audit checklist which had been developed and used for Foundation Year 1 was subsequently amended for Foundation Year 2 as detailed in section 4.9, to improve the reporting process and remove any ambiguities identified throughout the Foundation Year 1 compliance process.

This approach of relying on self-reporting is only in place during the Foundation Stage and subsequent Transition Year of the Code. When the Code becomes fully Operational from 1 July 2021, sections of the Code that are currently inoperative will become active. From this stage, the Code Administrator will have increased powers to conduct compliance audits, investigate complaints and breaches, and enforce sanctions.

Declarations of compliance through the Annual Report self-audit checklist are taken seriously by the Code Administrator as the key determinant of compliance throughout the year. The Administrator assesses Signatories' responses to items in the checklist and determines if Signatories have demonstrated either Full Compliance, Foundational Compliance, or Non-Compliance for items. A Signatory can receive Full Compliance in two scenarios: where the item is relevant and the Signatory is compliant, and where the Administrator is satisfied that an item is not relevant to the Signatory. Signatories receive Foundational Compliance for an item where the Signatory is found to be non-compliant with an item but have either already implemented or have committed to implementing appropriate measures to be compliant with the item in a specified near-term time frame within the next compliance year.

The Foundation Year 1 Annual Report identified several areas for improvement and focus of Signatory compliance for Foundation Year 2, including that Signatories should provide a higher level of detail and sophistication in comments where the Signatory states a particular item is not relevant to them. Also identified was that Signatories cannot decide that a compliance item is not relevant to them based on a Signatory's opinion or resource constraints. In the assessment of Signatories' Foundation Year 2 Annual Report self-audit checklists, the Administrator focused on identifying these improvements in both how Signatories reported and in how they conducted their activities for the compliance year.

If the Code Administrator is not satisfied with a Signatory's declaration, or suspects inaccuracy in a Signatory's response, further information is sought and a Signatory's status may be put on hold until the Code Administrator is satisfied of compliance.

Signatory requirements within the Code are split up into distinct sections, reflecting the timing and form of engagement activities with clients throughout the lifecycle of a carbon offset project. Four distinct sections are present within the Code and reflected in the Annual Report self-audit checklist:

- 1) Pre-project activities;
- 2) Project management;
- 3) General requirements;
- 4) Compliance with external standards and legislation.



4.2 Compliance Categories

In determining a Signatory's overall compliance during Foundation Year 2, the Code Administrator applied one of three categories of compliance based on assessment of their Annual Report self-audit checklist.

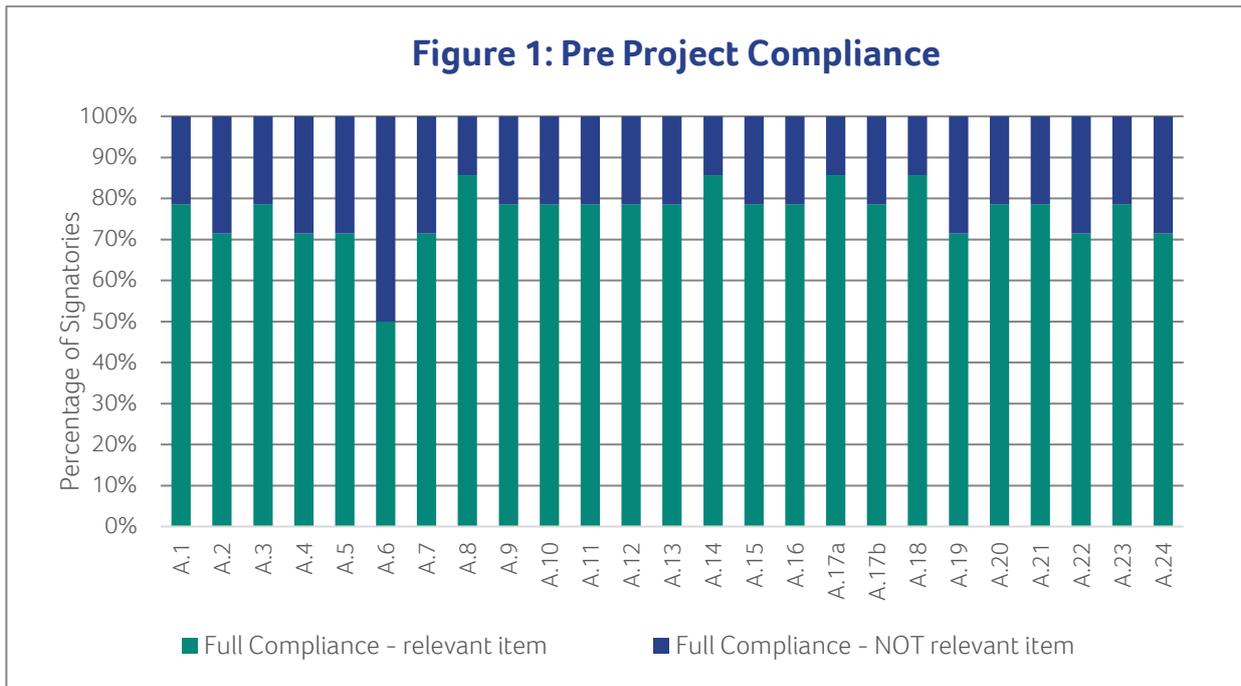
<p>Full Compliance</p> <ol style="list-style-type: none">1. The Signatory has met all requirements of the Code relevant to them; or2. None of the Code requirements were relevant to the Signatory in the specific compliance year.
<p>Foundational Compliance²</p> <ol style="list-style-type: none">1. The Signatory has met the majority of Code requirements relevant to them in the compliance year; and,2. Where the Signatory did not meet the requirement(s) relevant to them, or their comment on why a particular requirement did not apply to them was inadequate, the appropriate measure has since been undertaken or is currently being undertaken by the Signatory to meet the requirement(s).
<p>Non-Compliance</p> <ol style="list-style-type: none">1. The Signatory has not met the majority of the requirements of the Code relevant to them, or;2. Where the Signatory did not meet requirements relevant to them, or their comment on why a particular requirement did not apply to them was inadequate, the Signatory has not undertaken or not agreed to undertake the appropriate measure to meet the requirement(s), or;3. The Signatory did not complete the Annual Report self-audit checklist within the appropriate timeframe.

4.3 Pre-project Activities

Within the self-audit checklist there are 24 items related to pre-project activities (A.1 – A.24) that each Signatory must report against. These generally relate to provision of timely and accurate information to clients, transparent communication of project responsibilities, and genuine and early engagement with appropriate legal right holders, eligible interest holders and native title holders. Section 2.2 of the Code outlines in detail all the requirements that Signatories are expected to meet before a carbon project is registered.

Figure 1 below provides a snapshot of compliance during Foundation Year 2 against these items. To address the areas for improvement identified in the Foundation Year 1 Annual Report, both scenarios where a Signatory obtains Full Compliance is shown: where the item is relevant and the Signatory is compliant, and where the Administrator is satisfied that an item is not relevant to the Signatory.

² This category is consistent with the Code Administrator's regulatory stance that the Foundation Stage will provide industry sufficient time to become familiar with Code requirements and best practice before the Operational Stage of the Code.



Signatories received **100%** Full Compliance with pre-project requirements in Foundation Year 2 (compared to an average compliance rate of 99.68% in Foundation Year 1). To highlight some of the key compliance findings in this category, three items are shown below:

A.6 If the project occurs on native title land, the Signatory has undertaken appropriate due diligence prior to project registration.

In the case of item A.6, 50% of Signatories demonstrated Full Compliance by providing acceptable responses for the item not being relevant to the Signatory. Signatories demonstrated that this item was not relevant by stating the projects they were involved with were not area-based projects or if they were, they did not occur on native title land.

As part of the Independent Review process, the Administrator approved recommendations 1 and 2 of the Review, intended to improve Signatory engagement with native title holders and other relevant bodies. These recommendations (summarised in Appendix 2), along with other recommendations, will be explored with Signatories and relevant stakeholders including the Indigenous Carbon Industry Network throughout FY20-21 as discussed further in section 5 of this report.

A.13 Social, environmental and economic co-benefits have been considered by the Signatory in the planning and implementation of the project.

In Foundation Year 1, one item (A.13) received a Full Compliance rate of 92%. In Foundation Year 2, this item received a Full Compliance rate of **100%**, demonstrating that during Foundation Year 2 Signatories implemented appropriate measures to ensure Full Compliance with the item.

A.24 Where the client is entering into a Carbon Abatement Contract with the Clean Energy Regulator in relation to a Carbon Offsets Project, the Signatory has explained to the client the associated financial risks and the implications of non-delivery under the contract.

In the case of item A.24, 71% of Signatories demonstrated Full Compliance where the item was relevant to them. Where the item was not relevant, Signatories demonstrated that the projects they were involved with did not currently have Carbon Abatement Contracts with the CER.

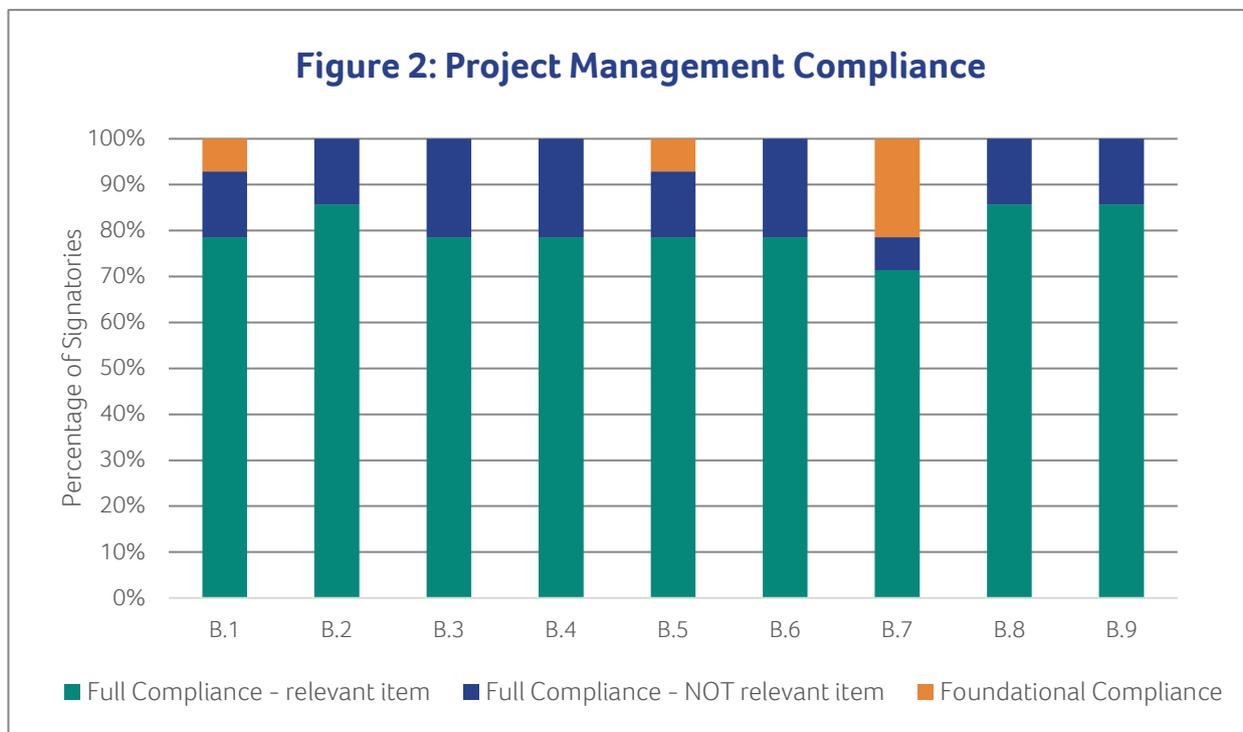


For each item in this category, an average of 16% of Signatories (up from 14% in Foundation Year 1) were required to provide additional information to confirm compliance. This increase was in part due to some Signatories believing that pre-project activities were not relevant to them if their project/s were not registered – despite some having project registration applications being processed by the CER. Upon requesting further information, these Signatories agreed that pre-project activities applied to them for unregistered projects during the compliance year and that the pre-project activity questions were relevant to them. As noted above in Figure 1, this clarification by the Administrator resulted in enough information to confirm 100% compliance.

4.4 Project Management Activities

Within the self-audit checklist there are nine project management items (B.1 – B.9) that each Signatory must report against. These items relate to best practice project management such as (but not limited to): development of a written project management plan in consultation with stakeholders, having written policies and processes for record keeping, adequate provision of advice regarding project risks and project management. Section 2.3 of the Code outlines in detail all the requirements that a Signatory is expected to meet with regard to carbon project management activities.

Figure 2 below provides a snapshot of compliance during Foundation Year 2 against these items.



On average **96%** (down from 97% in Foundation Year 1) of Signatories demonstrated Full Compliance with the Code for each compliance item in this category. To highlight some of the key compliance findings in this category, three items are shown below:

B.1 Signatory has developed a written project management plan in consultation with the client and other relevant stakeholders, that addresses all project obligations and responsibilities, and compliance requirements applicable to the project.

B.5 Signatory has developed written policies and processes for maintaining appropriate records that supports compliance with the record keeping requirements under the CFI Act, ERF Method or other scheme.



Items B.1 and B.5 each received Full Compliance rates of 93% (down from 100% in Foundation Year 1) of Signatories with the remaining 7% of Signatories demonstrating Foundational Compliance. In both cases the Signatory had written project management plans and policies that were draft and was required to confirm with the Administrator that the Signatory is, since reporting, developing completed project management plans and policies to ensure full compliance with the item. The Signatory is required to demonstrate this within 6 months of reporting.

B.7 Signatory has a written policy for identifying and consulting with relevant stakeholders.

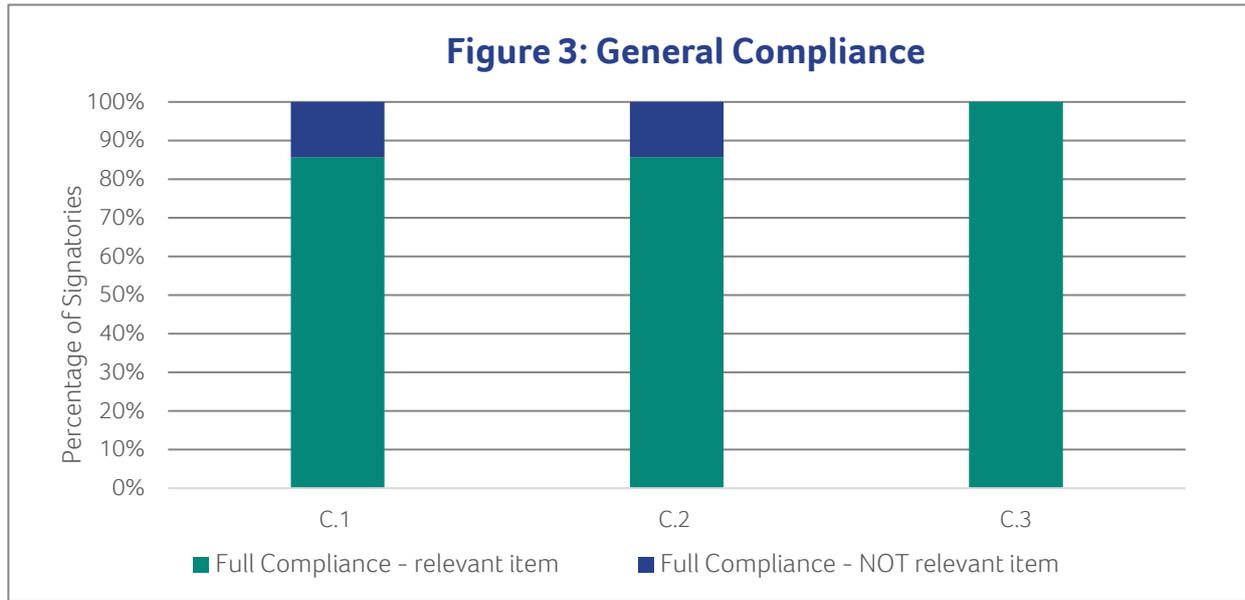
Item B.7 received the lowest level of Full Compliance with 79% (up from 75% in Foundation Year 1), with the remaining Signatories demonstrating Foundational Compliance.

All Signatories that had Foundational Compliance with this item in Year 1 implemented appropriate measures in Year 2 and subsequently received Full Compliance, while others demonstrated Foundational Compliance with this item in Year 2. In some cases, this was due to Signatories claiming that the item was not relevant to them with unacceptable or contradictory comments and upon requests for further information confirming the item was indeed relevant to them and that a written policy was not in place. These Signatories were required to demonstrate and confirm with the Code Administrator that the Signatory is, since reporting, developing an appropriate written policy to ensure full compliance with the item.

4.5 General Requirements

Within the self-audit checklist there are three ‘general requirement’ items (C.1 – C.3) that each Signatory must report against. This includes requirements intended to ensure transparency, client access to independent legal and financial advice, and appropriate complaints handling procedures. Signatories are also required to promote the Code to clients, ensure employees and representatives are aware of their responsibilities under the Code and to provide information to the Code Administrator including if there is a change to a Signatory’s primary contact details. Section 2.5 of the Code outlines in detail all the requirements that a Signatory is expected to meet with regard to general requirements.

Figure 3 below provides a snapshot of compliance during Foundation Year 2 against these items.



Signatories demonstrated **100%** Full Compliance with the Code for each compliance item in this category (up from an average of 97% in Foundation Year 1).



C.3 Signatory has an appropriate internal complaints handling process that is fair, efficient and transparent.

In Foundation Year 1, one item (C.3) received a Full Compliance rate of 92%. In Foundation Year 2, this item received a Full Compliance rate of **100%**, demonstrating that during Year 2 the Signatory implemented appropriate measures to ensure Full Compliance with the item.

On average 14% (up from 11% in Foundation Year 1) of Signatories had items requiring further information in this category.

One of the reasons for requesting further information was due to some Signatories identifying that items were not relevant to them, as they had not been involved with projects (as defined by the Code) and clients (as defined by the Code) during the compliance year. While some Code requirements in this category do focus specifically on the Code definitions of projects and client, that is not the case in all circumstances. For example, for item C.3 Code requirements apply to Signatories' clients as well as to other stakeholders. Upon requesting further information for this item all Signatories agreed that the item was relevant, providing responses to support Full Compliance with the item.

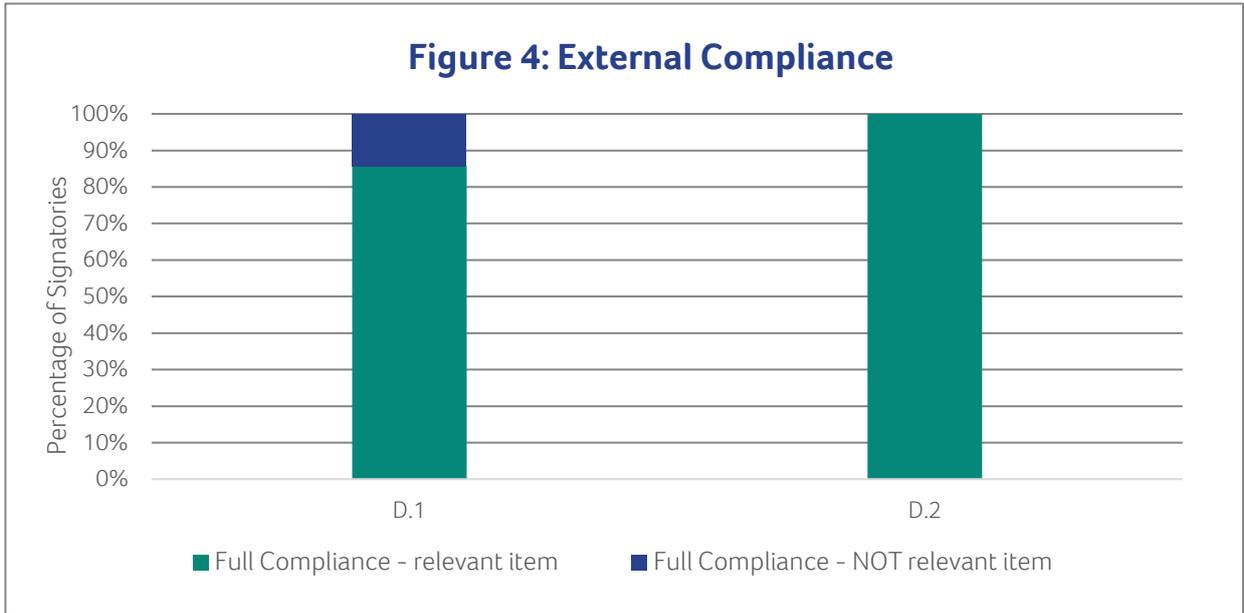
Requests for further information in this category contributed to the percent of Full Compliance where the item was relevant to the Signatory rising from 76% to 90% (up from 81% from Year 1).

As part of the Independent Review process, the Code Administrator has received a recommendation to review the Code's definition of consumers and clients. These recommendations are discussed further in Appendix 2.

4.6 Compliance with External Standards and Legislation

Within the self-audit checklist there are two items (D.1 and D.2) relating to standards and legislation that each Signatory must report against. Specifically, these requirements ensure that Signatories meet the obligations associated with all relevant local, state and federal legislation, regulatory guidance as well as Australian Financial Services Licence (AFSL) requirements. Section 2.4 of the Code outlines in detail all the requirements that a Signatory is expected to meet with regard to external compliance.

Figure 4 below provides a snapshot of compliance during Foundation Year 2 against these items.





As in Foundation Year 1, all Signatories demonstrated Full Compliance with the Code for each item in this category.

D.2 Signatory has undertaken appropriate due diligence to determine whether an AFSL is required for their business activities, in consideration of the requirements of the Corporations Act and relevant ASIC Regulatory Guides.

In the case of item D.2, 21% of Signatories (up from 8% in Foundation Year 1) were required to provide further information regarding their response.

One of the reasons for requesting further information was due to some Signatories identifying that this item was not relevant to them, as they had not been involved with Projects (as defined by the Code) and clients (as defined by the Code) during the compliance year. In this case Signatories were made aware that this item applied to business activities of Signatories and was not restricted to activities related to the projects and clients as defined by the Code. Upon requesting further information, all Signatories agreed that the item was relevant and provided responses to support Full Compliance with the item.

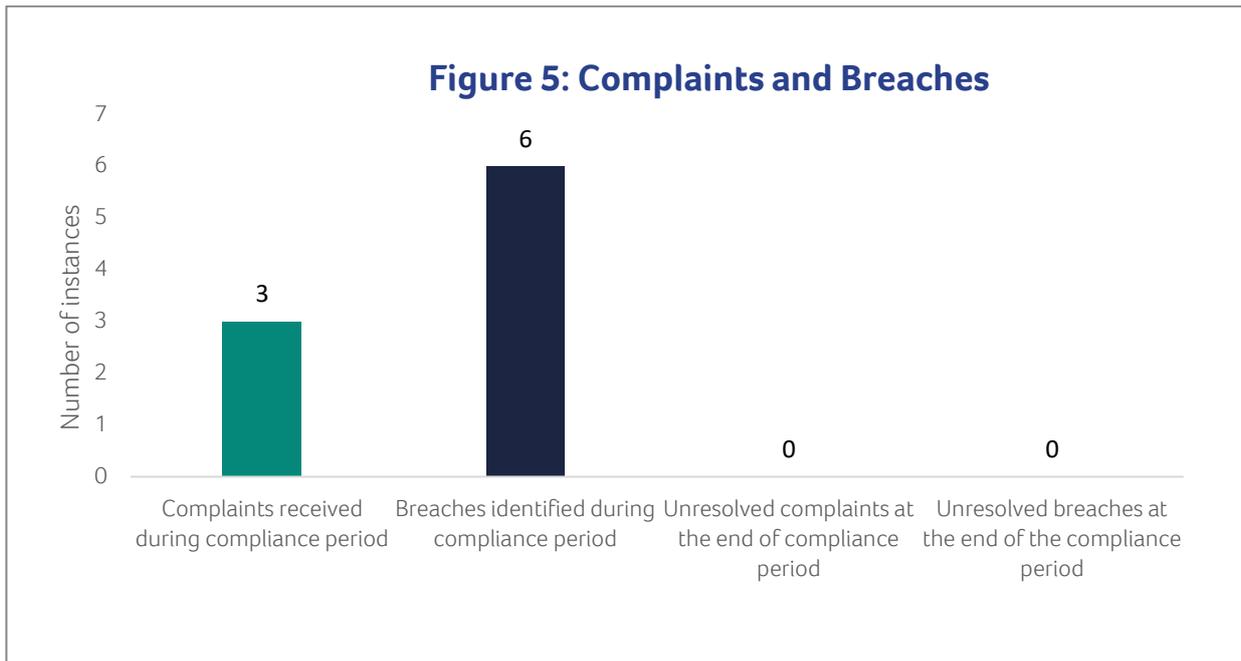
Requests for further information in this category contributed to the percent of Full Compliance, where the item was relevant to the Signatory, rising from 79% to 93% (up from 88% from Year 1).

4.7 Complaints and Breaches

The Annual Report self-audit checklist requires Signatories to disclose whether they had received any complaints against them as well as state whether they were in breach of the Code at any time during the compliance year. Signatories are also required to outline if there are any unresolved complaints or breaches at the conclusion of the compliance year.

For the purposes of this report the Administrator considered any instance of Foundational Compliance identified in Sections 4.3 to 4.6 above a breach. This is due to the Code defining a breach as any failure to comply with the Code of Conduct and while Foundational Compliance recognises that a Signatory has committed to becoming compliant, it also identifies that a Signatory has been non-compliant with a part of the Code during the compliance year. Instances where, throughout the compliance year, the Administrator had been made aware of a breach, but the Signatory had not specifically identified this in their self-audit checklist, were also reported as breaches. The total number of breaches in **Figure 5** is reflective of both types of breaches – noting that there were six breaches but only five of these were self-reported by Signatories in their Annual Report checklists.

As per Figure 5, a total of three complaints were disclosed by Signatories as having been received during the compliance year, with all complaints resolved by the end of the compliance period. In contrast, six breaches of the Code were identified, with all six having been resolved by the conclusion of the compliance period, or having an agreed process in place as approved by the Code Administrator to resolve the breach (constituting Foundational Compliance). While all six breaches are being actively managed through the Code, it is also important to note that these breaches did not constitute significant consumer risks, rather, they were related to improving Signatories' administrative processes.



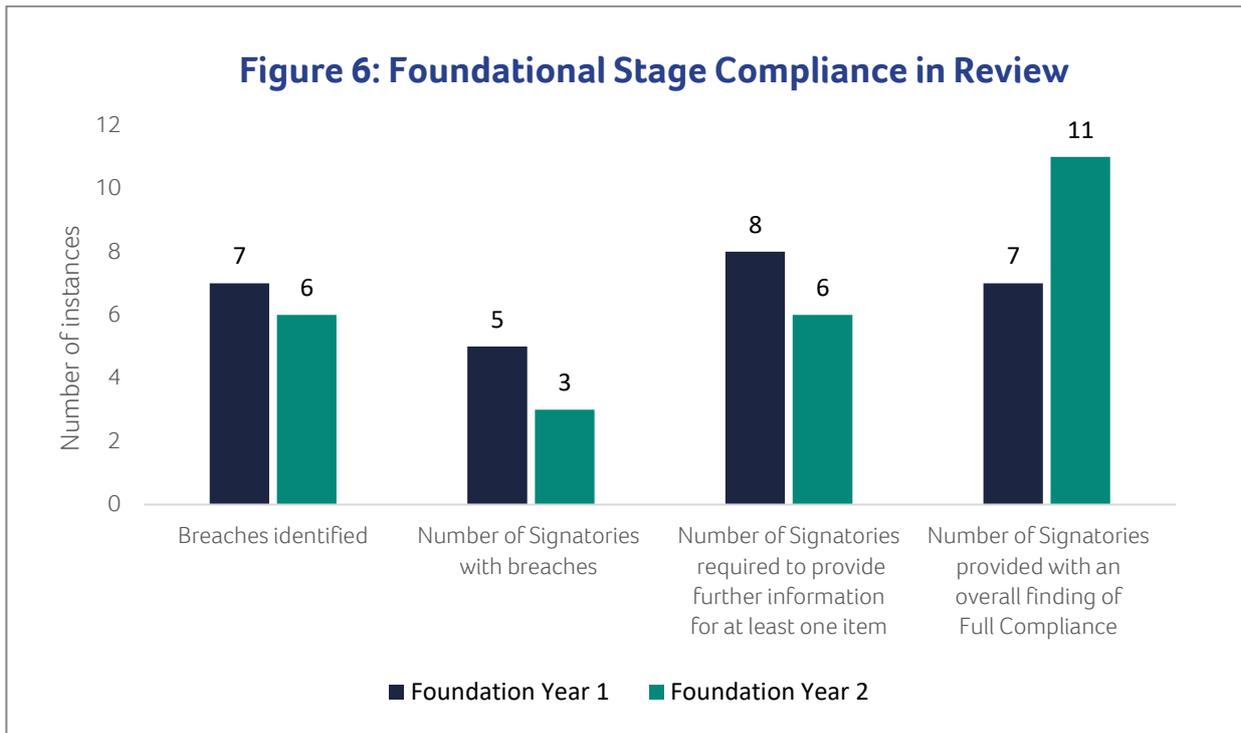
In accordance with Section 1.6 of the Code, during the Foundation Stage, the complaints procedures and investigation of breaches will not take effect. This will remain the same for the FY2020-21 Transition Year. However, the Code Administrator will monitor any unresolved complaints, and will continue to seek confirmation from Signatories that the complaints handling process in Section 2.5(4) of the Code has been complied with. However, complaints and breaches that the Administrator is made aware of during the Transition Year will form part of the Administrator’s compliance focus for FY2021-22.

4.8 Foundational Stage Compliance in Review

Over both years of the Foundational stage 100% of Signatories were found to have either Full or Foundational compliance with the Code, demonstrating the commitment that Signatories have to continuous improvement towards operating at best practice. The Annual Report self-audit checklist process is not only a key determinant for assessing Signatories’ compliance but is also an opportunity for Signatories to test their understanding of Code requirements with the Code Administrator. In Foundation Year 1 there were 12 self-audit checklists assessed, with eight (67%) Signatories required to provide further information relating to at least one item, resulting in a finding of seven breaches from five Signatories. In Foundation Year 2 there were 14 self-audit checklists assessed, with six (43%) Signatories required to provide further information relating to at least one item, resulting in a finding of six breaches from three Signatories. Importantly, none of the five Signatories that had breaches recorded in Foundation Year 1, had breaches recorded in Foundation Year 2.

As per **Figure 6**, the reduction in total breaches identified and the number of Signatories with breaches recorded in Foundation Year 2, show that Signatories have broadly improved systems and processes across the two Foundation Years. This also resulted in 11 (79%) Signatories being provided with an overall finding of Full Compliance for Foundation Year 2 (up from 7, or 58%, in Foundation Year 1).

The finding of six breaches by Signatories in Foundation Year 2, however, also identifies that through the Foundation Stage, Signatories needed to continue to update their systems and processes to align with Code requirements.



The reduction in the number of Signatories required to provide the Administrator with further information in relation to their self-audit checklist from Foundation Year 1 to Foundation Year 2 is partially due to a high number of Signatories, under their second reporting year, answering that they were compliant against the majority of items. Signatories are not required to provide comments against items for which they mark themselves as compliant. While in most cases this results in Full Compliance with the item, there is also a risk that Signatories' understandings of Full Compliance with Code requirements may not be completely aligned with the Code Administrator's understanding.

The Code Administrator's requests for further information from Signatories provided different results between the two years. In Foundation Year 1 only 10% of requests for information resulted in a finding of the item being relevant to the Signatory. This suggests that where items were not relevant, Signatories did not provide sufficient comments to explain the reason. In Foundation Year 2, 73% of requests for information resulted in an item being deemed relevant. Of these, 91% provided responses to these items that confirmed they were compliant with the items. This provided a slight increase on the percentage of relevant items for which Full Compliance was demonstrated (from 76% in Foundation Year 1 to 79% in Foundation Year 2).

This result was likely due to a number of factors, including that: this year was the second year under Code requirements for most Signatories; Signatories identified additional relevant items in Foundation Year 2; and Signatories provided more detailed comments in their reports where they provided responses that identified items were not relevant to them. These were key areas identified for improvement in the Foundation Year 1 Annual report and highlight the important role of the self-audit checklists and the Administrator's assessments of them in continuing to build broader understanding of Code requirements with Signatories across the Foundation Years of the Code.

4.9 Code Administrator's Compliance Priorities in the Transition Year

Foundation Year 2 and the compliance reporting process has identified several areas for improvement and focus for the Administrator during the Transition year and subsequent Operational Stage.

Signatory Compliance

1. **Increased Commentary in Self-reporting:** For the FY 2020-21 Transition Year, in completing compliance checklists, Signatories should not only provide comments where they have not been compliant or where



they believe an item is not relevant to them, but also provide comments for items against which they state they are compliant. These detailed comments would explain how the Signatory is compliant with the item and will be checked by the Code Administrator. This will ensure a greater understanding on the interpretation of Code requirements between Signatories and the Administrator before the Code becomes fully operational and when the Code Administrator will have increased mandate to conduct compliance audits, investigate complaints and breaches, and enforce sanctions.

2. **Management of Reporting Deadlines:** In Foundation Year 2, six out of 14 (43%) Signatories submitted their self-report checklists by the due date, with late submissions submitted on average 14 days after the due date. While extensions were provided by the Administrator for all late submissions in acknowledgement of COVID-19 impacts, the Administrator will expect Signatories to meet the report submission deadlines for all future years. Extensions will only be granted for extenuating circumstances. Signatories may be provided with an overall compliance finding of non-compliant (as defined under section 4.2) due to not completing their compliance reporting requirements within an appropriate timeframe.
3. **Relevance of all Pre-project Activities:** Some Signatories identified in their checklists that pre-project activities were only relevant to them if they were associated with a project that was currently registered after 1 July 2018. Signatories should be aware that pre-project activities under the Code are also relevant for scenarios where projects had not yet been registered, noting that not all pre-project activities result in a project being registered. Signatories' compliance with pre-project activities aligns with one of the key principles of the Code to promote consumer protection and appropriate and open interaction with project owners and landowners, legal right holders, eligible interest holders and native title holders.
4. **Relevance of Pre-project Stakeholder Engagement Policies:** Signatories are reminded that Section 2(2.3)(5)(a) of the Code requires Signatories to have a written policy for identifying and consulting with relevant stakeholders. Signatories should note that this item is not related to registered projects only. As an example, this written policy for identifying and consulting with relevant stakeholders would be required to support stakeholder engagement in any pre-project activities, regardless of whether or not those stakeholder interactions result in a project being registered or undertaken.
5. **Broad Inclusion of General Requirements:** Some Signatories identified that items under 'General Requirements' (section 2(2.5) of the Code) and 'Compliance Requirements' (section 2(2.4) of the Code) were not relevant to them, stating that they had not been involved with projects (as defined by the Code) and clients (as defined by the Code) during the compliance year. While the Code Administrator identified that some requirements of the Code in these sections do focus specifically on the definitions of projects and client provided by the Code, this was not the case in all circumstances. For example, requirements could apply to general business activities of Signatories and/or to Signatory stakeholders. Signatories should apply a broad interpretation of their requirements under sections 2(2.5) and 2(2.4) and where Signatories believe that they are not relevant, provide detailed reasons as to why they are not relevant.
6. **Adherence to Foundational Compliance Timelines:** Signatories should be aware that where Signatories were granted Foundational Compliance on the condition that the Signatory undertake appropriate measures to meet Code requirements, the Administrator expects these Signatories to implement the appropriate measures within the timeline agreed with the Code Administrator. The Administrator notes that check and review of compliance status are a part of this process, and non-adherence to meeting expected timelines will result in a change to compliance status.

Code Administrator's Processes

1. **Guidance on Project Definitions:** It was identified in the Foundation Year 1 annual report that the definition of ERF Project and Carbon Offsets Project, outlined in Appendix 1(9) and (27) of the Code, was not outlined appropriately within the Annual Report self-audit checklist. While attempts were made by the Administrator to address this in the 2019-20 self-audit checklist the results from this year's reporting show that further guidance is required. The Code Administrator will look to make these requirements of the Code clearer in the compliance checklist and other guidance material for subsequent years.



Self-audit Checklist Amendments

1. In the **Project Details** section of the checklist footnote 3 for ERF Projects was incorrect and stated: *As defined by Appendix 1 Section 1(25) of the Code*. This will be amended to: *As defined by Appendix 1 Section 1(27) of the Code* for the 2020-21 checklist.
2. In the **Project Details** section of the checklist, several Signatories provided varying interpretations of the questions on the total number of ERF and Carbon Offset Projects. The Code Administrator will amend these questions to make the requirement clearer in line with definitions outlined in Appendix 1 (9) and (27) of the Code for the 2020-21 checklist.
3. In the **Project Details** section of the checklist, it is not clearly articulated that pre-project activities apply to projects that have not yet been registered. This will be made clearer for the 2020-21 checklist.
4. **Other necessary amendments** as they are brought to light in the course of the FY20-21 compliance year. The Administrator welcomes Signatory feedback in this regard.

5 Year 3 & Independent Review

5.1 Independent Review of the Code

As per Section 1.6(4) of the Code, an Independent Review was undertaken, and [published](#) on the Code of Conduct website in April 2020. Conducted by Virginia Malley, the Review was informed by consultations with Signatories, the Code Administrator, the CER, the Department of Industry, Science, Energy and Resources, and other relevant stakeholders.

The Review was guided by an assessment framework based on the following factors:

- a) **Efficiency** – does the Code achieve its desired outcomes with the resources available to it?
- b) **Effectiveness** – has the Code achieved its objectives with minimal adverse consequences?
- c) **Clarity and comprehensibility** – are the objects and consequences of the Code readily understood by its stakeholders?
- d) **Predictability and consistency** – is the Code stable enough to rely upon? Does it avoid confusion? Does it engender trust?
- e) **Proportionality** – is the Code’s intervention in a Signatory’s business the right amount to achieve the Code’s objectives? Has it avoided regulatory overreach?
- f) **Flexibility** – is the frequency of review suitable given developments underway in carbon markets?

This framework formed the Review Terms of Reference, which is located in Appendix 1 of this report.

The Review provided 46 individual recommendations that can be implemented to ensure a successful transition from the Foundational Stage to the Operational Stage of the Code. A summary of these recommendations can be found in Appendix 2.

Following receipt of the Independent Review report, the Code Administrator undertook a stakeholder consultation process, which yielded eight submissions; this process was an important input into the Code Administrator’s consideration of the Review’s recommendations and plans for the required operational transition. All 46 recommendations have either been approved for design and implementation or will require further exploration to ensure appropriate interpretation and to fully consider practical implementation. No recommendations have been rejected.



5.2 Transition Year

The 2020-21 financial year is a Transition Year as the Code Administrator prepares the Code and Signatories for the Operational Stage, which will commence on 1 July 2021. During the Transition Year, the Administrator will work on developing the necessary tools, frameworks and resources for the feasibility analysis, stakeholder consultation and subsequent implementation of recommendations. The recommendations approved for implementation in a staged manner throughout the transition year relate to:

- a) 'Congestion busting' and burden reduction for Signatories;
- b) Best practice engagement with Eligible Interest Holders (specifically, obtaining appropriate consents);
- c) Increasing the capacities and resources of the Administrator and for it to be self-sustaining; and
- d) Establishing and commencing the operation of the Code Review Panel.

Throughout the year, deeper feasibility analysis and industry consultation will also take place on recommendations relating to items such as, but not limited to:

- a) Guidance for model contracts and options for carbon credit sales, for both supply and demand-facing market participants;
- b) Information sharing processes with the CER; and
- c) The proposal of the King Review to introduce a formal 'duty of utmost good faith' on participants operating under the ERF, and the role of the Code of Conduct to support that activity.

"Biodiverse Carbon's core business is to engage and support landholders, Traditional Owners, and other land care groups in large scale environmental planting projects that support biodiversity and other co-benefits. These projects aggregate together multiple landholders making clear and transparent communication, engagement and capacity building vital for their success. The Code of Conduct upholds best practice in the industry and our commitment to it, is key to building landholders' trust in our services."

Biodiverse Carbon – Code Signatory

5.3 Code Administrator's Focus in the FY21 Compliance Year

Additional to the compliance focus for FY21 as outlined in section 4.9 of this report, there are a number of key areas of focus for the Administrator throughout the year, outlined below.

Implementation of Review Recommendations

The Review recommendations will be developed in a staged manner and include Signatory and stakeholder consultation, as relevant. Adopted recommendations will be communicated to Signatories to ensure Signatories understand the impact of these changes. Recommendations from the Review will enter into force no earlier than 1 July 2021.

Preparation for Operational Stage

In addition to the Review recommendations, there are a number of clauses in the Code which will become operative from 1 July 2021. These include the following sections of the Code, as stipulated in clause 1.6(3):

- o **3.2:** Commencement of the Code Review Panel
- o **3.3(1) and 3.5:** Investigation of breaches
- o **3.4(2):** Conducting monitoring and auditing to assess compliance
- o **3.7:** Enforcement of sanctions due to Code breaches
- o **3.8:** Signatory removals and suspensions
- o **3.9:** Signatory appeals process



- **3.10(4):** Three-yearly independent reviews of the Code, Code reporting, Code Panel and Panel Terms of Reference
- **3.10(5):** Stakeholder consultation regarding the above-mentioned independent reviews.

Over the course of FY21, the Administrator will therefore prepare for these adjustments to ensure that Signatories and stakeholders are well placed to understand and comply with the Code from the beginning of the Operational Stage.

Risk Management and Mitigation

As the Code expands in scope and in capacity, material risks to the Code and the Administrator are expected to become more prevalent. The Administrator will therefore place increasing focus in FY21 and future years on management of these risks, including resourcing, reputational, financial, and litigation related risks. This also includes ensuring real and perceived conflicts of interest for CMI as both an industry association and independent Code Administrator are mitigated in an appropriate and transparent way.

Financial and Operational Sustainability

The long-term financial and operational sustainability of the Code and its administration will be fundamental to the Code's ongoing success. Having now entered the third compliance year, this will be a major focus for FY21 given the additional resourcing requirements to realise the transition to the Operational Stage. A three-year operating budget has been devised as a projection of the Code's financial sustainability. This includes a plan to gradually increase the Administrator's capacities over time. Establishing Government Partners and Industry Supporters will be critical to continuing operational sustainability, as will continuing to grow members amongst carbon project developers and advisory services.

Strategic Growth of the Code

Part of ensuring the Code's long-term sustainability will be growing the Code to meet the evolving demands and dynamics of the Australian carbon industry. The increase in Code Signatories from 12 in Year 1, to 20 as at October 2020 highlights the expansion of the Code's presence in the market to date.

The number of Signatories identified as scheme participants for projects published on the CER's ERF Project Register also provides a base level³ indication of the level of coverage of Signatories in relation to the ERF. Based on publicly available CER data, the 20 current Signatories account for 38% (66 of 174) of registered projects and 40% (89,519 of 222,370) of the ACCUs issued to projects registered since the Code's inception on 1 July 2018. The majority (56%) of project registrations by Code Signatories have been for vegetation projects, followed by agricultural projects (39%), with the remaining 5% in energy efficiency. Current Signatories account for 44% (63 of the 144) total land sector (agriculture, vegetation, and savanna burning) projects registered, and 40% of land sector ACCUs issued, since Code's inception on 1 July 2018. It is worth noting that these calculations have been made based on publicly available data; given different business models, the number of projects that Signatories are actually engaged with would be significantly higher. The Administrator will look to better understand the reach of the Code in the industry as it moves through its transition year.

The Administrator will also continue to promote the Code's impact and importance to market participants with a view to expand these representations year on year.

The Administrator will also place increased focus on attracting 'Industry Supporter' stakeholders from the demand-side of the market, as was recommended in the Independent Review. This is with a view to ensure that the Code can be positioned to support best practice for the market as a whole, and that the Code can become a more useful and active risk-management tool that provides demand-side entities with a level of

³ Signatories' business models vary and include scenarios where Signatories are not the scheme participant for a project but are involved in the majority of activities in the development and management of a project. In this way it is likely that the number of projects and ACCU issuance attributed to Signatories is significantly higher than the share represented here.



comfort around the transparency, accountability and integrity of the carbon providers they interact with. When launched later in 2020, it will ultimately contribute to improving market integrity, accountability, transparency, compliance, and trust.

6 Brandmark & Promotion

6.1 Story Behind the Brandmark



The primary intention of the Code, to engender best practice through bringing together all stakeholders in the industry, is represented by the Code brandmark.

The colour palette was developed to represent different components of the environment that carbon projects interact with and protect. Starting from the inner link, the first colour represents the earth's sky, the second represents the earth's flora, the third represents the earth's land and forests and the final link represents the earth's seas.

Only organisations authorised by the Code Administrator as a Signatory to or official supporters of the Code may use the brandmark or any aspect of the Code of Conduct branding. The brandmark is only to be reproduced from artwork supplied electronically or emailed directly from the Code Administrator. Only Foundation Signatories are eligible to use the Foundation Signatory brandmark below. Non-Foundation Signatories are not allowed to use this version of the brandmark.



6.2 Signatory Use of the Brandmark and Quotes

As the Code has grown in number of Signatories, the reach of the Code brandmark has expanded. The Administrator notes that 10 current Signatories are promoting their Signatory status on their own websites, testament to their pride as Signatories. Examples of these are displayed in **figures 7, 8 and 9**, below.



Figure 7: Extract from Carbon Conscious's website displaying the brandmark, which officially recognises the organisation's status as a Foundation Signatory to the Code of Conduct.



Figure 8: Extract from Carbon Farmers of Australia's website displaying the brandmark, which officially recognises the organisation's status as a Foundation Signatory to the Code of Conduct.

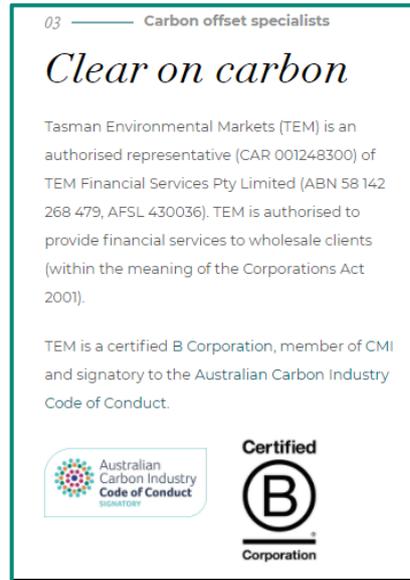


Figure 9: Extract from Tasman Environmental Markets' website displaying the brandmark, which officially recognises the organisation's status as a Foundation Signatory to the Code of Conduct.

Signatories are required to promote the Code. As per section 2.5(7)(a) of the Code, Signatories must:

- i) take all reasonable steps to promote the benefits of the Code to clients, including telling clients about the Code and providing copies on request;
- ii) advertise the latest version of the Code on their website and in other relevant marketing documents; and
- iii) ensure that clients are aware of the Signatory's complaints handling provisions.

In the FY21 compliance year, the Administrator will seek to engage with Signatories to ensure they provide a copy of and/or link to the Code on their websites. The requirements of section 7.5(2)(1)(a) of the Code will also be an item of interest for the subsequent compliance checks at the end of FY21.

In addition to displaying the Code brandmark on their website home pages, some Signatories have included text on their websites to actively promote the Code's presence in the market to their prospective clients. This includes:

- [AgriProve](#)
- [Climate Friendly](#)
- [CO2 Australia](#)
- [Green Collar](#)
- [Select Carbon](#)
- [South Pole](#)

Of note, AgriProve also highlights the Code's role in complaint and breach handling, stating, "If you have a complaint or you believe that AgriProve has breached the Code, information on reporting a complaint or breach of the Code, can be found [here](#)." This is an instance of best practice transparency with stakeholders.

This Code promotion is not only allowing Signatories to position themselves as committed to best practice in the industry, but also serves to increase the awareness within the market about best practice. Particularly for new market participants, the brandmark can become an educational tool in addition to a quality assurance stamp. Signatories have made the Administrator aware that the brandmark has become a discussion point when engaging stakeholders in pre-project activities – providing new market participants with a reassurance of the integrity of Code Signatories.

The Administrator expects that as more stakeholders become signatory to or supporters of the Code, the leverage of the brandmark will continue to grow. As the Administrator explores options to expand the Code's relevance to, and recognition by demand side market participants, it is anticipated that this will further increase the value of the brandmark as the Code's industry coverage increases, therefore enhancing the value of the Code to Signatories.



6.3 Code Promotion

The Code Administrator recognises the importance of advocating for the Code as a way of building awareness of best practice in the market. Throughout the compliance year, the Administrator has continued this advocacy through multiple events and channels, as summarised below.

Carbon Market Fundamentals Webinar

Together with the CER, CMI broadcast a live carbon market fundamentals webinar from Canberra, on 12 March 2020. A screenshot of the recording is shown in **Figure 10**, below. With 70 live attendees, the webinar included an overview of the Code of Conduct and its role in the market. The [recording](#) has remained on the CER's website, and as which has been an important educational tool particularly for new market participants to understand the Code.



Figure 10: Screenshot of the market fundamentals Webinar

Carbon Farming Forum 2019 and 2020

With the Queensland Department of Environment and Science (DES), CMI hosted the 3rd and 4th Carbon Farming Industry Forums on the 29–30 August, 2019, and the 22–23 September, 2020. The Forums brought together major stakeholders from across the land-sector carbon credit supply chain including key agriculture sector participants, land holders, Traditional Owners, carbon project developers, financiers and domestic high emitters. Both Forums included promotion of the Code and its role in the market, and an update on the Independent Review process. The 2020 Forum outcomes release can be found [here](#).

CER Seminars

The annual carbon market seminar series hosted by the CER and CMI was held between 12 March and 28 August 2020. Ordinarily this would have been held before the end of the FY20 compliance year, however it was delayed due to COVID-19 business impacts. The fifth seminar in the series, held on 24 July 2020, included a presentation on the Code of Conduct, as shown in **Figure 11**. This was attended live by 219 individuals from 118 organisations. A [recording](#) is currently housed on CMI's website, which has subsequently been viewed online over 90 times.



Figure 11: Virtual Seminar on 'Market Supply & Australia's Carbon Farming Industry' on 24 July 2020, including a presentation on the Code of Conduct by Brad Kerin.

Human Induced Regeneration Carbon Farming Guide

The Aboriginal Economic Development (AED) unit of the Federal Department of Primary Industries and Regional Development (DPIRD) is in the process of producing a Human Induced Regeneration Carbon Farming Guide. The guide is being created to assist Aboriginal pastoral lessees and Registered Native Title Body Corporates to access advice on carbon farming in Australia. The Guide will include mention of the Code of Conduct, and a link to the Code's website. It is expected that this will further improve awareness within the market of the Code's presence and therefore increase stakeholder interaction with the Code.

6.4 State & Territory Government Schemes

The Administrator will continue to engage with state and territory governments as they begin to develop and implement their sub-national carbon market schemes. The Administrator's intention is to ensure that the Code's principles including transparency, integrity, accountability, compliance, and trust are integrated into the design of Australia's emerging sub-national markets. The Administrator will also promote the Code as a risk management and consumer protection tool to be considered as a requirement for carbon market participants.

The Queensland's Land Restoration Fund (LRF) [eligibility requirement](#) of carbon service providers to have Code Signatory status has set a precedent for sub-national markets to promote and oblige best practice amongst carbon market participants. The Administrator has noted the impact of the LRF's Code Signatory requirement to date on market participant engagement with the Code, and values the LRF as an important partner.

In the coming months, the Administrator will seek to implement recommendation 44 of the Independent Review, to create a 'Government Partner' category to enable non-Signatory stakeholders to support the Code's development.

In addition, the Administrator is engaging with the Western Australian Government to seek to ensure consumer protection and best practice land rights management in the state. Excluding projects which cross multiple borders, WA has accounted for 28% of registered ERF (namely Human Induced Regeneration) projects in 2020 to date, and the WA government's landmark provision of consent for carbon projects to be undertaken on WA Crown Land may see further dramatic uptake of projects in the state. WA is hence of particular interest for the Administrator to ensure that stakeholder awareness of and engagement with the Code grows at a rate commensurate with the expansion of projects; particularly in the context of understanding the needs of multiple rights holders on Crown land in the state, including project developers, land and lease-holders, traditional owners, pastoralists, and mining and exploration organisations.

As the Code extends in its market coverage, remit, audit and compliance-focused mandate, the Administrator's interaction with other states and territories will increase accordingly. Interest from other state and territory governments to become Code Supporters has been expressed, and will be pursued in the FY21 compliance year.



7 Appendices

7.1 Appendix 1: Independent Review Terms of Reference

The Code

1.1. Provide advice on the extent to which the Code text and requirements in Section 2 of the Code currently meet the objectives of Section 1.1 of the Code, to

- 1) Define industry best practice for project developers, agents, aggregators and advisers in Australia's carbon project industry.
- 2) Promote consumer protection and appropriate and open interaction with project owners and landowners.
- 3) Provide guidance to scheme participants.
- 4) Promote market integrity, accountability and display international leadership in carbon project development.

1.2. Provide advice and recommendations on the extent to which Section 2 of the Code could be amended for the Operational Stage to better ensure the achievement of Section 1.1 of the Code and the outcomes and underlying principles in Section 1.3 of the Code, taking into consideration:

- 1.2.1. The economic and administrative burden for Signatories of the Code to effectively comply with the requirements of an amended Code.
- 1.2.2. Changes by relevant regulatory or administrative agencies (e.g. the Clean Energy Regulator, ASIC, Department of Energy and Environment) to improve (streamline and make more efficient) and update regulation of the market, that may interact with, or duplicate Signatory compliance and Code administration activities.

Administration of the Code

2.1. Review and make recommendations for the governance and operational procedures required to administer Sections 3.2, 3.3(1), 3.4(2), 3.5, 3.7, 3.8, 3.9, 3.10(4), 3.10(5) of the Code, which will become operative during the Operational Stage of the Code.

2.2. Review and make recommendations to improve current governance and operational procedures that have been utilised by the Code Administrator to administer all operative sections of Section 3 and Section 4 of the Code during the Foundation Stage.

- 2.2.1. Provide advice and recommendations on the extent to which Section 3 and Section 4 of the Code could be amended for the Operational Stage to improve the administration of the Code.

2.3. Recommend guidance and/or training material and events covering Code Signatory Obligations set out in Section 2 of the Code, to be prepared, published and/or delivered by the Code Administrator for the Operational Stage, providing Code Signatories a better understanding of their obligations and the detail necessary to effectively comply with the Code.

The Code Review Panel

3.1. With reference to 2.1 above, provide advice on process, and recommend representatives to be appointed to the Code Review Panel, which meet the requirements of Section 3.2(2) of the Code.

The Code Administrator

4.1. Provide advice and recommendations on the resources required to administer the Code in alignment with best practice administration during the Operational Stage, including, but not limited to staffing full time equivalent (FTE), annual signatory fee commitments and non-signatory fee funding commitments.



4.2. Provide advice and recommendations on whether the Carbon Market Institute or another body is the most suitable entity to impartially administer the Code as the Code Administrator during the Operational Stage.

4.3. If the recommendation is that CMI should administer the Code during the Operational Stage, provide advice and recommendations on the internal governance requirements needed for the Carbon Market Institute to effectively operate as the peak industry body and act as the Code Administrator with appropriate integrity (e.g. internal firewalls, information flows).

Miscellaneous

1.1. Provide advice on the suitability of allowing more than one entity to become a Signatory to the Code under the one Signatory Fee. (e.g. should a subsidiary or related entity of a Signatory be able to utilise the Code brand mark as a Signatory to the Code, without separately applying to become a Signatory).

1.2. Provide advice on the suitability of the information, application forms and guidance material provided on the Code website.

1.3. Provide advice on the suitability and design of a new signatory category or supporter category for purchasers of carbon credits/the demand side of the market to support the Code.

1.4. Provide advice on the extent to which the Code text can support the development of industry standards relevant to the demand side of the market (e.g. standardised carbon contracts).

7.2 Appendix 2: Summary of Independent Review Recommendations

1. The Code of Conduct

The Review recommends that:

- The Code should clearly define ‘consumers’, the different types of Signatories, and its version of ‘market integrity’.
- The Code should clarify the links between Section 2 of the Code (‘General Rules and Standards’) to the objectives in sections 1.1 and 1.3.
- A review of the Code’s vision of ‘*significantly contributing* to Australia’s greenhouse gas commitments under the Paris agreement’ is undertaken.
- The Code clarifies that best practice requires eligible interest holder (EIH) consent to be obtained prior to the registration of an area-based project, in line with guidance from the Indigenous Carbon Industry Network (ICIN). The Code requires Signatories to consider the financial and cultural advantages of taking into account the ‘active dissent’ of EIHs in relation to area-based ERF projects.⁴
- The Code should require Signatories to use the medium of communication that is linguistically and culturally appropriate for the audience – not necessarily “plain English” as currently stipulated in the Code.
- The Code Administrator develops its capabilities in performing a discretionary role in recognising and relying on the business practices and compliance measures a Signatory has implemented to meet its AFSL obligations, and that the Administrator reviews this arrangement annually or as a Signatory’s AFSL expires, whichever occurs sooner.
- The Code Administrator assist Signatories and stakeholders with regard to:
 - Accessing ASIC guidance on the need for an AFSL.
 - Ensuring fair and transparent benefit-sharing arrangements between clients and Signatories for projects generating co-benefits.
 - Guidance on the options for selling carbon credits.

⁴ ‘Active dissent’ would recognise a pre-project decision made by an EIH to never provide consent to an ERF proponent. Recognition of active dissent would save both proponent and the EIH the time and money invested in a project that would not generate ACCUs. In this scenario, it may mean a Signatory elects not to register a project or voluntarily de-register a project.



- Provision of legal guidance for written agreements via model contracts for each of the various types of arrangements entered into by Signatories and clients.
- Model contract provisions and/or model agreements for ACCUs
- That the Code references:
 - The Australian Financial Complaints Authority as a Consumer Protection Organisation, specifically referencing the AFMA Code.
- That the Code Administrator website promotes:
 - AFCA's complaints and dispute resolution role for retail consumers.
 - Relevant LRF and QRIDA webpages.
 - The Code Administrator should continue positioning Signatories as trusted, ethical suppliers in the ACCU supply chain.
- Required reporting approaches as outlined by the Code are amended to ensure:
 - Alignment of best practice eligible interest holder consent-seeking requirements with those of ICIN (the principle of free, prior and informed consent).
 - An 'if not, why not' reporting approach for Signatories.
 - Avoiding overlapping reporting requirements with the CFI Act and subordinate legislation.
 - The Code Administrator refers to the ERF project and contracts registers published on the Clean Energy Regulator's website where possible to minimise administrative burden on clients; the Code Administrator should request the CER consider making available project data to facilitate the automation of Signatory Annual Reports to the Code Administrator.
- The Code specify that if a Signatory takes on the role of ERF project proponent, the written agreement between the Signatory and customer must provide for orderly succession of the project proponent, consistent with the environmental and social integrity of the Scheme and with the relevant laws.
- More than one entity can become a Signatory to the Code under the one Signatory Fee, subject to those entities being companies within the same corporate group.
- A supporter category be created for participants on the demand side of the market.
- To facilitate the modification of industry contracts to ensure consistency in the way co-benefits are treated, it is recommended that the Code Administrator promote changes in the contractual needs of demand-side participants to the Clean Energy Regulator and AFMA.

2. Administration of the Code

The Review recommends that:

- The Code Administrator sets expectations on the timing of Signatory breach reporting, including provision of best practice standards for timely self-reporting of material breaches; The Administrator should consult with the Signatories to amend the Code to clarify the timing for self-reporting of major and severe breaches.
- The Code emphasises that Code Signatories' conduct as a group must support the Code's integrity and reputation.
- The Code Administrator to provide guidance for signatories in the form of: developing feasibility advice, risk assessment plans and conducting stakeholder consultations; providing checklists and handouts to assist compliance with the Code; publishing information on a Client Hub on its website that could be accessed by clients; working with the Queensland Government to increase awareness in the legal and banking sectors of the benefits of carbon projects.

3. The Code Review Panel

The Review recommends that:

- The list of 12 candidates be considered for Panel recruitment
- The Panel member selection process have regard to the skills and experience needed by the Panel as a whole
- Optional: Section 3.2(2) of the Code does not reference 'representative' (e.g. "a carbon projects representative").



4. The Code Administrator

The Review recommends that:

- The Carbon Market Institute administers the Code during the Operational Stage, and that a conflicts of interest framework is implemented
- Signatory fees should be reviewed annually
- In the first three years of the operational phase of the Code, the Code Administrator should refer proposals to apply severe sanctions or suspensions to the Code Review Panel for review. During that time, publication of severe sanctions and suspensions should not occur until the Code Review Panel affirms the Code Administrator's proposal
- The Code Administrator should implement appropriate controls to manage the security and confidentiality of its information assets
- The Compliance Manager's reporting line must provide them with ongoing high-level sponsorship and access
- The Code Administrator's performance should be reviewed by the Code Review Panel regularly, ideally on an annual basis.



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