

complying with the code
guidance for signatories

July 2021



Australian
Carbon Industry
Code of Conduct
SIGNATORY



This guidance document provides information for new and prospective Signatories to the Code of Conduct, to assist them in complying with the Code.

It details:

1. General Client Engagement
2. Providing Carbon Project-Related Advice
3. Reporting, Audit & Compliance
4. Handling Complaints and Breaches; and
5. Useful Links and Reference Material

General Client Engagement

The Code of Conduct for the carbon industry has been developed to promote market integrity, consumer protection and appropriate interaction with project stakeholders, including Native Title Holders, representative bodies, land managers and project owners. Signatories to the Code are required to undertake their business activities in accordance with the general principles of the Code, which are:

- Providing full transparency and accountability
- Ensuring environmental and social integrity of the scheme
- Complying with legislation and regulation
- Facilitating community trust in the outcomes of the scheme.

Prior to registering a project, it is expected that Signatories meet the minimum requirements for operating in the carbon industry, as outlines in the Code. Some of the key requirements for Signatories to note when engaging with clients are summarised below.

Communication with Clients

Signatories must provide sufficient, accurate information to clients to allow them to make informed decisions about whether to undertake a carbon offsets project and enter into an agreement with the Signatory. This information could include:

- The nature of the legal relationship between the client and Signatory and any legal implications or obligations as a result of the agreement entered into,
- Any financial benefit to the client and/or Signatory as a result of the agreement entered into.

Advice on Carbon Credit Generation, Sales and Markets

When providing clients with estimates of carbon credit generation, the following information (where applicable) must be disclosed and provided to clients:

- assumptions underpinning the estimates made,
- inherent risks and uncertainties associated with the assumptions,
- the source or method used to calculate the estimates,
- the impact of applicable abatement buffers or discounts under the *Carbon Credits (Carbon Farming Initiative) Act 2011* ('CFI Act') or ERF Method that may reduce the number of carbon credits that can be claimed based on the net abatement achieved by the project,
- advice on the crediting period in relation to carbon credits that can be claimed,
- the flexibility regarding a project start date and associated limitations,



- appropriate information and support to allow a client to establish an Australian National Registry of Emissions Units (ANREU) account,
- the option available for the sale of carbon credits,
- any interest or benefit to be gained by the Signatory in relation to a particular sales option,
- the risks associated with entering into a Carbon Abatement Contract with the Clean Energy Regulator, and the implication of non-delivery under that contract.

Note: where clients are entering into a Carbon Abatement Contract with the Clean Energy Regulator, Signatories must ensure that the client has been encouraged to obtain legal and financial advice in relation to the terms of the contract.

Engaging with Native Title Stakeholders

The Code intends to promote market integrity, consumer protection and appropriate interaction with project stakeholders, including Native Title Holders with a determination, Native Title Holders with a claim, and their representative bodies as relevant.

When undertaking carbon offsets projects on native title land or waters, the Code includes requirements for Signatories with regards to Native Title Holders and registered claimants. These requirements have been developed to align with best practice defined by the:

- Indigenous Carbon Industry Network’s February 2020 guidance: [Seeking free, prior and informed consent from Indigenous communities for carbon projects](#);
- Clean Energy Regulator’s [Native Title, Legal Right and Eligible Interest-holder Consent Guidance](#); and
- The principles outlined in the [United Nations Declaration on the Rights of Indigenous Peoples](#).

The Code also recognises that defining industry best practice will be an ongoing objective, with the current text designed to promote market integrity, provide guidance to project owners, promote open interaction with project owners and landowners and set baselines for industry best practice. As such, the Code’s requirements of how Signatories engage with Indigenous stakeholders will be reassessed and refined over time. The Administrator intends to ensure that Code Signatories demonstrate best practice engagement with Indigenous stakeholders and their representative bodies.

Native Title Stakeholder Definitions

- **Eligible interest** as defined under section 5 of the CFI Act.
- **Native Title Holders** Native Title Holders with a determination.
- **Native Title Holders with a claim** Registered native title claim groups, as defined by sections 224 and 253 of the *Native Title Act 1993* (Cth).

Undertaking Carbon Offsets Projects on Native Title Land

Genuine and early engagement with Native Title Holders promotes industry best practice and aligns with the general principles of the Code, including transparency and accountability, environmental and social integrity, facilitating community trust, and compliance.

In the first instance, Signatories must use reasonable efforts to follow the best practices set out in the ICIN guidance (mentioned above). Signatories must meaningfully engage or undertake appropriate due diligence in order to ensure that the following requirements are met with reasonable time for Native Title Holders and Native Title Holders with a claim to reach an informed decision:



1. Genuine and early engagement with Native Title Holders and where possible, claimants, has been undertaken.
2. Engagement with native title stakeholders is ongoing and dynamic including through the planning, development and implementation phases of the project, applying the principles of free, prior and informed consent throughout the life of the project.
3. Consent to the ongoing operation of the project has been sought and obtained *prior to* the application to register a project being lodged.
4. The rights of Native Title Holders to give or deny consent are respected.
5. Native Title Holders are fully informed about the project, including costs, benefits, risks and other implications, and they have the opportunity to seek independent advice.
6. All parties have a mutual understanding about the project conditions and requirements.
7. Reasonable efforts have been made to enter into legally-binding agreements with Native Title Holders before an application to register a project is lodged.
8. Reasonable efforts have been made to consult with Native Title Holders with a claim and to obtain agreement, as appropriate.
9. Native Title Holders have been provided with a reasonable amount of time to make an informed decision about the project being undertaken.
10. Native Title Holders have been advised of the intention to register a project over native title land.
11. Native Title Holders are provided with sufficient guidance on project registration and implementation, including (where relevant), on project and project feasibility advice; advice on the ERF and ERF Methods; and advice on carbon credit generation, sales and markets.
12. Native Title Holders are made aware of the Code of Conduct, and of the Signatory's own complaints handling process.
13. Native Title Holders are advised of any approvals obtained or required from any government or regulatory authority.

The above list is non-exhaustive – Signatories should refer to the Code text and supplementary **Engagement with Native Title Stakeholders Guidance for Signatories** for more detail on their obligations under the Code. Additionally, Signatories must comply with the requirements of the *Native Title Act 1993* (Cth) and take reasonable steps to comply with the principles set out in the United Nations Declaration on the Rights of Indigenous Peoples.

Project Ownership

Signatories are required to undertake the necessary due diligence to ensure that the project owner (project proponent) has the legal right for the project and that all eligible interest consent holders are identified. In addition to considering what eligible interest holders may need to be consulted, projects that have native title considerations will also need to consider how the *Native Title Act 1993* interacts with the requirements of the project and the Code.

Seeking Consent

Signatories must ensure that Native Title Holders have provided consent to the ongoing operation of the project, prior to any ACCU issuance and that reasonable efforts have been made to obtain consent from Native Title Holders with a claim prior to any ACCU issuance. Where legally binding agreements with Native Title Holders are unable to be reached before project registration, Signatories must ensure that Native Title Holders have been consulted and have provided relevant forms of agreement to the registration of a project, as appropriate, including a process by which final consent will be obtained.

Signatories must also ensure that consent from eligible interest holders is sought in a timely manner and in accordance with the requirements of the CFI Act.



Providing Carbon Project-Related Advice

Project Feasibility Advice

When providing any project feasibility advice to clients, Signatories must take into consideration the client's individual circumstances, the specific requirement of the ERF Methods or other voluntary offset project scheme, as applicable. Additionally, when providing advice, Signatories must comply with the requirements of the *Corporations Act 2001* (Cth) as it relates to the Australian Financial Services Licensee. Signatories must inform clients of the level of financial advice they can provide based on whether or not they hold an AFSL (Australian Financial Services Licence).

General Project Advice

Signatories must provide information on the different types of project development models available for undertaking a carbon offsets project. For example, these could include an aggregation model, agent model, or carbon service provider as the project owner model (project proponent under the ERF).

Appropriate due diligence must be undertaken by Signatories to ensure that the project owner has the legal right for the project and that all eligible interest consent holders are identified. The number and type of eligible interest holders will vary depending on the nature of the land title and project type but will generally include those persons or organisations listed on land titles as having an interest in the property.

Where legal right is required to be transferred (if appropriate to do so) the Signatory must arrange for this and ensure that the existing legal right holder has access to independent legal advice in relation to the transfer. In addition to considering what eligible interest holders may need to be consulted, projects that have native title considerations will also need to consider how the Native Title Act 1993 (Cth) interacts with the requirements of the project and the Code. For further information refer Guidelines for projects on native title land below.

Advice on the Emissions Reduction Fund-Related Activities

If there is potential for an ERF Method (or method under a different Carbon Offsets Scheme) to apply to a client's project, Signatories must provide information about the relevant method and associated project administration and compliance requirements. Signatories should also undertake their own due diligence assessment regarding the client's ability to meet the requirements of the method. Depending on the project, the type of information provided to clients could include:

- the type of activity covered by the ERF Method (or other relevant method)
- the particular requirements of the chosen method
- eligibility requirements
- baselines & abatement calculations
- monitoring requirements
- the tools and documents required for use with the method
- project registration, including eligibility criteria
- establishing 'legal right'
- (if applicable) eligible interest holder consents
- reporting periods, reporting and notification
- offsets reports & audits
- certificates of entitlement, and
- record keeping.



Where relevant, Signatories must provide clients with information on the ability to vary projects, and advice on relinquishment and revocation triggers for projects, as well as any associated implications. Information about the ERF, and a number of ERF guidance documents are available on the Clean Energy Regulator website and can be a useful resource to support the provision of the above information to clients. Refer to: <http://www.cleanenergyregulator.gov.au/ERF/About-the-Emissions-Reduction-Fund>.

Guidelines for Advising on Sequestration Projects

If a client is proposing to undertake a sequestration project, Signatories must provide their client with sufficient information related to sequestration projects. This includes:

- obligations and timelines relating to the project's permanence period, including obligations relating to land use during the permanence period;
- the implications of choosing a 100 year or 25 year permanence period, including the consequences of discounts applied to the generation of carbon credits;
- the commencement date for the permanence period;
- the ability to vary the area of the project;
- the risk of abatement reversal and consequences of reversal;
- the impact of natural disturbances on abatement and the notification requirements applicable to natural disturbances;
- relinquishment triggers and requirements;
- carbon maintenance obligations; and
- the implications of a sale of land which is the subject of a sequestration project.

Additional information and guidance on sequestration projects can be found on the Clean Energy Regulator website: <http://www.cleanenergyregulator.gov.au/ERF/Forms-and-resources/Regulatory-Guidance/sequestration-guidance>. This includes guidance on Avoided clearing of native regrowth, Human-induced regeneration, Native forest from managed regrowth, Native forest protection (avoided deforestation), Reforestation and afforestation, Soil carbon.

Guidelines for Developing a Carbon Project Management Plan

When undertaking a carbon offsets project, Signatories to the Code must develop a written project management plan in consultation with the client and other relevant stakeholders (including for example, NRM bodies and traditional owners) and is understood by all relevant parties.

The project management plan is in place to ensure that the obligations and responsibilities of all parties are clearly defined and understood, and that the objectives of the project are met. This includes all relevant compliance requirements under the Code, the applicable ERF Method (where relevant) and all other applicable legislation and regulations. The project management plan should also identify relevant project issues and risks and associated mitigation plans to manage these risks, as well as promote the general principles of the Code.

Signatories should ensure that regular contact and communication is maintained with landholders to confirm whether the project plan is being followed, and that any issues arising can be addressed effectively and in a timely manner.



Reporting, Audit & Compliance

Compliance & Audit Requirements

To provide clarity to Signatories, clients and stakeholders on the Administrator’s approach to compliance in the Operational Stage of the Code, the Administrator’s **Education, Monitoring and Enforcement approach** can be found on the Code website’s [Resources](#) page. This guidance document includes information on:

- Responsibilities of different stakeholders;
- A risk-based approach to compliance;
- Education;
- Monitoring, and
- Enforcement.

Annual Reporting for Signatories

Signatories are required to complete an **Annual Report (Self-audit Checklist) Form** at the end of each financial year (year ending 30 June). A completed annual report must be submitted to the Code Administrator within 30 days following the end of each financial year. This report will be used by the Code Administrator to inform compliance under the Code, in addition to auditing undertaken by the Administrator.

Annual Report – Key Dates

- 30 June** End of compliance period under the Code
- 1 August** Submission date for Signatory Annual Report
- September** Code Administrator publishes Code Annual Report

The **Annual Report (Self-audit Checklist) Form** can be found on the Code website’s [Resources](#) page and has been developed as a self-audit tool, covering all relevant aspects of the Code. The annual report also serves as confirmation of a Signatory’s compliance with the Code throughout the year, and reaffirms the Signatory’s ongoing commitment to the Code.

The Code Administrator may request additional information following receipt of each Signatory’s annual report. Signatories must comply in a timely manner with reasonable requests made by the Code Administrator for the provision of information or documentation. Annual reports will not be made publicly available, and all commercial-in-confidence information will be treated with appropriate confidentiality.

Record Keeping

Signatories are required to maintain appropriate records in relation to carbon offset projects undertaken. A documented procedure for record keeping must be in place, outlining the internal approach for keeping records to support compliance with the CFI Act, ERF Method or other relevant scheme.

Consideration should be given to audits that may be undertaken by the Code Administrator and the accessibility and type of information that will support audit procedures. Examples of information that should be kept include:



- relevant correspondence between Regulator and project owner,
- information about the project owner's legal right to carry out the project, and (if applicable) ownership of the applicable carbon sequestration right,
- information to support decisions in relation to obligations under the CFI Act,
- information about any variations to the project,
- information about regulatory approvals obtained in relation to the project,
- information about how applicable NRM plans have been considered,
- offsets reports and audit reports,
- information used to prepare an offsets report,
- information about any uncertainties associated with data used to determine abatement, including information and procedures used to derive uncertainty estimates,
- information about any assumptions made in abatement calculations and the procedures used to derive the assumptions,
- information about any event that is reasonably likely to significantly increase or decrease abatement,
- information about all procedures used to collect, document, monitor and process data used in determining abatement for the project.

Where ERF projects are being undertaken, Signatories should provide specific guidance to clients on the types of information and records that will be required for reporting and auditing under the ERF. Further information on the ERF requirements related to reporting and auditing can be found on the Clean Energy Regulator website: <http://www.cleanenergyregulator.gov.au/ERF/Forms-and-resources/reporting-and-auditing>.

Additionally, Signatories may be required to provide specific information to the Code Administrator in relation to their compliance under the Code. In the event of a request for information from the Code Administrator, Signatories should ensure that they have maintained appropriate records of all relevant business activities and transactions for a minimum period of five (5) years.

The type of information that could be requested by the Code Administrator includes:

- in-house procedures related to complaints handling
- records in relation to a suspected breach (e.g. information provided to a complainant, internal training provided to employees, correspondence with relevant stakeholders)
- any other information deemed relevant for reviewing a Signatory's compliance under the Code.



Handling Complaints and Breaches

For a detailed explanation of the process by which the Code Administrator will respond to complaints and suspected breaches of the Code please refer to the **Code Administrator's Complaints Handling and Breaches Procedure** published on the Code website's [Resources](#) page.

Receiving a Complaint

If you receive a complaint against you, as a Signatory to the Code you are required to be responsive and deal appropriately with clients and other stakeholders in a timely manner. You are also required to have a fair, efficient and transparent internal complaints handling procedure.

Further information on the process for handling complaints received by a Signatory is outlined in the **Handling Complaints and Breaches - Guidance for Signatories**, which can be found on the Code website's [Resources](#) page.

As a Signatory to the Code, if you receive a complaint against you by a complainant, or you are notified of a complaint that has been lodged against you with the Regulator, the Department, an ombudsman or a consumer affairs body, you are required to inform the Code Administrator, within 10 business days by completing the Signatory Self-Reporting Form, which can be found on the Code website's [Resources](#) page.

Please note: The Code Administrator is not a dispute resolution body and will encourage all complainants to contact the Signatory against which they are making the complaint in the first instance to seek resolution.

Reporting a Suspected Breach

If you suspect a Signatory has breached the Code, you must take reasonable steps to attempt to contact the Signatory suspected of breaching the Code before notifying the Code Administrator.

Notifying the Code Administrator

If you suspect a breach of the Code has occurred by another Signatory, you should inform the Code Administrator by completing the Signatory Breach Reporting of Another Signatory Form, which can be found at Code website's [Resources](#) page.

You are encouraged to read the **Handling Complaints and Breaches - Guidance for Signatories** available on the Code website, that outlines the process for handling complaints and breaches of the Code, as well as the process by which the Code Administrator will respond to complaints received.



Useful Links and Reference Material

A list of relevant references with additional information to support Signatories of the Code is listed below.

- Emissions Reduction Fund Guidance – Clean Energy Regulator
<http://www.cleanenergyregulator.gov.au/ERF/About-the-Emissions-Reduction-Fund>
- Native title, legal right and eligible interest-holder consent guidance – Clean Energy Regulator
<http://www.cleanenergyregulator.gov.au/DocumentAssets/Pages/Native-title-legal-right-and-eligible-interest-holder-consent-guidance.aspx>
- Opening and ANREU Account – Clean Energy Regulator
<http://www.cleanenergyregulator.gov.au/OSR/ANREU/Opening-an-ANREU-account>
- Australian Consumer Law – Resources & Guides
<http://consumerlaw.gov.au/business-and-the-acl/>
- *Native Title Act 1993* (Cth)
<https://www.legislation.gov.au/Details/C2017C00178>
- *Carbon Credits (Carbon Farming Initiative) Act 2011*
<https://www.legislation.gov.au/Details/C2017C00076>
- *Corporations Act 2001* (Cth)
<https://www.legislation.gov.au/Details/C2018C00131>
- Australian Financial Markets Association (AFMA) Code of Conduct
<https://afma.com.au/code-of-conduct>

for more information please contact

The Code Administrator

code.administrator@carbonmarketinstitute.org



Australian
Carbon Industry
Code of Conduct
SIGNATORY