

The Australian Carbon Industry Code of Conduct (the Code) aims to define industry best practice for project services and advisory services provided within Australia’s Carbon Industry and represents the minimum standards that all Signatories agree to meet. The principles underlying the rules of the Code are:

1. transparency and accountability;
2. environmental and social integrity;
3. legislative and regulatory compliance; and
4. community trust.

Signatories to the Code of Conduct have obligations relating to the types of information, advice, and documentation that they provide to their clients. When providing services to clients, Signatories are required to apply best practices to business activities both before a project commences, and throughout the project.

Background

In recent months, Australia’s carbon market has seen a number of challenges to integrity, as well as policy interventions that have led to at the very least, risks in the market and the business operating context, including:

- [ERF Rule changes](#) to allow for Ministerial veto of certain native forest regeneration projects;
- [A requirement](#) for non-energy Climate Active certifications to use at least 20 per cent ACCUs; and
- [Changes to ERF fixed delivery contracts](#), where fixed delivery contract holders may pay an exit fee to be released from delivery obligations to the Commonwealth.
- Questions raised about the integrity of certain ERF methods and ERF scheme governance structures.

Such developments have led to unforeseen and significant changes in market conditions, including price shocks, erosion of investor confidence, and an increase in regulatory and legislative risk for a range of market participants.

Furthermore, market participants may be either negatively or positively exposed to the ACCU price, and price shocks from the above changes may have altered their financial positions in unforeseen, opposing and significant ways. Such conditions may lead to real or perceived market behaviours that fall within the purview of the Code, including those that increase market volatility, uncertainty, or market misconduct.

The Code Administrator will remain vigilant to ensure there are no behaviours exhibited by Code Signatories that may result in inappropriate benefit at the expense of clients.

To assist Signatories in maintaining best practice integrity and accountability during this period, the Administrator has issued this statement as a reminder of their existing obligations as set out in the Code.

Key Definitions

<p><u>Market Integrity</u></p> <p>The Code defines market integrity as comprising the following principles (noting particularly c) and d)):</p> <ol style="list-style-type: none"> a) carbon credits are trusted and have high environmental integrity as guided by Articles 6 and 13 of the Paris Agreement; b) there is equal and unbiased market access; c) transparency of key market information is embedded in trade and benefit sharing arrangements; d) participants are trusted, accountable, and apply ‘do no harm’ principles resulting in lower investment risks and increased investor confidence. 	
<p><u>Supply-Side Clients</u></p> <p>Supply-side clients include Native Title Holders, and claimants, farmers, landowners, pastoralists, site owners, business owners, landlords and tenants.</p> <p>These clients require protections from risks associated with projects being undertaken on land where they have rights or interests.</p>	<p><u>Demand-Side Clients</u></p> <p>Demand-side clients include Government, business or community/other organisations and individuals.</p> <p>These clients require protections from risks associated with receiving advice on and purchasing carbon credits for either compliance or voluntary market purposes.</p>



Key Signatory Obligations

In the context of the above market conditions, Signatories and other stakeholders should be mindful of the following obligations for Carbon Service Providers set out in the Code.

Ethical Conduct

By signing up to the Code, Signatories have committed to acting ethically and with integrity, ensuring that their conduct does not negatively impact the carbon industry or the Code itself. Under current market conditions, the Administrator specifically notes the below Code sections:

Section 2.1 (2)	Signatories must take reasonable steps to avoid any actions, omissions or business practices that could damage the reputation of the carbon industry, or may adversely impact on the achievement of the objectives or vision of this Code.
Section 2.6 (2)	Signatories have given an undertaking, as part of a principled group of Signatories, that they agree to building professional relationships with other Signatories based on acting ethically and with integrity to support the carbon industry and the Code’s integrity and reputation.
Section 2.6 (5)	Signatories must not act in any way that might bring the Code into disrepute.

Provision of Information & Financial Advice

Signatories should provide clients with enough information to make informed decisions, particularly around changing market dynamics, policies and prices that may negatively impact them or their businesses. This includes additional obligations for Signatories providing financial advice as an agent or holder of an Australian Financial Services Licence (AFSL). The Administrator specifically notes the below Code sections:

Section 2.2 (1)	<p>Communication with clients</p> <p>a) When engaging with clients, Signatories must provide sufficient accurate information in a medium of communication that is linguistically and culturally appropriate for the audience and their level of maturity in the carbon market to allow clients to make informed decisions about whether to:</p> <ul style="list-style-type: none"> i. undertake a Carbon Offsets Project; and ii. enter an agreement with the Signatory.
Section 2.2 (10)	<p>Advice on carbon credit sales and markets</p> <p>a) Signatories must inform clients of the relevant options available for the sale of carbon credits.</p> <p>b) Signatories must inform clients whether or not they hold an Australian Financial Services Licence (AFSL), and the implications of whether or not they hold an AFSL in relation to the level of financial advice they can provide. See also section 2.4(2) regarding AFSL requirements.</p> <p>c) If the client will be entering a Carbon Abatement Contract with the Regulator in relation to a Carbon Offsets Project, the Signatory must explain to the client:</p> <ul style="list-style-type: none"> i. the financial risks associated with entering a Carbon Abatement Contract; and ii. the implications of non-delivery under a Carbon Abatement Contract. <p>The Signatory should also ensure that the client has been encouraged to obtain legal and financial advice in relation to the terms of the Carbon Abatement Contract.</p>
Section 2.4 (2)	<p>Requirement to hold an AFSL</p> <p>d) In dealing with and providing advice regarding ACCUs and other carbon credits, Signatories will have regard to the Australian Financial Markets Association Code of Conduct http://www.afma.com.au/code-of-conduct. For dealing with and providing advice to wholesale customers, Signatories will:</p> <ul style="list-style-type: none"> i. refer to section 3 of the Australian Financial Markets Association Code of Conduct.



Disclosure & Independent Advice

Clients should be encouraged to seek external legal and financial advice on any proposed changes to existing contractual arrangements. In some cases, a Signatory's financial interest in a project may conflict with the best interests of a client (including possible ACCU sale-related windfall gains).

Such interests should be transparently disclosed to the client so they can make an informed and independent decision, including as part of advice on changes to benefits-sharing arrangements. The Administrator specifically notes the below Code sections:

Section 2.2 (10)	Advice on carbon credit sales and markets d) Signatories must disclose any interest or benefit they have in a particular sales option.
Section 2.5 (2)	Recommending independent legal and financial advice a) Signatories must disclose to the client the Signatory's financial interest in the project. b) Signatories should recommend to the client that the client obtains independent legal and/or financial advice.

Complaints Handling

Signatories are required to provide their clients with clear information on their own complaints handling processes and those of the Code Administrator. Provision of such information creates pathways for parties to avoid systemic problems by managing issues in a ~~timely and~~ timely manner. The Administrator notes specifically the following Code section:

Section 2.5 (3)	Providing clients with a copy of the Code of Conduct Fact Sheet a) Clients must be given a fact sheet describing this Code and also including: i. The process for providing feedback and lodging Complaints; and ii. A link to further information at the Code of Conduct website . b) Signatories can determine their own marketing practices, in accordance with all other provisions of this Code and pursuant to the Privacy Act 1988.
Section 2.5 (4)	In-house procedures and complaints handling a) Signatories must be responsive to, and deal appropriately with, clients and other stakeholders at all times. b) Clients have the right to expect that any services supplied by a Signatory will comply with the Rules at all times. c) If a client or stakeholder is dissatisfied with the activities of a Signatory, they can submit a Complaint to the Signatory. d) Signatories must have an appropriate internal complaint handling procedure that is fair, efficient and transparent, in line with the following: i. the complaints handling procedure must be compliant with relevant legislation and standards including the Australian Standard on Complaints Handling AS/NZS 10002:2014. ii. information about the complaints process must be made available to clients and Signatory staff; iii. the Signatory must log the Complaint and begin its investigation within a reasonable time of its receipt; iv. every reasonable effort must be made to advise the Complainant as soon as possible of receipt of the Complaint and the expected timeframe for resolution of that Complaint; v. (v) feedback on the outcome of a Complaint must be provided to the Complainant within 21 days of receipt. Where additional time is required: A. clients must be informed of the need for more time to complete the investigation; and B. the investigation must be completed within 45 days of receipt of the Complaint; vi. where a Complainant is dissatisfied with the outcome of a Complaint, the Signatory must provide the Complainant with the appropriate contact details for escalating that Complaint to the Code Administrator.



	e) Signatories must maintain appropriate record keeping of Complaints and their outcomes.
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Engagement with the Code Administrator

As a response to these changing market conditions, the Code Administrator has expanded its list of compliance priorities for the current compliance year (FY22), to include:

- closer monitoring of Signatory behaviour in relation to the above Code sections;
- stronger public engagement and education on best practice carbon integrity; and
- deeper engagement with the Clean Energy Regulator and Australian Securities and Investments Commission on best practice engagement with carbon market clients and stakeholders.

Whilst all of these issues are tested throughout the annual reporting process, the Administrator will engage with Signatories individually to understand any concerns, or questions they may have about application of these Code requirements. The Administrator appreciates the ongoing support and commitment of Signatories to best practice operation, and will continue to work openly and transparently with Signatories, Government Partners, and other carbon market stakeholders during this time.

If you have any questions or comments about the above guidance note, please contact the Code Administrator via email at code.administrator@carbonmarketinstitute.org.

