



GUIDANCE FOR SIGNATORIES AND STAKEHOLDERS

COMPLYING WITH THE CODE

June 2023



Australian
Carbon Industry
Code of Conduct
SIGNATORY

Acknowledgement of Country

The Carbon Market Institute through the ACI Code of Conduct recognises and pays its respects to Aboriginal and Torres Strait Islanders as the Traditional Owners of Australia.

In delivering this Guidance, the ACI Code of Conduct acknowledge and thank Traditional Owners for their continuing custodianship of the lands, waters, skies, and communities, including young ones who are following in their footsteps, and where we live and work within today.

Acknowledgements

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Executive Summary

As a participant in Australia's carbon market, I congratulate you on becoming a Signatory of the Australian Carbon Industry Code. The Code promotes and supports market integrity, consumer protection and appropriate stakeholder engagement.

The Code is now fully operational and well established. Pleasingly, the Final Report of the Independent Review of Australian Carbon Credit Units (the Chubb Review) made a key finding that the Code contributes to the integrity of the Australian Carbon Credit Unit (ACCU) scheme.

As I write this introduction to this guidance, the federal Government has just shepherded in historic legislative reforms to the Safeguard Mechanism through the Australian Parliament. The reforms to the emissions baseline values, and the annual baseline decline rate of 4.9% to 2030 will place significant and increasing obligations on our highest greenhouse gas emitters to reduce emissions. Safeguard facilities will be able to buy and surrender ACCUs as an alternative to reducing on-site emissions (or purchasing and surrendering Safeguard Mechanism Credits).

To support compliance, it is proposed that Government-held ACCUs will be available for sale at a capped price of \$75 per tonne of CO₂-e in 2023-2024, increasing with CPI plus 2% each year.

In another historic move, the Government has also announced it will legislate a national Net Zero Authority that will promote the economic transformation required to achieve net zero emissions, support workers in emissions-intensive sectors to access new employment and skills and will assist investors and companies to engage with net zero transformation opportunities. The Authority will work with state, territory and local governments, existing regional bodies, unions, industry, investors and First Nations groups to help key regions, industries, employers and others proactively manage the transformation to a clean energy economy.

While the main game on the journey to a zero-carbon world is decarbonisation, the Safeguard Mechanism reforms place a strong spotlight on the important role for carbon credits and the carbon market in Australia to support the emissions reduction transition of our highest greenhouse gas emitters. All these developments are of direct relevance to the growth of the carbon market in Australia, the carbon industry and the Code.

Indeed, the Code's Vision is support for a strong emissions reduction and carbon sequestration industry for Australia that operates at the scale and quality required to significantly contribute to Australia's greenhouse gas reduction commitments under the Paris Agreement.

Co-benefits of the carbon industry

More broadly, the carbon farming industry is a vital and growing industry in Australia that delivers important environmental, economic, social and cultural benefits. Accordingly, section 2.2(12) of the Code provides that Signatories acknowledge that it is best practice to implement co-benefits where feasible and practical and will consider whether there are potential co-benefits associated with a project. Transparency and availability of co-benefit information is



vital to drive carbon investment toward more projects with significant co-benefits and the Code asks for this information as part of its annual audit of Code Signatories. The Code Administrator will also consult further on how to strengthen these requirements under the Code and improve best practice delivery of co-benefits. The Independent Review of the Code in second half of 2023 will also address this issue. The Code Administrator will also explore the option of publishing co-benefit information from Signatories in collaboration with all beneficiaries (particularly Indigenous communities) and respecting any intellectual property (IP) held by beneficiaries.

Stakeholder engagement

Given the potential co-benefits of carbon projects and the need to support the integrity and reputation of the carbon industry, the Code understandably has a strong emphasis on clear and credible stakeholder communications, and in particular respectful and ethical engagement with Native Title Holders, Native Title Claimants and their representative bodies.

It is especially important for Signatories to be aware of the principle of free, prior and informed consent when engaging with indigenous parties in relation to a carbon project. In this regard, I strongly encourage Signatories to read the relevant Code sections on this and Part 6 of this Guidance.

Code compliance guidance

The Code provides detailed general requirements, and requirements for pre-project and project activities. The Code makes it clear that the onus is on Signatories to ensure their activities are undertaken in accordance with applicable laws and regulations.

The Code also sets out specific requirements for a range of information that Signatories must provide to clients, consumers and stakeholders – for various project stages.

This guidance provides a summary overview for Signatories of Code requirements. This guidance will assist Signatories to complete their annual compliance report (including the self-audit checklist) to the Code Administrator.

However, Signatories must ensure that they are aware of the details of specific Code requirements that apply to particular activities and that they read and apply the relevant Code sections. I also note that Signatories can and should refer to resources available with the Clean Energy Regulator and other relevant regulatory agencies.

I commend this guidance to you, and I wish you every success in your carbon industry business.

Virginia Malley
Chair
Code Review Panel



This guidance provides information and context for prospective, new and existing Code Signatories to assist them in understanding their Code obligations, including how to complete the annual Code compliance audit.

It also informs consumers or clients¹, governments and other stakeholders on the Administrator's approach to Code compliance and the Administrator's *Complaints Handling and Breaches Procedure*.

This document is only intended to be a guide. If a Signatory is not clear about specific compliance requirements under the Code, the Signatory is strongly

encouraged to carefully read the relevant sections of the Code, and to ensure that it has also reviewed any relevant definitions in Appendix 1 to the Code.

While the Code Administrator may provide guidance to Code signatories in relation to Code compliance, it does not provide advice on compliance with the laws or regulatory frameworks that may apply to Signatories.

Accordingly, if a Signatory is not clear about legal and regulatory issues arising due to its participation in Australia's carbon industry and being a Code Signatory, the Signatory should always seek appropriate, independent advice.

¹ See Part 2 below which clarifies who are clients and consumers in the context of the Code.



PART 1 : THE ACI CODE OF CONDUCT

The vision of the Code is to support a strong emissions reduction and carbon sequestration industry (hereafter referred to as the carbon industry) for Australia that operates at the scale and quality required to significantly contribute to Australia's greenhouse gas reduction commitments under the Paris Agreement. The Code framework aims to enhance the integrity, transparency and accountability of Australia's carbon industry, by monitoring, reviewing and defining industry best practice.

The Code has been developed to promote market integrity, consumer protection and appropriate engagement with landholders and project stakeholders, including Native Title Holders and Native Title claimants, representative bodies, land managers and project owners.

Sections 1.1 to 1.4 of the Code outlines the Purpose, Objectives, Vision and Mission of the Code. To understand the spirit and intent of the Code, Signatories (including senior management and employees) are

strongly encouraged to read these sections carefully. This is because Signatories to the Code are required to undertake their business activities in accordance with the principles of the Code, which are to:

- Provide full transparency and accountability
- Ensure environmental and social integrity of the scheme
- Comply with legislation and regulation
- Facilitate community trust in the outcomes of the scheme.

The Code is non-prescribed and voluntary, however Signatories must comply with it and undergo an annual self-assessed audit. The Code aims to:

- 1) define industry best practice standards for carbon service providers, project owners, agents, aggregators and advisers in Australia's carbon industry;
- 2) promote consumer protection and appropriate and open interaction with



project owners, Traditional Owners and landowners;

- 3) provide guidance to carbon service providers; and
- 4) promote market integrity, accountability and display international leadership in carbon project development.

The Code is not intended to replace existing consumer, carbon farming, emissions reduction or environmental legislation, policy, regulations or guidance at local, state or federal government levels.



The Code is a form of industry self-regulation and voluntary for carbon industry participants. Accordingly, the Code does not replace existing legislation and regulatory guidance that apply to carbon industry participants in Australia.

Rather, the Code is complementary and additional to the regulatory framework for the Australian carbon industry. It supports clients of Signatories, consumers and stakeholders (including Native Title Holders, Traditional Owners, farmers, and a range of landowners) to identify industry participants that are committed to industry best practice. In this way, Signatories can easily be identified as trusted industry leaders.

Signatory activities

The Code Administrator's compliance function and the Code self-audit checklist focusses on projects commenced on or after 1 July 2018 because this is when the Code became operational. Signatories are

only required to provide information for audits in relation to the Code compliance for activities that they undertook from the date they became a Code Signatory.

Best Practice in the Market

The Code sets standards for Signatories that are intended to complement and be additional to legislative requirements for the carbon industry. The Code aims to support a high standard of industry conduct amongst market participants.

The Code provides a framework for Signatories to stand out in a crowded and complex market. It gives them an incentive to operate at or above bare minimum legal and regulatory requirements, and strives to promote accountable, honest and transparent behaviour.

The Code, and its audit and reporting process, applies to Signatories providing project services and advisory services to consumers. The Code aims to complement



the regulatory framework for Australia's carbon credit market under the *Carbon Credits (Carbon Farming Initiative) Act (Cth) 2011* (CFI Act) and related legislation, which provides for the registration of carbon projects and the creation and trade of Australian carbon credits units (ACCUs). This is known as the ACCU scheme (formerly known as the Emissions Reduction Fund (ERF))². The Code may also cover other Voluntary Offset Schemes as they apply to Signatory's projects carried out in Australia such as Gold Standard, Verified Carbon Standard, and potentially the Clean Development Mechanism³.

Protection of clients, consumers and involvement of stakeholders - who are they and how does the Code apply?

The terms 'consumer' and 'client' are used under the Code and in this guidance. The term 'stakeholder' is also used. Where 'consumer' is used in this guidance, it can refer to 'client' and vice versa, unless otherwise specified in the guidance. At times, someone could be both a client and a consumer for a project. For clarity, this guidance will try to set out the specific expectations the Code has of Signatories vis a vis 'clients' as opposed to 'consumers', or vice versa. Where there is any doubt about what the expectation is in relation to a client or a consumer, or who this may be in a particular situation,

Signatories if in doubt should contact the Administrator to discuss.

More generally 'stakeholders' may be individuals, groups or organisations that may have a less direct connection to a project, however who may still be impacted by or have a stake in a project. The way the Code is implemented, or a project rolled out, may be important to stakeholders, and equally it may be important for the Code or a Signatory to have the input of certain stakeholders, for example, for Signatories' stakeholder engagement plans, and where relevant, for the Administrator in operating and implementing the Code and during the three yearly independent review of the Code.

The Code defines consumers as:

Supply side consumers

Are involved in carbon projects and are consumers as they may be approached by businesses, including Signatories to the Code, to agree to and/or to sign agreements relating to carbon projects to operate on land, sites and/or within their business operations. They require consumer protection from risks associated with agreeing to carbon projects on their land or being undertaken where they may have legal rights and/or have an eligible interest. They may enter into agreements with Signatories for multiple purposes, including to receive advice, to enable carbon projects to operate or for the purchase of credits.

² This guidance refers to ACCU scheme from here on.

³ See Appendix 1 - Key Concepts for further explanation about the relevance of CDM to the Code.



Demand side consumers

Are involved with carbon project as buyers of carbon credits or investors in carbon projects. They are also consumers as they may need to be protected from risks associated with receiving advice about a carbon project and/or purchasing credits. The Code strives to provide protections for

risks associated with purchasing carbon credits produced in Australia from Signatories. However, the Code does not currently provide any protection in relation to credits produced from overseas carbon projects.

Table 1 below provides examples of Supply and Demand side consumers.

Table 1: Supply and Demand side consumers

Examples of Supply-Side Consumers	Examples of Demand-Side Consumers
<p>Includes Native Title Holders and claimants, farmers, landowners, pastoralists, site owners, business owners, landlords and tenants.</p> <p>They may require protections from risks associated with projects being undertaken on land where they have rights or interests.</p> <p>They may require protections from risks associated with receiving advice on, selling, or receiving benefits from the sale of carbon credits.</p>	<p>Includes Government, business or community/other organisations and individuals.</p> <p>They may require protections from risks associated with receiving advice on or purchasing carbon credits for either compliance or voluntary market purposes.</p>

What does it mean to be a Code Signatory or Supporter?

In understanding who can be a Code Signatory, the Code assists in setting out the meaning of 'Signatory'. Section 1.6 of the Code provides that Signatories are involved in:

- the planning, registration, implementation, and management of carbon projects in Australia,

- the provision of legal/financial/technical advice, and
- the trading of carbon credits in the Australian market.

When considering an application to be a Signatory under the Code, the Administrator will consider the main activities being carried out by the applicant in the market at the time and will determine the most relevant category with the Signatory. From time-to-time the Administrator may request updates from Signatories on their activities and this can lead to a Signatory changing categories if



their activities in the market have changed over time.

Importantly, the Code also applies to Signatories engaging in a range of pre-project activities – including before any written contracts are signed. In this regard, the Code aims to provide clients with rights to certain information and advice (from Signatories) before any contract is signed.

Signatories under the Code must submit to the annual compliance review and reporting process. There are two types of Signatory.

Project Services Signatory

These are entities intended to be directly contractually involved in a carbon project such as:

- a project proponent ; or
- an entity partnering a project proponent or a landholder that intends to primarily develop, implement and manage the project under a carbon project contract (a carbon service provider).

Advisory Services Signatory

This category includes entities intending to provide more piecemeal services to consumers including:

- carbon or environmental market-related consulting services;
- auditing services;
- legal services;
- trade and brokerage services; or
- financial services.

This category can also include carbon service providers who may not fall into the Project Services category (i.e. are not intending to primarily develop, implement and manage the project under a carbon project contract, however are still providing

their services to projects). This category may also include:

- Project Agents – entities providing services to assist project proponents to develop and manage carbon projects; and
- Project Aggregators – entities who provide aggregation services to support the process of bringing multiple sources (projects and/or methods) of carbon abatement together under one carbon project.

Requirements of Code Signatories

Signatories are responsible for complying with their obligations and requirements under the Code and Code guidance, including to develop and conduct their business in line with industry best practice, interacting with their clients and other stakeholders in a professional and ethical manner and using the Code logo in accordance with Code guidelines.

In setting high standards of conduct in relation to Signatories' engagement with consumers and stakeholders, the Code importantly provides a mechanism to hold Signatories to account for meeting the requirements of the Code. The two key accountability mechanisms are the annual compliance statement and audit that must be provided by each Signatory to the Code Administrator, and the process under the Code for the handling of complaints and Code breaches. More details on these frameworks can be found in Part 3.

Supporter Category

There are also two other categories of membership under the Code:


- *Government Supporter* - Provides financial and other support for Code. The growing support from various governments has been pivotal to the



Code's foundation, continued expansion and success; and

- *Industry Supporter* - Provides financial and other support for Code and agrees to assume certain other obligations and commits to align procurement practises and investments with the Code.

Code supporters do not have submit to the annual compliance review and reporting process. However, they do need to sign a general statement of support for the Code upon each annual renewal. This confirms that they support the vision, mission, purpose and objectives of the Code, including the ongoing development of the Code and of the Australian carbon market industry generally.

PART 3 : GENERAL RULES AND STANDARDS OF THE CODE

Section 2 of the Code sets out the general rules and standards that must be complied with by Signatories when they operate in the carbon market.

The following information is an outline of these compliance requirements as they relate to the different phases of a carbon project, and how these requirements support best practice under the Code.

If a Signatory is engaged in any of the pre-project or project activities identified in the Code, the Signatory is strongly encouraged to obtain a detailed understanding of the relevant section(s) of the Code, and if in any doubt about what is required, to contact the Administrator, and consider obtaining appropriate independent advice.

⁴ An ACCU project is registered when a declaration is made under section 27 of the CFI Act. A declaration may be subject to a condition that consent from an eligible interest holder must be obtained before the end of the first reporting period (section 28A CFI Act). If such a condition is imposed, the project is still registered, however if

Pre-project activities

Section 2.2 of the Code sets out detailed compliance requirements for pre-project activities. These are activities undertaken before and during the time an application is lodged for project registration and up to when the project is registered⁴. Pre-project activities end when a project is registered.

Pre-project activities relate to provision of timely and accurate information to clients, transparent communication of project responsibilities, and genuine and early engagement with anyone with a legal or beneficial interest in a carbon project, including eligible interest holders.

the condition is not satisfied ACCUS cannot be issued and the project declaration may be revoked. For voluntary offset schemes, like Verra or Gold Standard, pre-project activities are those activities undertaken prior to project certification with the relevant scheme.



The Code does not seek to duplicate regulatory requirements; however, it aims to support and guide signatories towards best practise and enhanced standards, and audits signatories annually on how they perform in achieving these.

Section 2.2 of the Code provides specific requirements for the following activities:

Communication with clients (section 2.2(1))

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. This is an important requirement due to the complexity of carbon projects, the number of risks present and the number of requirements that must be fulfilled. For example, before an eligible offsets project can be declared, the following minimum requirements must be satisfied:

- The project proponent⁵ must pass a 'fit and proper person test'⁶
- There must be an approved methodology for the type of project⁷.
- The project must deliver abatement that is additional to what would occur in the absence of the project.
- The project must meet the applicable additionality requirements⁹.
- The project must be undertaken in accordance with the methodology and comply with other scheme eligibility requirements⁸.

⁵ The project proponent is the person who is responsible for carrying out the project and has the legal right to carry it out: section 5, CFI Act 2011.

⁶ Section 60, CFI Act 2011 and Part 4, CFI Rule 2015.

⁷ Subsection 27(4) of the CFI Act 2011.

All these requirements must be thoroughly canvassed with a client so they understand the legal requirements in setting up a project and their role in the project.

The risks of not doing this properly are enhanced because many carbon projects have long permanence periods (25 years or 100 years for some projects) and will likely affect land use for many years to come. It is important Signatories communicate properly with clients, giving the right information and feasibility advice, to enable clients to structure their projects adequately and to get the right legal instruments in place.

General Project Advice (section 2.2(2))

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).

The level of information required to be communicated between a Signatory and their client depends on the business model that will be used for undertaking the project. Risks may arise where Signatories do not provide sufficient information for clients to understand the proposed project and their role in it. This is especially important where agreements are proposed that involve a client assigning the legal right to act as the project proponent to the Code Signatory and/or where the Code Signatory is engaged in providing financial product advice to the client or is dealing in ACCUs with the client.

⁸ The eligibility criteria for a project to be declared as an eligible offsets project are set out in section 27 of the CFI Act 2011, Part 3 of the CFI Regulations 2011 and section 20 of the CFI Rule 2015



What is an ACCU?

An ACCU is a unit issued to a person by the Australian Government by making an entry for the unit in an account kept by the person in the electronic Australian National Registry of Emissions Units (ANREU). Each ACCU issued should represent one tonne of carbon dioxide equivalent (tCO₂-e) stored or avoided by an eligible offset project.

An ACCU is personal property. The registered holder of an ACCU is its legal owner and may, subject to the *CFI Act 2011* and the *Australian National Registry of Emissions Units Act 2011* (ANREU Act 2011), pass good title to the ACCU to another person. It is important consumers understand this and get the right advice to structure their project and manage their investment and any trading of the asset they may wish to undertake in future (if they choose to own the asset).

An ACCU is also a financial product under the Corporations Act 2001. This means that some Code Signatories, depending on how they are participating in the market, may require an Australian financial services licence (AFSL) to buy, sell and trade ACCUs in the carbon market. The Australian Securities & Investments Commission (ASIC) is responsible for issuing licences under financial laws, and monitoring businesses that provide financial services in financial products. The Code provides training to signatories in this complex area so that they can understand their legal obligations better and how to communicate to clients about these requirements.

Advice on Project Ownership and Engagement with Interest Holders (section 2.2(3))

Appropriate and early 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. It is important that Code Signatories undertake genuine and early engagement with anyone with a legal or beneficial interest in a carbon project, including eligible interest holders.

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 as a minimum 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 and any eligible interest holder has access to independent legal advice in relation to the transfer. In addition to considering what information eligible interest holders may need to be consulted with, projects on land where native title interests have not been extinguished may also need to consider how the *Native Title Act 1993 (Cth)* interacts with the requirements of the project and the Code. It is particularly important to engage with best practise for seeking Free Prior and Informed Consent, including proper engagement with other indigenous stakeholders, such as native title claimants, so that proper legal



processes can be followed. *This is fundamental to satisfy for legal reasons.*

For further information on section 2.2(3) on engagement with Native Title Holders and other indigenous stakeholders refer to Part 5 of this guidance.

Advice on Emission Reduction Fund Method requirements (section 2.2(4)) and project administration (section 2.2(5))

If there is potential for an CFI Act method (or a 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 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. Further information and guidance about method and project requirements 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>.

Project Feasibility Advice (section 2.2(6))

When providing any project feasibility advice to clients, Signatories must take into consideration the client's individual circumstances, the specific requirement of the methods or other voluntary offset project scheme, as applicable.

Additionally, when providing financial product advice, noting an ACCU is a financial product, Signatories must comply with the requirements of the *Corporations Act 2001* (Cth) as it relates to the Australian Financial Services Licensee (AFSL). Signatories must inform clients of the level of financial advice they can provide based on whether or not they hold an AFSL.

Further information on AFSL requirements can be found in the [Australian Securities and Investment Commission \(ASIC\)](https://download.asic.gov.au/media/ejykal/vb/rg236-published-20-may-2015-20220328.pdf) guidance on AFSLs in the carbon market context - Regulatory Guide 236 - here: <https://download.asic.gov.au/media/ejykal/vb/rg236-published-20-may-2015-20220328.pdf>.

General guidance on Licensing: Financial Product Advice and Dealing (Regulatory Guide 36) can also help Code Signatories confirm whether they may be providing



financial product advice in relation to ACCUs:

<https://download.asic.gov.au/media/wdnk4aja/rq36-published-8-june-2016-20220328.pdf>

The requirement to comply with the *Corporations Act 2001 (Cth)* in relation to AFSs is also discussed further below in this guidance.

Advice on Carbon Credit Generation, Sales and Markets (section 2.2(7)-(10))

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,

ANREU advice

It is important for Signatories to assist a client with this information because an ACCU can only be issued to a person if the person has a Registry account (sections 11(5), 141(4) and 148(2), CFI Act 2011). A Registry account can only be opened by a person after the Regulator has considered whether they are a 'fit and proper person' (Section 60 CFI Act and regulation 13(2)(c), Australian National Registry of Emissions Units Regulations 2011 (ANREU Regulations 2011)).

- 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.



Inform on sequestration project under the ERF (section 2.2(11))

A sequestration project removes carbon dioxide from the atmosphere by sequestering carbon in one or more of the following:

- (i) living biomass;
- (ii) dead organic matter;
- (iii) soil.⁹

Further information on the type of information Signatories must provide to their clients on sequestration projects can be found on the Clean Energy Regulator website:

<https://www.cleanenergyregulator.gov.au/ERF/Forms-and-resources/Regulatory-Guidance/sequestration-guidance>

Inform on Project Co-benefits (section 2.2(12))

Co-benefits are direct positive outcomes associated with carbon projects that are additional to the emissions avoided or carbon stored. They are the social and cultural, economic and environmental benefits that occur as a result of a project.

Signatory obligations in relation to co-benefits of a project are found in section 2.2(12) of the Code. In planning and implementing projects, the Code requires Signatories to:

- Acknowledge it is best practise to implement co-benefits where feasible and practical;
- Consider whether there are potential co-benefits associated with the project; and
- Apply their own discretion to determine the extent to which a project incorporates and delivers co-benefits.

The Code supports the development of more projects with co-benefits. The Code

also recognises that transparency and availability of co-benefit information is vital to drive carbon investment toward more projects with significant co-benefits. Where appropriate this should be published in collaboration with beneficiaries and respecting any community intellectual property (IP) (particularly Traditional Ecological Knowledge and Indigenous IP).

As part of its annual audit of Code Signatories, the Code Administrator therefore asks for information on the following to encourage Signatories to consider greater up-take of co-benefits:

- how a Signatory has taken into consideration potential social, environmental and economic co-benefits in the planning and implementation of a project; and
- providing examples of co-benefits delivered if possible.

To assist Signatories in answering these questions, the Code Administrator encourages Signatories to look to best practise guidance in this area. For example, the Queensland Government's Land Restoration Fund (LRF) incorporates a Co-benefits Standard and a Co-benefits Scoping Tool which are most relevant to the ACCU scheme. The LRF has the objective of defining and paying for the co-benefits associated with carbon projects, delivering on other fundamental strategic goals around land restoration, protection and conservation as well as promoting and engaging Indigenous rights and practices. Signatories are encouraged to go the Queensland Government's website at <https://www.qld.gov.au/environment/climate-change/land-restoration-fund/co-benefits> to find the Co-benefits Standard and the Co-benefits Scoping Tool and best practise guidance generally for co-benefits.

⁹ Section 54 of the CFI Act.



The Indigenous Carbon Industry Network (ICIN) have also developed a guidance on Understanding Co-benefits and can be found in the following link: https://assets.nationbuilder.com/icin/pages/185/attachments/original/1664414665/10_Understanding_Co-Benefits.pdf?1664414665

Project activities

Section 2.3 of the Code sets out detailed compliance requirements for project activities. These are activities undertaken once a project is registered, and include all activities in relation to a conditionally registered project.

Project activities relate to best practice project management such as: 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, having a written policy for identifying and consulting with stakeholders.

Section 2.3 of the Code outlines in detail all the requirements that a Signatory must meet with regard to carbon project management activities, as follow:

Provision of a Carbon Project Management Plan (section 2.3(1))

When undertaking a carbon offsets project, Signatories to the Code must develop a written project management plan in consultation with their client. This written project management plan should only be developed after careful consultation with and consideration of other relevant stakeholders (including for example, Native Title Holders, Native Title Claimants,

traditional owners or NRM bodies) and the Code expects the Signatory to properly explain the plan to all parties being consulted.

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.

Advice on Project Activities (section 2.3(2)) and offset reporting and audits requirements (section 2.3(3))

When undertaking a carbon offsets project, Signatories to the Code must provide to a client ongoing information about project activities, including project risks, compliance with the relevant method, and a refer clients to relevant guidance, legislation and the Code in relation to the interpretation of any matter (section 2.3(2)).

Signatories must also provide to a client throughout the project information, and summaries, about offset reporting requirements under the CFI Act, ERF Method or other scheme, including information in relation to audit requirements (including mandatory audits) and site visits that are necessary and any statutory



declarations that may be required from the client to support the audit (section 2.3(3)).

Additional information and guidance on ERF projects can be found on the Clean Energy Regulator website:

<http://www.cleanenergyregulator.gov.au/ERF/Forms-and-resources/Regulatory-Guidance/sequestration-guidance>.

Written Policies and Record Keeping (section 2.3(4))

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 ACCU 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 ACCU scheme. Further information on the ACCU scheme 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>.



Legal Right to Carry Out a Project

An entity has the legal right to carry out a project when they can demonstrate that they:

- have the right to carry out the project activities on the land; and
- have a lawful and exclusive right to be issued all ACCUs that may be generated as a result of the project.

The project proponent has legal obligations under the CFI Act and the relevant methodology. Amongst other things, for example, a project proponent must pass a fit and proper person test (section 60 of the CFI Act). The Code aims to support Signatories in fulfilling their legal requirements.

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.

Consultation with stakeholders (section 2.3(5))

The Code has been developed to ensure that the carbon industry operates to achieve the vision set out in section 1.2 in collaboration with key stakeholders.

The Code aims to increase transparency and accountability from industry participants, support the environmental and social integrity of carbon projects and ensure appropriate consultation with project stakeholders.

Accordingly, the Code places a strong emphasis on transparent and appropriate stakeholder engagement.

Section 2.3(5)(a) provides that Signatories should have a written policy for identifying and consulting with relevant stakeholders. In this context a stakeholder could also include a consumer, who may need to be protected, and Signatories should consider this in developing their Stakeholder Consultation Policy.

The Code Administrator wishes to emphasise the importance of having a meaningful written policy for Stakeholder consultation. This policy is in addition to any obligations Signatories may have to provide information and advice to a client under the Code. At a minimum, the policy should:

- outline the nature and area of the Signatory's business
- explain the Signatory's process for identifying its stakeholders
- explain how the Signatory engages with different stakeholders to ensure they clearly understand the processes and implications of various carbon activities and services, the risks and opportunities



involved, and that they can make informed decisions

- explain how the Signatory will meet Code requirements in relation to the interests of stakeholders
- clearly outline (if relevant) how the Signatory identifies and engages with Native Title Holders or Claimants and Traditional Owners in accordance with the principle of Free, Prior and Informed Consent
- outline the stakeholder consultation process for the lifetime of a particular project, including monitoring and reporting on the project's process and outcomes.

For the Code annual compliance report and audit, if they have not already done so, Signatories will be asked by the Code Administrator to provide a copy of their written Stakeholder consultation policy.

General Disclosures (section 2.3(6))

The Administrator will be checking whether Signatories satisfy the requirement for general disclosures (section 2.3(6)). Signatories must respond in the audit on whether they have communicated effectively with clients, government agencies and other stakeholders to provide them with relevant and accurate information about the projects they are involved with.

Legislative Compliance

Section 2.4 provides that Signatories must comply with all local, state and federal legislation. This section of the Code provides for general requirements in relating to compliance with the law.

Compliance with the Law (section 2.4(1))

Section 2.4 provides that Signatories must comply with all local, state and federal legislation, including but not limited to the *Carbon Farming Initiative Act 2011* (Cth), the relevant ERF Method, relevant guidance provided by the Clean Energy Regulator, relevant environmental and planning legislation and the *Native Title Act 1993* (Cth).

Australian Financial Services Licensee (AFSL) requirements (section 2.4(1)(v) and (2))

An ACCU is a financial product and is regulated under the Corporations Act.

Section 2.4(1)(v) provides that Signatories must comply with AFSL requirements under the *Corporations Act 2001* (Cth), if applicable, including general obligations for a financial services licensee under section 912A.

Section 2.4(2) of the Code specifically outlines and reinforces the requirement to hold an AFSL if a Signatory is providing financial product advice or is dealing in a financial product (i.e. providing a financial service) – noting that Signatories understand that an ACCU is a financial product and that financial services relating to ACCUs are regulated under the *Corporations Act 2001*.



The Code notes that Signatories understand that providing financial services regarding ACCUs and other carbon credits may require an AFSL. Accordingly, Signatories must undertake appropriate due diligence, including obtaining legal advice if necessary, to determine whether an AFSL is required for their business activities – including consideration of the requirements of the *Corporations Act 2001 (Cth)*, and the relevant ASIC Regulatory Guidance including:

- *Regulatory Guide 236: Do I need an AFS licence to participate in carbon markets* - <https://download.asic.gov.au/media/ejykalvb/rq236-published-20-may-2015-20220328.pdf> ; and
- *Regulatory Guide 36: Licensing: Financial Product Advice and Dealing* - <https://download.asic.gov.au/media/wd nk4aja/rq36-published-8-june-2016-20220328.pdf>

Certain sections of the Code outline specific requirements in relation to an AFSL, namely:

- *Pre-project feasibility advice for clients* - section 2.2(6) of the Code provides that Signatories must comply with the AFSL requirements under the *Corporations Act 2001* when providing feasibility advice to a client about a Carbon Offsets Project on the relevant ERF Method requirements, the scheme requirements and the client's individual circumstances.
- *Pre-project advice on carbon credit sales and markets* - section 2.2(10) of the Code provides that Signatories must inform clients of the relevant options available for the sale of carbon credits. Further, Signatories must inform clients whether or not they hold an AFSL and

the implications of whether or not they hold an AFSL in relation to the level of financial advice they can provide.

The Code Administrator acknowledges that Signatories provide a wide range of services to clients – which may or may not constitute financial services in relation to ACCUs or other emissions units.

Accordingly, if a Signatory is not clear about the need to hold an AFSL, it must carefully read ASIC's *Regulatory Guide 236*, and seek legal advice if necessary.

Regulatory Guide 236 is relevant for persons advising carbon market participants and to help a person decide if an AFSL is required to participate in or provide financial product advice and other financial services in relation to carbon markets¹⁰.

A carbon abatement contract under the CFI Act is not a financial product under the Corporations Act

Regulatory Guide 236 is also important for Signatories involved in carbon abatement activities and who enter into carbon abatement contracts related to the Emissions Reduction Fund. It explains an important exemption for Signatories, that is, a regulation made under the *Corporations Act 2001* declares that a carbon abatement contract is not a financial product. Consequently, an AFSL is not required to (for example) provide advice about a carbon abatement contract or deal in a carbon abatement contract.

Some potential support for Signatories in relation to AFSLs

The Code Administrator intends to work with relevant government bodies, including ASIC and CER, to reduce any unreasonable barriers to participating in the

¹⁰ Please also refer to page 8 of *Regulatory Guide 236* – which provides a comprehensive list of other ASIC guidance for AFS licensees and licence

applicants – including *Regulatory Guide 36 Licensing: Financial product advice and dealing*.



carbon market due to the regulatory requirements for an AFSL. This may particularly be relevant for smaller Signatories who are working with few small retail clients. In certain circumstances ASIC has discretionary powers to grant relief (including by exemption) from certain legislative provisions, including where there is a net regulatory benefit or any regulatory detriment is minimal and outweighed by the commercial benefit. The Code Administrator is exploring some options that may be pursued in this regard.

In the meantime, Signatories may consider the following, depending on market activities, and the Code Administrator recommends you get independent legal advice before pursuing:

- Applying to ASIC for an individual exemption or relief under the *Corporations Act* – refer to ASIC Regulatory Guide 51 - <https://download.asic.gov.au/media/d5c/lvmpz/rq51-published-27-july-2020-20211008.pdf> ; and
- Applying to utilise ASIC's regulatory sandbox exemption procedure. This allows a person to test certain innovative financial services or credit activities without first obtaining an AFSL. It aims to facilitate financial innovation in Australia - see ASIC Information Sheet 248 - <https://asic.gov.au/for-business/innovation-hub/enhanced-regulatory-sandbox/info-248-enhanced-regulatory-sandbox/>. However, this exemption does not apply to certain types of clients or financial products - note, you must have total customer exposure of no more than \$5 million and limit individual retail client exposure to \$10,000 for certain products. Currently the sandbox exemption may only apply to people and financial products listed here - <https://download.asic.gov.au/media/576>

[3210/enhanced-regulatory-sandbox-infographic-aug-2020.pdf](https://download.asic.gov.au/media/576/3210/enhanced-regulatory-sandbox-infographic-aug-2020.pdf)

The Code Administrator intends to raise the scope of the regulatory sandbox exemption procedure with ASIC. In the meantime, the Code Administrator recommends Signatories obtain independent legal advice before applying for any of these exemptions.

Another option for Signatories to consider is an arrangement to be an authorised representative of a current holder of an AFSL. An AFS licensee may appoint 'authorised representatives' to provide specified financial services on its behalf - see more for this option at <https://asic.gov.au/for-finance-professionals/afs-licensees/appointing-and-ceasing-an-afs-authorised-representative/who-can-be-an-authorised-representative-of-an-afs-licensee/>



General Requirements

Section 2.5 provides for further important requirements, namely:

- Specific requirements for a Signatory's written agreement with a client (section 2.5(1))
- a Signatory must disclose to a client the Signatory's financial interest in the project, and it should recommend to the client that the client obtains independent legal and/or financial advice (section 2.5(2))

Providing clients with a copy of the Code of Conduct Fact Sheet (section 2.5(3))

Code requirements for Signatories are designed to ensure that clients and stakeholders are dealing with trusted and accountable industry participants. It is therefore vital that clients understand the important protections afforded to them under the Code. This in turn builds confidence in the industry and supports the reputation and standing of individual Signatories.

To ensure that clients understand the benefits of dealing with a Code Signatory, and the accountability mechanisms under the Code, section 2.5(3) provides that Signatories' clients must be *given* a fact sheet that: describes the Code, outlines the process for providing feedback and lodging Complaints under the Code, and that includes a link to further information at the Code of Conduct website.

The Code Administrator has a readily Code Fact Sheet available on the Code website and Signatory Portal. It is therefore a simple process for all Signatories to provide this Fact Sheet to all clients.

The Code Administrator emphasises to Signatories the importance of providing this

Fact Sheet to all clients, *and not just providing a link to the Code website or the full Code text.*

For the Code annual compliance report and audit, if they have not already done so, Signatories will be asked by the Code Administrator to provide evidence that they have in fact provided a Code Fact Sheet to clients. This could be in the form of a (de-identified) email to a client that is attached to the Code Fact Sheet.

A Signatory only needs to provide the Code Fact Sheet to a client once for the current version of the Code.

In-house procedures and complaints handling (section 2.5(4))

As a Signatory to the Code, if you receive a complaint, 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. This document provides guidance to Signatories on how to handle complaints and suspected breaches received from clients and other industry stakeholders. This procedure has been developed to align with the Joint Australian/New Zealand Standard Guidelines for complaint management in organizations (AS/NZS 10002:2014).

Internal processes

Your internal complaints handling procedures must be compliant with relevant legislation and standards on handling complaints in organisations, e.g. *AS/NZS 10002:2014: Guidelines for complaint management in organizations*. Information on how your organisation deals with complaints must be made available to



your staff and clients by make it available in your website.

Upon receiving a complaint from a client, stakeholder or other party, you are required to respond in a timely manner and provide feedback as soon as possible on the expected timeframe for resolution. Within 21 days of receipt of the complaint, you must provide the complainant with feedback on the outcome. If additional time is required, you must inform the complainant and the Code Administrator of this requirement. Signatories must complete their investigation and respond to the complainant no later than 45 days after receiving the original complaint.

If the complainant is not satisfied with the outcome of the investigation undertaken, they may escalate this to the Code Administrator. Contact details for the Code Administrator must be provided to the complainant if required. The complainant may lodge a complaint with the Code Administrator by completing the **Client Complaint Form** available on the Code website's [Resources](#) page. The complainant may also choose to contact a relevant consumer protection authority.

Appropriate records of the internal complaints investigation and outcomes must be maintained by Signatories. Records must be kept in a manner that are easily accessible for audit or other purposes.

This process is illustrated further in *Appendix 2*.

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.

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.

Annual Code compliance process – a refined approach for FY23

Signatories are required to provide an annual confirmation of their compliance with the Code and complete an annual Code compliance report at the end of each financial year (year ending 30 June).



A completed annual compliance 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 monitor Code compliance, in addition to auditing undertaken by the Administrator.

As noted in the 2021-2022 Code Administrator Annual Report, FY22 was the first year that Signatories provided their annual Code compliance report via the Salesforce portal. While this process streamlined compliance reporting and assessment, the Code Administrator is concerned to ensure that a 'tick-a-box' approach does not develop for Code compliance. After consultation with Signatories, the compliance assessment process for FY23 has been further refined to place the responsibility at the executive level of a Signatory to provide a signed declaration that key Code requirements have been met.

Accordingly, the annual FY23 compliance report includes a Compliance Declaration and Code Affirmation that must be signed by a senior representative of the Signatory. This can be the Signatory's Chief Executive Officer, Managing Director, Company Secretary, Chief Financial Officer or other senior executive officer as nominated and authorized by the Signatory's governing body.

Each Signatory must also complete a self-audit checklist to cover key Code compliance requirements, and it must provide certain information in relation to its carbon industry activities.

As outlined above, Signatories may be required to provide evidence and documentation of Code compliance. For example, if it has not already been provided to the Code Administrator, a Signatory will be asked to provide the following

documentation as part of its annual Code compliance report:

- a copy of its Stakeholder consultation policy
- a copy of its complaints handling policy
- evidence to show that it provides a Code Fact Sheet to clients (and not just a link to the Signatory's website or the Code website).

Further details about the FY23 annual Code compliance report are set out in the 2023 Signatory Annual Report Self-Audit Checklist that is available in Signatory Portal.

Signatories are strongly encouraged to clarify any issues with the Code Administrator before submitting their annual Code compliance report. This will reduce the need (and the time involved) for the Code Administrator to issue requests for further information, once compliance reports have been submitted.

Signatories' self-audit compliance reports are not published. All commercial-in-confidence and sensitive information will be treated with appropriate confidentiality. Table 2 below provides Code Administrator's key dates for the Annual Report process.

Table 2: Annual Report Process

Annual Report: Key Dates	
30 June	- end of compliance period under the Code
1 July	- open submission date for Signatory Annual Report
1 August	- submission due date for Signatory Annual Report
September/October	- Code Administrator publishes Code Annual Report



Use of the Code landmark and Promotion of the Code (section 2.5(7))

The Australian Industry Code of Conduct landmark is a valuable and well-recognised asset for integrity within Australia's carbon market.

Signatories are reminded that by signing the Signatory Declaration in their application form, they have agreed to comply with the Section 4.4 of the Code. In displaying the Code landmark on websites and marketing materials, Signatories and partners are also promoting their positioning in the market as trusted and ethical suppliers of carbon-related services.

All Signatories to the Code should comply with Section 2.5(7) of the Code by ensuring:

- they use the landmark appropriately in their engagement with clients or stakeholders.
- they promote the Code on their website – which may include the use of the code landmark linked to the correct version of the Code website (<https://carbonmarketinstitute.org/code/>).
- Their clients are aware of the Code and their Signatory's compliance responsibilities.

Only persons authorised by the Code Administrator as a Signatory to the Code, may use the landmark or any aspect of the Code of Conduct branding.



Obligations of Signatories

Section 2.6 provides for important obligations of Signatories in relation to the Code, including:

- compliance with section 2 in all dealings with clients
- not acting in a way that might bring the Code into disrepute
- not making any vexatious or unfounded claims against another Signatory
- ensuring that their employees, contractors, agents and any other individuals or businesses acting on the Signatory's behalf comply with the latest version of the Code.



PART 4 : CODE ADMINISTRATOR ROLE AND COMPLIANCE'S APPROACH

The role of the Code Administrator

The Administrator plays a key role in addressing issues that impact the integrity and reputation of the carbon industry and promote international leadership on carbon project development. Its operations are governed by a transparent compliance framework, oversight by the Code Review Panel and a regular cycle of independent review.

The Code Administrator carries out an annual compliance review of Signatories' activities and actively investigates and manages complaints under the Code. An Independent Review Panel oversees the Code Administrator and hears all appeals made in relation to decisions made by the Code Administrator.

At its best the Code reinforces rather than replaces regulatory frameworks, seeking to build a culture of best practice beyond

basic compliance. The Administrator is also responsible for:

- Developing training and supporting material on the Code to assist Signatories;
- Engaging with the independent Code Review Panel;
- Reviewing compliance including undertaking audits and initiating enquiries into compliance;
- Handling complaints and alleged breaches;
- Enforcing sanctions;
- Preparing an annual report on the Code's operations; and
- Overseeing the strategic growth and direction of the Code.

The specific activities and duties of the Code Administrator are set out in section 3.1 of the Code.



The role of the Code Review Panel

The Code Review Panel is an independent body that is responsible for the oversight, monitoring and direction of the Code, including to arbitrate compliance cases that are both referred from the Code Administrator and referred through appeals against actions and sanctions imposed by the Code Administrator.

Established in June 2021, the Panel is an independent body made of three members, who are all independent of the Code and its Signatories.

The Panel operates under a Terms of Reference and meets regularly to consider:

- Complaints handling processes and activities;
- Appeals of enforcement actions; and
- The Code Administrator's ongoing approach to compliance.

The specific activities and duties of the Code Review Panel are set out in section 3.2 of the Code.

The Independent Review of the Code

Under the Code framework, there is a three-yearly independent review of the Code, functioning as a critical transparency and accountability mechanism, which enables stakeholders to have input into the ongoing maturity, development, and integrity of Australia's carbon industry.

The first independent review was conducted at the end of the Code's two-year foundational stage, and implementation of its 46 recommendations

enabled the Code's expansion into full operation as intended by 1 July 2021.

The next review slated for end of financial year 2023.

The Administrator's approach to Compliance

The Administrator acknowledges the shared responsibility that Signatories, the Code and other stakeholders have to uphold and enhance the reputation of Australia's carbon industry. The Administrator's approach to compliance is to prioritise supportive engagement that assists Signatories to understand and meet compliance obligations, rather than enforcing punitive sanctions that drive Signatories away.

The Administrator will seek to deter, detect and respond to non-compliance in a consistent, transparent and fair manner. This approach has been developed to align with the below guiding principles to:

- Encourage transparency and trust between Signatories and the Administrator;
- Encourage Signatory accountability and alignment with best practice;
- Educate on and advocate for consumer protection;
- Prioritise guidance, education and engagement with Signatories where best practice is not demonstrated;
- Have regard to Signatories' demonstration of efforts and endeavours to align with best practice;
- Exercise discretion when assessing cases of non-compliance; and
- Implement a staged approach to enforcing compliance, raising industry standards, increasing expectations and improving consistency over time.



For the annual self-audit, the Administrator will assess Signatories as either “Compliant”, “Materially Compliant” or “Non-Compliant”. Signatories that are materially compliant may be assessed, if appropriate, by the Administrator as those that have (a) met most of the relevant Code requirements; and (b) have attested that they have already rectified, or that they will rectify the non-compliance by 31 December 2023.

Where a Signatory has identified a non-compliance to the Administrator, this will not be treated as a Code breach until such time as it is clear that the Signatory is not willing or is not able in the opinion of the Administrator to rectify the non-compliance within the timeframe provided. The Administrator will weigh up the seriousness of the non-compliance in accordance with this guidance in its assessment.

Full Compliance

1. Signatory has met all relevant requirements of the Code to them; or
2. The particular Code requirements were not relevant to the Signatory in the specific compliance year

Material Compliance

1. Signatory has Materially met most of the relevant Code requirements; and
2. Attested where there was any non-compliance, that it is now rectified or will be rectified by 31 December of the year of the self-audit.

Non-Compliance

1. Signatory has failed to meet the majority of the requirements of the Code relevant to them; or
2. Signatory has not rectified or not agreed to rectify the non-compliance, and this is recorded as a breach of the Code; or
3. The Signatory did not complete the Annual Report self-audit checklist within the appropriate timeframe.



Confidentiality and Conflict of Interest Policies

Confidentiality, Privacy and Data Use Policy

Under the Code, confidentiality and information sharing controls applies to all information assets held by the Administrator and covers external sharing and internal management of confidential and sensitive information. It provides a process for identifying confidential and sensitive information, restricting access to such information as necessary, appropriate use of software and information management systems, and appropriate record keeping.

The Code of Conduct Confidentiality and Data Use Policy is available [here](#).

Conflict of Interest Policy

Conflicts of Interest Policy applies to conflicts of interest that may arise:

- Within the Code Administrator; and
- Between the Code Administrator and the CMI.

Conflicts between any parties other than those noted above (as relevant to the Code of Conduct) are excluded from this policy. Whilst conflicts may arise between other internal CMI and Code Administrator stakeholders, there exist other policy structures that govern conflicts of interest that may arise.

The Code of Conduct Conflict of Interest Policy is available [here](#).

The Administrator's Engagement with Signatories (Education & Training sessions)

The focus for the Administrator is to engage with Signatories in order to provide advice and support to help them to understand their obligations and how to comply with them.

Education and Training

The Education and Training sessions are designed to improve overall conduct in the Australian market (particularly Code Signatories) and avoid non-compliance through the provision of resources, training materials and educational sessions. To educate Signatories, the Administrator will:

- Engage with Stakeholder and Signatories to co-design guidance materials on how to comply with Code obligations;
- Publish fact sheets, checklists and handouts to promote the Code and its rules;
- Hold workshops and webinars for Signatories to raise questions; and
- Incorporate feedback from Signatories, clients and stakeholders to improve the Administrator's systems and processes, and understanding of best practice, where appropriate.

These are opportunities not just for the Code Administrator, but also for broader stakeholders – including governments, Signatories, Partners and others.



Administrator's Interaction with Signatories

Transparent engagement with the Administrator on a Signatory's activities and processes throughout the compliance year will assist the Administrator in working to support compliance and negative outcomes.

The Administrator is taking an intelligence-led risk-based approach that considers the behaviour, motivations and levels of practice of Signatories, as shown in the table 3 below:

Table 3: Administrator's Interaction with Signatories

<p>These Signatories will be least likely to contravene obligations and will be promoted as demonstrating industry best practice.</p> <p>1. <u>Signatories that are engaging with the Administrator</u> maintain regular contact to ensure they understand their obligations under the Code, conduct self-assessments of their ability to comply, provide requested information on time, and actively promote the Code to clients and stakeholders.</p>
<p>These Signatories will receive support in order to meet compliance obligations.</p> <p>2. <u>Signatories experiencing difficulty in meeting obligations</u> contact the Administrator early to identify difficulties in understanding and/or meeting obligations under the Code, seek guidance on how to correct identified non-compliance, demonstrate progress in developing internal systems and processes to improve compliance.</p>
<p>These Signatories are likely to experience stronger compliance action.</p> <p>3. <u>Signatories that are unwilling to meet their obligations</u> rarely contact the Administrator to confirm their understanding of their obligations under the Code, do not reply promptly to requests for information, information provided is often incomplete or inaccurate, fail to take steps to remedy non-compliance and are not genuine in their efforts to meet obligations under the Code.</p>



Administrator's Monitoring and Enforcement approach

Monitoring

The Administrator monitors and reviews compliance under the Code to ensure Signatories continue to operate professionally and in compliance with Code obligations. Compliance monitoring activities will be undertaken by the Administrator through:

- Ongoing engagement between the Administrator and Signatories;
- Audit compliance checks;
- Annual self-audit checklists completed by Signatories;
- Analysis of client complaints;
- Investigation of cases in which Signatories may have breached the Code;
- Analysis of conciliation and arbitration cases;
- Media reports;
- Signatory renewal process;
- Information received from other Signatories; and
- Any additional sources.

The Administrator will achieve its responsibilities to monitor Code compliance in an efficient and targeted way, with careful consideration of balancing administrative burden to both the Administrator and Signatories with ensuring that Code risks are adequately monitored.

The Administrator will target compliance monitoring activities by:

- Requiring Signatories to provide certain evidence or documents for review and assessment by the Administrator for new Signatory applications and annual Signatory reporting;

- Building capability in understanding and obtaining access, where possible, to public and certain non-public information on Signatories' compliance activities under regulatory or other carbon offset schemes and reducing Code compliance monitoring activities where Code risks are adequately addressed through other schemes;
- Utilising information obtained from compliance monitoring and investigations of complaints and breaches to identify emerging risks and to target future compliance monitoring and education activities; and
- Publishing compliance priorities and results of compliance monitoring efforts in annual report/website.

Enforcement

The Administrator undertakes enforcement action as necessary to stop harm and to disrupt business practices that are contrary to the Code.

The Administrator's consideration and treatment of suspected breaches will be done in the context of a Signatory's:

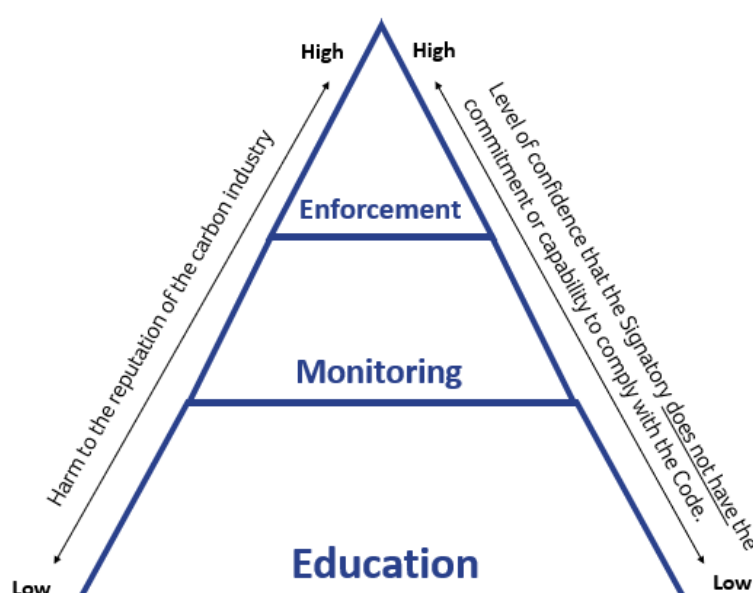
- overall level of practice (leading, well-established, emerging, absent);
- ability to evidence meaningful and positive engagement with clients (consumers);
- commitment to continuous improvement of their own practices and those of the industry; and
- ongoing interaction with the Administrator that provides an understanding of 'reasonable efforts' to comply.

Table 4 below provides details of the Code Administrator's approach when considering enforcement action and enforcement option.

**Table 4: Matters for Considering Enforcement Action and Enforcement Option**

Enforcement action is likely to occur when:	Considerations for undertaking an investigation include:	Options available for the Administrator to take enforcement action include:
<ul style="list-style-type: none"> Reasonable grounds have been established that a breach has occurred; A Signatory has not taken steps to return to compliance; and There is evidence of deliberate non-compliance. 	<ul style="list-style-type: none"> Evidence of repeated non-compliance over time; and The impact of the non-compliance on the integrity of the Code and risk to the reputation of the carbon industry. 	<ul style="list-style-type: none"> Request Signatories to take action to remedy non-compliance within an agreed timeframe and to provide evidence to the Administrator; Request Signatories to appoint an independent auditor to audit areas of non-compliance and provide results and actions to the Administrator; Identify Signatories with unrectified severe breaches in Annual Report or on the Code website; and The suspension and removal of Signatories from the Code.

Note Table 4 identifies: when enforcement action could likely occur; examples of matters the Administrator will consider when deciding to investigate; and the enforcement options available to the Administrator under the Code.

Figure 1: The Administrator approach to promote and ensure compliance.

Note Figure 1 shows the focus of the Administrator on education and monitoring, with Signatories being subject to enforcement action where: there is a high level of confidence that Signatories are not committed or do not have the capability to comply with Code obligations; and where identified non-compliance represents a high level of actual or perceived harm to the carbon industry.



Administrator Complaints handling and breaches procedure

The Code Administrator is responsible for investigating potential complaints and breaches of the Code.

The Code Administrator responds to complaints and suspected breaches of the Code. This procedure has been developed to align with the Joint Australian/New Zealand Standard Guidelines for complaint management in organizations (AS/NZS 10002:2014).

A Code breach may be referred to the Code Review Panel by the Code Administrator. If a breach is handled solely by the Code Administrator, a Signatory is entitled to appeal a ruling to the Code Review Panel.

The Code's breach investigation process also allows for multiple stages of investigation by the Administrator, and case referral to the Code Review Panel for assessment if required. In these processes, the Administrator will consider in particular:

- The timing and quality of the engagement process;
- The level of knowledge and understanding of best practice;
- Understanding of risks to stakeholders and efforts to mitigate these risks;
- The perspectives of the Indigenous stakeholder groups involved; and
- The Signatory's commitment and willingness to improve standards of practice over time.

When specifically looking to remedy any poor practice or suspected breaches of the Code, the Administrator may require Signatories to provide explanations and specific evidence to

Complaint

An expression of dissatisfaction with an action or service of a Signatory where a response or resolution is explicitly or implicitly expected (see AS/NZS 10002:2014).

Breach

Any failure to comply with the Code including the Code rules, and other documentation referred to in the Code.

Dispute

A complaint by a client in relation to a Code Signatory, that has not been immediately resolved when brought to the attention of that Signatory.

corroborate their actions, including written documentation (including possibly from Registered Native Title Body Corporates RNTBCs where appropriate) attesting to their stakeholder engagement processes.

When specifically looking to remedy any poor practice or suspected breaches of the Code, the Administrator may require Signatories to provide explanations and specific evidence to corroborate their actions, including written documentation (including possibly from RNTBCs where appropriate) attesting to their stakeholder engagement processes.



The Administrator will work with a range of Signatory and non-Signatory stakeholders over time to understand the most efficient and effective types of evidence that could be consistently provided, noting any legal, commercial or other considerations.

Notifying the Code Administrator

As a Signatory to the Code, you have agreed to conduct your business in line with the Code requirements and must inform the Code Administrator:

- within 10 business days of receiving a complaint from a complainant;
- within 10 business days of being notified by the relevant body of receipt of a complaint, of any complaints lodged against you with the Regulator, the Department, an ombudsman or a consumer affairs body.
- within 10 business days of self-reporting a breach to the relevant body such as

the Regulator, the Department, an ombudsman or a consumer affairs body.

- within 10 business days of becoming aware of a major or severe suspected breach of your obligations under the Code (as listed in the Breach Matrix under section 3.6 of the Code).
- within 15 business days of becoming aware of any other suspected breach of your obligations under the Code.

Timeframes for Signatories to provide suspected breach information to the Code Administrator are provided in the in Table 5. Signatories can notify the Code Administrator by completing the **Signatory Self-Reporting Form** available on the Code website's [Resources](#) page.

For further details of Code breaches, see section 3.5 of the Code and the Code Administrator's Complaints Handling and Breaches Procedure is available [here](#).

Table 5: Signatory Breach Reporting Timelines

Code breach reporting required by Signatories	Major and Severe	All other Breaches
Signatory breach self-reporting	Within 10 business days [2.5(6)(f)]*	Within 15 business days [2.5(6)(g)]
Signatory providing information regarding breaches of the Code upon request by the Code Administrator	Within 10 business days [2.5(6)(g)]	Within 15 business days [2.5(6)(n)]
Signatory breach reporting of other Signatories	Within 15 business days [2.5(6)(n)]	Within 20 business days [2.5(6)(i)]

*Corresponding section in the Code.



PART 5 : ENGAGING WITH NATIVE TITLE STAKEHOLDERS

Intention of the Code's Native Title Engagement Requirements

The Code intentionally distinguishes between its requirements for engagement with different types of stakeholders. This is due to the uneven treatment and protection of different stakeholder groups in Australia's carbon market.

The Code requires stronger levels of engagement with Indigenous stakeholders to support implementation of best practice engagement across the carbon industry. Indigenous stakeholders could include, but are not limited to, Native Title Holders, Native Title Claimants, traditional owners, or representative bodies.

The Code encourages Signatories to meaningfully engage in similar but differentiated ways with:

- relevant Indigenous persons and Indigenous representative bodies (specifically Registered Native Title Body Corporates (RNTBCs)) who hold a legal right and/or eligible interest in land and waters where a carbon project is being developed (referred to in Code text as "Native Title Holders"); and
- registered native title claimants (referred to in Code text as "Native Title Holders with a claim").

There may be different legal considerations for Native Title Holders as compared to registered Native Title Claimants, however in promoting best practice the Code attempts to go beyond this distinction (except where there is a need to maintain a distinction, for example when obtaining a signed EIH consent form or working to an RNTBC's requirements). For example, the Code Administrator strongly encourages Signatories to engage with native title claimants or traditional owners where possible, as a matter of best practice,



noting that native title determination does not create new rights but merely recognises existing rights of traditional owners. Further information on Indigenous Rights and Interests can be found ICIN website:

https://www.icin.org.au/indigenous_carbon_projects_guide_downloads .

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.

For further detail on project proponent (ownership), please review ICIN's Guidance 6 Indigenous Rights and Interest in the following link:
https://assets.nationbuilder.com/icin/pages/185/attachments/original/1664414311/6_Indigenous_Rights_and_Interests.pdf?1664414311

Engaging with Native Title stakeholders – further details

When undertaking carbon offsets projects on native title land or waters, or on land where Native Title interests have not been extinguished, the Code includes requirements for Signatories with regards to Native Title Holders and registered or future claimants.

The Administrator is neither a dispute resolution body nor an arbiter of native title consent processes, and does not seek to duplicate such processes managed by other institutions, such as the Administrative Appeals Tribunal.

However, as discussed in the section above, the Administrator is responsible for investigating potential complaints and breaches of the Code and failure to follow a FPIC process may result in a breach of the Code and may result in compliance action in line with Section 4 of this guidance.

The Administrator's approach to raising best practice standards for engagement with Traditional Owner stakeholders is to:

1. Encourage alignment with key principles through the Code requirements;
 - This will include the facilitation of interaction between a range of stakeholder groups, including Indigenous stakeholders..
2. Encourage and allow for Signatories to be transparent in providing the Administrator with contextual and circumstantial information; and
 - The Administrator encourages Signatories to show transparency and



accountability to the Administrator, and if relevant publicly, in relation to their engagement with Traditional Owners, and particularly encouraging knowledge sharing around the complexities of engagement across different regions, project/method types, legislative contexts and business models. Following a best practise FPIC process means designing an engagement process (including timeframes) in collaboration with all relevant Indigenous stakeholders.

3. Support Signatories to improve industry practices over time.
 - The Administrator will encourage engagement in this area in a consistent and appropriate way.

This approach also applies to the Administrator's compliance reporting, review, assessment and breach processes with relation to native title requirements.

These requirements have been developed to align with best practice defined in the Table 5 below by the Indigenous Carbon Industry Network, the Clean Energy Regulator and the United Nations.

**Table 5: Relevant Domestic & International Human Rights Principles**

From the Indigenous Carbon Industry Network's February 2020 guidance [Seeking free, prior and informed consent from Indigenous communities for carbon projects](#) (ICIN Guidance):

- Early, ongoing and respectful engagement should occur. This can help to: ensure fair treatment of Traditional Owners, create trust, provide project assurance, mitigate project risk, provide confidence and improve long-term financial outcomes for all parties involved.
- As a matter of best practice, engagement with Native Title Holders (through the relevant RNTBCs) should occur and consent should be obtained before the project is registered.
- As native title determination does not create new rights but merely recognises existing rights, Native title claimants should also be engaged and provide consent prior to registration.

The nine steps for best practice identified by ICIN in its guidance should be followed. Refer to the guidance document for the detail on these steps. Further guidance on how to engage with indigenous communities can be found in the following website: https://www.icin.org.au/indigenous_carbon_projects_guide_downloads

From the United Nations' September 2007 [Declaration on the Rights of Indigenous Peoples](#) (UNDRIP):

- Consultation and cooperation in good faith with Traditional Owners should take place in order to seek free and informed consent prior to the approval of any project affecting their lands or territories and other resources.
- There is a need to respect and promote the inherent rights of Indigenous peoples, especially their rights to their lands, territories and resources.

From the Clean Energy Regulator's June 2018 guidance [Native title, legal right and eligible interest-holder consent guidance](#) (CER Guidance):

- Project success is best realised with genuine, early and formal engagement with stakeholders.
- Minimal upfront engagement with native title groups constitutes high-risk practice.
- It is critical that those providing consent know what is being agreed to.
- Entering into an Indigenous land use agreement (ILUA) is strongly recommended by the CER. As well as providing the strongest legal certainty, it ensures that Native Title Holders are engaged, and protects the proponent from any future changes to native title on the land.
- Although proponents are not legally required to engage with registered claimants, they should be aware that native title can subsequently be determined to exist on unclaimed land. Therefore, engaging with claimants is not only best practice, but it can also help to reduce project risks.
- Proponents can seek advice and information from relevant land councils, the [Native Title Register](#), and the [National Native Title Tribunal](#).



Signatories must be aware of the key principle of free, prior and informed consent (FPIC).

Free, prior and informed consent (FPIC) means that consent is: free from force, intimidation, manipulation, coercion, or pressure; obtained prior to the project starting; and obtained after Indigenous people are fully informed about the costs, benefits, risks and any other implications of the project, and have the opportunity to seek independent advice.

Free, prior and informed consent is both a process and an outcome. The outcome is the right of Indigenous people to say 'yes' or 'no' to a carbon project which impacts on their rights, based on comprehensive, accurate, timely, and easy-to-understand information. This is a higher standard than the mere right to be consulted. FPIC is also a decision-making process and a framework for ensuring that project developers properly engage and involve Indigenous people in carbon project decision-making.

Further detail on Free, Prior and Informed Consent (FPIC) and its principles can be found in ICIN's guidance 7:

<https://assets.nationbuilder.com/icin/pages/185/attachments/original/1664414313/7. Free Prior and Informed Consent %28FPIC%29.pdf?1664414313>

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.

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). Table 6 provides further information on how Signatories must meaningfully 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.

The below 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.

The Administrator will work in an ongoing manner with Signatories, initially to understand current activities in relation to their engagement with Indigenous stakeholders, and then ongoing through education, monitoring and support to progress Signatories towards full alignment and compliance with the Code over time.

The Administrator will work to lift the baseline of how the industry engages with Traditional Owners and seek to ensure a level of transparency and consistency of practice from all Code Signatories.

More detail on what constitutes the above levels of best practice is provided in *APPENDIX 3*.

Seeking Consent

Legally, Signatories must ensure that Native Title Holders have provided consent to the ongoing operation of the project, prior to any ACCU issuance.

Best practice engagement with Native Title Holders or Native Title Claimants should begin well before project registration. Claims might be registered after project registration (or ACCU issuance) in which case best practice would be to monitor for new claims and start engagement as soon as possible (noting that claim groups often have limited capacity, and the process would need to be resourced). Under the Code Signatories must have made reasonable efforts to ensure that Native Title Holders and Native Title Claimants have provided consent prior to the registration of the project. 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.



Table 6: Signatories due diligence in order to meaningful engage with Native Title Holders and Native Title Holders with a claim

Requirements to meet the Code's reasonable efforts requirement when engaging with Native Title Holders and Native Title Holders with a claim

- ☐ Genuine and early engagement with Native Title Holders and where possible, claimants, has been undertaken.
- ☐ 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.
- ☐ Consent to the ongoing operation of the project has been sought and obtained prior to the application to register a project being lodged.
- ☐ The rights of Native Title Holders to give or deny consent are respected.
- ☐ 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.
- ☐ All parties have a mutual understanding about the project conditions and requirements.
- ☐ Reasonable efforts have been made to enter into legally binding agreements with Native Title Holders before an application to register a project is lodged.
- ☐ Reasonable efforts have been made to consult with Native Title Holders with a claim and to obtain agreement, as appropriate.
- ☐ Native Title Holders have been provided with a reasonable amount of time to make an informed decision about the project being undertaken.
- ☐ Native Title Holders have been advised of the intention to register a project over native title land.
- ☐ 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.
- ☐ Native Title Holders are made aware of the Code of Conduct, and of the Signatory's own complaints handling process.
- ☐ Native Title Holders are advised of any approvals obtained or required from any government or regulatory authority.



APPENDICES

Appendix 1: Key concepts

Australian Carbon Credit Unit has the meaning given by section 5 of the CFI Act.

Breach, any failure to comply with the Code of Conduct including the Code Rules, and other documentation referred to in the Code.

Carbon Credit, generic term for various types of units recognised under carbon offsets schemes in Australia and overseas, which are associated with greenhouse gas emissions reductions or carbon abatement (e.g. an ACCU or a VER)

Carbon Project Contracts. The legal right to carry out a project can be transferred from a landowner to a carbon service provider under a contract. Carbon project contracts should be drafted clearly to ensure that whichever party is acting as project proponent can meet its legal obligations under the CFI Act, or other relevant requirements, with respect to the project without compromising fairness, transparency and accountability to the landowner or other interest holders. The transparency and fairness of processes around negotiating, entering into and managing a project under a contract is a very important focus of the Code. The Code aims to protect consumers from risks associated with agreeing to carbon projects on their land or being undertaken where they may have legal rights and/or have an eligible interest. The Code aims to ensure Signatories are fair, transparent and accountable during contract negotiations.

Client, for the purposes of this Code means both supply-side consumers and demand-side consumers in the Carbon Market. For the avoidance of doubt, reference to client within Part 2 (General Rules and Standards) will have regard to the context in which the term is used. For example, all requirements relating to project level activities will be deemed to refer to a supply-side consumer.

Carbon Market, means all activities related to the generation and trading (buying and selling) of carbon credits.

Carbon Offsets Project means a project carried out in accordance with a Scheme. The Code will only apply to projects, which are yet to commence as defined by the rules of the Scheme, as of 1 July 2018

Carbon Service Provider. A carbon service provider will usually be directly contractually involved in a project, however it may not be the project proponent and it may not hold the legal right to carry out a project. It is a broad term for entities that partner a project proponent or landholder to develop, implement and manage a project under a written carbon services agreement. For example, a landholder may be the project proponent, however, requires an entity to provide it with specialist services to directly assist to plan, develop, implement and manage the project. If a landholder is the project proponent, they retain the right to undertake the project and be issued all ACCUs generated by the project. In this case, a carbon service



provider under a carbon services agreement may typically require either a monetary fee for its services or a share of the ACCU revenue generated by the project.

Clean Development Mechanism. The Clean Development Mechanism, defined in Article 12 of the Kyoto Protocol, allows a country with an emission-reduction or emission-limitation commitment under the Kyoto Protocol to implement an emission-reduction project in developing countries. Such projects can earn saleable certified emission reduction (CER) credits, each equivalent to one tonne of CO₂, which can be counted towards meeting Kyoto targets - <https://unfccc.int/process-and-meetings/the-kyoto-protocol/mechanisms-under-the-kyoto-protocol/the-clean-development-mechanism> Although the CDM all but collapsed in 2012, the scheme still operates and has been used more recently in 2020 due to new support from the United States, China and a few other countries. Since 2013, 1,200 projects have been registered, with a cumulative total of 2 billion tonnes of CO₂ certified emission reduction credits issued. Most of those new projects and newly issued credits represent investments by companies in China, Mexico, and South Africa who want to accumulate certified emission reductions for future use (<https://cepr.org/voxeu/columns/collapse-clean-development-mechanism-scheme-under-kyoto-protocol-and-its-spillover>). We understand there are currently no CDM projects under the Code, however this may change in future.

Dispute, a Complaint by a client in relation to a Code Signatory, that has not been immediately resolved when brought to the attention of that Signatory.

Eligible interest holders (EIH) are specified entities that have an interest in the project land and include banks (where there is a mortgage in place), the Crown Land Minister if the project is on Crown land and registered native title body corporates if there is a native title determination in place for the land. Eligible interest as defined under section 5 of the CFI Act.

Market integrity. For the purposes of adherence by Signatories to the articles of the Code of Conduct, Market Integrity comprises the following principles:

- (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.

Native Title Holders. Native title is the bundle of rights and interests in land and waters that Aboriginal and/or Torres Strait Islander people can hold under traditional laws and customs. Native title may exist over an area as common law even if native title rights have not been formally recognised (or determined) by a court. The process for recognising native title rights and interests is set out in the *Native Title Act 1993 (Cth)* (Native Title Act). In summary, members of a native title claim group seek a decision from a court that native title exists so their rights and interests are formally recognised under Australian Law. This is called a native title determination. A determination is a decision by the Federal Court (or the High Court on appeal) that native title either does or does not exist in relation to a particular area of land or waters. The Native Title Act requires traditional owners to prove they have maintained a



traditional connection to their country since sovereignty. The native title recognition process can take a long time, sometimes up to 15 years or more. This is because it involves a number of different people and processes. If the Federal Court determines native title rights and interests exist, the group must set up a prescribed body corporate to hold the rights and interests, as an agent or on trust, for the group. Once registered, this body corporate is termed a registered native title body corporate. A native title determination must set out the relationship between native title rights and interests and any other interests in the determination area, including whether the native title holder holds exclusive or non-exclusive rights over the land. For more information, see section 225 of the Native Title Act or <https://www.cleanenergyregulator.gov.au/DocumentAssets/Documents/Native%20title,%20legal%20right%20and%20eligible%20interest-holder%20consent%20guidance.pdf>.

Native Title Holders with a claim. Refers to individuals, groups or communities who have made a claim for native title to the Federal Court and that claim has been accepted for registration by the National Native Title Tribunal. The term ‘determined native title holders’ is used to refer to individuals, groups or communities whose native title rights and interests have been recognised by a native title determination. Legally, there are important distinctions between claimants and native title holders under the Native Title Act. However, both registered claimants and native title holders may have procedural rights under the Native Title Act for acts that affect native title. When engaging with native title claimants, it is important to recognise that a native title determination does not create new native title rights, however confirms the existence or extent of impingement of existing native title rights. It is not the case that native title claimants do not have native title rights—rather, these rights have not yet been arbitrated on by a court. Registered native title claimants are reflected in sections 224 and 253 of the Native Title Act and discussed more in <https://www.cleanenergyregulator.gov.au/DocumentAssets/Documents/Native%20title,%20legal%20right%20and%20eligible%20interest-holder%20consent%20guidance.pdf>.

Project Proponent. Every project registered under the ACCU scheme must have a **project proponent**, which is the entity recognised by the Clean Energy Regulator as being both responsible for carrying out a project and having the legal right to carry out a project. Provided the project proponent holds the **legal right to carry out the project**, the project proponent can be anybody, for example, the owner of the land, the lessee of the land, a carbon project developer or a carbon service provider, etc. If the project proponent is not the landowner, they should undertake appropriate due diligence to ensure the landowner is able to transfer full legal right to them.

Registered Native Title Body Corporates (RNTBCs) are registered organisations established to represent traditional owners and their interest when a determination recognising native title is made by the Federal Court. This is in accordance with the Native Title Act 1993 requirements. They are most known as prescribed bodies corporate (PBCs). Further information on RNTBCs can be found in the following website: [https://www.oric.gov.au/registered-native-title-bodies-corporate#:~:text=When%20a%20determination%20recognising%20native,title%20bodies%20corporate%20\(RNTBCs\)](https://www.oric.gov.au/registered-native-title-bodies-corporate#:~:text=When%20a%20determination%20recognising%20native,title%20bodies%20corporate%20(RNTBCs))



Sequestration offsets projects. Under the CFI Act, a project is defined as a *sequestration offsets project* if it is a project:

(a) to remove carbon dioxide from the atmosphere by sequestering carbon in one or more of the following:

- (i) living biomass;
- (ii) dead organic matter;
- (iii) soil; or

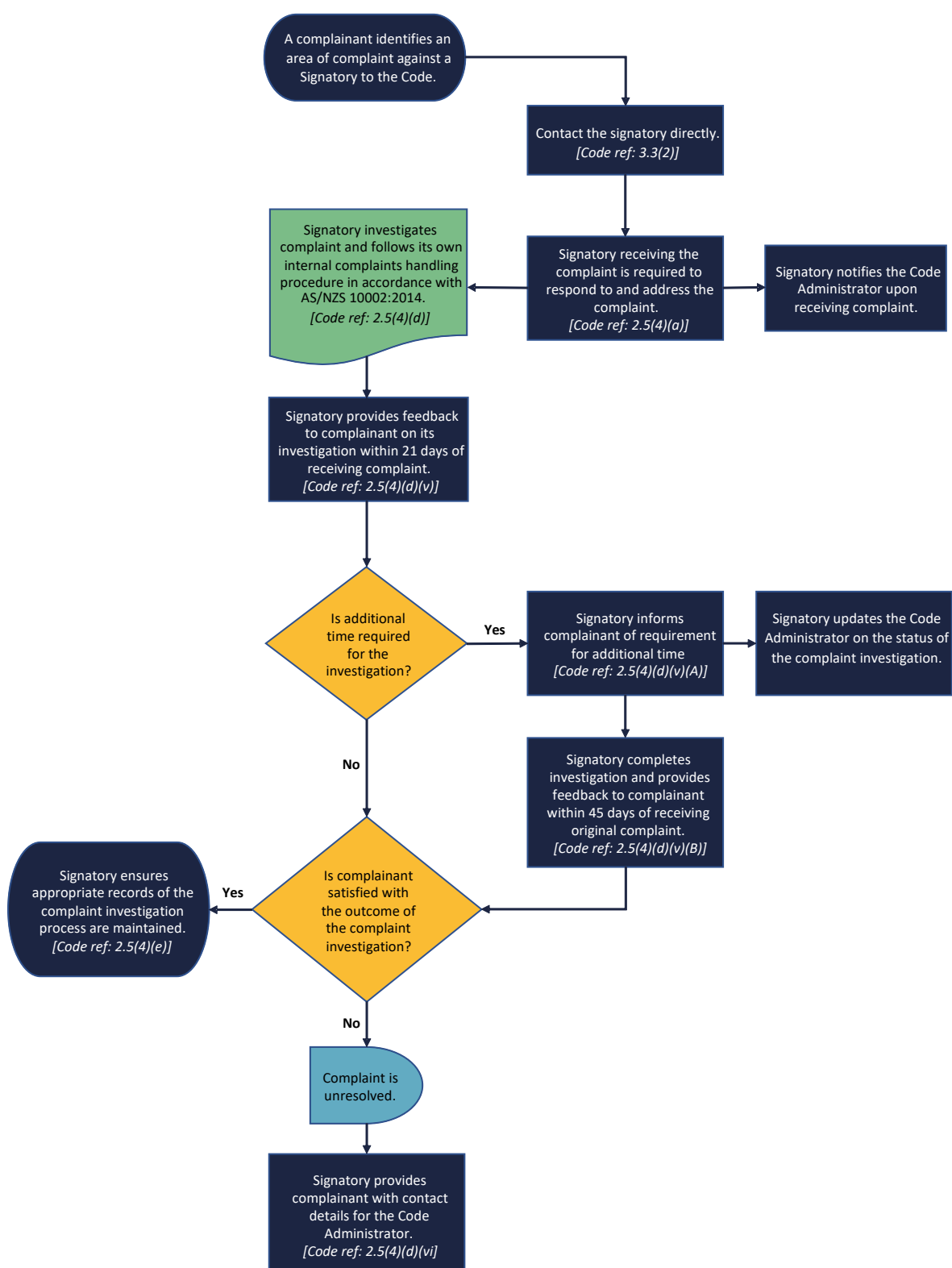
(b) to remove carbon dioxide from the atmosphere by sequestering carbon in, and to avoid emissions of greenhouses gases from, one or more of the following:

- (i) living biomass;
- (ii) dead organic matter;
- (iii) soil.

Voluntary Offset Schemes, voluntary offset standards and schemes other than the ERF which provide for the creation of carbon credits. This includes Gold Standard, Verified Carbon Standard, Clean Development Mechanism and other similar schemes.



Appendix 2 - Internal Complaints Handling Process (flow chart)





Appendix 3 – Compliance definitions

Table 4: Compliance Definitions

A 'leading' Signatory demonstrates compliance with all aspects of the Code's requirements in relation to native title engagements and consent processes. The Signatory demonstrates that:

1. The quality of engagement with all relevant native title stakeholders follows best practice standards as outlined in ICIN guidance.
2. The timing of the engagement process is in line with ICIN guidance.
3. The Signatory's level of knowledge and understanding of best practice native title consents processes and outcomes as outlined in ICIN guidance is high.
4. The Signatory has understanding of, and taken all appropriate actions to mitigate, potential and actual risks to all relevant native title consumers and stakeholders.
5. The Signatory is willing and committed to transparently raising the standards of their own native title engagement and consents practices over time as appropriate.

A 'well-established' Signatory demonstrates compliance which is not likely to result in adverse material impacts to native title stakeholders. The Signatory demonstrates that:

1. The quality of engagement with all relevant native title stakeholders follows best practice standards as outlined in ICIN guidance.
2. The timing of the engagement process is mostly in line with ICIN guidance.
3. The Signatory's level of knowledge and understanding of best practice native title consents processes and outcomes as outlined in ICIN guidance is reasonable.
4. The Signatory has understanding of, and taken some actions to mitigate, potential and actual risks to all relevant native title consumers and stakeholders.
5. The Signatory is willing and committed to transparently raising the standards of their own native title engagement and consents practices over time as appropriate.

An 'emerging' Signatory demonstrates compliance which has potential to result in adverse material impacts to native title stakeholders. The Signatory demonstrates that:

1. The quality of engagement with all relevant native title stakeholders somewhat follows best practice standards as outlined in ICIN guidance.
2. The timing of the engagement process is somewhat in line with ICIN guidance.
3. The Signatory's level of knowledge and understanding of best practice native title consents processes and outcomes as outlined in ICIN guidance is limited.
4. The Signatory has some understanding of, and taken some actions to mitigate, potential and actual risks to all relevant native title consumers and stakeholders.
5. The Signatory is willing and committed to transparently raising the standards of their own native title engagement and consents practices over time as appropriate.

An 'absent' Signatory demonstrates practices that are misaligned with the Code, and have a high potential to result in adverse material impacts to native title stakeholders. The Signatory has demonstrated that:

1. The quality of engagement with all relevant native title stakeholders does not at all follow best practice standards as outlined in ICIN guidance.
2. The timing of the engagement process is not at all in line with ICIN guidance.
3. The Signatory's level of knowledge and understanding of best practice native title consents processes and outcomes as outlined in ICIN guidance is limited or very poor.
4. The Signatory has limited or no understanding of, and taken limited or no actions to mitigate, potential and actual risks to all relevant native title consumers and stakeholders.
5. The Signatory is neither willing nor committed to transparently raising the standards of their own native title engagement and consents practices over time as appropriate.

for more information please contact

The Code Administrator

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