

1 March 2024

To: Vicki Mullen, Independent Reviewer, Finity Consulting
C/- Carbon Market Institute

By email: code.administrator@carbonmarketinstitute.org

Re: Independent Review of the Australian Carbon Industry Code of Conduct

GreenCollar welcomes the opportunity to provide feedback on the second independent review of the Code of Conduct. As a foundation signatory to the Code, GreenCollar supports the Carbon Market Institute (CMI) in undertaking this review to ensure that the Code continues to deliver the key objectives of integrity, transparency and accountability in the Australian carbon industry.

The review comes during a significant period for the Australian carbon market, with ongoing regulatory reform of the ACCU Scheme following the Chubb Review, impact of recent reforms to the Safeguard Mechanism, the review of the ClimateActive certification program, recent review and recommendations made by the Climate Change Authority as well as initiatives occurring internationally in response to stakeholder scrutiny of the voluntary carbon market. Where possible, the review of the Code should take account of these developments.

More broadly, it is relevant to note that since the Code was first introduced there has been increased investment by large emitters into project development to meet their own Safeguard compliance requirements. There is also increasing activity in the secondary market for ACCUs rather than carbon abatement contracts entered into with the Commonwealth.

Given the Code is intended to operate alongside the regulatory regime that governs the ACCU Scheme, it is important that updates to the Code take into account market developments and the recommendations and reforms arising from the Chubb Review. To that end, GreenCollar queries whether the Administrator will consider whether recommendations and updates to the Code following this review should be implemented once there is greater clarity on legislative amendments.

About GreenCollar

GreenCollar is Australia's largest environmental markets investor and project developer. We aim to prove that the best way to achieve lasting environmental outcomes is to place a value on the environment and enable markets to provide incentives and payment for sustainable land management practices and ecosystem services.

We help farmers, graziers, traditional owners and other land managers to identify and create commercial opportunities through nature-based projects that enhance their productive agricultural enterprise while caring for the environment and delivering tangible social and economic benefits.

We work with land managers, corporates, government, research organisations, traditional owners and other stakeholders to create methodologies and markets that place the environment on the balance sheet, and ensure money flows to the people living and working on the land that deliver environmental benefits for all.

Feedback

In the section below we have responded to questions that were raised in the Consultation Paper.

1. Code requirements and current scope

1.1 What is the role of the Code in the context of current and forthcoming regulatory requirements that apply to carbon industry participants?

Notably, the Chubb Review found that *“The Carbon Market Institute’s voluntary Carbon Industry Code of Conduct contributes to the integrity of the ACCU scheme. Mandating performance standards for carbon service providers, including agents, would enhance market confidence and consumer protection.”*

GreenCollar values the role of the Code in supplementing regulatory requirements by identifying, for the benefit of all stakeholders, high integrity, best practice behaviours in undertaking carbon projects. The Code does this by providing important guidance on the standards that industry stakeholders can expect Signatories to apply to their own conduct when they are complying with the legislative and regulatory requirements.

1.2 Is the current scope of the Code suitable to support the integrity and development of the Australian carbon industry?

GreenCollar considers the scope of the Code as well as its purpose, objectives, vision, mission and the principles underlying the rules to remain appropriate for the orderly development of the carbon industry in Australia. As noted in the Chubb Review, *“[t]he Code requires signatories to conduct business in accordance with industry best practice and to engage with clients and stakeholders in an ethical manner. It provides a ready benchmark for best practice.”*

We support signing onto the Code being made mandatory for all participants and suggest that this could be achieved by requiring participants to be Code signatories in order to maintain fit and proper person status.

1.3 Should the distinction under the Code between project services and advisory services to clients be retained?

Although the Code refers to project services and advisory services, the manner in which the Code’s provisions apply to both categories of service providers is essentially the same. Similarly, the ‘Complying with the Code’ Guidance for Signatories and Stakeholders identifies the two categories of service provider but does not distinguish between them when providing guidance to market participants. The section of CMI’s website that lists the Signatories to the Code also does not make a distinction between the providers of project services and advisory services.

GreenCollar considers that there would be value in retaining the distinction between project services and advisory services if changes were made to the Code to distinguish the parts of the Code that apply relevantly to these different types of participants. If this were done, it may lead to broader adoption of the Code by a more diverse ranges of signatories (eg consultants), as currently the majority of Signatories are project developers.

1.4 Should the distinction between pre-project activities and project activities be retained?

Registration of a project (albeit remaining subject to various conditions) is a significant milestone in the life cycle of a carbon project. It therefore makes sense to retain the distinction between those activities that occur before project registration and those that occur afterwards. However, GreenCollar notes that this aspect may need to be revisited as part of the implementation of Chubb Review recommendations.

1.6 Are there specific issues or carbon industry matters that could benefit from (non-mandatory) guidance under the Code?

The Code, and the associated Guidance for Signatories and Stakeholders, contains some information about the Corporations Act requirement to hold an Australian Financial Services Licence (AFSL). This includes a reference to ASIC Regulatory Guide 236, which was first issued in 2012 and the current version was issued in May 2015. Notably ACCUs were previously sold predominantly pursuant to Carbon Abatement Contracts (which

did not require an AFSL), however it is now the case that sales to secondary market purchasers (which are not eligible for an AFSL exemption) are an increasingly common form of transaction.

GreenCollar considers that the industry would benefit from the Code containing additional guidance and consistency as to AFSL requirements applying to carbon service providers and other organisations that are providing financial services in connection with ACCUs. This guidance could include examples of common activities and scenarios for which an AFSL may be required. This would assist carbon services providers in ensuring they are complying with licensing requirements.

Similarly, it may be useful to include more detailed guidance within the Code to assist consumers of carbon services to understand whether the types of carbon-related activities that are regulated under the Corporations Act, thereby giving them greater confidence that the companies with whom they are engaging are subject to appropriate regulatory oversight.

2. Administration of the Code

2.1 Are amendments necessary for the more efficient and effective operation of the Code's compliance, auditing, breach, governance and operational procedures set out in sections 2, 3 and 4?

Compliance, auditing, breach, governance and operational procedures outlined in section 3 and 4 of the Code remain generally fit for purpose though more publicly available information about breaches could support greater transparency and confidence that the Code is effectively enforced. Currently only severe breaches of the Code are required to be listed on the website and mentioned in the annual report.

3. Strategic matters for the Code

3.1 Recommendation 12 of the Chubb Review provides that carbon service providers and carbon market advisors, including agents, should be accredited and regulated. In the context of this Recommendation and the federal Government's response to the Chubb Review, what role should the Code play in supporting the carbon industry as a form of industry self-regulation?

The Chubb Review found that the Code contributes to the integrity of the ACCU Scheme, and noted that the Code provides a "ready benchmark for best practice" that is already adopted by the proponents of 75% of current projects in the ACCU Scheme. We note that the federal Government intends consulting with stakeholders on the best approach to registering and regulating carbon service providers.

It seems appropriate for any accreditation scheme to require parties seeking accreditation to become Signatories to the Code, thereby ensuring that all industry participants had committed to hold themselves to the best practice standards outlined in the Code. As mentioned above, this could be (in part) implemented by requiring project proponents to be signatories to the Code in order to maintain their fit and proper person status.

3.2 Should the Code be developed to take account of and/or incorporate international industry standards for voluntary carbon markets?

Globally, there are a range of new initiatives designed to improve integrity in the voluntary carbon markets, as well as greater collaboration between a number of decarbonisation-related organisations with the intention of assisting companies understand who they should work with in relation to decarbonising their operations and value chains and addressing their remaining emissions with high-integrity carbon credits.

Noting the global trend towards convergence of compliance and voluntary carbon markets, it would be useful for the Code Administrator to engage with other frameworks to ensure consistency where possible and provide market participants with information in relation to those consistency measures.

Including such guidance in the Code would be consistent with the existing scope of the Code, as it is already intended to apply to projects undertaken within Voluntary Offset Schemes.

3.3 Should the Code be developed to provide clearer standards and obligations for the supply and demand sides of the carbon market in Australia?

There are a range of new standards and obligations for carbon market participants to comply with and GreenCollar considers there may be merit in the Code referencing the existing domestic legislation relevant to the supply and demand sides of the Australian carbon market and the standards that apply in the voluntary carbon market.

3.4 How can the Code better support carbon industry participants to engage appropriately with Indigenous communities seeking to participate in and benefit from the carbon market?

As part of the implementation of Chubb Review Recommendation 11, it may be useful for the Code to provide guidance as to matters to be incorporated by project participants into planning processes and communications with stakeholders about the steps that are required to be undertaken before a project can be registered. The detail of this approach would need to be considered once implementation of Recommendation 11 is completed.

3.5 How can the Code better support carbon industry participants to engage appropriately with rural and remote communities seeking to participate in and benefit from the carbon market?

Sections 2.3 and 2.4 of the Code currently contain detailed guidance for engagement with clients in the periods before and after project registration. This review provides an opportunity to re-evaluate those sections of the Code and assess whether the current requirements could be reframed to focus on the principles that currently underpin the rules, thereby rationalising some of the detailed requirements contained in those sections.

3.6 How can the Code better support the integrity of the Australian carbon industry? Should it set standards in relation to claims made about the quality, integrity (or any other aspect) of carbon credits?

GreenCollar considers that the scope of the Code should remain focussed on establishing industry best practice for project developers, carbon advisers and other stakeholders such as landholders and Native Title Holders in connection with the delivery of carbon projects. Other regulatory initiatives in relation to claims about the use of carbon credits are already in existence, or are currently being developed in Australia, including:

- ACCC's recently-finalised guidance on making environmental claims (December 2023);
- Australian Association of National Advertisers' Environmental Claims Code, which is currently being updated;
- the current review of the ClimateActive program; and
- the draft legislation to introduce climate-related financial disclosure requirements for Australian companies.

These initiatives and guidance at the Australian domestic level are in addition to the VCMI Claims Code of Practice for the voluntary carbon market, and in the case of the ClimateActive program there is the potential that it may incorporate aspects of the VCMI Claims Code.

Other aspects for consideration in the review

(a) Additional transparency

As noted in our response to question 2.1, the Code may benefit from greater transparency in respect of the compliance action that has been taken in response to breaches of the Code.

(b) Example clauses

CMI has published on its website a set of example clauses that may be used in Project Development Agreements and Services Agreements. Included with those example clauses is a statement that they are not intended to be mandatory, and are not intended to form part of the Code. GreenCollar agrees with this position, and notes that caution should be taken in proposing clauses of this nature, as the

circumstances of each individual project will be different and it is appropriate that the terms of any agreement properly reflect the circumstances of each project and the parties involved. Example clauses should not be considered as a substitute for landholders obtaining their own legal advice on a proposed project and the terms of any agreement that is to be negotiated in respect of that project.

(c) General updates to the Code

In addition to amendments to the Code that will be required to reflect the regulatory amendments resulting from the Chubb Review, there are a number of general updates that could be made to the Code to modernise the content. For example, references to the 'Foundation Stage' and the 'Operational Stage' could be removed as the Foundation Stage has concluded.

GreenCollar values the opportunity to provide this feedback on the operation of the Code, and looks forward to participating in further consultation as any potential amendments to the Code are considered. We would be happy to discuss any aspects of the submission with the Review Team if that would be of assistance.