

# becoming a signatory **guidance for signatories**

July 2018



Australian  
Carbon Industry  
**Code of Conduct**  
SIGNATORY



## Becoming a signatory

### Key definitions for Signatories

The Code of Conduct contains the following definitions in relation to Signatories, their clients and carbon abatement

- **Client** A landholder, facility owner or other party who wishes to undertake a carbon project.
- **Signatory** A signatory to this Code of Conduct.
- **ERF Project** An emissions reduction or carbon sequestration project undertaken under an approved ERF Method. The Code will only apply to projects that meet the Regulator's definition of the [newness requirement](#), as at 1 July 2018. To avoid confusion, the project may be listed on the Clean Energy Regulator's project register but must not have commenced prior to 1 July 2018.
- **Carbon Offsets Project** A project carried out in accordance with a statutory or voluntary scheme. The Code will only apply to projects, which are yet to commence as defined by the rules of the Scheme, as at 1 July 2018.

### Application Process

Thank you for your interest in becoming a Signatory to the Carbon Industry Code of Conduct. By becoming a Signatory to the Code, you are supporting the carbon industry's vision of achieving a well-functioning carbon industry in Australia at the scale required to significantly contribute to greenhouse gas reduction commitments under the Paris Agreement.

Application forms can be found in the Forms & Resources section of the Code of Conduct website. All applications must be submitted to the Code Administrator for assessment. You will be notified within 10 business days on the outcome of your application. If your outcome is successful you will be issued with a tax invoice for your annual signatory fee. More information about signatory fees can be found below.

Once all fees are processed, your nominated primary contact will receive confirmation of your company becoming a Signatory to the Code. You will also receive your Signatory ID and information about the Code brand mark and brand mark guidelines.

Please note: any incorrect or incomplete applications submitted to the Code Administrator may lead to a delay in processing your application.

### Signatory Types

The Code has predominantly been designed to suit the regulatory regime of the Emissions Reduction Fund (ERF) (which was previously known as the Carbon Farming Initiative (CFI)). The Code is also relevant to other Voluntary Offset Schemes (for example Gold Standard and the Verified Carbon Standard).

The Code aims to define industry best practice for carbon service providers and represents the minimum standards that all signatories agree to meet. The Code applies to project developers, agents, aggregators and advisers who act as scheme participants and/or provide advice and services to clients regarding registration,



implementation and management of carbon projects. It covers all types of projects undertaken within the ERF and other Voluntary Offset Schemes in Australia.

The application of the Code may be different according to the category of signatory. For example, an agent operating in the land-based sector will have different requirements than a project proponent exclusively undertaking landfill gas or energy efficiency projects.

High-level guidance is provided below in relation to different signatory types captured under the Code. However, the Code Administrator recognises that some companies that apply to become a Signatory to the Code, may not fit exclusively in one signatory type and have business activities within the industry that span across different signatory types. It is therefore also the responsibility of such Signatories to ensure that they are aware of, and adhere to, the compliance requirements relevant to their business activities. Signatories are encouraged to read the **Signatory Annual Report (Self-audit Checklist) Form**, which can be found in the Forms & Resources section of the Code of Conduct website which outlines annual reporting requirements.

## Signatory – Project Developer/Aggregator/Agent/Advisor

The focus of your carbon industry business activities is related to:

- the direct services for the development of ERF or carbon offset projects;
- acting directly as a project agent;
- acting directly as a project aggregator, or;
- directly advising on the above.

**Example 1** Your carbon industry activities involve the aggregation of multiple sources of carbon abatement from client(s) carbon offsets projects.

**Example 2** Your carbon industry activities involve the provision of advice relating to the potential for ERF projects on a client's property, and the preparation of project registration and auction qualification documentation for ERF projects.

**Example 3** Your carbon industry activities provide services to a client in the development, design and activities of a carbon offsets project.

## Signatory – Advisory Services

The focus of your carbon industry business activities is related to:

- environmental consulting services;
- auditing services;
- legal services;
- brokerage services, or;
- financial services.

**Example 1** Your carbon industry activities involve the provision of legal advice to a client on an ERF Carbon Abatement Contract.

**Example 2** Your carbon industry activities involve the provision of auditing services to a client on a carbon offsets project.



## Signatory Fees

The fee categories for each signatory type are outlined below:

- **Project Developer/Aggregator/Agent/Advisor** Signatories are required to pay an amount that is calculated according to the number of projects they are contractually involved with at the time of application. These projects will have already commenced or are currently being implemented at the time of application.
- **Advisory Services** Signatories are required to pay a fixed amount.

Signatory Type	Category Criteria	Fee
<b>Project Developer/Aggregator/Agent/Advisor</b>		
• <b>Category 1</b>	At the time of application your company is contractually involved with 15 or more projects.	\$12,500/per year
• <b>Category 2</b>	At the time of application your company is contractually involved with between 5 and 14 projects.	\$5,000/per year
• <b>Category 3</b>	At the time of application your company is contractually involved with less than 5 projects.	\$2,500/per year
<b>Advisory Services</b>		\$2,500/per year

The fees listed in the table above are applicable in the first two Foundation years of the Code. Following that the Code fees may be adjusted from time to time.

Once all fees are processed, your nominated primary contact will receive confirmation of your company becoming a Signatory to the Code, your Signatory ID and the code brandmark and **Brandmark Guidelines**, which can be found in the Forms & Resources section of the Code of Conduct website.

After filling out the application form and submitting it to the Code Administrator for assessment, you will be notified within 10 business days on the outcome of your application.

If your outcome is successful you will be issued with a tax invoice for your annual signatory fee. Annual fees are calculated differently for each signatory and category type. If you would like to clarify your signatory category and/or fee level, please contact the Code Administrator.

## Meeting Code compliance against relevant Sections of the Code

As companies who apply to become a Signatory to the Code may not fit exclusively in one Signatory Type or have a variety of business activities that span the carbon industry, there may be sections of the Code related to compliance that are not applicable to every Signatory.

It is primarily the responsibility of Signatories, to ensure that they are aware of, and adhere to, all the compliance requirements of the Code that are relevant to their business activities.



## Guidelines for engaging clients

The Code of Conduct for the carbon industry has been developed to promote market integrity, consumer protection and appropriate interaction with project stakeholders, including Native Title Holders, representative bodies, land managers and project owners.

Signatories to the Code are required to undertake their business activities in accordance with the general principles of the Code, that is:

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

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

## Communication with clients

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

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

## Project advice

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

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

Where legal right is required to be transferred (if appropriate to do so) the signatory must arrange for this and ensure that the existing legal right holder has access to independent legal advice in relation to the transfer.

In addition to considering what eligible interest holders may need to be consulted, projects that have native title considerations will also need to consider how the *Native Title Act 1993* (Cth) interacts with the requirements of the project and the Code. For further information refer to the Clean Energy Regulator's Guidelines for projects on native title land, below.

## Advice on the Emissions Reduction Fund (ERF) and ERF Methods

If there is potential for an ERF Method to apply to a client's project, signatories must provide information about the ERF 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 ERF Method.

Depending on the project, the type of information provided to clients could include:

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

Where relevant, signatories must provide clients with information on the ability to vary projects, and advice on relinquishment and revocation triggers for projects, as well as any associated implications.

Information about the ERF, and a number of ERF guidance documents are available on the Clean Energy Regulator website and can be a useful resource to support the provision of the above information to clients. Refer to: <http://www.cleanenergyregulator.gov.au/ERF/About-the-Emissions-Reduction-Fund>.

## Project feasibility advice

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

## Advice on carbon credit generation, sales and markets

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

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



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

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

## Guidelines for projects on native title land

The Code of Conduct for the carbon industry has been developed to promote market integrity, consumer protection and appropriate interaction with project stakeholders, including Native Title Holders with a determination, Native Title Holders with a claim, representative bodies, land managers and project owners.

When undertaking carbon offsets projects on native title land, the Code includes requirements for signatories with regards to Native Title Holders. These requirements have been developed to align with best practice defined by the Clean Energy Regulator's *Native Title, Legal Right and Eligible Interest-holder Consent Guidance* and the principles outlined in the United Nations Declaration on the Rights of Indigenous Peoples.

The Code also recognises that defining industry best practice will be an ongoing objective, with the current text designed to promote market integrity, provide guidance to scheme participants, promote open interaction with project owners and land owners and define industry best practice. As part of the review of the Code to take place prior to the commencement of the Operational Phase, this section of the Code will be reassessed to ensure it continues to represent best practice with respect to Native Title Holders and eligible interest consent holders.

### Definitions

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

### Undertaking carbon offsets projects on native title land

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

Signatories must undertake appropriate due diligence in order to ensure that the following requirements are met prior to the registration of the project, and with reasonable time for Native Title Holders and Native Title Holders with a claim to reach an informed decision:

1. All parties have a mutual understanding about the project conditions and requirements
1. Reasonable efforts have been made to enter into legally-binding agreements with Native Title Holders.
2. Reasonable efforts have been made to consult with Native Title Holders with a claim and to obtain agreement, as appropriate.



3. Native Title Holders have been provided with a reasonable amount of time to make an informed decision about the project being undertaken.
4. Native Title Holders have been advised of the intention to register a project over native title land.
5. Native Title Holders are provided with sufficient guidance on project registration and implementation, including (where relevant):
  - project and project feasibility advice
  - advice on the ERF and ERF Methods
  - advice on carbon credit generation, sales and markets.
6. Native Title Holders are made aware of the Code and the complaints handling process.
7. Native Title Holders are advised of any approvals obtained or required from any government or regulatory authority.

Additionally, signatories must comply with the requirements of the *Native Title Act 1993* (Cth) and take reasonable steps to comply with the principles set out in the United Nations Declaration on the Rights of Indigenous Peoples.

## **Project ownership**

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

## **Seeking consent**

Signatories must ensure that Native Title Holders have provided consent to the ongoing operation of the project, prior to any ACCU issuance and that reasonable efforts have been made to obtain consent from Native Title Holders with a claim prior to any ACCU issuance.

Where legally binding agreements with Native Title Holders are unable to be reached before project registration, signatories must ensure that Native Title Holders have been consulted and have provided relevant forms of agreement to the registration of a project, as appropriate, including a process by which final consent will be obtained.

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

## **Relevant references**

- Clean Energy Regulator's Native Title, Legal Right and Eligible Interest-holder Consent Guidance
- United Nations Declaration on the Rights of Indigenous Peoples available online

## **Guidelines for advising on sequestration projects**

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

- obligations and timelines relating to the project's permanence period, including obligations relating to land use during the permanence period;
- the implications of choosing a 100 year or 25 year permanence period, including the consequences of discounts applied to the generation of carbon credits;
- the commencement date for the permanence period;
- the ability to vary the area of the project;





- the risk of abatement reversal and consequences of reversal;
- the impact of natural disturbances on abatement and the notification requirements applicable to natural disturbances;
- relinquishment triggers and requirements;
- carbon maintenance obligations; and
- the implications of a sale of land which is the subject of a sequestration project.

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

## Guidelines for Developing a Carbon Project Management Plan

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

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

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

## Reporting, Audit & Compliance

### Annual Reporting (for signatories)

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

#### 2018-19 Annual Report – Key Dates

- 30 June 2019** End of first compliance period under the Code
- 1 August 2019** Submission date for 2018-19 signatory annual report
- 1 September 2019** Code Administrator publishes Code Annual Report

The **Annual Report (Self-audit Checklist) Form** can be found on the Code website at [[Forms & Resources](#)] and has been developed as a self-audit tool, covering all relevant aspects of the Code. Signatories have the option of completing the annual report using one of two methods:



1. Filling in the annual report online form and submitting it to the Code Administrator by the reporting date, or;
2. Completing and submitting their own company annual report, which follows the annual report guidelines, by the reporting date.

The annual report also serves as confirmation of a Signatory's compliance with the Code throughout the year, and reaffirms the signatory's ongoing commitment to implementing the Code.

The Code Administrator may request additional information following receipt of each Signatory's annual report. Signatories must comply in a timely manner with reasonable requests made by the Code Administrator for the provision of information or documentation.

Annual reports will not be made publicly available, and all commercial-in-confidence information will be treated with appropriate confidentiality.

## **Compliance & Audit Requirements**

The Code Administrator has put in place arrangements for monitoring signatories' compliance with the Code to ensure it delivers the desired outcomes. During the Foundation Stage, the Code Administrator will monitor Code compliance by reviewing annual reports ("self-audit checklists") submitted by each signatory.

Prior to the Code's transition to the Operation Stage, further guidance and information will be provided to signatories regarding the specific audit and compliance procedures that will take effect.

## **Record Keeping**

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

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

Where ERF projects are being undertaken, Signatories should provide specific guidance to clients on the types of information and records that will be required for reporting and auditing under the ERF. Further information



on the ERF requirements related to reporting and auditing can be found on the Clean Energy Regulator website: <http://www.cleanenergyregulator.gov.au/ERF/Forms-and-resources/reporting-and-auditing>.

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

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

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

## Guidelines for handling complaints and breaches

### **Receiving a complaint**

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

Further information on the process for handling complaints received by a signatory is outlined in the **Guidance Note for Signatories**, which can be found in the Forms & Resources section of the Code of Conduct website.

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 Complaint Form**, which can be found in the Forms & Resources section of the Code of Conduct website.

The Code Administrator will log this information in its Complaints Register and use this information to monitor the effectiveness of the Code and inform the Code Annual Report. Information collected will be treated with appropriate confidentiality and signatories against which a complaint or suspected breach is reported will not be publicly identified.

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 major or severe breach of the Code has occurred by another signatory, you should inform the Code Administrator by completing the Signatory Breach Form, which can be found in the Forms & Resources section of the Code of Conduct website. You are also encouraged to notify the Code Administrator of all other types of suspected breaches (i.e. medium or minor) by another signatory using the Signatory Breach Form.



The Code Administrator will log this information in its Breach Register and use this information to monitor the effectiveness of the Code and inform the Code Annual Report. Information collected will be treated with appropriate confidentiality and signatories against which a suspected breach is reported will not be publicly identified.

You are encouraged to read the Complaints Procedure, that outlines the process for handling complaints and alleged breached of the Code during the Foundation Stage, as well as the process by which the Code Administrator will respond to complaints received. The Complaints Procedure can be found in the in the Forms & Resources section of the Code of Conduct website.

## Useful links and reference material

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

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

## for more information please contact

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