

Independent Review:
Foundation to Operational Stage
terms of reference

October 2019



Australian
Carbon Industry
Code of Conduct



Introduction

On the 1st of July 2018, the **Carbon Market Institute** (CMI) began implementation of one of the world's first voluntary domestic Carbon Industry Code of Conduct, designed to promote market integrity, consumer protection and accountability for industry practitioners and service providers across Australia.

Developed over two years, with input from a wide range of industry, community and government stakeholders, and support from the Queensland Government, the **Australian Carbon Industry Code of Conduct** (the Code) provides guidance for project developers, agents, aggregators and advisers undertaking carbon offset projects including under the Australian Government's Emissions Reduction Fund and other Voluntary Offset Schemes.

During development, the decision was made to implement the Code in a staged manner, commencing with the initial **Foundation Stage** on 1st July 2018, and CMI was appointed to act as the **Code Administrator**. The Foundation Stage is intended to be in place for a period of two years, after which the Code is intended to transition to an **Operational Stage** commencing on 1st July 2020.

Various elements of the Code are intended to come into effect at the commencement of the Operational Stage. This includes, but is not limited to, the establishment of an independent Code Review Panel, delivery of compliance audits, the investigation of complaints and breaches, and the enforcement of sanctions. This staged approach was designed to allow industry to become familiar with the requirements of the Code during the Foundation Stage and to build a foundational platform for continual improvement in ensuring best practice behaviours in the carbon industry.

The specifics of the Independent Review are required by several elements of the Code of Conduct text, namely:

- **Section 1.6(4)** of the Code requires that an **Independent Review** (the Review) of the Code must be undertaken prior to commencement of the Operational Stage, in order to appropriately consider and implement the transitional requirements necessary for elements of the Code to come into effect.
- **Section 1.6(4)(a)** of the Code requires that Terms of Reference for the Review will be determined having regard to matters such as the Code, Code reporting, the Code Administrator, appointment of the Code Administrator, establishment of the Code Review Panel and the Code Review Panel Terms of Reference, and following consultation with Signatories to the Code.
- **Section 1.6(4)(b)** of the Code requires that the Review will be undertaken by a suitably qualified, independent person/body, the **Reviewer**. In completing the Review, the Reviewer will have access to all necessary documentation required to undertake the Review, including procedures and reporting from the Code Administrator.
- **Section 1.6(4)(c)** of the Code requires that the Review process will include consultation with Signatories to the Code, the Code Administrator and relevant stakeholders including the Department of the Environment and Energy and the Clean Energy Regulator.
- **Section 1.6(4)(d)** of the Code requires that the results of the Review must be published online and Signatories to the Code may vote on recommendations which may be made by the Reviewer.
- **Section 1.6(5)** of the Code states that Commencement of the Operational Stage will only take place following consideration and, where applicable, implementation of the recommendations of the Review.



The Reviewer

The Reviewer will be appointed by CMI, which will ensure the Reviewer has the suitable qualifications, experience and independence to deliver the Review, at reasonable cost to CMI.

Eligibility Criteria

- Must not be a current Signatory to the Code.
- Must not include individuals from the Carbon Market Institute Executive Team.
- Can either be an individual, an organisation or a combination of both.
- Can be a Carbon Market Institute Member organisation, assuming no conflict with the above criteria.

Expertise Criteria

- A significant understanding of the Australian carbon industry, particularly the operation of the Emissions Reduction Fund (ERF) and obligations, opportunities and associated issues within the carbon market.
- An acceptable level of technical knowledge associated with the development and implementation of carbon projects in Australia.
- Detailed knowledge of the *Carbon Credits (Carbon Farming Initiative) Act 2011* and associated subordinate legislation, including the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* and the *Carbon Credits (Carbon Farming Initiative) Rule 2015*, which form the legislative framework of the ERF.
- There should also be a general level of knowledge regarding Methodology Determinations and how they operate under the ERF.

Stakeholders

For the purposes of the **Process** section of this Terms of Reference, the following listed entities are to be considered **Key Stakeholders***.

Entity	Description
Carbon Market Institute	Code Administrator (Foundation Stage)
Aboriginal Carbon Foundation	Foundation Signatory
Agriprove	Foundation Signatory
AI Carbon	Foundation Signatory
Alterra	Foundation Signatory
Carbon Farmers of Australia	Foundation Signatory
Climate Friendly	Foundation Signatory
CO2 Australia	Foundation Signatory
Corporate Carbon	Foundation Signatory
GreenCollar	Foundation Signatory
Market Advisory Group	Foundation Signatory
Select Carbon	Foundation Signatory
Daryl Killin Management	Signatory
Natural Carbon	Signatory
Tasman Environmental Markets	Signatory
Queensland Government	Financial Supporter of the Code



Clean Energy Regulator	Responsible for administration of the Emissions Reduction Fund
Emissions Reduction Assurance Committee	Important stakeholder in the development and review of ERF methods.
Department of the Environment and Energy	Responsible for policy oversight of the Emissions Reduction Fund

**An entity that becomes an approved Signatory to the Code prior to commencement of the review will be considered a Key Stakeholder.*

For the purposes of the **Process** section of this Terms of Reference, the following listed entities are to be considered as **Relevant Stakeholders**.

Entity	Description
CMI Corporate Members*	Members of the CMI, including entities purchasing ACCUs.
Clean Energy Council	Important stakeholder in the original development of the Code having designed, developed and administered multiple voluntary industry Codes of Conduct.
Indigenous Groups	There are core requirements of the Code that relate to Native Title and engagement with indigenous groups.
Natural Resource Management Groups	Important stakeholder engaging with land holders involved in Code-related emission reduction projects
Australian State & Territory Governments (excl. QLD)	Important stakeholders for State/Territory schemes related to the Code.
National Farmers Federation	Important stakeholder engaging with land holders and operators involved in Code-related emission reduction projects.
Meat and Livestock Australia	Important stakeholder engaging with land holders and operators involved in Code-related emission reduction projects.

**Where an entity is not already a Signatory to the Code*



Scope of work

Section 1.6(4)(a) of the Code requires that the Terms of Reference have regard to matters such as the Code, Code reporting, the Code Administrator, appointment of the Code Administrator, establishment of the Code Review Panel and the Code Review Panel Terms of Reference, and following consultation with Signatories to the Code.

As such, the Reviewer will review, and provide recommendations on the following.

The Code

1.1. Provide advice on the extent to which the Code text and requirements in **Section 2** of the Code currently meet the objectives of **Section 1.1** of the Code, to:

- (1) Define industry best practice for project developers, agents, aggregators and advisers in Australia's carbon projects industry.
- (2) Promote consumer protection and appropriate and open interaction with project owners and landowners.
- (3) Provide guidance to scheme participants.
- (4) Promote market integrity, accountability and display international leadership in carbon project development.

1.2. Provide advice and recommendations on the extent to which **Section 2** of the Code could be amended for the Operational Stage to better ensure the achievement of **Section 1.1** of the Code and the outcomes and underlying principles in **Section 1.3** of the Code, taking into consideration:

- 1.2.1. The economic and administrative burden for Signatories of the Code to effectively comply with the requirements of an amended Code.
- 1.2.2. Changes by relevant regulatory or administrative agencies (e.g. the Clean Energy Regulator, ASIC, Department of Energy and Environment) to improve (streamline and make more efficient) and update regulation of the market, that may interact with, or duplicate Signatory compliance and Code administration activities.

Administration of the Code

2.1. Review and make recommendations for the governance and operational procedures required to administer **Sections 3.2, 3.3(1), 3.4(2), 3.5, 3.7, 3.8, 3.9, 3.10(4), 3.10(5)** of the Code, which will become operative during the Operational Stage of the Code.

2.2. Review and make recommendations to improve current governance and operational procedures that have been utilised by the Code Administrator to administer all operative sections of **Section 3** and **Section 4** of the Code during the Foundation Stage.

2.2.1. Provide advice and recommendations on the extent to which **Section 3** and **Section 4** of the Code could be amended for the Operational Stage to improve the administration of the Code.



2.3. Recommend guidance and/or training material and events covering Code Signatory obligations set out in **Section 2** of the Code, to be prepared, published and/or delivered by the Code Administrator for the Operational Stage, providing Code Signatories a better understanding of their obligations and the detail necessary to effectively comply with the Code.

The Code Review Panel

3.1. With reference to 2.1 above, provide advice on process and recommend representatives to be appointed to the Code Review Panel, which meet the requirements of **Section 3.2(2)** of the Code.

The Code Administrator

4.1. Provide advice and recommendations on the resources required to administer the Code in alignment with best practice administration during the Operational Stage, including, but not limited to staffing full time equivalent (FTE), annual signatory fee commitments and non-signatory fee funding commitments.

4.2. Provide advice and recommendations on whether the Carbon Market Institute or another body is the most suitable entity to impartially administer the Code as the Code Administrator during the Operational Stage.

4.3. If the recommendation is that the CMI should administer the Code during the Operational Stage, provide advice and recommendations on the internal governance requirements needed for the Carbon Market Institute to effectively operate as the peak industry body and act as the Code Administrator with appropriate integrity (e.g. internal firewalls, information flows).

Miscellaneous

1.1. Provide advice on the suitability of allowing more than one entity to become a Signatory to the Code under the one Signatory Fee. (e.g. should a subsidiary or related entity of a Signatory be able to utilise the Code brandmark as a Signatory to the Code, without separately applying to become a Signatory).

1.2. Provide advice on the suitability of the information, application forms and guidance material provided on the Code website.

1.3. Provide advice on the suitability and design of a new signatory category or supporter category for purchasers of carbon credits/the demand side of the market to support the Code.

1.4. Provide advice on the extent to which the Code text can support the development of industry standards relevant to the demand side of the market (e.g. standardised carbon contracts).

1.5. Have



Outputs, deliverables and timelines

The Reviewer will submit outputs and deliverables 2, 3 and 4 below to the Carbon Market Institute providing advice and recommendations on the matters listed under the **Scope of Work** of this Terms of Reference by the associated timeframe. The Reviewer will not publish any form of the outputs and deliverables 2, 3 and 4 before it has been provided to, and published by, the Carbon Market Institute.

No.	Outputs & Deliverables	Responsible Entity	Timeframe
1	Appointment of the Reviewer	Carbon Market Institute	By 11 October 2019
2	Commencement of the Review	The Reviewer	By 14 October 2019
3	Consultation with Key Stakeholders	The Reviewer	October 2019 – February 2020
4	Review Report and Recommendations	The Reviewer	By 20 March 2020
5	Publication & Presentation of Signatory Report & Recommendations	Carbon Market Institute The Reviewer	By 26 March 2020
6	Receipt of Signatory vote & other stakeholder feedback	Carbon Market Institute	By 10 April 2020
7	Confirmation of Code amendments (if any)	Carbon Market Institute	By 17 April 2020

Process

In formulating its advice, the Reviewer may obtain specialist technical advice regarding the considerations listed under the **Scope of Work** of this Terms of Reference with the express permission of the Carbon Market Institute.

In developing its advice and recommendations to the **Scope of Work** of this Terms of Reference the Reviewer **must** consult with all **Key Stakeholders** and may consult with other **Relevant Stakeholders**. The Carbon Market Institute will work with the Reviewer to design and implement stakeholder consultation, with the objective of informing the Reviewer in developing its advice and recommendations.

The Reviewer will have access to all information provided, collected and utilised by the Code Administrator in administering the Code during the Foundation Stage.



Independent Reviewer

The Independent Reviewer appointed to lead this review is Ms Virginia Malley FAICD. Please see detailed biographical information about Ms Malley below.



Ms Virginia Malley FAICD

Virginia has over thirty years' experience in the design, execution and oversight of strategic governance, risk management and compliance frameworks for financial and environmental institutions. Ms Malley is a highly experienced non-executive director specialising in the risk-controlled stewardship of natural and financial capital and has a particular focus on the development of innovative primary and secondary environmental markets.

Ms Malley previously worked at Macquarie Group from 1987 to 2012 where her roles included Chief Risk Officer and membership of the Clean Technology, Asia/Pacific, Private Equity and Global/Advisory Investment Committees at Macquarie Funds Management Group. Her current roles include Deputy Chair of the Biodiversity Conservation Trust of NSW, member of the Clean Energy Regulator, non-executive director of Perpetual Superannuation Ltd and Chair of the Pinnacle Funds Services Compliance Committee.

Education

- Master of Laws 2016, University of Sydney.
- Graduate Diploma in Environmental Law 2013, University of Sydney.
- Juris Doctor 2012, University of Technology Sydney.
- Diploma Company Directors Course 2007, Australian Institute of Company Directors.
- Master of Applied Finance 1990, Macquarie University.
- Bachelor of Arts 1987, Macquarie University

Ms Malley has been appointed to this role independently of her current roles, and appropriate non-disclosure agreements have been put in place to protect privacy of information shared by Signatories and other stakeholders with Ms Malley in her capacity as Independent Reviewer of the Code of Conduct.

Ms Malley's review support team is also covered by similar such agreements to ensure independence and confidentiality of process and information for the duration, and following the review.

for more information please contact

Code Administrator

code.administrator@carbonmarketinstitute.org

+61 (03) 8601 1142



Australian
Carbon Industry
Code of Conduct