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RE: Independent Review of the Carbon Industry Code of Conduct

Thank you for providing an opportunity to comment on the recommendations of the Independent Review of the Carbon Industry Code of Conduct.

I note that this review has covered some aspects in detail and made a number of important recommendations. However other key areas that should have been covered by the review are absent and will need to be addressed for end use consumers to have assurance and confidence in carbon industry products. This is particularly important for those people and organisations that voluntarily buy the carbon offsets as a part of offsetting their emissions in general or to make a carbon neutral claim.

LACK OF A LEGAL FRAMEWORK

One of the key issues for carbon markets in Australia is that with the exception of the limited number of corporations covered by the National Greenhouse and Energy Reporting Framework, there are no legal methods or rules to guide greenhouse allocation and accounting of Scope 1, 2 and 3 emissions. There is also no Federal Government legal framework to guide the creation or transfer of scope 3 emissions reductions in the form of carbon offsets. There is no legal guidance on how and when a Scope 3 carbon offset should be claimed against a scope 1 or 2 emission value, and no guidance as to whether it is appropriate for organisations to be claiming scope 3 emissions offsets against scope 1&2 only accounts where other significant scope 3 emissions are not counted. This means that voluntary carbon markets have been created and evolved without basic accounting and allocation rules.

The problem of there being no legal framework for emissions allocation and trading is not unique to carbon offsets. It also applies to the entire voluntary renewables market where end use claims of reduced emissions are at a minimum 100% double counted and often triple counted. To understand more about the farcical state of the renewable electricity markets, a number of my submissions, including my submission to the Climate Active consultation on Scope 2 Electricity Emissions (commenced February 2020) can be found here:

<https://drive.google.com/drive/folders/1tBnG9JBxMxDxg2IplAIUcOYPCNPdYy9>

There are issues with the way some carbon offsets are created and traded which can be remedied, but even if the Code of Conduct could address these issues, it would not apply across the whole market and the Carbon Markets Institute does not have any authority to mandate rules for trading and accounting for offsets through the supply chain from supplier to end user.

In relation to Recommendation 22:

“It is recommended that the development of model contract provisions and/or model agreements for Australian Carbon Credit Units (ACCUs) be informed by the legal standards and procurement policies of its government and major corporate stakeholders”.

In so far carbon offsets are used in Australia by non NGER liable parties including voluntary end users, no model contract provisions can apply as no rules legally apply. It is noted that the intent of this Code of Conduct is aimed primarily at the supply side of the market chain and supply customers, but further attention is required to assure end user customers in the market.

An essential part of future Australian Carbon Markets is to have the legal foundation upon which to build market rules and codes of practice. Without a legal foundation this Code of Conduct cannot be regarded as having authority.

- It lacks transparency and accountability, as it ignores key problems and is itself not accountable against a legal framework
- Where double counting can be identified, issues of environmental integrity will persist
- legislative and regulatory compliance in relation to emissions trading and claims do not apply to the vast non NGER voluntary markets meaning that the code cannot adequately reference a legal foundation
- Consumers cannot be confident in carbon offsets until there is an emissions allocation and accounting framework established in law and such a framework incorporates a “No double counting principle” applied across the market from supply to the end use consumer.

The Objects of the Code should to be enhanced follows (marked up):

- (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; and
- (4) **ensure** ~~promote~~ market integrity, accountability **across the whole market chain from creation to end user purchasing** and display international leadership in carbon project development

Recommendation

- (1) The Australian Carbon Industry should acknowledge that no legal framework has been applied to the voluntary carbon offsets and renewable energy markets as a whole, and that an extension to the NGER Framework is required to establish this legal framework***

USE OF AUSTRALIAN CARBON CREDIT UNITS

Carbon offset markets largely work as a market pool when common units are created and endorsed for use such as Australian Carbon Credit Units. When this happens, part of the uniqueness of a claim is surrendered as the supply and demand forces apply to the units as a whole rather than that of any particular project. Another feature of a pool based market is that bad carbon offsets contaminate the whole market.

When the Australian Government authorised a method for creating ACCUs from the replacement of street lighting to more efficient forms, it was warned about the risk that those with operational control of the asset were likely to claim the emissions reduction whilst also selling the carbon

offsets. It is likely that the vast majority of street lighting upgrades have been claimed by local government councils as an emissions reduction whilst selling the offset to third parties. There has been no advice not to do so.

As with the Renewable Energy (Electricity) Act 2000, the Carbon Credits (Carbon Farming Initiative—Commercial and Public Lighting) Methodology Determination 2015, only describes the creation of the offset, but not how it should be traded and used in claims. Therefore, a council that is converting its street lights to LEDs that would result in an emissions reduction off say 50%, is free to claim that emissions reduction for the reporting period as well as entering a contract for ACCUs to be created and sold to a third party. It is also technically possible for a council to buy these same ACCUs to offset their remaining street lighting emissions. It is technically possible for a 50% reduction in emissions to be claimed twice to cover all the street lighting emissions.

Whilst the Federal Government have not prevented against such loopholes and they are possible to exploit without breaking any law, the integrity of Australian Carbon Credit Units as a whole can be considered as contaminated by offsets where the benefit is still being claimed by the creator or system owner.

The solution is for a rule such that ***any supplier that is receiving an emissions benefit from an action should not be creating offsets for use in voluntary markets from that action.***

This problem is also applicable to the use of international offsets where the country of origin has not made an adjustment to their emissions to subtract the abatement from their inventory, when the offsets are sold to a customer in separate country.

Recommendations

- (2) ***Australian Carbon Credit Units should not be accepted for use in this Code of Conduct due to the double counting of the emissions reduction benefit to the owners of street lighting and third party carbon offset customers.***

- (3) ***The Code of Conduct should establish a no double counting test and preclude user-suppliers such that: ‘any supplier that is receiving an emissions benefit from an action should not be creating offsets for use in voluntary markets from that action’***

- (4) ***The no double counting test should be applied to all domestic and international offsets referred to in this Code of Conduct.***

RETIRED RENEWABLES REBIRTHED AND DOUBLE COUNTED THROUGH CARBON OFFSETS

I note that the Code of Conduct and the review does not cover renewable electricity and its use and claims by end consumers. It is an unnatural boundary to separate out two areas where indirect emissions markets have evolved as both cover direct and indirect emissions accounts. The Federal Government is consistent in advising that voluntary renewable electricity mechanisms are not offsets, but then provides guidance on how to claim renewable electricity purchasing as an offset. Doublethink is common in carbon markets.

There is one situation where the use of carbon offsets crashes into renewable electricity markets with unfair and unconscionable results. This occurs where carbon offsets are used to rebirth renewable electricity that should have been removed from the market. I have covered this loophole in my Climate Active submission as well.

The loophole that enables used renewables to be rebirthed

The loophole exploits the situation that Large Scale Certificates are themselves devoid of any attributes in law and that the convention for LGCs to be used to claim reduced emissions and use of renewable electricity use is not followed in a uniform manner. The way that LGCs have been adopted as an integrity certificate is contrary to the legal situation.

Loophole method:

1. A provider can produce electricity from renewable electricity generation
2. The LGCs may get sold for voluntary surrender, GreenPower or mandatory RET retirement. (Count 1)
3. Because there is no legal or rule guidance on what defines renewable electricity use, the renewable energy (RE) attributes are not forfeited
4. Electricity retailers may then attach a carbon offset to electricity sold to another customer.
5. The electricity retailers strongly promoting carbon offset renewable electricity can establish a renewable brand based on their asset base or whether they have PPAs to renewable generators regardless of whether LGCs from these sources are used to meet mandatory requirements or are sold to third parties.
6. Because the provider has electricity contracts with a wind or solar farm for example, the communication to the customer comes across as buying **carbon offset renewable electricity from a renewable provider** (Claim 2). Yet another form of double counting.

There is also a problem in the way that rebirthed carbon offset renewable electricity undercuts actual market based renewable electricity, particularly under the current approach where the price of renewables to most customers is the price of the LGC.

It is strongly recommended that the carbon neutral electricity concept be stopped. Households and businesses can still buy carbon offsets to cancel out their emissions should they choose to, but there have been very perverse double counting outcomes as a result of the carbon neutral electricity method.

I won't show examples of ambiguous marketing as this would upset the providers and is largely the fault of the Federal Government for not establishing a market wide set of rules. However, when looking up offers of carbon neutral electricity ambiguous marketing is common. Whilst each individual statement may be correct, the packages of information are tangled sufficiently for most consumers to not appreciate exactly what companies are claiming and offering.

Recommendation

- (5) The Code of Conduct should prevent or at least discourage the use of carbon offsets being used in a way that could lead to a customer thinking that they are buying Carbon offset electricity from a renewable source when LGCs have been sold to a third party. Assessments should be made across the package of marketing of organisations, not on simply the detailed fine print of an electricity offer.***

Conclusion

In conclusion, this Code of Conduct has made an important start to ensure the integrity of Australia's carbon markets, but has not yet addressed the key and fundamental requirements for emissions

allocation and accounting to be established under a legal framework that applies to the whole market in Australia.

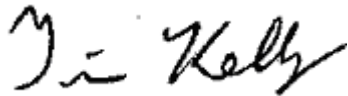
The Review has also not addressed the problem that offsets endorsed by this Code of Conduct include those created by supplier users that are also claiming the emissions reduction in association with their own activities

There are also unique problems such as the rebirthing of renewable electricity with carbon offsets through the marketing and brand packages of companies.

In order for the Code of Conduct and Australia's carbon markets to have integrity and become trusted, these issues must be addressed with urgency.

If possible, I would like to discuss my submission with the Code Administrator

Yours sincerely

A handwritten signature in black ink that reads "Tim Kelly". The signature is written in a cursive style with a large, stylized 'T' and 'K'.

Tim Kelly