

**CODE OF CONDUCT
CONSULTATION PAPER**

**Defining Consumers and
Signatories**

March 2021



Australian
Carbon Industry
Code of Conduct



1. Background

Commencing on 1 July 2018, the Australian Carbon Industry Code of Conduct (the Code) aims 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; and
- 4) promote market integrity, accountability and display international leadership in carbon project development.

In 2020, an Independent Review of the Australian Carbon Industry Code of Conduct was undertaken, from which 46 recommendations to the Code Administrator were made. As part of the Code’s operational transition, the Administrator is proposing updates to the Code text and related frameworks and will consult with stakeholders on these changes early in 2021. During consultations, the Administrator will welcome feedback on any/all potential options and will use these reflections to form a final position that will be announced in May 2021. Relevant changes will be incorporated into updated Code text and guidance materials to be shared with stakeholders well in advance of coming into effect on 1 July 2021.

This consultation paper has been developed to address recommendations 1, 9, and 43, which relate to:

- clearly defining consumers and Signatories under the Code (Code Section 1.4 and 1.5);
- the number of Signatory related entities coverable by one Signatory fee; and
- relevant definitions set out in Appendix 1 (1) Glossary and Definitions of the Code.

Each recommendation is outlined below, along with the Administrator’s initial response communicated to stakeholders in 2020. These below responses underpin the approach to proposed changes laid out later in this consultation paper.

Independent Review Recommendations 1 9 43	
Review Recommendation	Administrator’s 2020 Review Response
1. It is recommended that the Code clearly define ‘consumers’.	Approved The majority of current signatories deal with supply-side consumers i.e. traditional owners, landholders and farmers. However, an expanding group of legal, professional and trading service provider signatories are increasingly dealing with demand-side consumers, and so the Administrator will review and provide clarity on the definition of consumers in the context of the need for both supply and demand-side consumer protection.
9. It is recommended that the Code define the different types of Signatories.	Approved The Administrator will modify internal compliance systems and the relevant articles in the Code text to be updated and implemented for compliance from 1 July 2021.
43. It is recommended that more than one entity can become a Signatory to the Code under the one Signatory Fee, subject to those entities being	Approved In-Principle The Administrator agrees in-principle with this recommendation, particularly as it already takes this approach in approving Signatory applications. The Administrator will review its current stance, to ensure continuing effectiveness, accountability and consumer protection throughout the initial 12-month transition period of the Operational Stage.



companies within the same corporate group.

Any changes to this stance will be updated well in advance of, and for implementation for the compliance year beginning 1 July 2021.

2. Consideration of Recommendations 1 | 9 | 43

The Code Administrator provided a response to each recommendation following a consultation on the review recommendations which received 8 submissions. Submissions made to the Independent Review by Signatories and stakeholders in May and June 2020 revealed support for Recommendations 1, 9 and 43, noting considerations, as below:

- Recommendation 1: Submissions supported the need to better define consumers, noting that the particular vulnerabilities of some carbon industry consumers due to the non-applicability of traditional consumer protection laws should be considered.
- Recommendations 9: Submissions supported the need for a review of the definition of a Signatory, although noting some concerns, namely that clear guidance should be provided on the application of a Signatory's requirements, particularly with regards to their interactions with 'clients' as defined in Appendix 1(12) of the Code of Conduct.
- Recommendation 43: Submissions supported the need for a review of related entity rules, although noting some concerns, namely the risk of creating an imbalance between larger organisations being advantaged over smaller organisations – where a larger organisation could pay the same annual fee for numerous related entities as a smaller organisation with only one entity.

The view of the Administrator is that the Code requires more clarity on how it can oversee best practice engagement with both supply and demand-side consumers, and the Signatories that interact with these different stakeholders. Considerations include that:

- the Code is sufficiently equipped to manage supply-side consumers and supply-focused Signatories, but less able to support compliance of advisory services and other Signatories that more directly engage with demand-side consumers.
- better definitions of Signatories and consumers/clients will help the Code Administrator and consumers to understand how to support Signatories in their compliance efforts, and to better support transparency, accountability and integrity in Australia's expanding carbon market.
- The broader remit of the Code extends across the breadth of Australia's carbon market and should engage with Signatories and stakeholders on the quality of non-regulated (non-ACCU) units that are traded in the Australian market, and on the quality of advice that is provided around this procurement and related transactions.
- Working with Australian market participants on non-domestic carbon abatement activities has implications for the use of limited Code Administrator resources, and so a longer-term guidance and advocacy role should be considered alongside more material engagement with Signatories.

The Code also needs to be financially sustainable with Signatory annual fees covering the cost of administering the Code. Considerations include that:

- if Signatories can add multiple entities under the one Signatory fee this may result in reduced income for the Code, placing upward pressure on Signatory fees overall and on the Code Administrator's ability to administer the Code.
- fees should be applied fairly, with Signatories paying a fee that best aligns with the benefits they receive and the costs for the Code Administrator to manage a particular Signatory.
- the current fee structure ensures Signatories under the 'Project Services' (Project Developer/ Aggregator/ Agent/ Advisor) type pay a fee based on the number of projects they are contractually involved with.

The Administrator proposes draft positions to implement for Recommendations 1, 9 and 43, based on submissions to the Review received from stakeholders, and further investigation of these and related issues



by the Code Administrator. These considerations and draft positions are neither decisive nor exhaustive and are presented as a basis for discussion. Proposed changes to Code text are displayed in red throughout this document.

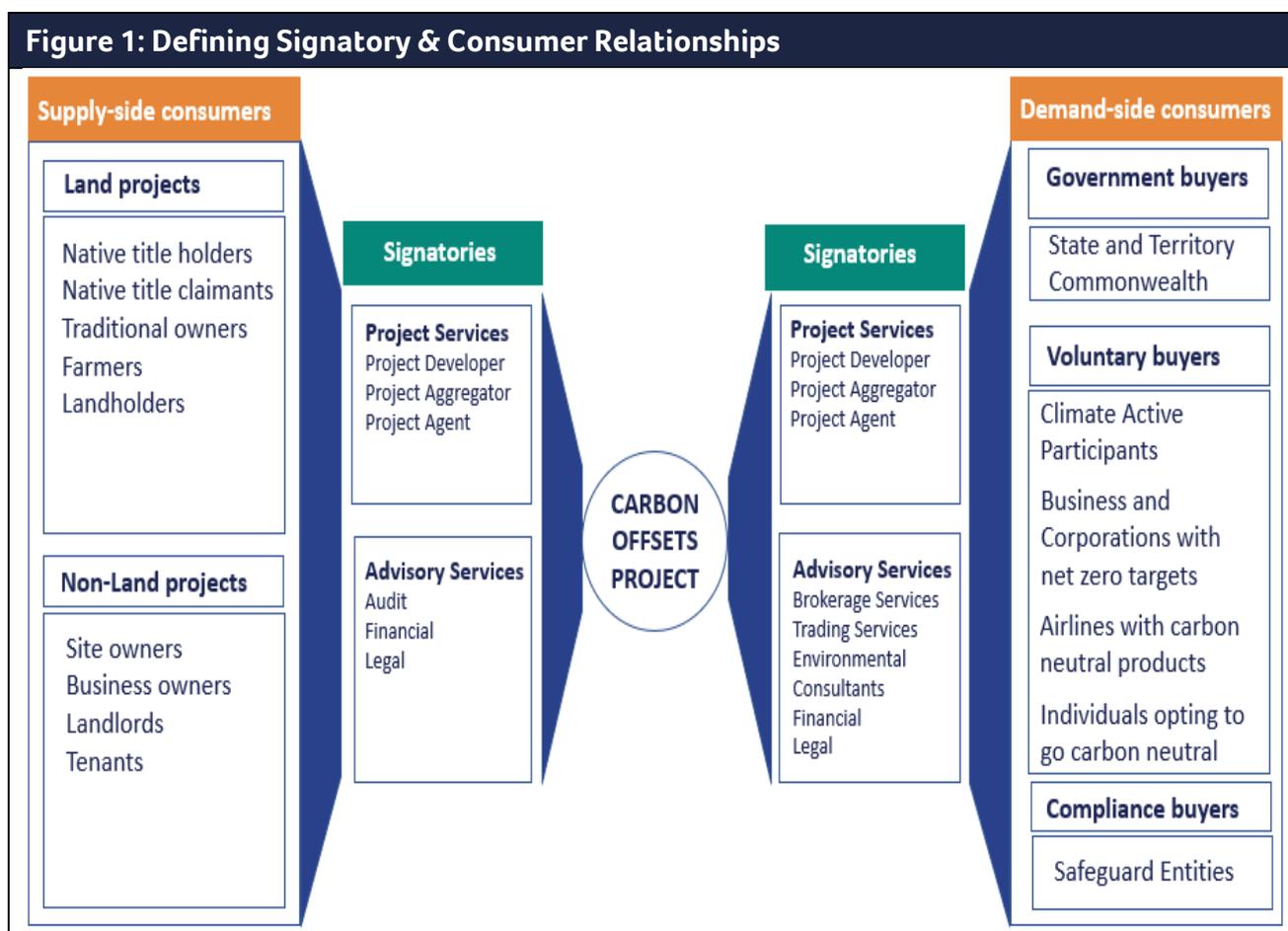
3. Proposed Options for Consultation

3.1 Definition of Consumers

Recommendation 1 suggests that the definition of consumers reduce ambiguity and to ensure that these definitions are relevant given the varying types of consumers engaging with the carbon industry. The Review highlighted the need to now provide consumer protection for demand-side consumers, highlighting that:

- the voluntary market is growing with a range of consumers transacting a broad array of carbon credits.
- the Code can provide consumer protections for these new buyers entering the market. Examples of voluntary buyers include: Climate Active participants, businesses and corporations with net zero or other emissions reduction targets, companies offering carbon neutral products and services, and individuals opting to go carbon neutral/buy carbon neutral products and services.
- Signatories may approach and/or assist these consumers to buy carbon credits to meet certain offsetting goals. Interactions would typically be focused on better understanding a consumer’s requirements, providing financial/legal/other advice and negotiating terms for the brokerage, trade or sale of carbon credits between parties.

The proposed changes in sections 3.1 and 3.2 of this consultation paper are interconnected. The relationship between newly defined Signatories and supply-side and demand-side consumers is shown in Figure 1, below.





The Administrator proposes that the Codes definition of ‘Client’ be amended in the Code text to include the broadened definition of consumers under the Code.

Current Code Text	Proposed Code Text
<p>Appendix 1</p> <p>1 Glossary and Definitions</p> <p>Client - for the purposes of this Code means a landholder, facility owner or other party who wishes to undertake a carbon project.</p>	<p>Appendix 1</p> <p>1 Glossary and Definitions</p> <p>Client - for the purposes of this Code means both supply-side consumers and demand-side consumers in the carbon market.</p> <p>Supply-side consumers - are categorised as consumers involved in both land-based and non-land-based projects. They are consumers as they may be approached by businesses to agree to and/or to sign contracts for carbon projects to operate on land, sites and/or within their business’s operations. They require consumer protections from risks associated with agreeing to carbon projects being undertaken where they have legal rights and/or have an eligible interest.</p> <p>Examples of land-based consumers include: Native title holders, Native title claimants; Traditional owners; farmers and landowners. Examples of non-land-based consumers include site owners; business owners; landlords and tenants.</p> <p>Demand-side consumers - represent the buyers of the credits generated by carbon offsets projects. They are consumers as they need to be protected from risks associated with purchasing Australian-generated carbon credits for various purposes.</p> <p>These consumers are categorised as Government, business or community/other organisations that purchase for either compliance or voluntary purposes. Each entity has different consumer risks due to their capacity to manage risks and their reasons for buying carbon credits.</p> <p>Carbon Market - relates to the production of carbon credits on the supply side and trading (buying and selling) of carbon credits on the demand side of the market.</p>

3.2 Definition of Signatories

The Administrator proposes the following amendments to Code guidance and Code text to provide more detail on the interactions that Signatories may have the different types of Signatories with demand-side consumers, which will support greater visibility of Signatory behaviour with, and greater protection of, these consumers.



Current Code Guidance	Proposed Code Guidance
<p>The two signatory types under the Code are:</p> <p>1. <u>Project Developer/Aggregator/Agent/Advisor</u></p> <p>The focus of your carbon industry business activities is related to:</p> <ul style="list-style-type: none"> 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. 	<p>The two signatory types under the Code are:</p> <p>1. <u>Project Services</u></p> <p>The focus of your carbon industry business activities is to provide <u>direct</u> services to supply-side and demand-side consumers for the purpose of the development and management of ERF or carbon offset projects. Typical roles your business may undertake include engaging with clients directly:</p> <ul style="list-style-type: none"> as a project developer; as a project aggregator; as a project agent, or; advising on the above. <p>If your business is contractually involved in developing and managing any Carbon Offset Projects or ERF Projects (regardless of role as primary, secondary or other contracting party), you would be under the 'Project Services' Signatory type.</p>
<p>2. <u>Advisory Services</u></p> <p>The focus of carbon industry business activities is related to:</p> <ul style="list-style-type: none"> environmental consulting services; auditing services; legal services; brokerage services, or; financial services. 	<p>2. <u>Advisory Services</u></p> <p>The focus of your carbon industry business activities is <u>NOT</u> to provide direct services for the purpose of the development and management of ERF or carbon offset projects, but to provide indirect services to supply-side and demand-side consumers across the carbon industry. Typical services your business may undertake include:</p> <ul style="list-style-type: none"> carbon or environmental market-related consulting services; auditing services; legal services; trade and brokerage services, or; financial services.

Current Code Text	Proposed Code Text
<p>1.4 Scope and Interpretation</p> <p>The Code aims to define industry best practice for carbon project developers, agents, aggregators and advisers and represents the minimum standards that all Signatories agree to meet.</p> <p>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.</p> <p>[last 2 paragraphs in section remain the same]</p>	<p>1.4 Scope and Interpretation</p> <p>The Code aims to define industry best practice for project services and advisory services provided within Australia's Carbon Industry and represents the minimum standards that all Signatories agree to meet.</p> <p>The Code applies to entities providing project services and advisory services to clients regarding (i) the registration, implementation, and management of carbon projects in Australia, (ii) providing legal/financial/technical advice (iii) the trading of carbon credits in the Australian market. It covers all types of projects undertaken within the ERF and other Voluntary Offset Schemes.</p> <p>[last 2 paragraphs in section remain the same]</p>



<p>1.5 Signatories to the Code</p> <p>Signatories to this Code are compliant with and agree to adhere to the Code. They:</p> <ol style="list-style-type: none"> (1) are carbon project businesses, including project developers, agents, aggregators and advisers who provide advice and services to clients regarding registration, implementation and management of carbon projects under the ERF and other Voluntary Offset Schemes, and (2) are committed to developing and conducting their business in line with industry best practice and interacting with their clients and other stakeholders in a professional and ethical manner. 	<p>1.5 Signatories to the Code</p> <p>Signatories to this Code are compliant with and agree to adhere to the Code. They:</p> <ol style="list-style-type: none"> (1) include entities, such as project developers, aggregators, and agents who provide direct project services to clients, and (2) include entities, such as carbon or environmental market-related consultants, auditors, lawyers; traders/brokers; and financial consultants, who provide advisory services to clients, for (3) the purposes of the registration, implementation, and management of carbon projects under the ERF and other Voluntary Offset Schemes, providing legal/financial/technical advice, and/or the trading of carbon credits in the carbon market; and (4) are committed to developing and conducting their business in line with industry best practice and interacting with their clients and other stakeholders in a professional and ethical manner.
<p>Appendix 1</p> <p>1 Glossary and Definitions</p> <p>Signatory – a signatory to this Code of Conduct.</p>	<p>[No change]</p>
<p>Appendix 1</p> <p>1 Glossary and Definitions</p> <p>[not currently in the Code]</p>	<p>Appendix 1</p> <p>1 Glossary and Definitions</p> <p>Project Developer - Organisations and individuals who develop and manage carbon projects as project owners (scheme participant, proponent).</p> <p>Project Aggregator - Organisations and individuals who include aggregation services to support the process of bringing multiple sources (projects and/or methods) of carbon abatement together under one carbon project. They may act as a project developer or agent.</p> <p>Project Agent - Organisations or individuals providing carbon services to assist project owners to develop and manage carbon projects.</p>

3.3 Definition of Multi-Entity Inclusion

Recommendation 43 requires that more than one entity can be included in a single Code Signatory status, subject to those entities being within the same corporate group or governance structure. There are clear benefits in allowing multiple related entities to be included in a single Signatory status.

The view of the Administrator is that a ‘multi-entity’ Signatory structure should remain in place, noting that:



- there are reduced administration costs for both the Code Administrator and for Signatories to comply with Code requirements, if more than one entity is allowed under one Signatory status. E.g. the fee-paying Signatory completes one annual report for all entities under the one Signatory status.
- These savings in administration costs for the Code Administrator rightly should flow to a reduction in Signatory fees for these Signatories.
- Conditions and limits should be set around multi-entity fees for both Project Services and Advisory Services Signatory types, so that the administration costs required to monitor Code compliance does not grow beyond the annual fees received.
- Limits should be set on the number and type of entities allowed within both Project Services and Advisory Services Signatory types to ensure entities have similar business operations providing the necessary reductions in administration costs to justify any reduction in fees.

3.3.1 Proposed Multi-Entity Signatory Structure

Below are proposed updates and changes to the multi-entity fee structures, along with existing arrangements for comparison.

Current Code Guidance	Proposed Code Guidance
[not currently in the Code Guidance]	<p>Multiple entities from the same corporate group are allowed under the one Signatory status, noting:</p> <ul style="list-style-type: none"> • A maximum of three entities from the same corporate group are allowed. • Where there are multiple entities under the 'Project Services' Signatory type, total fees are commensurate to the total number of projects that those entities combined are contractually involved with (N.B: These projects have either already or are planned to be registered after 1 July 2018). • Where there are multiple entities under the 'Project Advisors' Signatory type, total fees for are set at \$1,000/year for each additional entity joining the Signatory (after the first). • All entities applying for inclusion under one Signatory status must be of the same Signatory type, i.e., 'Project Services' entities and 'Advisory Services' entities cannot be included under one Signatory status.

3.3.2 Proposed Multi-Entity Signatory Fees

Proposed Signatory fees are set out below, in Table 1. These fees remain consistent with existing fees, with the additional limits and conditions built in, as per the proposal above, in section 3.3.1.

Signatory Types	Category Criteria	Signatory Fees (AUD ex. GST)**	
		One entity	Multiple Entities
<u>Category 1</u> Project Services	At the time of application your entity is contractually involved with 15 or more projects*.	\$12,500/per year	Based on the number of projects* that a maximum of three entities combined are contractually involved with.
<u>Category 2</u> Project Services	At the time of application your entity is contractually involved with between 5 and 14 projects*.	\$5,000/per year	
<u>Category 3</u> Project Services	At the time of application your entity is contractually involved with less than 5 projects*.	\$2,500/per year	
<u>Advisory Services</u>		\$2,500/per year	\$1,000/year for each additional entity.

* These projects have either already or are planned to be registered after 1 July 2018.

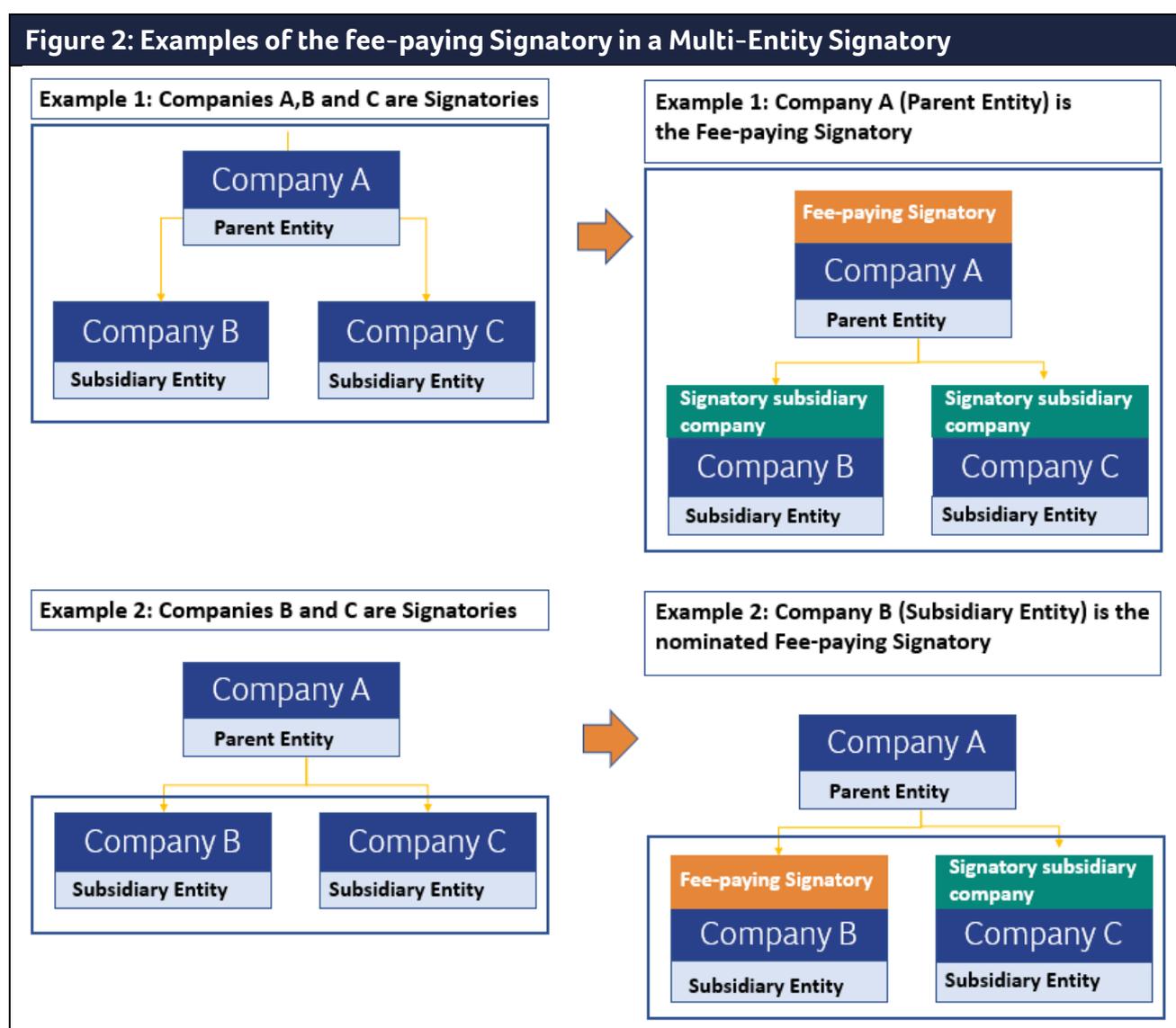
** Starting from 1 July 2021, Signatory fees are subject to an annual increase of 3% or CPI (whichever is greater).



3.3.3 Proposed Multi-Entity definitions and responsibilities.

It is proposed that the following rules are applied to define and manage related entities within the same corporate group:

- Where the Signatory is a parent entity (or organisation), any subsidiary of the parent entity can come under the one Signatory status.
- Where the Signatory is a subsidiary of a parent entity, both the parent entity and any subsidiaries of the same parent entity can come under the one Signatory status.
- The entity in the corporate group with the greatest operational control or who has been nominated is the fee-paying Signatory (see Figure 2).
- The fee-paying Signatory entity has overall responsibility for the Signatory.
- Related entities within the same corporate group as a fee-paying Signatory do not automatically receive Signatory status and will need to apply to join the Signatory providing evidence they are a related entity.



Below are proposed updates and changes to defining and managing related entities within the same corporate group under the one Signatory status.



Current Code Guidance	Proposed Code Guidance
[not currently in the Code Guidance]	<p>Fee-paying Signatory definition</p> <ul style="list-style-type: none"> • If there is only one entity in the corporate group that is a Signatory to the Code, this entity is the fee-paying Signatory. • If there is more than one entity in the corporate group that is a Signatory to the Code, then the fee-paying Signatory entity is: <ul style="list-style-type: none"> ➤ the parent entity if the parent entity is a Signatory to the Code (see Figure 2: Example 1). ➤ if the parent entity is not a Signatory to the Code, the subsidiary entity that has been nominated as the fee-paying Signatory by all subsidiary entities that are Signatories to the Code (see Figure 2: Example 2). • If a parent entity of the same corporate group wishes to join the Code under the same Signatory as a subsidiary entity, then the parent entity needs to replace the subsidiary entity and become the new fee-paying Signatory (see Figure 2: Example 1).
[not currently in the Code Guidance]	<p>Fee-paying Signatory responsibilities</p> <ul style="list-style-type: none"> • Accepts full responsibility for paying Code Signatory Fees for both itself and for Signatory Related Entities. • Accepts full responsibility for compliance with Code requirements for both itself and for Signatory Related Entities. This includes, but is not limited to: <ul style="list-style-type: none"> ➤ completing annual reporting under sub-section 2.5(6)(a), ➤ responding to information requests under sub-section 2.5(6), ➤ paying signatory fees under sub-section 4.2, ➤ applying to become a Signatory under sub-section 4.1, and ➤ training employees and representatives on Code requirements under sub-section 2.5(7) of the Code. E.g., if Code non-compliances are identified for a Signatory Related Entity these non-compliances will be reported against the Fee-paying Signatory and under section 3.8 of the Code could result in the removal or suspension of the Fee-paying Signatory and the Signatory Related Entity. • Will need to apply for a Signatory Related Entity to come under their Signatory status providing evidence including a declaration that: <ul style="list-style-type: none"> ➤ the fee-paying Signatory has full power to manage and execute any business of the affiliated entity related to compliance with the Carbon Industry Code of Conduct. ➤ the entity is within the same corporate group and that subsidiaries within the corporate group meet the definition from section 46 of the Corporations Act 2001. • Can promote themselves as a Signatory, including using the Code brandmark in their documentation, and all relevant entity logos of the Signatory organisations will be published on the Code website.
[not currently in the Code Guidance]	<p>Signatory Related Entity definition</p> <ul style="list-style-type: none"> • Is an entity that has signed up to the Code through a Fee-paying Signatory that is in the same corporate group.
[not currently in the Code Guidance]	<p>Signatory Related Entity responsibilities</p> <ul style="list-style-type: none"> • Accepts responsibility for complying with Code requirements for itself only. • Will provide information and follow direction from the fee-paying Signatory regarding their responsibilities to comply with Code requirements. • Payment of Signatory fees is managed by the fee-paying Signatory. • Can promote themselves as a Signatory, including using the Code brandmark in their documentation, and all relevant entity logos of the Signatory organisations will be published on the Code website.



[not currently in the Code Guidance]	<p>Entity definition</p> <ul style="list-style-type: none"> a company, organisation, non-profit or registered charity with an Australian Business Number (ABN) or CAN. Entities may or may not be part of a corporate group. If they are part of a corporate group, they may be parent entities or subsidiary entities.
[not currently in the Code Guidance]	<p>Corporate Group definition</p> <p>Includes a Parent Company/s and its subsidiary/s as defined under section 46 of the <i>Corporations Act 2001</i>.</p>
[not currently in the Code Guidance]	<p>Parent Entity definition</p> <p>A corporation or other business enterprise that owns controlling interests in one or more subsidiary companies (distinguished from holding company).</p>
[not currently in the Code Guidance]	<p>Subsidiary Entity definition</p> <p>The Code takes its definition of 'subsidiary' from section 46 of the Corporations Act 2001 (the Corporations Act). That is, a body corporate (the first body) is a subsidiary of another body corporate if, and only if:</p> <ul style="list-style-type: none"> (a) the other body: <ul style="list-style-type: none"> (i) controls the composition of the first body's board; or (ii) is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the first body; or (iii) holds more than one-half of the issued share capital of the first body (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or (b) the first body is a subsidiary of a subsidiary of the other body.

Consultation Next Steps

The Administrator will:

- Undertake consultations in April 2021 with the following groups of stakeholders, as relevant:
 - Indigenous stakeholders and Indigenous representative groups
 - Signatories
 - The Clean Energy Regulator
 - Government Partners of the Code
 - Industry Supporters of the Code
 - Land management stakeholders and their representative groups
 - Prospective Signatories, Partners, and Supporters
- Use the information provided during the consultations to inform the Code's development as it is transitioned to fully operational from 1 July 2021.
- Continue to inform stakeholders and Signatories of prospective amendments to the Code, and provide an electronic copy of the Code text with proposed changes clearly marked prior to the updates being enacted.
- Invite stakeholders' final comments on the draft updates, which will be taken into account at the Administrator's discretion.

Stakeholders from any of the above groups are invited to contact the Code Administrator (code.administrator@carbonmarketinstitute.org) to confirm interest in participating in the consultations.

for more information please contact

Code Administrator

code.administrator@carbonmarketinstitute.org



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