

**CODE OF CONDUCT
CONSULTATION PAPER**

Signatory Breach Reporting

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 26-29, which relate to:

- Signatories' requirements on timely reporting of breaches of the Code (Code Section 2.5);
- Providing positive guidance on Signatories' professional relationships with each other (Code Section 2.6).

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 26 27 28 29	
Review Recommendation	Administrator's 2020 Review Response
26. It is recommended that the Code Administrator provide guidance to Signatories on best-practice standards for timely self-reporting of material breaches.	Approved The Administrator will provide guidance to Signatories to clarify and supplement existing requirements for self-reporting of material breaches, during the 2020/2021 financial year.
27. It is recommended that Signatories be provided with the opportunity to provide feedback on whether the Code should be amended so that it clarifies the timing for self-reporting of major and severe breaches.	Approved The Administrator will consult with Signatories to receive feedback on the need for clarifying timing for self-reporting of breaches in the text of the Code itself, rather than just through guidance, as discussed above in Recommendation 26.
28. It is recommended that the Code Administrator set expectations on the timing of Signatory breach reporting. In principle, a Signatory should be the first to report on its own breaches to the Code Administrator. (as	Approved The Administrator will set expectations as recommended, and this will be noted in the guidance prepared as part of Recommendation 26, and



<p>opposed to hearing about it from other Signatories or the media).</p>	<p>considered in Signatory consultation for Recommendation 27.</p>
<p>29. It is recommended that Section 2.6 of the Code be amended to include positive guidance on Signatories' professional relationships with each other, emphasising that their conduct as a group must support the Code's integrity and reputation, and that Code Signatories be seen as a principled group that acts ethically and with integrity.</p>	<p>Approved</p> <p>The Administrator will develop guidance, and modify internal compliance systems and the relevant articles in the Code text to be updated and implemented for compliance from 1 July 2021.</p>

2. Consideration of Recommendations 26 | 27 | 28 | 29

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 26-29, noting some issues and considerations, as below:

- Recommendation 26 | 27: Submissions supported the need for clarity on timely self-reporting, including guidance on best practice standards for timely self-reporting of material breaches.
- Recommendation 28: Submissions supported that a Signatory be the first to report on its own breaches noting that the timing for self-reporting should be reasonable.
- Recommendation 29: Submissions supported the Code providing positive guidance on Signatories' professional relationships with each other, noting some concerns, namely that the language should be carefully considered to protect the reputation of the industry while acknowledging relationships exist in a competitive industry.

The view of the Code Administrator is that:

- Timeframes should be set for when Signatories provide Code breach information to the Code Administrator when: self-reporting; reporting breaches made by other Signatories; providing information about a suspected breach to the Code Administrator upon request.
- The severity of a breach should be considered when deciding the timeframe to report a breach, with material breaches to be reported in a shorter timeframe than other breaches.
- Signatory breach self-reporting occurs in a shorter timeframe than Signatory breach reporting of other Signatories.
- Code breach reporting timeframes should align to those required under ASIC where possible, as many Signatories have AFS licenses and are required to comply with ASIC breach timeframes. ASIC requires AFS licences for "significant" self-reported breaches to be reported within 10 business days.

The Administrator proposes draft positions to implement for Recommendations 26-29, 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.



3. Proposed Options for Consultation

Suggested timeframes for Signatories to provide Code breach information to the Code Administrator are provided in the Signatory Breach Reporting Matrix in Table 1.

Table 1: Signatory Breach Reporting Matrix Types of Code breach reporting required by Signatories	Breach timeframes	
	Major and Severe	All other Breaches
Signatory breach self-reporting	Within 10 business days	Within 15 business days
Signatory providing information regarding breaches of the Code upon request by the Code Administrator	Within 10 business days	Within 15 business days
Signatory breach reporting of other Signatories	Within 15 business days	Within 20 business days

The Administrator also proposes the following amendments to Code text (in red) and guidance to incorporate timeframes for Signatories to provide Code breach information outlined in Table 1 and to outline positive guidance on Signatories' professional relationships with each other.

Current Code Text	Proposed Code Text
2.5(6)(e) [not currently in the Code]	2.5(6)(e) Signatories must undertake to inform the Code Administrator of a major or severe breach of their obligations under the Code (as listed under section 3.6 Breach Matrix of this Code) within 10 business days of becoming aware of the suspected breach.
2.5(6)(f) [not currently in the Code]	2.5(6)(f) Signatories should inform the Code Administrator of any other breach of their obligations under the Code within 15 business days of becoming aware of the suspected breach.
2.5(6)(g) Subject to section 2.6(6) of this Code, Signatories must undertake to inform the Code Administrator of a major or severe breach of the Code (as listed under section 3.6 Breach Matrix of this Code) made by other Signatory companies. See also section 2.6(5) of this Code regarding the obligation not to make a vexatious or unfounded claim.	2.5(6)(g) Subject to section 2.6(6) of this Code, Signatories must undertake to inform the Code Administrator of a major or severe breach of the Code (as listed under section 3.6 Breach Matrix of this Code) made by other Signatory companies within 15 business days of becoming aware of the suspected breach. See also section 2.6(5) of this Code regarding the obligation not to make a vexatious or unfounded claim.
2.5(6)(h) Subject to section 2.6(6) of this Code, Signatories should endeavour to inform the Code Administrator of any breaches of the Code made by other Signatory companies. See also section 2.6(5) of this Code	2.5(6)(h) Subject to section 2.6(6) of this Code, Signatories should inform the Code Administrator within 20 business days of any other breaches of the Code made by other Signatory companies. See also section 2.6(5) of this Code



regarding the obligation not to make a vexatious or unfounded claim.	regarding the obligation not to make a vexatious or unfounded claim.
2.5(6)(k) [not currently in the Code]	2.5(6)(k) For major or severe suspected breaches of the Code, Signatories must comply within 10 business days of reasonable requests made by the Code Administrator for the provision of information or documentation.
2.5(6)(l) Signatories must comply in a timely manner with reasonable requests made by the Code Administrator for the provision of information or documentation in relation to compliance audits or investigation of suspected breaches of the Code.	2.5(6)(l) Signatories must comply within 15 business days with reasonable requests made by the Code Administrator for the provision of information or documentation in relation to compliance audits or investigation of suspected breaches of the Code.
2.6 (2) [not currently in the Code]	2.6 (2) Signatories have given an undertaking, as part of a principled group of Signatories, that they agree to building professional relationships with other Signatories based on acting ethically and with integrity to support the carbon industry and Code's integrity and reputation.

Current Code Guidance	Proposed Code Guidance
[not currently in the Code Guidance]	<p>Under section 2.6 (2) of the Code Signatories agree to building professional relationships with other Signatories based on acting ethically and with integrity to support the carbon industry and Code's integrity and reputation. Signatories also agree to act appropriately in interactions with other Signatories including under:</p> <ul style="list-style-type: none"> • Sub-section 2.6 (4) - Signatories must not act in any way that might bring the Code into disrepute. • Sub-section 2.6 (5) - Signatories must not make any vexatious or unfounded claims against another Signatory. • Sub-section 2.6 (6) -If a Signatory suspects another Signatory has breached the Code, the Signatory must take reasonable steps to contact the Signatory suspected of breaching the Code before informing the Code Administrator of a breach under sections 2.5(6)(e) and (f) of this Code. <p>To further assist Signatories to meet the above Code requirements, the below guidance is also provided:</p> <ul style="list-style-type: none"> • When reporting a suspected breach of another Signatory, it is best practice to: <ul style="list-style-type: none"> ➢ Provide specific information including the organisations involved, timeline of events, relevant sections of the Code of the suspected breach, and specific details of the suspected breach. ➢ Provide the Signatory the opportunity to self-report the breach within the timeframes for self-reporting set out in the Code. ➢ Ensure the purpose for reporting suspected breaches focuses solely on if a breach under the Code has occurred and is not driven by commercial negotiations/ arrangements or any other purposes. • Signatories commit to building professional relationships with other Signatories by upholding the professional values of trustworthiness, competence, honesty, fairness, and diligence.



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| | <ul style="list-style-type: none">• As part of a principled group, Signatories make professional commitments to maintain a high level of relevant industry knowledge and skills, cooperating with the Code Administrator on investigations of suspected breaches, contributing to reviews of the Code, promoting ethical standards of the profession, and to holding each other accountable in supporting the carbon industry and the Code's integrity and reputation. |
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Consultation Next Steps

The Administrator will:

1. Undertake consultations in April 2021 with the following groups of stakeholders, as relevant:
 - Signatories
 - The Clean Energy Regulator
 - Government Partners of the Code
 - Industry Supporters of the Code
 - Indigenous stakeholders and Indigenous representative groups
 - Land management stakeholders and their representative groups
 - Prospective Signatories, Partners, and Supporters
2. Use the information provided during the consultations to inform the Code's development as it is transitioned to fully operational from 1 July 2021.
3. 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.
4. 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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