



**Strengthening Free, Prior
and Informed Consent (FPIC)
in the Australian Carbon
Industry Code of Conduct**

Submission by First Nations Economics

April 2026

Acknowledgement of Country

First Nations Economics acknowledges the Aboriginal and Torres Strait Islander Peoples as the First Peoples and Traditional Custodians of Australia, their lands, seas, and skies.

Our offices are located on the traditional lands of the Gadigal and Wangal clans of the Eora Nation in Camperdown, the traditional lands of the Bundjalung Nation in Lennox Head, and the traditional lands of the Whadjuk Noongar people in Perth, Western Australia.

We have staff on the lands of the Larrakia, the Yuggera, the Wurundjeri Woi-wurrung, and the Bunurong / Boon Wurrung peoples. We pay our respects to the Elders of these lands, past and present, and thank them for their ongoing custodianship of Country.

We acknowledge that sovereignty was never ceded. These lands, waterways and skies are, and will always be, sovereign Aboriginal and Torres Strait Islander lands.

1. Executive Summary

This submission responds to proposed updates to the Australian Carbon Industry Code of Conduct relating to Free, Prior and Informed Consent (FPIC) and engagement with First Nations stakeholders.

First Nations Economics (FNE) supports strengthening the Code to improve the consistency, credibility and practical application of FPIC across carbon projects. While the current Code recognises engagement and consent, it does not provide sufficient clarity on how to operationalise them in complex project environments.

A central issue is the gap between engagement as a process and consent as a governance outcome. Engagement can be undertaken in ways that meet procedural requirements without resulting in informed decision-making, meaningful influence or durable agreement. The current system structurally enables procedural compliance without governance legitimacy. Addressing this requires clearer expectations, stronger safeguards and a more consistent approach across schemes.

The submission recommends the inclusion of a dedicated FPIC section, supported by defined standards for what constitutes free, prior and informed consent in practice. It also emphasises the importance of early and ongoing engagement, transparent communication of economic and long-term project implications, and alignment with community governance structures.

Consistent application of FPIC across carbon crediting schemes is critical to maintaining market integrity, while allowing for proportionate application based on project complexity. Inconsistent application of FPIC creates regulatory risk, while weak application presents uncertainty for investors and exposure to reputational and legal risks.

The submission further highlights the need for clearer standards around claims relating to First Nations participation, improved guidance on identifying appropriate community representatives, and stronger alignment between legislative frameworks and practical implementation. FPIC is not only a safeguard, but a value-creating mechanism that strengthens long term project viability.

Strengthening these areas will support more credible engagement, improve confidence across the market, and enable First Nations communities to participate meaningfully in decisions that affect their land, resources and economic futures.

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2. About First Nations Economics

First Nations Economics (FNE) is an Aboriginal-led, Supply Nation-registered charity dedicated to walking alongside communities to achieve their self-determined prosperity.

FNE provides economic advisory services at the intersection of First Nations rights and interests, public investment frameworks, and major project development, including clean energy and carbon markets. Our work focuses on enabling meaningful First Nations participation in complex investment environments, with particular emphasis on governance, economic inclusion and shared-value design.

We work alongside Traditional Owner groups, Aboriginal corporations, governments and proponents to support informed participation in economic decision-making. This includes providing strategic advice, applied analysis, and system-level insights to design participation pathways that move beyond consultation and transactional benefit-sharing toward enduring economic participation, decision-making influence, and long-term value creation.

Our approach recognises that investment on Country is not solely a technical or commercial exercise. It is also an intergenerational economic decision with implications for governance capability, community wealth and cultural authority. Effective participation, therefore, depends on alignment between commercial models, policy intent and First Nations governance systems.

This perspective informs FNE's approach to engagement and consent. The effectiveness of engagement is determined not only by process, but by whether it supports informed decision-making, reflects community authority, and influences outcomes.

FNE's perspective is informed by extensive advisory experience supporting First Nations organisations engaging with large-scale infrastructure, clean energy and carbon-related investments. This includes an applied analysis of participation and benefit-sharing models across Australia and comparable jurisdictions, including Canada, the United States, and Aotearoa (New Zealand), with a focus on legal operability, financial viability, governance readiness, and scalability.

Across this work, consistent patterns emerge. Outcomes are materially stronger when First Nations communities are engaged early, before key commercial and governance settings are finalised; when participation is structured through equity, revenue-linked mechanisms, or formal governance roles; and when governance arrangements recognise cultural authority and provide genuine influence over decision-making.

Where engagement occurs later in the project lifecycle, participation is more likely to be limited to short-term employment, training or community grants, with limited influence over value distribution or strategic direction.

We also observe the consequences where engagement and consent are not effectively established. Where FPIC is weak or treated as a procedural requirement, projects are more likely to experience delays, renegotiation, legal dispute and reputational damage. These impacts are not only borne of proponents, but also by communities through disengagement, reduced trust and diminished long-term outcomes. In some cases, this has resulted in investor uncertainty or withdrawal where project risk is no longer considered acceptable.

These are not theoretical risks, they are recurring features of projects where consent is not established as a governance outcome.

This submission draws on this body of work to provide system-level insight into the conditions required to support effective engagement, credible consent processes and long-term economic outcomes.

FNE brings this perspective through direct advisory support to communities, proponents and governments to design engagement and participation models that are practical, credible and aligned with community authority.

3. Recommendation 47 – Dedicated FPIC section in the Code

FNE supports the inclusion of a dedicated section on FPIC within the Code.

The current Code addresses engagement and consent within broader due diligence and consultation provisions. While this signals intent, it does not provide sufficient clarity or consistency in how FPIC should be applied, evidenced or maintained across the lifecycle of a project.

In FNE's advisory work supporting First Nations organisations engaging with major projects, engagement processes are often procedurally compliant but do not result in genuine understanding, influence, or agreement. Participation does not necessarily equate to informed consent, and consultation does not necessarily translate into decision-making influence.

Where this distinction is not recognised early, the cost of remediation is often materially higher than the cost of getting engagement right from the outset. In practice, this has involved renegotiation of commercial terms, project delays, legal disputes and in some cases, investor withdrawal. These are not isolated outcomes, they are recurring where participation is assumed to constitute consent.

In comparable project environments, engagement undertaken after key commercial settings were finalised has resulted in participation being limited to consultation and short-term benefits, with limited influence over value distribution or decision-making.

This reflects a gap between engagement as a process and consent as a governance outcome. A dedicated FPIC section would provide the foundation to address this gap by establishing clear, enforceable expectations.

Defining FPIC in practice

The Code should define FPIC not only as a set of principles, but as a set of observable conditions that must be met.

- **Free** - Consent must occur without coercion or structural pressure, including time constraints, financial dependence, or an information imbalance. This requires adequate timeframes, access to independent advice, and the ability to decline participation without consequence.
- **Prior** - Engagement must occur early enough to influence outcomes, including project design, delivery models and benefit-sharing arrangements – not after key decisions have been made.
- **Informed** - Communities must be supported to understand:
 - a) the purpose and structure of the project
 - b) financial models and expected returns
 - c) long-term obligations, including permanence and liability risks

This requires more than the provision of information. In practice, it involves culturally appropriate communication, opportunities for discussion, and confirmation that information has been understood.

- **Ongoing consent** - FPIC should be treated as a continuous process, not a one-off approval. Consent should be maintained across the life of the project, with structured opportunities to revisit decisions where conditions change.
- **Community authority** - Consent must be grounded in community-defined governance. In practice, this requires aligning engagement with local decision-making structures, recognising cultural authority, and ensuring communities have a role in validating how outcomes and decisions are interpreted.

Strengthening application within the Code

To ensure FPIC is meaningful in practice, the Code should:

- require evidence that communities understand project implications, not just that engagement has occurred
- demonstrate how engagement has influenced project design and outcomes
- clarify expectations for explaining financial models, risks and long-term obligations
- recognise community-defined authority alongside legal representation
- extend consent requirements across the full project lifecycle
- introduce clear documentation and verification requirements aligned with audit processes

Across FNE's work, stronger outcomes are consistently associated with early engagement, transparent economic information, and processes that allow communities to validate decisions. Current reliance on "reasonable efforts" creates variability and limits accountability.

A dedicated FPIC section would support a shift from engagement as a procedural requirement to FPIC as a core governance mechanism within the carbon market.

Without this level of clarity and consistency, there is a risk that engagement remains process-driven rather than outcome-driven, limiting the effectiveness of consent and undermining trust in the sector.

Strengthening FPIC in this way will improve the integrity, credibility and long-term sustainability of carbon projects, while supporting Aboriginal communities to participate in decisions about land, resources and economic activity on their own terms.

4. Recommendation 48 – Strengthening engagement standards

Strengthening engagement standards is critical to ensuring that FPIC is applied consistently and meaningfully across the carbon market.

While the current Code requires engagement with First Nations stakeholders, there remains variability in how this is undertaken in practice. This creates a risk that engagement becomes procedural rather than outcome driven.

From our experience across program design, evaluation and community engagement, good practice engagement is not defined by the volume of activity, but by whether communities:

- understand the project and its implications
- have the opportunity to influence decisions
- and are able to determine whether participation aligns with their priorities

What good practice engagement looks like

Strengthening engagement standards is critical to ensuring that FPIC is applied consistently and meaningfully across the carbon market.

While the Code requires engagement with First Nations stakeholders, experience shows that engagement can still occur in ways that are procedurally compliant but do not result in genuine understanding, influence or agreement.

In practice, the distinction is not whether engagement occurs, but whether it enables communities to:

- understand the full implications of a project
- influence key decisions
- and determine whether participation aligns with their priorities

What good practice looks like

Effective engagement is defined less by the volume of activity and more by when and how it occurs.

Engagement must occur early enough to shape outcomes. This is particularly evident where engagement occurs after key commercial settings are finalised, limiting participation to consultation and short-term benefits rather than meaningful influence over outcomes.

It must also be properly resourced. Meaningful participation requires time to consider information, access to independent advice, and engagement approaches that align with community preferences. Without these conditions, engagement risks reinforcing existing power imbalances.

A critical element is the ability to engage with the economic reality of a project. Communities need to understand how value is created and shared, what risks they carry, and the nature of long-term obligations. Where these elements are not clearly explained, consent is unlikely to be fully informed, regardless of the process.

Engagement must also align with community governance and authority. This includes recognising cultural authority and local decision-making structures, rather than relying solely on formal or legal frameworks.

Finally, engagement should not be treated as a single event. It is an ongoing process that continues beyond initial consent, with structured opportunities to revisit decisions, respond to changing conditions and validate outcomes over time.

Safeguards that support effective engagement

To support consistency, the Code should include a small number of clear safeguards that reflect how engagement operates in practice:

- access to independent legal, financial or technical advice

- adequate timeframes for decision-making
- clear disclosure of risks, obligations and trade-offs
- transparency around financial and commercial arrangements
- documentation of how community input has influenced decisions

These safeguards reflect the conditions required for engagement to move beyond consultation and support informed and credible consent.

What enables genuine FPIC

Three factors consistently determine whether consent is genuinely free, prior and informed.

- **Clarity of information** - Information must be understandable, relevant and tested for comprehension, including how decisions are made and how community input will be used.
- **Integrity of process** - Communities must have sufficient time and culturally appropriate processes to consider decisions, deliberate internally and seek advice. Compressed or externally driven timelines undermine consent.
- **Balance of power** - Communities must be able to influence outcomes, negotiate terms and decline participation. Where engagement processes recognise community authority, outcomes are more credible and sustainable.

Where these conditions are present, engagement is more likely to result in informed decision-making, stronger agreements and long-term trust.

Strengthening engagement standards requires a shift from activity-based expectations to outcome-based practice. Without this shift, there is a risk that engagement will continue to be treated as a procedural requirement rather than as a mechanism for shared decision-making.

Embedding clear, practical expectations will improve consistency across the market and support the effective application of FPIC in complex project environments.

5. Recommendation 49 – Application across the carbon crediting scheme

FPIC should apply consistently across all carbon crediting schemes covered by the Code.

The need for FPIC does not vary based on how a project is classified or credited. Communities are engaging with the same types of activities, with similar long-term obligations, risks and potential benefits, regardless of the scheme under which a project operates.

Inconsistent application of engagement standards risks creating variability in how consent is understood, applied and maintained. This can result in differing expectations across similar projects, reduced protections in less regulated or voluntary markets, and potential for regulatory arbitrage where projects align with lower standards.

A consistent baseline for FPIC is therefore necessary to support clarity, accountability and overall market integrity.

At the same time, the application of FPIC should be proportionate to the scale, complexity and risk profile of the project. In FNE's advisory work, projects involving longer time horizons, complex contractual arrangements or greater uncertainty in financial outcomes require more intensive engagement to ensure that consent is genuinely informed.

This typically includes a deeper explanation of economic structures and risk, longer timeframes for community decision-making, and access to independent advice where appropriate.

Variation in application should therefore reflect project complexity, not reduce the standard of consent. Maintaining a consistent FPIC baseline with a proportionate application will support meaningful engagement across all project types and strengthen confidence in the carbon market.

6. Recommendation 50 – Claims relating to Indigenous participation or co-benefits

Claims relating to First Nations participation, partnership or co-benefits should be subject to clear and consistent standards within the Code.

These claims carry significant risk if unsubstantiated. Variability in how terms such as “participation”, “partnership” and “community benefit” are used can lead to overstatement or misrepresentation of the nature and extent of First Nations involvement.

A clear distinction must be maintained between consultation, participation in project delivery, and genuine partnership or shared decision-making. Without this, claims risk overstating involvement relative to the underlying engagement and consent processes.

To address this, the Code should require that claims are accurate, clearly defined and supported by documented consent, including agreement on how participation is represented.

Stronger outcomes are associated with engagement processes where communities understand how their involvement will be described, have the opportunity to review and validate claims, and retain a level of control over how their participation or association with a project is communicated.

The Code should also require that claims are consistent with the underlying engagement processes, supported by documentation available for audit, and that any referenced benefits are clearly explained and not overstated.

Strengthening this area will reduce the risk of misrepresentation and support more transparent and credible communication across the carbon market, improving confidence for communities, proponents and investors.

7. Recommendation 51 – Engagement with First Nations stakeholders

Engagement with First Nations stakeholders should recognise that communities are not homogenous, and that different groups hold distinct rights, interests and authority in relation to land, culture and decision-making.

The Code should acknowledge that engagement may need to occur with Native Title holders and claimants, Traditional Owners and cultural knowledge holders, Aboriginal Community-Controlled Organisations (ACCO's), and other representative bodies. Each may play a different role depending on the project context.

Effective engagement requires consideration of both legal rights and community-defined authority, including how decisions are made locally and who holds cultural legitimacy.

A key risk arises where engagement is limited to formally recognised entities without sufficient consideration of community governance. While this may meet legal requirements, it does not always reflect how authority operates in practice and can limit the legitimacy of outcomes.

To address this, the Code should provide clearer guidance on how organisations identify and engage with appropriate representatives. This should include expectations that proponents undertake early stakeholder mapping that considers both legal and community governance structures, engage with multiple sources to confirm appropriate representation, and recognise that authority may sit across individuals, groups or institutions rather than a single entity.

Effective engagement is strengthened where the process itself is validated with community prior to formal engagement, and where there is flexibility to adapt as relationships and understanding develop.

Identifying appropriate representatives should therefore be treated as an iterative process rather than a one-off compliance task. Validation is a governance requirement, not a courtesy. Strengthening this aspect of the Code will reduce the risk of incomplete or inappropriate engagement and support more credible and durable outcomes.

8. Recommendation 18 – Alignment with legislative developments

The Code should align with relevant legislative and policy frameworks, including the *Native Title Act 1993 (Cth)*, the *Carbon Credits (Carbon Farming Initiative) Act 2011 (Cth)* and associated ACCU Scheme reforms, as well as international frameworks such as the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*.

These frameworks establish important foundations regarding legal rights, project integrity, and the principle of FPIC. However, they are typically high-level and do not provide sufficient guidance on how to apply engagement and consent in complex project environments.

The Code should therefore play a complementary role by translating these principles into clear, practical and enforceable expectations. This includes clarifying how consent is obtained, evidenced and maintained, and how engagement processes connect to project design, governance and economic outcomes.

In doing so, the Code should also recognise related guidance and frameworks that support engagement in practice, including Indigenous Data Sovereignty (IDS) principles, protocols relating to Indigenous Cultural and Intellectual Property (ICIP), and government guidance on engagement with Native Title holders and Traditional Owners.

Alignment should not be limited to referencing these frameworks but should ensure that their intent is reflected in how engagement is practised. This will support greater consistency, reduce ambiguity, and strengthen the credibility of engagement and consent processes across the carbon market.

9. Additional Feedback

In addition to the matters outlined above, there are several practical considerations that materially affect the quality and legitimacy of engagement in carbon projects.

One of these risks is consultation fatigue. Communities are often asked to engage across multiple processes without clear visibility of how their input will influence outcomes. Over time, this can reduce

trust, constrain participation, and weaken the effectiveness of engagement. Engagement is stronger where it is purposeful, coordinated, and clearly linked to decision-making.

Greater emphasis is also needed on feedback and closure. Engagement processes frequently focus on gathering input, but do not consistently return findings or decisions in a way that is accessible or meaningful to participants. Credibility is strengthened where communities can see how their contributions have been interpreted and reflected in outcomes.

The quality of engagement is also shaped by capability and preparedness. Effective engagement depends not only on community readiness, but also on proponents having the cultural capability, local understanding and appropriate leadership to engage in ways that reflect community governance and protocols.

Another important consideration is knowledge governance. Engagement may involve the sharing of community priorities, local knowledge, and cultural information. Clear expectations are required regarding how this information is recorded, used, and shared, including transparency on confidentiality, attribution, and future use.

Good practice engagement is characterised by clear participation processes, including the ability not to participate or to withdraw, engagement methods that reflect local context, validation of processes and outcomes with community, and the return of findings in accessible and useful forms. Engagement is also most effective when treated as part of an ongoing relationship rather than a discrete transaction.

Recognising these operational dimensions of engagement would strengthen the Code's ability to guide practice in a way that is credible, practical, and responsive to community expectations.

10. Conclusion

Strengthening the application of FPIC within the Code represents a critical opportunity to improve the integrity, consistency and long-term credibility of the carbon market.

This requires moving beyond process-based engagement toward approaches that support informed decision-making, reflect community authority, and enable meaningful participation in project outcomes.

Clear, practical and enforceable expectations will provide greater certainty for proponents, improve transparency for investors, and support more credible and durable outcomes for First Nations communities.

The Code is well-positioned to play this role by translating existing principles into practice, supporting engagement that is not only compliant but also legitimate, consistent, and effective over time.

FNE would welcome the opportunity to work with the carbon industry to support the practical application of these principles and contribute to the development of consistent, credible and effective engagement approaches.