

The Grueen Transfer

Australian Association of National Advertisers: Environmental Claims Code Review

Australian consumers are increasingly concerned about environmental matters such as climate change and rely on the claims and credentials of business to make informed decisions. Australian regulators have noted an uptick in greenwashing as businesses attempt to attract environmentally conscious consumers.

Rigorous standards for environmental claims in advertising are critical to protect consumers and to prevent advertisers from falsely boosting their environmental credentials. More broadly, the advertising industry has a responsibility to reflect on the role it plays in Australia's biodiversity and climate crises.

The review of the Environmental Claims Code provides a unique opportunity for the Australian Association of National Advertisers (AANA) to drive integrity and best-practice in Australian advertising.

Polly Hemming

February 2023

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ISSN: 1836-9014

Introduction

The Australia Institute welcomes the opportunity to provide input into the review of the Environmental Claims Code (the Code).

The Australia Institute has been strongly engaged with research into environmental claims made by Australian companies. Our work has focused in particular on claims made by polluting and extractive industries and the ‘greenwashing’ of carbon emissions. As part of this, we have undertaken research into the broader integrity of Australian climate policy, the regulation of climate claims, and the use of domestic and international carbon credit schemes to ‘offset’ emissions by polluting industries including coal and gas projects.¹

While we acknowledge that the Code covers a broad range of environment-related claims made by companies and advertisers, our submission is focused on the integrity of ‘net zero’ and ‘carbon neutral’ claims made by Australian business.

It is no secret that with environmental issues being a key concern of Australian consumers, brands and corporations are looking to promote the environmental benefits of their products and as a powerful means of brand differentiation. The way in which companies position themselves on key environmental issues such as carbon emissions, impacts to biodiversity, reliance on environmentally destructive chemicals and recycling play an important role in driving consumer choices as well as shaping the public perception of firms and individual brands.

A 2021 Finder report on Australian consumer preferences found that 65 per cent of Australians are either ‘somewhat concerned’ or ‘extremely concerned’ about their carbon footprint. That same report found that an overwhelming 88 per cent of consumers believe a company’s ESG provisions are important to consider when purchasing a product or service.²

Crucially, concern is most concentrated among younger consumers. Millennials and generation Z are both more likely to express concern with environmental issues like climate change, but are also more likely to pay a premium for products with demonstrated environmental credentials.³

¹ The Australia Institute, 2022, State Sponsored Greenwash, <https://australiainstitute.org.au/wp-content/uploads/2022/10/State-sponsored-Greenwash-WEB.pdf>

² Finder, 2021, Going Green: A report on Australian consumer attitudes to climate action, <https://dvh1deh6tagwk.cloudfront.net/finder-au/wp-uploads/2021/06/Finder-Green-Consumer-Report-2021.pdf>, p.4

³ Finder, 2021, Going Green: A report on Australian consumer attitudes to climate action, <https://dvh1deh6tagwk.cloudfront.net/finder-au/wp-uploads/2021/06/Finder-Green-Consumer-Report-2021.pdf>, p.6

Indeed, Australian public opinion regarding environmental issues has shifted to such a degree that even extractive industries such as coal and gas developers treat environmental reporting as a key dimension of their ESG objectives and part of their broader social licence to operate.

In this context, as more Australian companies rely on environmental marketing as a means of brand differentiation, there is an increasing risk that some firms will make unclear or false claims to promote products or to greenwash their public image.

Gina Cass-Gottlieb (Chair of the Australian Competition and Consumer Commission) reported to The House of Representatives Standing Committee on Economics in October of last year that greenwashing and false claims of carbon neutrality are of increasing concern to Australian regulators. Her testimony is worth quoting at length (emphasis added):

Mr Laxale: You've been reported in the press as saying that greenwashing and fabrications about carbon neutrality have created unfair advantages for companies and have led to the misleading of consumers. Do you think firms actively use claims about being net zero or being carbon neutral to gain a competitive advantage?

*Ms Cass-Gottlieb: We are concerned that that is the case. We know that amongst other consumer enforcers worldwide—so, within the ICPEN group that I referred to previously, that is, international consumer enforcement protection agencies—they have done, at a global level, research to test this and have found that **40 per cent of claims had problems and weren't able to be verified. That's a high proportion.**⁴*

With respect to carbon credits in particular, Ms Cass-Gottlieb testified (emphasis added):

Mr Laxale: Several people, including a former chair of the Emissions Reduction Assurance Committee, have raised some concerns with the integrity of carbon credits. I think the term 'low-integrity carbon credits' is often used to describe some that are in the system. For the purpose of today I will call them 'junk carbon credits.' How can you know the difference between a carbon neutral product developed with renewable energy over a carbon neutral product that's offset with junk credits?

*Ms Cass-Gottlieb: All of your question is important and one part of it is incredibly relevant from our perspective which is **consumers are unable to actually validate or assess the truth of what is being put to them in this regard.** It is one of the reasons that our initial guidance that we are emphasising is that there needs to be **very specific, very clear, able to be substantiated and narrow claims made, rather than general claims***

⁴ House of Representatives, Standing Committee on Economics, Review of the Australian Competition and Consumer Commission Annual Report 2021, hearing Tuesday 11th October 2022

*because it is very difficult for consumers to ever assess the validity of such claims.*⁵

The need to ensure that environmental claims made by companies are credible and are not misleading or deceptive to consumers must be a key priority of Australian advertising standards and regulation going forward. Regulatory agencies in Australia and elsewhere have indicated that they intend to reign in misleading and exaggerated claims with respect to carbon neutrality. Unfortunately, at this stage it is less clear that the advertising industry reflects a similar level of ambition within existing, voluntary codes of practice.

In Australia, greenwashing is drawing the attention of regulators. In October last year, the ACCC instituted a broad investigation into environmental claims made by 200 Australian businesses, with a particular emphasis on greenwashing.⁶ While government prosecution of deceptive conduct on the part of businesses will continue to be important, there is significant opportunity for voluntary industry codes of practice to ensure that advertisers operate in ways that do not contravene the public interest.

We consider this particularly important with respect to claims made by advertisers regarding carbon emissions and climate action. This is due to both the significant public concern with climate change, but also the difficulties faced by large segments of the public in navigating complex claims made by companies on their climate credentials.

According to CHOICE Magazine, while a majority of Australians consider their carbon footprint when making purchasing decisions, four in ten Australians are unsure whether to trust carbon neutral claims by businesses and 26 per cent claim to be distrustful of such claims.⁷

Our own polling undertaken in January 2023 has found similar results.⁸ From a representative sample of Australian consumers, we found that:

- While an overwhelming majority of Australians (85%) have heard the term ‘carbon neutral’, only one in three (33%) know what it means.
- Fewer Australians have heard of ‘net zero’ (60%) and just over one in ten (14%) know what net zero means.
- Three in five Australians (58%) think all emissions from business operations, products and services should be accounted for when making a claim of carbon neutrality.
- Half of Australians (48%) agree that carbon offsets are greenwash.

⁵ House of Representatives, Standing Committee on Economics, Review of the Australian Competition and Consumer Commission Annual Report 2021, hearing Tuesday 11th October 2022

⁶ ACCC, 2022, ACCC internet sweep target ‘greenwashing’, fake online reviews, 4th October 2022, <https://www.accc.gov.au/media-release/accc-internet-sweeps-target-greenwashing-fake-online-reviews>

⁷ CHOICE, 2022, Consumer awareness growing around carbon credentials, 9th June 2022, <https://www.choice.com.au/shopping/package-labeling-and-advertising/advertising/articles/consumer-awareness-growing-around-carbon-credentials>

⁸ The Australia Institute, Polling – Carbon neutrality, net zero and carbon offsets, January 2023, <https://australiainstitute.org.au/report/polling-carbon-neutrality-net-zero-and-carbon-offsets/>

- Three in five Australians (62%) agree that carbon offsets help polluters look like they are reducing emissions even when they aren't.
- Two in five (39%) Australians say that there would be less need for EVs if all petrol was carbon neutral (31% disagree, 30% don't know).

Australian consumers clearly have a preference towards products and services which will minimise their environmental footprint. Many of them want to reduce their contribution to climate change in particular. Despite this, a significant proportion of consumers are confused as to how to navigate the complex, confusing and at times misleading claims made in public messaging.

Greenwashing claims are often technical and difficult to understand. This is particularly the case with claims of carbon neutrality. In this space, terms like 'net zero emissions' obscure the complex and at times fraught ways in which carbon emissions are accounted for using a range of emissions reductions technologies, but more commonly, reliance on domestic and international carbon 'offsets' of unknown quality.

This review provides an opportunity for the AANA to ensure that environmental claims in Australian advertising keep pace with community expectations.

In our submission, we address many of the questions posed by the AANA's November 2022 Discussion Paper, with a focus on questions relevant to carbon neutral claims by Australian businesses.

Beyond the development of the Code, we would encourage the AANA and its members to reflect upon the past and current contribution of advertising and public messaging to the present climate crisis, as well as other environmental issues. The advertising industry is uniquely placed to promote solutions to pressing environmental problems and educate the Australian public to ways that their living patterns and decisions can contribute to sustainability.

To paraphrase the Secretary General of the United Nations Antonio Guterres, climate change and environmental harm is not only the work of fossil fuel companies and polluting industries. Enabling interests in finance and diverse professions have had a significant hand in contributing to our present set of environmental challenges.⁹

⁹ McKibben, B., 2023, The UN Secretary General's Searing Message for the Fossil-Fuel Industry, <https://www.newyorker.com/news/daily-comment/the-un-secretary-generals-searing-message-for-the-fossil-fuel-industry>

The AANA has a role to play in the agenda starkly defined by Secretary General Guterres at the United Nations this year; ‘no more excuses; no more greenwashing; no more bottomless greed of the fossil fuel industry and its enablers’.¹⁰

Rather, AANA members should aspire to play a positive role in the transition to a sustainable, climate friendly future.

¹⁰ McKibben, B., 2023, The UN Secretary General’s Searing Message for the Fossil-Fuel Industry, <https://www.newyorker.com/news/daily-comment/the-un-secretary-generals-searing-message-for-the-fossil-fuel-industry>

Responses

1. Are any changes required to the definitions in the Environmental Claims Code?

No response.

2. Are any changes required to section 1 or the Practice Notes for section 1? If so, why are changes required and what specific changes are required?

No response.

3. What changes to the overall Code or Practice Notes could be made to assist in the interpretation and compliance with the Code?

No response.

4. Where broad, general claims of environmental benefit (e.g. sustainable, green) are made, should the product or company's overall environmental footprint be taken into account when assessing the accuracy of the claims?

Yes. This change would improve the integrity of the Environmental Claims Code and hold advertisers to a higher standard than is currently the case. In the Australian context, there have been instances where companies that are engaged in environmentally harmful activities have greenwashed their image under the existing code.

5. Where claims of carbon emission reductions are made in advertising, should advertisers be required to specify the extent to which this is achieved by use of carbon offsetting?

Yes. The extent to which claimed carbon reduction (or neutrality) is the consequence of reducing actual carbon emissions within the development or life cycle of a product, or through reliance on offsets is a significant difference that should be highlighted in advertising material through the use of prominent, clear disclaimers.

Our recent poll of Australian consumers indicated that some 58 per cent of respondents believe that emissions from all products and services should be accounted for when making a claim of carbon neutrality.¹¹ A majority of Australians find it disingenuous for a firm to claim carbon neutrality for a specific, unrepresentative product or aspect of its business, ignoring the emissions associated with the firm and its activities as a whole.

In Australia, one way such greenwashing occurs is when firms acquire carbon neutral certification (for example from Climate Active) for offsetting the emissions associated with

¹¹ The Australia Institute, Polling – Carbon neutrality, net zero and carbon offsets, January 2023, <https://australiainstitute.org.au/report/polling-carbon-neutrality-net-zero-and-carbon-offsets/>

only a small part of their business activities. Typically this is a low-emissions sector, such as the corporate office, while high emissions sectors of the business (such as production, transport) are ignored for the purposes of certification. This can also occur with individual products, including, farcically, actual fossil fuel products like petrol and diesel.¹²

Our recent polling on this issue found that while 85 per cent of Australians have heard of the term ‘carbon neutral’ only 33 per cent know what it means.¹³ It is clear that Australian consumers face significant confusion around this issue. As a consequence, they are at risk of being misled by greenwashing claims which exploit the complexities associated with net zero claims.

When making carbon neutral claims, businesses should explicitly refer to what specific area(s) of their business for which they are claiming carbon neutrality. They additionally should describe how this carbon neutrality has been achieved and provide detail regarding their exposure to carbon offsets.

When businesses directly reduce their emissions, they effectively and uncontroversially reduce their CO₂ footprint. In contrast, there remains significant doubt about the climate benefit of many Australian and international carbon offset projects. Given the poor compliance record of the carbon offsets industry, the reliance on offsets to justify claims of carbon neutrality introduces significant risk that the claim is false, even when certified by a third party.

6. Are any changes required to section 2 or the Practice Notes for section 2? If so, why are changes required and what specific changes are required?

No response.

7. Environmental claims can cover a range of complex issues including carbon emissions, waste diversion or reduction, increased circularity, ecosystem impact, biodiversity and more. What independent certification or substantiation standards, schemes or tests exist in relation to each type of environmental claim? Should any of these standards or tests be adopted in the Environmental Claims Code to substantiate each type of environmental claim?

A wide range of certification agencies and schemes have emerged within Australia and abroad. Unfortunately, the track record of these schemes delivering claimed levels of carbon abatement is poor.

¹² Ampol, Ampol Achieves Australian First With Introduction of Carbon Neutral Fuel Option, <https://www.ampol.com.au/about-ampol/news-and-media/carbon-neutral-fuel>

¹³ The Australia Institute, Polling – Carbon neutrality, net zero and carbon offsets, January 2023, <https://australiainstitute.org.au/report/polling-carbon-neutrality-net-zero-and-carbon-offsets/>

The world's most widely relied upon certifier of voluntary carbon credits, Verra, was recently exposed in an investigation by The Guardian and Source Material.¹⁴¹⁵ This investigation demonstrated that up to 90 per cent of certified credits generated by forest protection projects did not actually provide any significant amount of carbon abatement over the life of those projects. Principally, credits certified by Verra were issued off the assumption that forested areas within project boundaries would be cleared. Assumed rates of land clearing for most projects in the Verra portfolio were found to be exaggerated, resulting in the over issuance of 'phantom credits' that did not correspond to real CO₂ abatement.

With respect to the Australian carbon market, project proponents generate carbon credits (Australian Carbon Credit Units or ACCUs) for activities which purportedly reduce emissions, or which sequester carbon. Unfortunately, the methods used to measure the amount of carbon abatement provided by projects in the Australian market suffer from similar integrity deficiencies as standards used in international markets.

A significant majority of credits (about 80 per cent) generated within the Australian market have relied upon a small number of individual methods; the capturing of methane from landfill gas, avoided deforestation¹⁶ and 'human induced regeneration'.¹⁷ These methods suffer from significant integrity concerns, particularly with respect to additionality, or the extent to which carbon savings would likely have occurred without the project. Notably, criticism of these methods by a senior regulator, turned whistleblower, prompted a review into the Integrity of the current ACCU system.¹⁸

Given this, there should be a low level of assumed trust towards 'carbon neutral' claims by advertisers in instances where those claims rely heavily or exclusively on the use of carbon offsets. In the overwhelming proportion of cases, carbon 'neutral' certifications are based on the voluntary purchasing of carbon offsets.

While we appreciate that in many circumstances, the purchasers of carbon credits are acting in good faith, the poor integrity standards which pervade the carbon offsets industry make it difficult to treat most claims of emissions neutrality with confidence. Until uncontroversial,

¹⁴ The Guardian, 2023, Revealed: more than 90% of rainforest carbon offsets by biggest certifier are worthless, analysis shows, 19th January 2023, <https://www.theguardian.com/environment/2023/jan/18/revealed-forest-carbon-offsets-biggest-provider-worthless-verra-aoe>

¹⁵ Source Material, 2023, The Carbon Con, 18th January 2023, <https://www.source-material.org/vercompanies-carbon-offsetting-claims-inflated-methodologies-flawed/>

¹⁶ Avoided deforestation involves awarding landowners carbon credits for not removing vegetation on their property.

¹⁷ Human induced regeneration involves allowing previously cleared land to naturally regrow over time to mixed forest.

¹⁸ Morton, A., 2022, Australia's carbon credit scheme 'largely a sham', says whistleblower who tried to rein it in, The Guardian, 23rd March 2022, <https://www.theguardian.com/environment/2022/mar/23/australias-carbon-credit-scheme-largely-a-sham-says-whistleblower-who-tried-to-rein-it-in>

high integrity offset certification schemes are developed, this should be reflected in the Environmental Claims Code and the expectations placed upon advertisers.

The Australian Government organisation Climate Active provides ‘carbon neutral’ certification to businesses, organisations, products or events able to satisfy the Climate Active Carbon Neutral Standard. This standard requires organisations to develop a carbon account of their business or product, and then offset those emissions using a recognised form of carbon offset credit, typically ACCUs, or international credits certified by either Verra or Gold Standard.¹⁹

Climate Active provides a list of ‘eligible’ offsets that it will accept as part of a carbon neutral claim. However, Climate Active conducts no due diligence research into the credibility or integrity of the specific offset projects referenced by proponents in their application for carbon neutral certification. The Climate Active Carbon Neutral Standard only requires that a company undertake a carbon account of its operations, or product and then balance reported emissions with reported offset purchases.

A recent review of the public Climate Active registry has found that 90 per cent of carbon neutral certifications are backed by cheap, international carbon offsets with questionable or unknown integrity.²⁰

As investigative journalism into Verra and the Australian carbon market has demonstrated, the simple fact that carbon offsets are issued by an authority or verified under a particular standard does not guarantee that those offsets are genuine and represent genuine abatement.

Ultimately, this means that the government’s own Climate Active scheme may be providing a false level of certainty to consumers about carbon neutrality claims – by endorsing the claims of certain businesses relying on potentially fraudulent or unsubstantiated carbon offsets.

Given this, in 2023, The Environmental Defenders Office, in conjunction with The Australia Institute lodged a complaint about Climate Active with the ACCC. The complaint alleges that Climate Active may be in breach of Section 18 of Australian Consumer Law, which prohibits defective and misleading conduct.

While advertisers may claim compliance with certain privately administered standards, including Climate Active, advertisers wishing claim carbon neutrality in any sort of definitive sense should be held to a higher standard of substantiation.

¹⁹ Climate Active, 2022, Carbon Neutral Organisations, https://www.climateactive.org.au/sites/default/files/2022-10/10571RR%20Environment%20-%20Organisation%20Standard%20A4_FA_Web.pdf, p.47

²⁰ Mazengarb, M., 2023, Almost 90 per cent of Australia’s carbon neutral claims underpinned by ‘junk’ international offsets, <https://tempestsandterawatts.substack.com/p/almost-90-per-cent-of-australias>

We note this is how comparable environmental claims codes have been interpreted in other countries, notably the Code for Environmental Advertising (MRC) in the Netherlands, developed by the SRC (or Stichting Reclame Code). Article 3 of the MRC requires ‘all environmental claims to be demonstrably correct’ with more stringent evidence being required to substantiate more absolute claims.²¹ This standard led the SRC to find against Shell for claiming carbon neutrality (via voluntary offsetting) for a fuel product.²² Specifically, the SRC noted:

*An absolute environmental claim is either guaranteed to be correct and therefore permissible or impermissible. **Even if the information is factually correct, the claim should be a true and accurate representation of the magnitude of the environmental benefit, and not paint an overly optimistic view of the benefit achieved.***²³
(Emphasis added)

In this case (ref: 2021/00190), although Shell could point to adherence to particular standards for carbon accounting, it was found that the absolute claim (carbon neutrality) could not be substantiated (in an absolute sense), given reliance on offsets which are subject to uncertainty – notwithstanding their certification:

*With regard to the certified projects in which it participates, Shell has made it plausible that these have been carefully selected and meet strict requirements, and that Shell actively monitors that these projects continue to meet the requirements. **However, this does not change the fact that meeting these theoretical, agreed-upon standards is insufficient to substantiate Shell's absolute environmental claim, in the absence of sound, independent, verifiable and generally recognized evidence.***²⁴ (Emphasis added)

In other words – a strong environmental claim such as carbon neutrality must be substantiated beyond mere reference to third party certification or standard. With respect to the voluntary carbon offsets, the AANA should adopt this standard for advertisers, as many carbon offset projects fail to deliver promised abatement and the offsets industry is effectively unregulated.

²¹ See the Code for Environmental Advertising (MRC) Article 3, <https://www.reclamecode.nl/nrc/code-for-environmental-advertising-mrc/?lang=en>

²² SRC, 2021, Case File Number 2021/00190, <https://www.reclamecode.nl/uitspraken/resultaten/vervoer-2021-00190/304997/>

²³ ²³ SRC, 2021, Case File Number 2021/00190, <https://www.reclamecode.nl/uitspraken/resultaten/vervoer-2021-00190/304997/>

²⁴ ²⁴ SRC, 2021, Case File Number 2021/00190, <https://www.reclamecode.nl/uitspraken/resultaten/vervoer-2021-00190/304997/>

We note that the lack of integrity of many carbon offset standards and developers has drawn the attention of Australian regulators. This issue was raised by the Chair of the ACCC in her recent testimony to the House of Representatives Standing Committee:

Mr Hamilton: Last question on that, then: with regard to the certification bodies, will you be reviewing their positions as well? Obviously there's the opportunity for discrepancy there as well.

*Ms Cass-Gottlieb: **There is. It's why we want to be very careful about which ones are trusted and have scientific and rigorous processes behind them.***²⁵ (Emphasis added)

The Australia Institute's complaint to the ACCC about the Climate Active certification also raises concerns with the way a certification may misrepresent the scope of a carbon neutral claim. The Climate Active trademarks themselves do not make clear the details of how the program works or disclaimers in relation to the claims made. For example, 'carbon neutral products' allow an organisation to claim carbon neutrality for a small proportion of their emissions and represent themselves as 'climate active', but may in fact be significantly increasing the emissions across other areas of operations and product development.

'Carbon neutral organisations' can be contributing to emissions in their operations or through their products or services. This is confusing to consumers. Most would assume that carbon neutrality applies to a company's whole organisation including its products. This is the most popular type of certification by Climate Active. In reality most of the emissions reductions are achieved through companies purchasing green energy and making some minor changes to their offices, with offsets being used for the remaining emissions.

Many companies have increased their emissions despite continuing to be 'Climate Active organisations'. Telstra for example is a carbon neutral certified organisation but has recently become an energy retailer meaning that its gross emissions have increased. Gas companies claiming to be carbon neutral organisations certified by Climate Active report projected expansion of fossil fuel production.

To reiterate the above, while we agree that independent certification or substantiation standards are critical to backing up a green claim, we are concerned that these standards themselves may be misleading and are therefore insufficient on their own.

²⁵ House of Representatives, Standing Committee on Economics, Review of the Australian Competition and Consumer Commission Annual Report 2021, hearing Tuesday 11th October 2022

8. Where an environmental claim is made that relies on a certification mark or scheme which ceases to exist through no fault of the advertiser, what, if any, allowance should be made in the Environmental Claims Code for such a scenario?

The advertiser should not be able to cite that certification in defence of an environmental claim. In a general sense, advertisers should not rely solely on certification schemes to justify environmental claims and certainly not on defunct certification schemes.

9. Are any changes required to section 3 or the Practice Notes for section 3? If so, why are changes required and what specific changes are required?

No response.

10. In this case, the Jury found that the Plastic Free Certification Mark did not qualify the very broad ‘plastic-free claims’ made by the advertiser and that consumers were entitled to expect that the products did not contain plastic in any form. The Jury noted that the certification standard did not replace or modify the standard for truth in advertising under the Code of Ethics and the Australian Consumer Law. Are there any learnings from this case in relation to certification or substantiation that should be incorporated into the Environmental Claims Code?

Yes, this case study has a number of relevant lessons for greenwashing and climate claims. With reference to the publicly released Ad Standards Industry Jury report,²⁶ we note that:

- A key issue in this case is the reliance on third party certification for an environmental claim on the part of the advertiser.
- The jury found (Section 5.29) that ***‘certification standard behind the Plastic Free Certification Mark does not replace or modify the standard for truth in advertising under the Code of Ethics and the Australian Consumer Law’*** (Emphasis added).
- The jury further found (Section 5.30) *‘The Plastic-Free Claims are made in very broad terms and have not been qualified in any way. In particular, the claims go beyond simply displaying the Plastic Free Certification Mark endorsed by Control Union. An average consumer would be entitled to expect that the Products do not contain plastic in any form and not simply that the Products had been tested to a specific standard referenced by the Plastic Free Certification Mark’.*

We suggest that key takeaways relevant for the Environmental Claims Code include observing that:

²⁶ Ad Standards Industry Jury, Case 21 ASIJ 1, 1st February 2022, https://adstandards.com.au/sites/default/files/21asij1_industry_jury_final_determination_biopak_v_pinnacle_packaging.pdf

- Third-party certification schemes do not exempt advertisers from requiring claims to be truthful. This is critical to acknowledge given the fact that certification schemes themselves can be misleading.
- Broad environmental claims, including claims of ‘carbon neutrality’ justified on the basis of third-party certification, should be qualified as such.

11. In this case, the Jury decided that if a product is represented in absolute terms as being a fully recyclable product or 100% recyclable, it should be capable of being recycled through standard kerbside recycling facilities in Australia. Is this a principle that should be incorporated into the Environmental Claims Code or Practice Notes?

Additional guidance on the meaning of the word ‘recyclable’ should be provided in the Practice Notes. If advertising material is directed at consumers, it is our view that the term ‘recyclable’ should only be used to refer to products which can be fully recycled by a typical household using conventional garbage collection services provided by local government.

12. Are there any other learnings from this decision which should be incorporated into the Environmental Claims Code rules?

No response.

13. In the event of any inconsistency, should the Environmental Claims Code aim for global best-practice on environmental claims standards or consistency with the Australian Consumer Law?

To the extent that there are inconsistencies, the Code should aspire towards global best-practice on environmental claims.

The Code should also be reviewed regularly to ensure compatibility with improving international standards with respect to green claims in advertising.

14. Should the Environmental Claims Code adopt international benchmarks or standards for measuring the environmental impact of a product or company? If yes, please provide details of which international benchmarks or standards should be adopted. If no, please explain why international standards or benchmarks should not be adopted in Australia.

No response.

15. Should the Environmental Claims Code include a list of specific marketing practices which would automatically be deemed to be misleading and in breach of the Code, similar to that being proposed by the EC?

Yes.

16. Should the Environmental Claims Code contain more guidance around product characteristics or future environmental performance of products, similar to that guidance in the EC proposed amendment to Articles 6 and 7 of the UCPD?

Yes.

17. Unlike the UK Code, the AANA Environmental Claims Code does not include a rule that omitting significant information in relation to general environmental claims could amount to misleading advertising. Should this be included in the new Environmental Claims Code or Practice Notes?

Yes. The omission of salient or contextual information has the potential to confuse or mislead consumers. The intentional omission of relevant information is antagonistic to the spirit of Section 1 of the existing Environmental Claims Code and to Sections 1.2 and 1.3 of the AANA's Code of Ethics.

As the AANA notes in the question, including a rule requiring the disclosure of significant information would bring the Code into alignment with the higher standards required of environmental claims codes in comparable countries.

18. Should the AANA Environmental Claims Code include a rule that environmental claims must be based on the full life cycle of the advertised product or service?

Yes, unless the claim makes explicit that it only applies to a specific part of the life cycle of a product or service.

This would be consistent with expectation in comparable countries, such as the ASA advertising code in the UK, and proposed reforms in the EU.

19. Are there any other rules in the UK Code which should be incorporated into the Environmental Claims Code?

Section 3 of the existing Code should be strengthened. Section 11.3 of the ASA (UK Code) requires absolute claims to be supported by high levels of substantiation.

Section 3 of the Code should include an explicit provision that requires absolute claims to require proportionally greater certain levels of substantiation relative to less absolute claims.

20. Should the Environmental Claims Code align with the updated ICC Framework and additional guidance on emerging environmental claims?

Yes.

21. In the case of general environmental claims, should the Environmental Claims Code require substantiation based on the full lifecycle of the product or business? How can this

be proven by advertisers and verified by consumers? Where possible, please provide examples.

For general environmental claims, requiring businesses to substantiate claims for the full lifecycle of a product or business would provide greater confidence to consumers.

The proposed European Green Claims Directive provides a model as to how this might be accomplished in Australia. The Green Claims Directive will (if implemented) restrict businesses to only make claims that have been substantiated through approved methodologies. It would additionally prevent companies from making positive green claims about products that are additionally associated with negative environmental outcomes, without also disclosing those negative outcomes.²⁷

We should expect that the adoption of such a standard in Australia would radically reduce the ability of companies to legally make environmental claims in advertising.

However, we additionally note that in Australia, no frameworks have been developed that would allow businesses to substantiate claims in a standardised, rigorous way. The European directive builds on existing Product and Organisational Environmental Footprint methodologies already in place within the EU. Australian regulators are lagging world's best practice in this area.

22. Are there any other issues, rules or standards that should be included in the Environmental Claims Code? If so please, give details.

No response.

23. Do you have any additional suggestions or comments on the review of the Environmental Claims Code?

We would like to reiterate, in general terms, our concern over claims of carbon neutrality which are becoming an increasingly common feature of Australia's advertising landscape. In particular, we want to underscore the need for appropriate scepticism when such claims are made by firms reliant on domestic and international carbon offsets.

While voluntary and government sponsored accreditation schemes for carbon offsets exist, time and time again, the carbon offset industry has been the subject of scandal and 'certified' projects have failed to deliver the carbon sequestration that they promised. Claims of emissions neutrality based on dodgy offsets therefore have significant potential to be false and misleading. At their worst, they are an intentional form of greenwashing pursued by

²⁷ Oyarzabal, R., Falco, L., Molyneux, C.G., Gevrenova, Y. & Van Vooren, B., 2023, Upcoming EU Rules on Green Claims, January 23rd 2023, <https://www.insideenergyandenvironment.com/2023/01/upcoming-eu-rules-on-green-claims/>

polluting industries and unscrupulous firms seeking to exploit public concern about climate change, and the complexities surrounding decarbonisation.

Environmental claims in advertising must have integrity. This means when firms use carbon offsets to justify claims of carbon neutrality, these claims deserve scrutiny and must be qualified conservatively.

Given this, the AANA's revised Environmental Claims Code should take a suitably conservative approach to how carbon neutral claims are treated in Australian advertising.

It is commendable that the AANA reviewing the Environmental Claims Code, but the organisation has a broader role to ensure integrity and best-practice in the Australian advertising industry. The industry is not a passive actor in the global climate crisis – historically it has played a prominent role in enabling and amplifying the misleading claims made by the industries driving climate change. The Australia Institute hopes that the review of the Environmental Claims Code AANA will prompt deeper reflection on the role the advertising industry now has in tackling climate change and biodiversity loss.