



Environmental Claims Code Review

DISCUSSION PAPER FOR PUBLIC COMMENT

NOVEMBER 2022

AANA
The voice for brands

Introduction

The Australian Association of National Advertisers (AANA) is the peak national body championing the interests of Australia's advertisers. We exist to inspire and promote responsible, innovative and respected marketing.

AANA is undertaking a review of the AANA Environmental Claims Code (the Environmental Claims Code) to ensure that it continues to meet its stated objective of ensuring that advertisers develop and maintain rigorous standards when making environmental claims and to increase consumer confidence to the benefit of the environment, consumers and industry.

The Environmental Claims Code is part of the advertising industry's self-regulatory system that complements Australia's consumer protection laws. At an international level, there are self-regulatory Codes and laws similar to those in Australia. AANA monitors these with a view to ensuring our self-regulatory system continues to reflect best-practice standards for environmental claims.

When it comes to the regulation of environmental claims, globally we are seeing the introduction of new standardised measures and restrictions on environmental claims. This, combined with growing community concern in Australia around the environment, climate change and waste means that it is an appropriate time to review the Environmental Claims Code.

The Environmental Claims Code is accompanied by Practice Notes which provide guidance to advertisers and complainants on the intent of the Code's clauses and must be applied by the Ad Standards Community Panel in making its determinations. This review will update the Code and Practice Notes to ensure that the Environmental Claims Code reflects changing technical and community standards for environmental claims.

The purpose of this discussion paper is to promote dialogue with all stakeholders and to stimulate informed input to the review. It is not intended to be proscriptive and any other matters raised will be given due consideration.

Submissions received in response to this paper will assist the AANA in preparing a new AANA Environmental Claims Code for consideration by the AANA Board.

Consultation process

Consultation on the Discussion Paper will be undertaken through:

- written submissions from any interested party; and
- discussions between interested stakeholders and the AANA.

The AANA invites submissions from all interested parties by **5pm on Friday 24 February 2023**.

Written submissions or enquires on this discussion paper may be made as follows:

By email: aanasubmissions@ana.com.au

AANA requests that all submitters clearly identify:

- the name of the party making the submission; or
- the organisation or interest group represented by the submission; and
- contact details – including telephone number and email address (if available).

THE AANA AND SELF-REGULATION

Background

The AANA has been the peak national body for advertisers for over 90 years. Advertising and marketing communication plays an important role in the economy and society, contributing approximately \$40 billion to the Australian economy and employing over 200,000 people¹. It takes many forms, including advertising in traditional and digital media, consumer engagement on social media platforms and direct-to-consumer marketing. Advertising helps consumers and wider society to be better informed, to achieve insights and understanding about products and services and to secure value for money. As a key driver of demand, it enables innovation to be brought to market and stimulates economic growth and employment. It underwrites the economic viability of commercial media, including news media, and enhances the variety of media content.

AANA's advertising self-regulatory system came into operation in 1997 following extensive consultation by AANA with consumers, consumer groups, advertisers, business and government representatives. The system, which has the support of all major media owners and their associations, includes both code making expertise and a complaints handling system administered by Ad Standards, providing independent determinations regarding breaches of the AANA Codes. It is a national system that is technology and platform neutral and applies to all consumer advertising and marketing communication, whether or not the brand owner is an AANA member.

AANA Codes

General

The AANA currently manages five advertising self-regulatory codes:

- **Code of Ethics** – this over-arching Code sets the standard for ethical behaviour by advertisers and marketers as well as by advertising and marketing agencies.
 - Section 1 of the Code of Ethics provides for an alternative dispute resolution mechanism whereby businesses can complain about a competitor's advertising (including environmental claims in advertising) and have the issue resolved in an efficient and low-cost way without the need for recourse to the courts.
 - Section 2 of the Code of Ethics sets the self-regulatory rules around portrayal of people, violence, treatment of sex, sexuality and nudity, appropriate language, health, safety and distinguishability in advertising. Members of the public can complain about advertising they believe is in breach of these rules. The vast majority of complaints dealt with by Ad Standards relate to section 2 of the Code of Ethics.
 - This Code underwent a formal review in 2019 and was amended to reflect community concern around overtly sexual content, gender stereotypes and violence in advertising as well as ensuring that influencer advertising is clearly distinguishable as advertising.
- **Food & Beverages Advertising Code (F&B Code)** – this Code regulates how food and beverages can be advertised in Australia and underwent a formal review in 2020. Guided by feedback from government, the F&B Code was strengthened to protect children by ensuring they are not targeted with advertising for occasional food or drinks.
- **Code for Advertising to Children (Children's Code)** – this Code is currently subject to a formal review. The objective of the Children's Code is to ensure that advertisers and marketers develop and maintain a high sense of social responsibility when advertising to children in Australia.

¹ *Advertising Pays: the economic, employment and business value of advertising*, June 2016
<http://www.advertisingpays.com.au/>

- **Wagering Advertising Code** – this Code aims to ensure advertisers adopt a high sense of social responsibility when advertising wagering products in Australia.
- **Environmental Claims Code** – this Code is the subject of this Discussion Paper.

The self-regulatory system in Australia is rooted in the model of best practice developed with regulators, NGOs, consumer and public health groups, providing consensus not only on the model but the critical role that effective self-regulation plays to ensure robust qualitative advertising standards. The model ensures consultation of third parties in the development of codes and both complaints and decisions are dealt with transparently².

A key strength of the AANA self-regulatory system is the commitment to regular review and evolution of the Codes to maintain universality (application to all media and all brands) and to address specific problem areas.

Practice Notes

Each AANA Code is accompanied by a Practice Note which provides guidance to advertisers and complainants and must be applied by the Ad Standards Community Panel in making its determinations. In the event of any ambiguity the provisions of the Code prevail.

Platform neutral, national approach

The AANA Codes do not make a distinction between traditional media advertising and digital advertising. The definition of “advertising” in the AANA Codes ensures virtually all commercial communication directed at consumers is captured (including direct-to-consumer public relations material, online, social media, point-of-sale and outdoor). This means that the standards specified in the AANA Codes apply equally across all media.

The platform neutral, national self-regulatory model allows complaints to be made without the consumer having to consider the medium or geographical location in which the relevant advertisement appeared. The AANA Codes will continue to evolve as new technology and means of communication evolve so that they remain relevant and universal.

The table below shows the number of cases considered by the Ad Standards Community Panel according to media type³.

² <http://www.easa-alliance.org/>; <https://iccwbo.org/publication/icc-advertising-and-marketing-communications-code/>

³ Ad Standards, *Review of Operations 2021*, p 23. <https://adstandards.com.au/article/2021-review-operations>

ANALYSIS OF CASES BY MEDIA (%)

	2017	2018	2019	2020	2021
TV - Free-to-air	79.06%	76.39%	71.33%	38.90%	36.24%
Internet - social media	2.49%	2.61%	3.99%	16.93%	23.59%
TV - On demand	-	-	1.79%	7.05%	8.43%
TV - out of home	-	-	0.65%	1.31%	5.34%
Internet	2.93%	2.15%	1.67%	5.48%	4.21%
TV - Pay	3.81%	3.02%	3.40%	5.22%	4.21%
Poster	4.62%	2.76%	2.82%	5.22%	3.37%
Radio	1.37%	1.67%	2.43%	4.44%	2.81%
Email	-	-	0.36%	1.57%	2.25%
Transport	1.12%	1.85%	2.05%	2.61%	2.25%
App	-	-	-	3.13%	1.69%
Billboard	2.28%	4.26%	4.03%	2.09%	1.69%
Billboard - Digital	-	-	-	1.57%	0.84%
Outdoor	0.33%	0.60%	1.26%	1.83%	0.84%
Print	0.51%	0.49%	0.78%	1.57%	0.84%
Mail	0.42%	0.33%	0.23%	0.26%	0.56%
Billboard - Mobile	-	-	-	0.26%	0.28%
Cinema	0.12%	0.40%	0.34%	0.26%	0.28%
Promotional material	-	-	1.62%	1.31%	0.28%
Other	0.95%	3.46%	1.24%	-	-
TOTAL	100%	100%	100%	100%	100%

Enforcement and Compliance

Ad Standards

Ad Standards administers the complaint handling service for the AANA Codes. Complaints are adjudicated by the Ad Standards Community Panel, an independent panel of individuals who are representative of the wider community. Complaints may be made by any member of the public and it only takes one complaint to spark a review of the advertisement by the Community Panel.

Advertisers who are found by the Community Panel to be in breach of a AANA Code are required to withdraw or modify the material so that it is no longer published or broadcast in the same format. The resulting commercial consequences of breaching a AANA Code include the direct and indirect costs of withdrawing an advertisement and the reputational cost when a non-compliance decision is made public, including possible adverse media coverage.

This complaints-based system provides a free, open and transparent mechanism to address concerns about the content of advertisements and other marketing communication.

Complaint volumes

Complaints under the Environmental Claims Code represent a small but growing proportion of overall complaints adjudicated by the Ad Standards Community Panel each year. In 2021, 1.42% of total complaints related to issues covered by the Environmental Claims Code according to the Ad Standards Review of Operations⁴, an increase from 0.45% the previous year.

The proportion of complaints according to each Code are set out in the table below:

⁴ Ad Standards, *Review of Operations 2021*, p 20

ISSUES ATTRACTING COMPLAINT (%)

	2017	2018	2019	2020	2021
Code of Ethics Section 2.4 (Sex, sexuality & nudity)	14.59%	36.39%	16.37%	32.29%	21.31%
Code of Ethics Section 2.6 (Health & safety)	12.55%	4.83%	5.25%	7.96%	16.50%
Other	4.77%	3.72%	33.91%	4.43%	15.54%
Code of Ethics Section 2.3 (Violence)	12.57%	26.58%	15.78%	10.29%	11.34%
Code of Ethics Section 2.1 (Discrimination or vilification)	18.34%	8.66%	13.08%	15.43%	10.22%
Code of Ethics Section 2.5 (Language)	18.79%	7.09%	5.82%	5.59%	9.77%
Code of Ethics Section 2.2 (Exploitative or degrading)	9.06%	5.87%	5.96%	18.29%	3.34%
FCAI Code	0.60%	1.04%	0.85%	0.89%	3.19%
Code of Ethics Section 2.7 (Distinguishable advertising)	0.22%	0.41%	0.14%	0.45%	2.68%
Food and Beverages Code	0.97%	1.13%	1.56%	2.33%	2.18%
Advertising to Children Code	0.52%	0.50%	0.20%	0.45%	1.42%
Environmental Claims Code	0.05%	0.05%	0.34%	0.45%	1.37%
Wagering Code	6.66%	3.35%	0.31%	0.45%	1.01%
AFGC Responsible Childrens Marketing Initiative (RCMI)	0.11%	0.07%	0.17%	0.13%	0.15%
AFGC Quick Service Restaurant Resp Childrens Marketing Initiative (QSRI)	0.20%	0.32%	0.26%	0.58%	-
TOTAL	100%	100%	100%	100%	100%

THE ENVIRONMENTAL CLAIMS CODE RULES & CASES

Definitions

Advertising or Marketing Communication means:

- a) any material which is published or broadcast using any Medium or any activity which is undertaken by, or on behalf of an advertiser or marketer,
- over which the advertiser or marketer has a reasonable degree of control, and
 - that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct,
- b) but does not include
- labels or packaging for products
 - corporate reports including corporate public affairs messages in press releases and other media statements, annual reports, statements on matters of public policy and the like
 - in the case of broadcast media, any material which promotes a program or programs to be broadcast on that same channel or station.

The Community Panel means the panel appointed by the Ad Standards from time to time, the members of which are representative of the community, to administer a public complains system in relation to Advertising or Marketing Communication.

Environment includes:

- (a) ecosystems and their constituent parts, including people and communities; and
- (b) natural and physical resources; and
- (c) the qualities and characteristics of locations, places and areas.

Environmental Claim means any express or implied representation that an aspect of a product or service as a whole, or a component or packaging of, or a quality relating to, a product or service, interacts with or influences (or has the capacity to interact with or influence) the Environment.

Medium means any medium whatsoever including without limitation cinema, internet, outdoor media, print, radio, telecommunications, television or other direct-to-consumer media including new and emerging technologies.

Example Case – Minerals Council of Australia – (read the case report [here](#))

This case related to a television advertisement featuring farmers talking about rehabilitated land after mining and making the following statements:

“It’s hard to believe this whole paddock used to be a mine”

“For us, it’s not just about mining”

“We’re absolutely passionate about the rehabilitation work we do”

“Once the mining’s gone, this beautiful rehab land is here to stay”

“With the mining and the agriculture, we work together – there’s certainly no them and us”

“We all have the same goals – we want healthy cows and productive land after mining”

“It’s about giving back to our communities for future generations”

The complaint claimed that the advertisement conveyed the misleading impression that mining companies restore the mined land to its pre-mining state, when the land featured in the advertisement had been subject to environmental complaints, had not been returned to its pre-mined state and evidence was available that the mined land has not been properly rehabilitated.

The Panel considered that the comments made by the people in the advertisement do not constitute environmental claims.

The Panel considered that the advertisement does not make an environmental claim and as such the provisions of the Environment Code do not apply.

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

Rules & Practice Notes

Section 1 – Truthful and Factual Presentation

Environmental Claims in Advertising or Marketing Communication:

- (a) shall not be misleading or deceptive or be likely to mislead or deceive;*
- (b) shall display any disclaimers or important limitations and qualifications prominently, in clear, plain and specific language;*
- (c) shall represent the attributes or extent of the environmental benefits or limitations as they relate to a particular aspect of a product or service in a manner that can be clearly understood by the consumer.*

Practice Notes

Section 1a

It is not intended that legal tests be applied to determine whether advertisements are misleading or deceptive, or likely to mislead or deceive, in the areas of concern to this Code.

Instead, consideration will be given as to whether the average consumer in the target market would be likely to be misled or deceived by the material.

Factors to consider include:

An advertisement may be misleading or deceptive directly or by implication or through emphasis, comparisons, contrasts or omissions. It does not matter whether the advertisement actually misled anyone, or whether the advertiser intended to mislead – if the advertisement is likely to mislead or deceive there will be a breach of the Code.

- The target market or likely audience of the advertising or marketing communication should be carefully considered when making environmental claims. Therefore all advertising should be clear, unambiguous and balanced, and the use of technical or scientific jargon carefully considered.*
- Any comparative claim should be specific and make clear the basis for the comparison. Points of comparison, where appropriate, should reflect a body of evidence including recognised benchmarks or standards where appropriate.*
- Environmental claims relating to future matters or commitments should be based on reasonable grounds as at the time the claim was made, even if the future matter does not come to pass. The fact that a person may believe in a particular state of affairs does not necessarily mean that there are reasonable grounds for the belief.*
- Environmental claims should not lead the consumer to conclude a business has voluntarily adopted an environmental practice if that practice has been legally mandated.*
- Environmental claims should not be made in a manner that implies, directly or indirectly, a correlation between the environmental aspects of the product/service and any social initiative of the advertiser when none exists. For example, the advertising of a “partnership” with or “sponsorship” of an environmental group should not imply that the partnership has improved environmental aspects of the company’s product/ services where this is not the case.*
- The use of any symbol or logo should be explained unless the symbol is required by law, or is underpinned by regulations or standards, or is part of an authoritative certification scheme. Symbols or logos should only be used in an advertisement when the source of the symbol or logo is clearly indicated, and there is no confusion over the meaning.*

Section 1b

- A disclaimer can clarify, expand or reasonably qualify a representation but should not contradict, diminish or retract it.*
- As a general guideline, the main body of the advertisement, apart from the disclaimer, should be capable of standing alone without being misleading.*

Section 1c

The environmental claim should not be extended, or implied to be extended, to a whole product or service when it relates only to one aspect of the product eg packaging or energy use, or service. For example, if the claim relates to the:

- *packaging only, but not the use of that product, the claim should not imply that it relates to the product as well as the packaging;*
- *energy use in the manufacture of a product, the claim should not imply that it relates to the energy use in the manufacture of the packaging as well.*
- *Relevant information should be presented together.*

Recent Case – Australian Gas Networks (read the case report [here](#))

This case related to a number of statements made on the website <https://renewable-gas.com.au/> including:

- Renewable gas We're changing gas, for good.
- We're changing gas for a better future.
- Your home, powered by renewable gas - Renewable gas has already started making its way into homes in South Australia in the form of renewable hydrogen blended with natural gas. Renewable hydrogen gas provides all the great benefits of natural gas but has zero carbon emissions. So while we keep work on improving the supply, you can be comfortable that the only thing changing is the gas.
- Why renewable hydrogen? When burned as a fuel it releases just heat and water – zero carbon emissions. It's safe and reliable to use and performs just like natural gas
- How is it made? There are a number of ways to make it, but the hydrogen we plan to deliver to your home is produced by an electrolyser from water.
- You don't have to lift a finger – we've got this. Renewable gas can be safely delivered through the existing gas network and for now, it won't change how your appliances work. As an industry, we're decarbonising the gas sector and the best part is, you don't need to do a thing except feel good about a renewable energy future!
- 100% renewable gas by 2050 - A 5% renewable gas blend is already being delivered in part of South Australia with 10% renewable gas planned for other parts of the country. Together, we aim to transition the entire gas network to run on renewable gas by 2050.
- By 2025 100% renewable gas available for selected new home estates.
- By 2030 the whole network supplied with 10% renewable gas blend.
- By 2050 the whole network supplied with 100% renewable gas.

The Panel considered that the statements amounted to an advertisement which contained the following Environmental Claims:

- The only by-product of hydrogen gas is water and therefore it is carbon neutral.
- The advertiser is aiming for 100 per cent renewable gas by 2050, with a 10% target by 2030.
- Renewable gas can be safely delivered through the existing network for now.

In relation to section 1 of the Environmental Claims Code, the Panel considered that the average consumer in the target market for this advertisement would understand renewable hydrogen to be a reference to hydrogen which has been produced using only renewable resources. The Panel considered that while the advertisement did not explain the difference between renewable hydrogen and hydrogen produced using electricity from non-renewable sources, the references to 'clean hydrogen' and 'renewable hydrogen' in the article are references to the advertiser's plan to move to

hydrogen produced using renewable sources. The Panel considered that consumers would not be misled by the term 'renewable hydrogen' as it was used in that article.

The Community Panel found that the advertisements would not mislead or deceive the target market into believing that all hydrogen gas is renewable or that renewable gas is currently in use and therefore the advertisement did not breach section 1.

Recent Case – Ampol (read the case report [here](#))

This case involved a Facebook advertisement featuring an aerial image of treetops with the words "Ampol Carbon Neutral" superimposed over them. The caption to the post reads, "We are proud to announce an important step forward in our Future Energy & Decarbonisation Strategy, with the launch of our carbon neutral fuel solution – Ampol Carbon Neutral. Ampol Carbon Neutral will be available to all of our business customers looking to offset the greenhouse gas emissions associated with the sourcing, refining, distribution, retailing and consumption of our petrol and diesel products. For more information about Ampol Carbon Neutral, head to: <https://www.ampol.com.au/business.../carbon-neutral-fuel>"

The Community Panel considered that the advertisement contained an Environmental Claim that the advertiser is offering a carbon neutral solution to business customers through offsetting.

The Community Panel noted the complainant's concerns that the advertisement gives the general impression that Ampol offers a fuel which is carbon neutral and noted that:

- the complainant's concern appeared largely related to the viability of offsetting as a way to reduce emissions;
- it was not its role to adjudicate on the legitimacy of carbon offsetting programs; and
- its role is to consider whether an average person in the target market would be likely to be misled by the content of the advertisement.

The Panel considered that:

- the target market for this advertisement was business customers who relied on fuel for their businesses;
- the advertisement clearly stated that the 'carbon neutral' solution being offered by the business was through offsetting;
- business consumers in this market would have an understanding that the service being offered was carbon offsetting for the fuel use;
- the advertisement provided sufficient detail to support the claim that the advertiser is offering a carbon neutral solution to business customers through offsetting, and further disclaimers or qualifications were not necessary in this case; and
- overall, the advertisement would not mislead or deceive the target market into believing that fuel was carbon neutral.

The Panel determined that the Environmental Claim was not misleading or deceptive and did not breach Section 1 of the Environmental Claims Code.

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

Section 2 – A Genuine Benefit to The Environment

Environmental Claims must:

- (a) be relevant, specific and clearly explain the significance of the claim;*
- (b) not overstate the claim expressly or by implication;*
- (c) not imply that a product or service is more socially acceptable on the whole.*

Practice Notes

Section 2a

Environmental claims should only be made where there is a genuine benefit or advantage. Environmental benefits should not be advertised if they are irrelevant, insignificant or simply advertise the observance of existing law.

Advertising and marketing communication should adequately explain the environmental benefits of the advertised product or service to its target audience. It is not the intent of the advertiser making the claim that will determine whether it is considered misleading; it is the overall impression given to the consumer that is important. Advertising therefore should not inadvertently mislead consumers through vague or ambiguous wording.

Providing only partial information to consumers risks misleading them. Generally a claim should refer to a specific part of a product or its production process such as extraction, transportation, manufacture, use, packaging or disposal.

Section 2b

Advertisers and marketers should avoid making claims that expressly or impliedly overstate an environmental benefit. Consideration should be given to whether there is sufficient disclosure of any negative impacts. For example, whether negative impacts have been withheld which, if known, would diminish the positive attribute.

Section 2c

Consideration should be given to the relationship of the environmental claims to other aspects of a product/service. For example, advertisers should use care not to imply a product or service is more socially acceptable overall by implying another non-environmental attribute/detriment is of lesser importance.

Also refer to AANA Code of Ethics clause 2.6 Advertisements shall not depict material contrary to prevailing community standards on health and safety.

Recent Case – Glencore Australia Holdings Pty Ltd (read the case report [here](#))

This case related to a sponsored Facebook advertisement featuring the caption “We’re the largest mining company you’ve probably never heard of. Responsibly mining the materials for a low carbon future.” A video features images of mining, farmland, and bushland. A voice-over says, “Every mine eventually comes to an end but the use of the land never should. It’s why Glencore is a leader in mine rehabilitation in Australia. Working with local communities and going beyond what’s expected to return our mines to native forests and farmland. We do this because we believe it’s the responsible thing to do. Glencore. Advancing responsibly. Advancing everyday life”.

The Community Panel noted the complainant’s concern that the advertisement made misleading or deceptive claims because:

- the advertisement is silent on its current mining production and investment in Australia mostly being related to coal. Glencore has invested \$259 million in the expansion of thermal coal and

- only \$2 million in the expansion of minerals supporting renewables; and
- the advertisement misleads consumers about the overall nature of the business and its fossil fuel plans.

The Panel considered that, overall, the advertisement captions and video made two Environmental Claims:

1. Glencore is responsibly mining the materials for a low carbon future.
2. Glencore is a leader in mine rehabilitation and goes beyond what's expected to return mines to native forest and farmland.

The Panel noted:

- the advertiser's response had provided substantiation that it is a leading producer of green metals and is making significant investments in this area;
- the advertiser's response that the advertisement clearly and unambiguously refers to Glencore as a mining company including significant coal operations and that it is Australia's largest producer of cobalt and zinc, and second largest producer of copper and nickel;
- the advertiser's response that its total capital expenditure for metals in 2020 and 2021 was not materially less than the total capital expenditure for coal;
- the video includes a man walking in front of coal mining equipment, and superimposed text which names the former mines as coal mines;
- this advertisement did not directly refer to any materials other than coal;
- the phrase 'responsibly mining' would most likely be interpreted as mining within current regulations and was not an indication that the advertiser did not mine coal;
- the phrase 'responsibly mining' in combination with the video would most likely be interpreted as references to the mine rehabilitation projects; and
- the advertiser had provided substantiation to support the claims of rehabilitation works being undertaken.

The Community Panel considered that the Environmental Claims in the advertisement were relevant and specific and clearly outlined the significance of the Claims and were not overstated. The Panel also considered that:

- while the advertisement did have messaging relating to the environmental actions of the advertiser, it also contained clear information about the fact it is also a coal mining company;
- the Claims made are factual and supportable;
- the overall impression of the advertisement is not that the entire company and its current actions are environmentally friendly, rather it is that the company is engaging in mine rehabilitation as part of their environmental goals;
- while the advertiser is clearly wishing to convey as favourable impression as possible, the claim that Glencore mines materials which are essential for a low carbon future does not imply that the organisation is more socially acceptable as a whole; and
- the statements made in relation to mine rehabilitation are limited to this practice and do not imply that the organisation is more socially acceptable as a whole.

The Community Panel found that the advertisement did not breach section 2 of the Environmental Claims Code.

Recent Case – Suncorp Ltd (read the case report [here](#))

This case related to a television advertisement featuring a man lying on a couch crying as he watches videos relating to climate change. He says, 'We're doomed'. Another man sitting in the room is handed a guitar and begins to sing, "Look I'm not being funny. But where we choose to put our money can mean that our transactions ripple into climate action." The two men are then seen standing on top of a wind turbine as he continues to sing, "Cleaner air. Calmer weather. The power's green. The outlook's better". The two men are then seen riding on top of a whale, as he continues to sing, "and if the fish are all a-grazing, life abounds." The other man whispers, "you're amazing" to the whale. The men are then back in the house as the man sings, "People prosper. You and me. And this bad news, won't spoil your tea."

The Community Panel noted that the advertisement includes the statement that "where we chose to put our money can mean that our transactions ripple into climate action". The Panel considered that this statement amounted to an Environmental Claim that if people chose to bank with the advertiser this will contribute in some way to climate action.

The Panel noted that the wording in the advertisement is vague and not particularly specific in detailing how climate action will be achieved by Suncorp. However, the Panel noted that the additional information provided by Suncorp and available in their Climate Action Plan did show that the brand was taking steps which would be considered by ordinary and reasonable people of the target audience, to be 'climate action'.

The Panel considered that while the claim made in the advertisement is broad, the overall impression of the claim in the advertisement is that the brand is taking climate action, and this has been substantiated. The Panel further noted that information on the advertiser's climate action is available to consumers through the Suncorp website. The Panel considered that the environmental claim that Suncorp is taking part in climate action is relevant and specific, and that the significance of the claim is easily accessible through the Suncorp website.

The Community Panel found that the advertisement did not breach section 2 of the Environmental Claims Code.

- 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?**
- 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?**
- 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?**

Section 3 – Substantiation

Environmental Claims in Advertising or Marketing Communication:

(a) shall be able to be substantiated and verifiable. Supporting information shall include sufficient detail to allow evaluation of a claim;

(b) shall meet any applicable standards that apply to the benefit or advantage claimed;

(c) containing testimonials shall reflect the genuine, informed and current opinion of the person giving the testimonial.

Practice Notes

Section 3a

Advertisers and marketers should have a reasonable basis for making a claim and therefore should hold appropriate, balanced, comprehensive and credible evidence to substantiate all express and implied claims. Information to support a claim may include, but is not limited to, documentary evidence or data evidencing conformity with an identified standard, research, studies, or an expert independent audit. There is no requirement to use third party verification or certification before an environmental claim is made. An advertiser's own internal procedures may be able to provide the necessary substantiation.

In testing the validity of any claim the Board will only rely on information/material provided by the advertiser and the complainant. The Board may seek expert advice to assist in the consideration of material provided in relation to the complaint. It is not the intent for the Board to act as an arbiter of scientific fact, or of philosophical approaches to understanding or addressing environmental concerns.

Factors to consider include:

- The use of broad or unqualified general claims of environmental benefit should be avoided unless supported by a high level of substantiation or associated with a legitimate connection to an authoritative source. Examples of claims that may be problematic unless properly qualified include: “green”, “environmentally friendly”, “environmentally safe”, “energy efficient”, “recyclable”, “carbon neutral”, “renewable or “green energy”.*
- The use of unqualified general claims of environmental benefit should be avoided unless supported by a high level of substantiation or associated with a legitimate connection to an authoritative source.*
- An unqualified general environmental claim may convey that the product or service has far-reaching environmental benefits or conveys to consumers a broad range of environmental attributes it does not have. Unqualified claims (stated or implied), such as ‘green’ or ‘eco friendly’ should therefore be evidenced with a high level of substantiation, for example, such as that based on a full life-cycle assessment.*
- Publication of research results should identify the researcher and source reference unless there is an obligation of confidence or compelling commercial reason not to do so.*
- Substantiation information should be readily accessible or made available in a timely manner in response to a reasonable written request.*

Advertisers have a variety of avenues available for making such information available to consumers, for example, websites, brochures, labels, shelf-talkers; such information does not need to be included in the advertising or marketing communications itself.

Section 3b

This section applies to legally mandated standards. It will also apply in circumstances where the advertiser makes a representation in the advertising or marketing communication that it complies with a voluntary standard.

Section 3c

Testimonials should reflect the genuine, informed and current opinion of the person giving the testimonial. Similarly, claims relating to sponsorships, approvals, endorsement or certification schemes should be current.

Example Case – Coles (read case report [here](#))

This case related to a television advertisement featuring celebrity chef Curtis Stone on a fishing boat talking about Coles salmon. In the advertisement, he asks “ever wonder if your seafood is responsibly sourced? All Coles brand seafood is responsibly sourced.” A vision of a salmon in ice and the salmon product being promoted is shown as a voice over states “like Coles fresh Aussie salmon skin-on portions just \$13 a pack”. Curtis Stone then states “for responsibly sourced seafood, good things are happening at Coles” and he is seen looking at fish on the boat.

The Community Panel noted the complainants’ concerns that the advertisement makes a false claim that the seafood is responsibly sourced, claims that the seafood is sustainable and that the advertisement misleadingly suggests the Coles Salmon is wild caught salmon.

The Panel considered that the claim ‘responsibly sourced seafood’ is a claim most members of the community would understand to mean that Coles understand where their seafood is caught and that the manner sourcing of their seafood would have lower impact on the aquatic ecosystem than seafood captured using less responsible fishing methods. The Panel noted that the definition of responsibly sourced available on the Westfarmers website is: “*Responsibly sourced seafood means Coles knows how and where its seafood is caught, ensuring fish populations and the impact on surrounding habitats and ecosystems are monitored to meet robust sourcing standards.*”

The Panel considered that this is an environmental claim.

The Panel noted that Coles salmon is certified as responsibly sourced by the ASC and that the ASC website states that this means that the salmon farms minimize impacts on the local ecosystem in a number of ways, and have set requirements on monitoring feed sourcing, pollution and disease. The Panel noted that the claim made in the advertisement related to all Coles seafood is responsibly sourced – not just the salmon.

The Panel noted the advertiser’s response, and information available on the Coles website indicates that all seafood at Coles is certified by ASC, The Marine Stewardship Council or meet Coles Responsibly Sourced Seafood criteria, which looks at: “ - *Target fish stocks: The health and robustness of the target fish population and the measures in place to ensure they remain healthy in the future; - Ecosystem impacts: The impact of the fishing method on other species and the surrounding ecosystem; and - Fishery Management: The effectiveness of the fishery management system in promoting healthy fish stocks and ecosystems.*”

The Panel considered that the certification process, and the measures put in place by Coles in assessing “responsibly sourced” criteria would be considered by most reasonable members of the

community to meet the threshold of an environmental claim about responsibly sourced seafood. The Panel considered that the advertiser provided sufficient documentation to the Panel to substantiate the claims made in the advertisement as their products are certified by ASC and that the ASC system meets criteria for a claim of responsibly sourced.

The Community Panel found that the advertisement did not breach section 3 of the Environmental Claims Code.

- 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?***
- 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?***
- 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?***

AANA CODE OF ETHICS & ENVIRONMENTAL CLAIMS

Environmental claims can also be dealt with under the AANA Code of Ethics. Section 1 of the Code of Ethics provides an alternative dispute resolution mechanism whereby businesses can complain about a competitor's advertising and have the issue resolved in an efficient and low-cost way without the need for recourse to the courts. Claims under this section are determined by the Industry Jury, a variable panel of 3 lawyers who specialise in advertising, competition and/or consumer law. This mechanism provides businesses with a way to challenge environmental claims made by a competitor where they believe their competitor's environmental claim is:

- in breach of Commonwealth law or the law of the relevant State or Territory (section 1.1);
- misleading or deceptive or be likely to mislead or deceive (section 1.2);
- contains a misrepresentation, which is likely to cause damage to the business or goodwill of a competitor (section 1.3); or
- exploits community concerns in relation to protecting the environment by presenting or portraying distinctions in products or services advertised in a misleading way or in a way which implies a benefit to the environment which the product or services do not have (section 1.4).

Recent Case - Pinnacle International Wholesalers Pty Ltd (see the case report [here](#))

This case related to advertising for a range of disposable coffee cup products (the Products) sold under the "Truly Eco" brand. The complaint related to various claims made on the company website about the quality ad composition of the Products that:

- (a) the Products do not contain any plastic (Plastic-Free Claims);
- (b) the Products are fully recyclable (Recyclability Claims); and
- (c) the Products are compostable (Compostability Claims),

The Jury found that the advertiser breached sections 1.1, 1.2 and 1.4 because:

- The Products contained a copolymer of poly (ethylene-co-acrylic acid) or similar which is a plastic material.
- The Plastic-Free Claims were made in very broad terms and were qualified in any way.
- 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.
- There was no reasonable basis for the advertiser making the Plastic-Free Claims.
- It is a fundamental requirement 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.
- Although the Products may have been able to be recycled via a specialised collection stream, this was a clear limitation on the recyclability of the Products which would need to be clearly explained to a consumer so that the headline claim about the product's recyclability is not misleading.
- As not such explanation of the specialised collection stream was included on the website, the claims around the Products being fully recyclable were misleading or deceptive;
- The advertiser did not substantiate any of the Compostability Claims and therefore has breached Sections 1.1, 1.2 and 1.4 of the Code of Ethics by making misleading or deceptive representations in respect of the nature and composition of the Products by the Compostability Claims.

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

AUSTRALIAN CONSUMER LAW & ENVIRONMENTAL CLAIMS

The Australian Consumer Law (ACL) covers environmental claims made in advertising. The ACCC has recently announced that sustainability claims are a priority enforcement area. In October 2022, the ACCC launched an internet sweep of environmental claims made by Australian businesses. AANA is mindful that there is overlap between the ACL and AANA Code and many businesses assess advertising for compliance with the ACL but not the AANA Environmental Claims Code. For this reason, AANA has endeavoured in the past to align its rules with the ACL. However, if the AANA Environmental Claims Code adopts global best practice for regulating environmental claims, this may impose standards over and above those required under the ACL.

There are two key provisions in the ACL covering environmental claims:

18 Misleading or deceptive conduct: *(1) A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.*

29 False or misleading representations about goods or services:

(1) A person must not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services:

(a) make a false or misleading representation that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use;
or

(b) make a false or misleading representation that services are of a particular standard, quality, value or grade; or

(g) make a false or misleading representation that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits.

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?

GLOBAL DEVELOPMENTS IN ENVIRONMENTAL CLAIMS REGULATION

European Union

European Commission Environmental Footprint Methods

The European Commission (EC) has released a legislative proposal to adopt standardised [Environmental Footprint methods](#) to guide both government and private sectors when making claims about the life cycle environmental performance of products or organisations.

The proposal seeks to introduce standardised '*Product and Organisation Environmental Footprint (PEF/OEF)*' methods and *Life Cycle Assessment* methods so that environmental performance is calculated taking into consideration the environmental impacts throughout the value chain, from extraction/growing of resources to the end of life of the product or the product portfolio of an organisation, covering 16 impact categories. The EC have developed their own PEF and OEF methods after determining that existing methods contain gaps.

The EC is also looking to introduce specific sector rules and benchmarks to ensure easy comparison of product categories (e.g. cosmetics) or organisational sectors (e.g. energy, superannuation). The benchmarks would be voluntary and would assess "*the whole life-cycle of a product or the holistic impact on the environment by an organisation*". It is intended that that companies could then use the benchmarks to substantiate environmental claims, with validation and verification to be carried out by an independent third party.

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.

European Commission Unfair Commercial Practices Directive

In March 2022 the European Commission adopted a [proposal](#) for the Directive on "*Empowering Consumers for the New Transition*". The proposal aims to strengthen existing European Union consumer protection laws around environmental claims.

In the European Union, there are two Directives aimed at protecting consumer rights:

1. the *Unfair Commercial Practices Directive 2005/29/EC* (UCPD); and
2. the *Consumer Rights Directive 2011/83/EU* (CRD).

The proposal seeks to enhance both the UCPD and the CRD to protect consumers against green washing and contribute to the shift to a green economy.

Annex I of the UCPD contains a "blacklist" of marketing practices that are prohibited in all circumstances because they are considered misleading. The proposal seeks to add ten new banned practices to the list of prohibited marketing practices:

1. displaying a sustainability label that is not based on a certification scheme or not established by public authorities;
2. making generic environmental claims, such as 'environmentally friendly', 'ecofriendly', 'eco', 'green', 'biodegradable', 'nature's friend', 'carbon neutral', 'carbon positive', 'biobased', or similar. Such claims would be prohibited if their excellent environmental performance could not be demonstrated by, for instance, compliance with the EU Ecolabel, officially recognised ecolabelling schemes in a Member State, or EU laws such as legislation on energy efficiency labelling;
3. making an environmental claim about the entire product when it actually concerns only a certain aspect of the product;
4. presenting requirements imposed by law as a distinctive feature of a trader's offer, for instance, highlighting that a product does not contain a chemical substance, when this substance is prohibited by law for all products within that product category;
5. omitting to inform the consumer that a software update, including a security update, would negatively impact the use of goods with digital elements. Consumers would have to be informed, for instance, if updating the operating system would negatively impact the functioning of any features of their smartphone;
6. omitting to inform the consumer about a feature of a product that limited its durability. This would introduce a ban on planned obsolescence of products, i.e. products designed to fail after a particular period of time;
7. false claims about durability of a product;
8. falsely claiming that a product can be repaired or failing to inform the consumer that the product cannot be repaired in line with legal requirements (e.g. legal guarantee);
9. persuading consumers to replace a product earlier than necessary for technical reasons, for instance, urging them via settings on a printer to replace ink cartridges before they are actually empty;
10. failing to inform the consumer that the product is designed in such a way that using non-original spare parts, consumables and accessories (ink cartridges or a charger manufactured by a different producer) would limit its functionality.

The proposal also seeks to amend Articles 6 and 7 of the UCPD which cover misleading statements and omissions that may distort the transactional decision of the 'average consumer', as judged on a case-by-case assessment. Proposed amendments to these articles include:

1. **Product characteristics:** environmental and social impact, durability and reparability would be explicitly mentioned on the list of main product characteristics, which, if false or deceiving, could be considered to constitute a misleading commercial practice.
2. **Potential misleading commercial practices:** two more practices would be explicitly mentioned on a list of practices that can be found misleading on a case-by-case basis, taking into account all features and circumstances:
 - a. Making environmental claims about future environmental performance of a product without clear, objective and verifiable commitments and targets and without an independent monitoring; or
 - b. Advertising something that is a common practice in the relevant market as a special benefit for consumers - for instance, highlighting that a product does not contain a chemical substance, when absence of this substance is a common practice for the particular product anyway.
3. **Comparison tools:** traders providing a service that compares the sustainability of products would be required to disclose information on the method of comparison, the products being

compared, the suppliers of the products, and measures on how information is to be kept up to date.

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?
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?

United Kingdom

ASA Advertising Codes

The United Kingdom has rules around environmental claims which are enforced by the Advertising Standards Authority. The relevant rules are:

Section 9.2:

The basis of environmental claims must be clear. Unqualified claims could mislead if they omit significant information.

Section 9.3:

The meaning of all terms used in advertisements must be clear to consumers.

Section 9.4:

Absolute claims must be supported by a high level of substantiation. Comparative claims such as "greener" or "friendlier" can be justified, for example, if the advertised product or service provides a total environmental benefit over that of the advertiser's previous product or service or competitor products or services and the basis of the comparison is clear.

Section 9.5:

Environmental claims must be based on the full life cycle of the advertised product or service, unless the advertisement states otherwise, and must make clear the limits of the life cycle. If a general claim cannot be justified, a more limited claim about specific aspects of a product or service might be justifiable. Claims that are based on only part of an advertised product or service's life cycle must not mislead consumers about the product or service's total environmental impact.

Section 9.6:

Advertisements must not suggest that their claims are universally accepted if a significant division of informed or scientific opinion exists.

Section 9.7:

If a product or service has never had a demonstrably adverse effect on the environment, advertisements must not imply that the formulation has changed to improve the product or service in the way claimed. Advertisements may, however, claim that a product or service has always been designed in a way that omits an ingredient or process known to harm the environment.

Section 9.8:

Advertisements must not mislead consumers about the environmental benefit that a product or service offers; for example, by highlighting the absence of an environmentally damaging ingredient if

that ingredient is not usually found in competing products or services by highlighting an environmental benefit that results from a legal obligation if competing products are subject to the same requirements.

Section 9.9:

This rule must be read in conjunction with Directive (EC) No 2010/30/EU and the Energy Information Regulations 2011 on labelling and standard product information of the consumption of energy and other resources by energy-related products and its subsequent delegated regulations. The Directive introduces an information and labelling framework whereby delegated regulations will detail which products need to contain an energy efficiency rating or fiche. The rule only applies to products which are subject to a delegated regulation.

Recent Case – HSBC UK Bank plc (see the case report [here](#))

This case involved two posters for HSBC on bus stops as follows:

- The first poster featured an aerial image of waves crashing on a shore with text that stated "*Climate change doesn't do borders. Neither do rising sea levels. That's why HSBC is aiming to provide up to \$1 trillion in financing and investment globally to help our clients transition to net zero*".
- b. The second poster featured an image of tree growth rings with text that stated "*Climate changes doesn't do borders. So in the UK, we're helping to plant 2 million trees which will lock in 1.25 million tonnes of carbon over their lifetime*"

The complainants alleged that the ads were misleading because they omitted significant information about HSBC's contribution to carbon dioxide and greenhouse gas emissions.

In relation to the first ad, HSBC said that the financing of greenhouse gas-emitting industries was required during the transition to net zero, and so their continued financing of those industries was not in conflict with the aims of a transition to net zero. They highlighted that the IEA's 2021 report on net zero by 2050 outlined that at that stage the world would still need 20% of current natural gas production, and 25% of current oil production. Fossil fuels would play a critical role in a secure energy transition up to 2050 and would require financing. HSBC preferred a phase-down and industry engagement rather than divestment, an approach that had been drawn from the UN's Principles for Responsible Investment.

In relation to the second ad, HSBC had entered into a four-year partnership with the National Trust, worth £4 million, to create 2,000 hectares of carbon-rich woodland. Under that partnership it endeavoured to plant two million trees by 2025, which according to the Woodland Carbon Code, and based on the average 100-year lifespan of a tree, would lock in 1.25 million tonnes of carbon. The trees would be at various sites, and 90,000 had already been planted since the partnership's inception.

HSBC believed the claims in both ads highlighted two tangible and specific short-to-medium term initiatives, capable of quantifiable measurement, and would not be seen as commenting, in a broader sense, on their green credentials or environmental contribution. Furthermore, the ads had appeared in the run up to the 2021 United Nations Climate Change Conference (COP26), which they believed would have affected how the average consumer understood the claims made.

Furthermore, HSBC claimed that the ads invited consumers to find out more about the initiatives through a call to action - "Search HSBC Sustainability" and if consumers searched for those terms on the Internet, they would find a link to a page on HSBC's website where they could access a detailed summary of climate change initiatives which had been, and would be, introduced by HSBC.

The ASA found that consumers would understand the claims "HSBC is aiming to provide up to \$1 trillion in financing and investment globally to help our clients transition to net zero" in the first ad and "we're helping to plant 2 million trees which will lock in 1.25 million tonnes of carbon in their lifetime" in the second ad to mean that HSBC was making, and intended to make, a positive overall environmental contribution as a company. As part of that contribution, we considered consumers would understand that HSBC was committed to ensuring its business and lending model would help support businesses' transition to models that supported net zero targets. The ASA also found that consumers would understand that HSBC were undertaking an environmentally beneficial activity by planting trees which would make a meaningful contribution towards the sequestration of greenhouse gases in the atmosphere. The ASA considered that the use of imagery from the natural world, and in particular the first ad's image of waves crashing on a beach, contributed to that impression.

The ASA considered that the ads were placed on high streets in Bristol in the run up to COP26 however coverage of COP26 in the media did not mean that consumers would understand the intricacies of transitioning to net zero, and would not expect that HSBC, in making unqualified claims about its environmentally beneficial work, would also be simultaneously involved in the financing of businesses which made significant contributions to carbon dioxide and other greenhouse gas emissions and would continue to do so for many years into the future.

The ASA noted HSBC's Annual Report which indicated that HSBC intended to invest between \$750 billion and \$1 trillion in helping its clients transitioning to net zero. However, it also indicated that its current financed emissions – emissions related to the customers it financed – stood at the equivalent of around 65.3 million tonnes of carbon dioxide per year for oil and gas alone based on the information available at the time the report had been prepared, a figure which was likely to be much higher once other carbon-intensive industries such as power and utilities, construction, transport, and coal mining had been analysed and included. The ASA also noted the Annual Report stated that HSBC intended to continue funding thermal coal mining and power production – a type of fuel that emitted high levels of carbon dioxide and other greenhouse gasses – to some degree until 2040 (or 2030 in the OECD).

The ASA found that, notwithstanding the reasons given for the continued financing of those industries and despite the initiatives highlighted in the ads, that HSBC was continuing to significantly finance investments in businesses and industries that emitted notable levels of carbon dioxide and other greenhouse gasses. The ASA found that consumers would not know that was the case and it was material information that was likely to affect consumers' understanding of the ads' overall message, and so should have been made clear in the ads. The ASA concluded that the ads omitted material information and were therefore misleading.

- 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?**
- 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?**

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

ICC Code on Environmental Claims

The International Chamber of Commerce (ICC) Codes represent best practice for self-regulation. The AANA Environmental Claims Code is based on the ICC Code.

In November 2021 the ICC's updated its [*Framework for Responsible Environmental Marketing Communication*](#). The updated Framework provides additional guidance on some established environmental claims and additional guidance on some emerging claims, including:

- **Climate-related claims:** including carbon footprint, carbon offset, carbon neutral, carbon negative, net zero, and climate positive. These may be aspirational claims related to goals of reducing, neutralising or compensating a company's climate impact of producing a product, component, package, service or a company's business operations over time.
- **Circularity claims:** including circular, circularity, and circular economy
- **Additional "free-of" claims:** including "micro-plastics free" and "not made with fossil fuels"
- **Recyclability claims** and the use of material identification codes
- **Recycled content claims**
- **Degradable claims:** including biodegradable, marine degradable, oxo-biodegradable, and photodegradable

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

World Federation of Advertisers

In April 2022, the World Federation of Advertisers released its [Global Guidance on Environmental Claims](#). The guidance contains the following principles based on International best practice:

Global environmental principles based on international best practice



Principle 1

Claims must not be likely to mislead, and the basis for them must be clear.



Principle 2

Marketers must hold robust evidence for all claims likely to be regarded as objective and capable of substantiation.



Principle 3

Marketing communications must not omit material information. Where time or space is limited, marketers must use alternative means to make qualifying information readily accessible to the audience and indicate where it can be accessed.



Principle 4

Marketers must base general environmental claims on the full lifecycle of their product or business, unless the marketing communication states otherwise, and must make clear the limits of the lifecycle.



Principle 5

Products compared in marketing communications must meet the same needs or be intended for the same purpose. The basis for comparisons must be clear and allow the audience to make an informed decision about the products compared.



Principle 6

Marketers must include all information relating to the environmental impact of advertised products that is required by law, regulators or Codes to which they are signatories.

The current AANA Environmental Claims Code reflects these principles, with the exception of Principle 4 which states that *“Marketers must base general environmental claims on the full lifecycle of their product or business, unless the marketing communication states otherwise, and must make clear the limits of the lifecycle”*.

The AANA Environmental Code does not require assessment of the full lifecycle of a product prior to making claims of environmental benefits.

- 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.**

OTHER TOPICS

This Discussion Paper poses a range of questions in relation to the Environmental Claims Code. The issues and related questions raised are presented to facilitate discussion and are not intended to be exhaustive. Stakeholders and interested parties are invited to comment on any other matters they wish to raise.

- 22. Are there any other issues, rules or standards that should be included in the Environmental Claims Code? If so please, give details.**
- 23. Do you have any additional suggestions or comments on the review of the Environmental Claims Code?**

LIST OF CONSULTATION QUESTIONS

1. Are any changes required to the definitions in the Environmental Claims Code?
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?
3. What changes to the overall Code or Practice Notes could be made to assist in the interpretation and compliance with the Code?
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?
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?
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?
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?
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?
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?
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?
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?
12. Are there any other learnings from this decision which should be incorporated into the Environmental Claims Code rules?
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?
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.

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?
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?
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?
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?
19. Are there any other rules in the UK Code which should be incorporated into the Environmental Claims Code?
20. Should the Environmental Claims Code align with the updated ICC Framework and additional guidance on emerging environmental claims?
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.
22. Are there any other issues, rules or standards that should be included in the Environmental Claims Code? If so please, give details.
23. Do you have any additional suggestions or comments on the review of the Environmental Claims Code?

