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Submission to Australian Association of National Advertisers (AANA) Environmental Claims Code Review

Consumers are frequently being shown green claims online and off. Yet, the quality of these claims varies from vague imagery and language through to hyper-specific phrases and terms. It can be very difficult for consumers to trust the green claims they see or understand how one product is better or worse than another based on the claims made.

The Consumer Policy Research Centre (CPRC) is an independent, not-for-profit consumer research organisation. Our mission is to improve the lives and welfare of consumers by producing evidence-based research that drives policy and practice change. Our submission provides evidence of how consumers experience green claims and the impacts of greenwashing to support our recommendations on how the Environmental Claims Code (the Code) can be improved to benefit consumers.

Australian consumers experience of green claims.

In 2022, CPRC conducted research on Australian consumers experience of green claims. The aim was to better understand how frequently consumers see green claims, where they see them, what types of claims and what would happen if they found out a business was engaged in greenwashing. We surveyed 2000 Australians in September-October 2022 in a nationally representative survey.¹

Overall, our research found that consumers are interested in purchasing products that are greener or more sustainable, but they're worried about the truthfulness of claims in the market. We found that:

- 55% of Australians consider sustainability as part of their decision making and purchasing habits.
- 50% said they were worried about the truthfulness of green claims across every sector we surveyed consumers about.

The role of Ad Standards and the AANA is to review complaints after a claim is used, however we found that almost half of Australians (46%) thought that someone was checking green claims before they were used in advertising, marketing or on products and packaging. This includes:

- 17% who think the Federal Government checks,
- 12% who think industry groups check, and
- 16% who think Ad Standards checks green claims before they are used.

More needs to be done to ensure green claims are accurate and meaningful because consumers are trusting that these claims are verified.

We know there are consumer harms from greenwashing. We also found that consumers would react strongly if they found out a business was engaging in greenwashing, with:

- 47% of Australians saying they would stop buying from a business because of greenwashing.
- 39% of Australians said it would make buying sustainable products more confusing.
- 32% of Australians would want enforcement action taken against that business.²

¹ Consumer Policy Research Centre, *The consumer experience of green claims in Australia*, December 2022
<https://cprc.org.au/green-claims/>

² Consumer Policy Research Centre, *The consumer experience of green claims in Australia*, December 2022

We have made recommendations throughout our submission in relation to specific questions asked in the consultation paper. Our recommendations seek to ensure that where green claims are used they are meaningful and help consumers who want to make sustainable purchases to have confidence in green claims.

More needs to be done to improve the quality of green claims used in Australia. Businesses, regulators and governments must take concrete steps to remove unhelpful or misleading green claims and to get better quality information into the hands of consumers. The onus should not be on consumers to attempt to verify claims or spend hours researching the various claims they see in a day. It is up to industry and government to make green claims worthy of consumer attention.

CPRC would welcome the opportunity to work with AANA provide further insights from our consumer research as the code review is being finalised. If you have any queries about this submission or would like more information on our research, please contact Kristal Burry, Policy and Program Director at kristal.burry@cprc.org.au

Yours Sincerely



Kristal Burry
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Consumer Policy Research Centre

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

Consumers reported seeing green claims across all mediums. Product packaging and labels has the highest level of recall, with 13% of people saying they saw green claims very frequently on packaging, compared with just 6% seeing them on ads in public spaces and physical displays. When all positive responses are collapsed,

- 73% of Australians see green claims on packaging,
- 61% see them in mainstream media,
- 56% on social media, and
- 54% for physical displays in shops.³

The Code currently excludes labels, products or packaging from the definition of what constitutes advertising or marketing communication⁴. This means that green claims made on labels or packaging are not included in the Code. These should be included as they form part of the overall promotion of a product or service and are often the primary point where consumers see green claims (that may be the same as those that are being used in an advertisement or marketing materials).

In addition, the Code should be amended to clarify that in-store promotions and social media are included within the definition of 'medium'.⁵

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?

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

The Practice Notes should be clearer and more specific.

- Greater guidance is required on how to determine and communicate who the target audience is. A higher standard needs to be applied to making green claims and advertisers should not assume that their ads or marketing will only be seen by people in the target audience, especially for advertising in public spaces.
 - User testing with a broad range of consumers should be required for advertisers and this should be provided to the Panel when they are reviewing a complaint.
- Additional information is required in the Practice Notes to provide advertisers and marketers and the Panel with information about what level of evidence is required to substantiate a claim and how to communicate this will consumers.
- Section 1c should be expanded to include:
 - If the claim relates to the energy or carbon use in the manufacturing of a product or service, the claim should not imply that it relates to the energy or carbon use through the full lifecycle of the product or service.

General comments on the case studies provided in the consultation paper.

The Code and complaints handling is administered by Ad Standards. A Community Panel reviews complaints and determines if advertising and marketing material has breached the Code. The below examples makes it clear that the Panel requires more training, guidance and support in undertaking their duties. There appears to be a

³ Consumer Policy Research Centre, *The consumer experience of green claims in Australia*, December 2022

<https://cprc.org.au/green-claims/>

⁴ AANA, 2022, Environmental Claims Code consultation paper

⁵ *ibid*

lot of weight given to assumptions about how consumers understand or engage with claims without evidence to back up these assumptions. There also appears to be a lot of weight given to evidence supplied by industry in responding to complaints.

Case study – Mineral Council of Australia

A Mineral Council of Australia ad featuring farmers talking about rehabilitated land after mining, was deemed not to breached the code as it did not make an environmental claim. It is unclear how statements such as below:

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

are not making an **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**.

Further to this, claims should not ‘lead the consumer to conclude a business has voluntarily adopted an environmental practice if that practice has been legally mandated’. Mining rehabilitation is a condition of licensing and required by law.⁶ This ad could be construed that this is a voluntary arrangement between the mining sector and farmers.

Case study – Australian Gas Network

Another case study is of Australian Gas Network (AGN) claims about renewable gas and the impact of hydrogen in the domestic gas networks. This ad was also deemed to have not breached the code because, the Panel considered 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 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 the article.

CPRC’s research found that consumers are less likely to respond to or trust green claims about carbon offsets and emissions as much as they do claims about recycling or biodiversity. Our theory is that this is in-part because these claims are more difficult to understand than others that relate to packaging or recycling, which a consumer typically has practical experience with.

We found in our research that consumers were less likely to be influenced by claims such as:

- 50% of consumers said they would be influenced by claims about the company shifting investments or divesting from fossil fuels.
- 53% of consumers said they would be influenced by claims about the emissions of a product or service being offset.
- 58% of consumers said they would be influenced by claims about reducing fossil fuel use by a business.

This was compared to 74% of consumers saying they would be influenced by claims about products made from biodegradable, compostable or natural materials.⁷

To indicate that the language used by AGN is not misleading because the target audience would know, is not sufficient to ensure that all consumers understand what is being communicated.

Case study – Suncorp– Banking You Can Feel Good About

A complaint was made about the Suncorp ad ‘Banking You Can Feel Good About’, that the claims made in this ad were vague and did not provide sufficient information to support their claims.

⁶ Australian Government, 2016, *Mine rehabilitation. Leading practice Sustainable Development program for the mining industry*. Department of Industry, Industry.gov.au

⁷ Consumer Policy Research Centre, *The consumer experience of green claims in Australia*, December 2022
<https://cprc.org.au/green-claims/>

This ad was found not to have breached the Code despite the Panel noting *‘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 (to the panel after the complaint) 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 additional information referenced in the determination was provide as part of Suncorp’s response to the complaint, which requires consumers to know about the complaint and seek out the determination⁸. While Suncorp has made information available in their Climate Action Plan, this relies on consumers seeking that information out. The ad itself remains vague and unhelpful to consumers. This example demonstrates the limits of relying on information on different mediums rather than within the ad itself or requiring that businesses and advertisers to provide more clear and useful language in advertising and marketing materials to begin with.

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?

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.

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?

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?

Consumers are overwhelmed by ads and products that make claims about being ‘green’ or ‘eco-friendly’ and ‘sustainable’ but provide no information to support these claims. Our research documented 122 green claims a consumer might be exposed to through the course of a typical 24-hour period. Of these claims, only 39 had any supporting evidence or verification to help provide confidence the claim was accurate or meaningful.⁹ Below are examples we documented in our day-in-a-life scan of vague claims. These are not helpful for a consumer to be able to effectively decide to purchase the product or service, adopt a different practice or avoid products that are more harmful to the environment.

Eat me and save the planet

Power as green as our spinach

Gas, electricity and warm fuzzies

We help you answer two tricky questions: ‘what can I do about climate change’ and ‘what’s for dinner?’¹⁰

Broad and general claims about the environmental benefits of a business, product or services should not be allowed to be used in advertising and marketing.

⁸ AANA, 2022, Environmental Claims Code consultation paper

⁹ Consumer Policy Research Centre, 2022, The consumer experience of green claims in Australia, December 2022

<https://cprc.org.au/green-claims/>

¹⁰ *Ibid*

Where environmental claims are made that are more meaningful and specific, they should take into consideration the overall environmental footprint or impact of the business or product. A green claim can be misleading if the business makes claims about the positive impact part of their operations or process but does not disclose the negative impacts of their business or process. This is greenwashing by omission and needs to be prevented. Misleading conduct by omission should be taken seriously and the Code and the Practice Notes should make that clear to both businesses and the Panel.

Recommendation

Broad and general claims about the environmental benefits of business, products or services should not be allowed to be used in advertising and marketing.

Recommendation

Environmental claims should take into consideration the overall environmental footprint or impact of the business or product.

Recommendation

The Practice Note states – *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.*

As more businesses seek to report on and communicate their net-zero or carbon commitments there will be more claims about how they aim to achieve these. This means ads will include more claims about the future environmental outcomes or benefits. It is critical that these claims are based on evidence, can be substantiated and do not overstate the impact of the businesses actions.¹¹ A higher standard is required than ‘*based on reasonable grounds as at the time the claim was made, even if the future matter does not come to pass*’.

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?

The use of carbon offsets to meet net-zero targets is meant to be used as a last resort for sectors or business processes where other decarbonisation efforts are more challenging to deploy.¹² Where the use of offsets that rely on carbon credit or accounting schemes that are audited and verified to make genuine contributions to carbon abatement, this information should be specified in advertising and marketing materials.

Recommendation

Advertisers should be required to specify the extent to which environmental claims are achieved by use of carbon offsetting.

Recommendation

Businesses that use offsets should be required to report what other efforts they have made to decarbonise before adopting the use of offsets. They should also be required to report their quality assurance programs or methods they have used to verify that the offsets they have purchased come from genuine programs.

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

¹¹ BEUC, 2022, Proposal on empowering consumers for the green transition. BEUC Position paper.

https://www.beuc.eu/sites/default/files/publications/BEUC-X-2022-105_Empowering_consumers_for_the_green_transition.pdf

¹² Climate Council, 2023, *What is carbon offsetting and is it worthwhile?*

<https://www.climatecouncil.org.au/resources/carbon-offsetting-worthwhile/>

these standards or tests be adopted in the Environmental Claims Code to substantiate each type of environmental claim?

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?

Our research found that consumers trust green claims more that come with a trustmark or certification scheme. We found that:

- 69% of Australians are likely to be influenced by the presence of a trustmark about a green claim.
- 29% said they use trustmarks to help them to fact check green claims.

This demonstrates the importance of trustmarks and verification to support green claims. The Code should include a list of standards and trustmarks that are independent, verified, and thorough a certification scheme to help businesses and marketers to support the green claims they make.

Recommendation

The Practice Notes state - *“Environmental claims should not lead the consumer to conclude a business has voluntarily adopted an environmental practice if that practice has been legally mandated.”*

To avoid confusion, environmental claims that are supported by voluntary codes or standards need to be made clear to consumers rather than just stating where an action has been mandated.

Recommendation

The Practice Notes state - *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.*

Given the proliferation of eco logos, certifications and trademarks, the use of these should be explained even when required by law or the scheme is underpinned by regulations or standards. We should not assume consumers know of these regulations, understand the rules, or understand thresholds for participation in these schemes. It is incumbent on businesses and advertising industry to contribute to consumer understanding and support education about schemes.¹³

Recommendation

The Code should include a list of standards and trustmarks that are independent, verified, and thorough a certification scheme to help businesses and marketers to support the green claims they make.

Recommendation

Ad Standards or the AANA should seek to regularly update the list of those schemes that meet these criteria. Where a scheme is no longer in use or no longer meets these criteria, Ad Standards or the AANA should notify its members. While it might be no fault of the advertiser all effort must be used to remove ads or marketing that uses or references the defunct scheme and where necessary correct the record if the claim is significant.

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?

¹³ CMA, 2021, *Making environmental claims: a literature review*, Competition and Markets Authority
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1131212/MGC_Literature_review_-_1.pdf

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

Where a product makes claims about the recyclability or biodegradability of a product or packaging it is important that the recyclability or composability of the product is achievable in residential collection facilities or household composting. It is not enough for a product to be recyclable or compostable in commercial facilities, that are difficult for a person to be able to find or access, this is especially important for regional communities where facilities might not be available. Because while these claims may technically be true, for a consumer it could be misleading and could result in consumers losing trust in green claims and it may make it harder for them to make sustainable choices in the future.¹⁴

Recommendation

Advertisers should only make claims about a product being fully or 100% recyclable when they are recyclable through standard kerb side facilities. In addition, where a product is not recyclable or compostable in residential facilities this should be clearly communicated, and this qualification should be prominently positioned for consumers to see.

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?

Given the volume of sustainability claims in the market, and that many are failing to meet the basic voluntary guidance issued by regulators, Australia needs more solutions that stop unhelpful and misleading claims before they hit the shelves. As previously stated in our submission, consumers think that government or an independent body such as Ad Standards is checking green claims before they are used. CPRC would support the introduction of bans on specific phrases that are being widely misused, especially generic claims within the Code.

In our report¹⁵ we also recommend the Australian Government introduce a verification system for the most problematic green claims, so that a responsible party sets standards for the use of those green claims and checks to see if they are being used correctly. This could help support the Ad Standards in administering the list of banned phrases for advertising.

Recommendation

The Code should include a list of specific marketing practices and terms that are deemed to automatically be deemed to be in breach of the Code. This should be regularly reviewed and updated.

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?

It is clear from the case studies provided in the consultation paper that the current Code and Practice Notes are insufficient to help prevent poor quality claims from entering the market. The Practice Notes are also insufficient to help in enforcing the Code. This is particularly concerning where claims about the future impact of a business's practices or product are made.

¹⁴ Consumer Policy Research Centre, 2022, The consumer experience of green claims in Australia, December 2022
<https://cprc.org.au/green-claims/>

¹⁵ Ibid

Improvements to the guidance should include the provision of sector specific guidance. This is particularly important in sectors such as superannuation and banking or those sectors where marketers and advertisers are more likely to make vague claims about the future outcomes of their products. This will help to ensure that these claims if used are high-quality and accurate. In addition, user testing of these claims should be undertaken to ensure that where claims about the future impact of a business or product are easy for consumers to understand or so consumers understand the limitations or uncertainty surrounding these types of claims.

Recommendation

The Code should include sector specific rules and guidance to improve the quality of green claims in sectors where consumers are more likely to have challenges understanding claims, issues trusting green claims or, where the potential consumer harm is high.

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

The Code relies on consumers making complaints about ads or marketing material effectively leaving consumers to monitor and enforce the Code. It is important that Ad Standards and AANA undertakes proactive monitoring and enforcement of the Code.

In our report we made a number of recommendations for businesses to improve their use of green claims. These are:

- Businesses proactively checking to see if the green claims they're making are accurate and meet ACCC or ASIC guidelines.
- Businesses being as transparent as possible and providing information on their websites about the steps they have taken to ensure green claims are true.
- Businesses consumer-testing green claims before they hit the market, checking to see if advertising and marketing is accurately understood by consumers and genuinely helps them to make decisions. Businesses should release this research wherever feasible.
- Businesses using their industry expertise by working with regulators to identify where players in their sector may be misusing green claims.
- Industry associations using codes and sector-specific regulation to set standards for green claims relevant to their industry.¹⁶

It is incumbent on businesses and marketing professionals to seek to go above and beyond the minimum voluntary standards set by the Code or guidance provided by regulators and provide consumers with green claims that they can use to inform their choices. If not, consumers will respond to greenwashing by no longer shopping at a business or warning friends and family to not shop with a business.

¹⁶ Consumer Policy Research Centre, 2022, The consumer experience of green claims in Australia, December 2022
<https://cprc.org.au/green-claims/>



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