

Submission

Australian Association of National Advertisers (AANA) Environmental Claims Code: Exposure Draft

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CPRC

The Consumer Policy Research Centre (CPRC) is an independent, not-for-profit, consumer think-tank. CPRC aims to create fairer, safer and inclusive markets by undertaking research and working with leading regulators, policymakers, businesses, academics and community advocates.

Contact for submission

Sarah Panckridge
Senior Research and Policy Advisor
Email: sarah.panckridge@cprc.org.au

Submission made via: aanasubmissions@aana.com.au

Statement of Recognition

CPRC acknowledges the Traditional Custodians of the lands and waters throughout Australia. We pay our respect to Elders, past, present and emerging, acknowledging their continuing relationship to land and the ongoing living cultures of Aboriginal and Torres Strait Islander Peoples across Australia.

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Make the code count for consumers

Green claims are increasingly prolific in advertising across the Australian market. Consumers deserve and are entitled to accurate and truthful information on products and services advertised as being sustainable or environmentally beneficial.

Outlining clear and specific expectations of advertisers making green claims helps people wishing to make sustainable choices, to compare the environmental features of the products and services available to them, and to make meaningful and evidence-informed choices.

We welcome the AANA’s direction to hold advertisers making green claims to rigorous standards, for the benefit of consumers, industry and the market as a whole.

In this submission we discuss how elements of AANA’s commendable green code could be strengthened. The key issues we focus on include the need for consumers to have meaningful information to be able to make direct comparisons about the products and services being advertised to them, through setting specific expectations of advertisers with respect to communicating supporting evidence to consumers. We outline extensive problems with trustmarks and self-certification schemes, the influence of imagery, and vague and obscure language in advertising featuring green claims.

Summary of recommendations:

Recommendation 1.	<i>Expand Code Rule 1 to state that claims unable to be verified as factual, such as a claim suggesting that an organisation is ‘lower carbon’ for example, be avoided.</i>						
Recommendation 2.	<i>Update Code Rule 2 to outline more specific requirements on advertisers, by requiring that supporting information relating to a green claim be made readily accessible to consumers, such as through an easy to access QR code.</i>						
Recommendation 3.	<i>Update Code Rule 2 to state that “Advertisers should have reasonable grounds for making an environmental claim, based on publicly available evidence at the time the claim is made” as opposed to “evidence held at the time”.</i>						
Recommendation 4.	<i>Include in Code Rule 2 that advertisers should not use self-certified trustmarks.</i>						
Recommendation 5.	<i>Develop a resource for advertisers as part of its broader green code, that outlines conditions for a small number of certified trademarks that advertisers could adopt provided they meet those conditions.</i>						
Recommendation 6.	<p><i>Include the following terms and phrases to the list of absolute, vague, broad or non-specific claims that should not be used without qualification, as called out in Code Rule 3:</i></p> <table data-bbox="470 1937 1356 2016"> <tr> <td><i>Bio</i></td> <td><i>Clean</i></td> <td><i>Environmentally correct</i></td> </tr> <tr> <td><i>Biodegradable</i></td> <td><i>Climate friendly</i></td> <td><i>For the planet</i></td> </tr> </table>	<i>Bio</i>	<i>Clean</i>	<i>Environmentally correct</i>	<i>Biodegradable</i>	<i>Climate friendly</i>	<i>For the planet</i>
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Recommendation 7.	<i>Conduct research with consumers to test consumer perception and understanding of a short list of alternative term descriptors that are specific, clear and comparable, for potential inclusion in the code.</i>		
Recommendation 8.	<i>Develop an evolving list of terms that can be added to over time, as a reference for advertisers making green claims.</i>		
Recommendation 9.	<i>Amend Code Rule 3 to encourage advertisers to outline information relating to the durability of a product, in the context of its broader life cycle value.</i>		
Recommendation 10.	<i>Strengthen Code Rule 4 by recommending that high-polluting sectors and businesses withhold from advertising green claims in any form.</i>		
Recommendation 11.	<i>Further develop Code Rule 4 by stating that advertisers need to be cautious when using emojis and other images, to ensure they are not implying an environmental outcome exists when it may not be significant or substantially beneficial.</i>		
Recommendation 12.	<i>Expand on Code Rule 5 to specify what is meant by 'reasonable grounds' when stating that 'environmental claims relating to aspirational targets or environmental goals should only be made if the advertiser has reasonable grounds at the time the claim is made', to better communicate expectations of advertisers making forward looking green claims.</i>		
Recommendation 13.	<i>Develop a checklist to accompany the code that is regularly updated and reviewed for evidence and applicability, for advertisers to work through and utilise when making a forward looking green claim.</i>		

1. Truthful and factual

The need for products to be comparable is rightly outlined in Code Rule 1, but the rule should be made stronger.

It is in the interests of advertisers to provide information about their environmental or sustainability credentials in a way that is factual and benefits consumers. When businesses fail to act on promises to achieve larger sustainability goals, it can reduce consumer desire to adopt sustainable actions. CPRC research shows that many Australians would feel manipulated if they discovered a business had been greenwashing.¹ They also feel it would impact on their ability to exercise their choices and desire to be more sustainable in the future.

¹ CPRC, 2022, The consumer experience of green claims in Australia, <https://cprc.org.au/report/green-claims>.

Australians are bombarded with claims about environmental and sustainable features of products and services through advertising. With more businesses transitioning to advertising with green claims, stronger protections are needed to ensure that consumer choice towards environmental options is meaningful and informed.² Consumers cannot compare the merits of a product's sustainability features without having the necessary information at hand to make such an assessment. Comparative claims that make reference to either competitors or a past state for the business, rely on advertising being truthful, factual, and trusted by consumers.

We caution against the use of vague terms that imply an organisation is 'lower carbon' or any other term that could imply the company is comparatively better than other options on the market. While companies will reduce emissions to improve on their past usage, there are likely to be other competitors or market alternatives that innately produce lower emissions.

There is strong international evidence that vague product-specific claims are confusing for consumers. For example, a pork product could be produced in a way that uses lower carbon than competitors or previous manufacturing processes. However, a claim that the pork is "lower carbon" can be inherently misleading for a consumer who is making a decision about what to add to a meal. While the pork product could be "lower carbon" than equivalent pork products, it is a significantly worse environmental option than alternatives such as lentils or vegetarian alternatives. The vague claim that the product is "lower carbon" may be meant to be read as lower than direct competitors but is easily interpreted as a better option overall, against all possible alternatives.

Recommendation 1. Expand Code Rule 1 to state that claims unable to be verified as factual, such as a claim suggesting that an organisation is 'lower carbon' for example, be avoided.

2. Evidence

Advertisers need to support any green claims they make with evidence. The code needs to be supported via proactive regulation to ensure that any green claims made by advertisers are factually correct and are backed by evidence. This will help instill consumer confidence in the products and services being advertised to them.

Code Rule 2 states that advertisers do not necessarily need to include supporting information in an advertisement at the time it is made, to demonstrate that the claim is accurate. While it is not always practical to include supporting information as a blanket rule, particularly where significant detail is required, it is unfair to put the onus on the consumer to 'dig' to find information to substantiate a claim they see in advertising. The onus should be on advertisers who choose to make green claims to provide the necessary information in the first place. Code Rule 2 could outline more specific requirements on advertisers, by specifying that supporting information relating to a green claim should be readily accessible to a person, such as through an easy to access QR code, for example.

Evidence must be publicly available, not just evidence held by the company in an unpublished format. At minimum, a company should publish the information it may hold to help consumers

² CPRC and ADM+S, 2023, Seeing Green, <https://cprc.org.au/seeing-green/>.

and third parties understand the basis for environmental claims. Failing to publish this information means that consumers can't verify the information. Publishing could be as simple as providing the information behind the claim on the company website. Without this basic transparency, there is a much higher risk that companies will make misleading or vague environmental claims.

Addressing the trust in trustmarks

The Code needs to include guidance about the use of trustmarks given how important they are to consumers making decisions about environmental factors. CPRC's research found that 69% of people said they were likely to trust a green claim that had a trustmark with it. While some schemes have robust governance and integrity, there are risks with the proliferation of these schemes. It is difficult for consumers to understand what every certification scheme or trustmark means, or to assess how robust the scheme is.³

In Australia there are growing numbers of certification schemes or trustmarks which seek to build consumer trust and confidence by indicating adherence to certain quality, safety, environmental or ethical standards. These trustmarks or certifications do not have to meet minimum standards for transparency, quality or accountability. While intended to increase consumer confidence and provide assurance as to a product or service's environmental benefits and features, the use of trustmarks as evidence is often misused, while being incredibly confusing for consumers.

CPRC's day-in-the-life scan⁴ uncovered examples of trustmarks and images displayed on products that looked like certification schemes, despite no evidence of the business participating in any external program to verify what they're doing.

The Australian Competition and Consumer Commission (ACCC) has identified how some businesses create their own certification scheme for their own products to use in advertising, risking that such schemes become meaningless, and no longer help consumers distinguish products with strong environmental or social performance.⁵ For example, our research found examples of logos on product packaging designed to appear as belonging to certification schemes, without any verification as to whether this was actually the case. Companies running their own scheme are very unlikely to have third-party certifiers confirming activity, making them inherently less trustworthy than trustmarks where third-party certifiers are involved.

Ultimately, the proliferation of trustmarks is making the market even more challenging and confusing to navigate for consumers attempting to make sustainable choices. CPRC is very concerned that consumers are being deceived by images that resemble legitimate trustmarks and certification schemes through advertising, as a trustmark can be interpreted as evidence a product or service has met certain environmental standards.

At minimum, Code 2 should clarify that businesses should not use self-certified or self-run trustmarks. This will remove the greatest risk that businesses mark their own homework, reducing the point of a trustmark or certification.

³ ACCC, 2023, Greenwashing by businesses in Australia – findings of ACCC's internet sweep, <https://www.accc.gov.au/system/files/Greenwashing%20by%20businesses%20in%20Australia.pdf>.

⁴ CPRC, 2022, The consumer experience of green claims in Australia, <https://cprc.org.au/report/green-claims>.

⁵ ACCC, 2023, Greenwashing by businesses in Australia – findings of ACCC's internet sweep, <https://www.accc.gov.au/system/files/Greenwashing%20by%20businesses%20in%20Australia.pdf>.

Code 2 could also go even further by requiring that all trustmarks and certifications used in advertising meet the ISEAL Code of Good Practice for Sustainability Systems or at least the principles outlined in this Code, designed to clarify what good practice looks like for environmental certification. Any certification scheme or trustmark should:

- Have a standard-setting processes that involves stakeholders, seeks feedback, improves over time, can be measured and assessed.
- Have an clear, rigorous and accessible assurance process that involves assessing compliance so all parties can trust claims.
- Involve robust monitoring and evaluation that leads to improved practices over time.
- Provide clarity about what claims can be used, by who and when.

Clearer obligations for advertisers

Both the EU⁶ and the UK⁷ have unfair trading prohibitions and are currently proposing to strengthen their rules by including ‘blacklists’ of unfair practices in the area of green advertising claims. The EU Green Claims Directive on Substantiation and Communication of Explicit Environmental Claims⁸ prohibits displaying a sustainability label which is not based on a certification scheme or not established by public authorities.

In our view, blacklisting the use of uncertified schemes in Australia is commonsense, fair practice, and is less confusing for consumers trying to do the right thing by making sustainable purchases. While we recognise that blacklisting or banning specific practices in regulation or legislation will take time, AANA has the opportunity now to make its green code even clearer, specifically stating that self-certified trustmarks should not be used by advertisers. It would also be useful for the code to list a specific, small number of certified trademarks alongside the conditions that need to be met, to assist advertisers while keeping them accountable.

Recommendation 2. Update Code Rule 2 to outline more specific requirements on advertisers, by requiring that supporting information relating to a green claim be made readily accessible to consumers, such as through an easy to access QR code.

Recommendation 3. Update Code Rule 2 to state that “Advertisers should have reasonable grounds for making an environmental claim, based on publicly available evidence at the time the claim is made” as opposed to “evidence held at the time”.

Recommendation 4. Include in Code Rule 2 that advertisers should not use self-certified trustmarks.

Recommendation 5. Develop a resource for advertisers as part of its broader green code, that outlines conditions for a small number of certified trademarks that advertisers could adopt provided they meet those conditions.

⁶ European Commission, 2024, Unfair commercial practices directive, https://commission.europa.eu/law/law-topic/consumer-protection-law/unfair-commercial-practices-law/unfair-commercial-practices-directive_en.

⁷ Which (2022), Consumer Protection from Unfair Trading Regulations 2008, [Consumer Protection from Unfair Trading Regulations 2008 - Which?](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/208208/Consumer_Protection_from_Unfair_Trading_Regulations_2008_-_Which?.pdf)

⁸ European Commission, 2023, Green claims https://environment.ec.europa.eu/topics/circular-economy/green-claims_en; European Commission, 2023, Proposal for a Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims (Green Claims Directive) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023PC0166>.

3. Clear and not vague

CPRC research⁹ has shown that far too many businesses use non-specific language in green claims. In 24-hours, our researcher identified 122 green claims across 17 sectors including energy, groceries, personal care products, banking and superannuation both online and offline. Most of these claims involved obscure, vague and confusing language to substantiate green claims, which is exceptionally misleading for consumers. Examples include:

- “Our freezers are greener” with no contextual information to understand what the claim was comparing freezers against.
- “Banking you can feel good about” with numerous images of happy wildlife and green technology like windfarms but no context about what the bank was actually doing to make a meaningful contribution to any environmental cause.
- A “GoZero” Soda Maker with no information about what “GoZero” meant (i.e., zero plastic? Zero emissions?).

Our recent research into green claims made by advertisers on social media analysed 8,963 unique and separate ads which were observed more than 20,000 times in participants’ Facebook feeds. This analysis demonstrated that environmental terminology has no common meaning. The same environmental term is used differently by multiple businesses with different meanings. For example, ‘sustainable travel’ could mean learning about sustainable initiatives, or provision of a sustainable service that may be delivered as part of a broader package. The term is often used in such a vague manner that it is difficult to pinpoint what aspect of the travel experience is being claimed as sustainable.¹⁰

Some social media advertisements provide succinct details to support an environmental claim, while in other advertisements it is difficult to ascertain the accuracy of the claim. Colour appears to play an integral role when combined with imagery through the use of green, blue and beige hues, implying an environmental benefit that may or may not exist. When analysing the frequency of common terms, the top three terms identified were ‘clean’, ‘green’ and ‘sustainable’. This was followed by variations of the terms commencing with ‘recycl’ (i.e. recyclable or recycled), the terms ‘bio’, ‘pure’ and ‘eco-friendly’.¹¹

Code Rule 3 rightly lists commonly used vague claims. In line with the EU’s proposed legislation¹² and CPRC research into green claims on social media¹³ relating to banning misleading advertising of green claims, we suggest this list be expanded (see Recommendation 6).

⁹ CPRC, 2022, The consumer experience of green claims in Australia, <https://cprc.org.au/report/green-claims>.

¹⁰ CPRC and ADM+S, 2023, Seeing Green, <https://cprc.org.au/seeing-green/>.

¹¹ CPRC and ADM+S, 2023, Seeing Green, <https://cprc.org.au/seeing-green/>.

¹² European Parliament, 2023, Parliament backs new rules for sustainable, durable products and no greenwashing, <https://www.europarl.europa.eu/news/en/press-room/20230505IPR85011/parliament-backs-new-rules-for-sustainable-durable-products-and-no-greenwashing>.

¹³ CPRC and ADM+S, 2023, Seeing Green, <https://cprc.org.au/seeing-green/>.

The AANA could assist advertisers by identifying a short list of alternative term descriptors to be tested with consumers through research that tests consumer perception and understanding of the terms. Below is an example of one set of terms that AANA could consider testing:

- Actively reducing carbon emissions.
- Actively lowering carbon output.
- Continuously working to reduce carbon emissions.
- Actively reducing how much carbon our company produces.
- Our organisation is reducing our greenhouse gas/CO2 impact on the world.
- Recyclable if you/by [clear statement on how to recycle the product]
- Biodegradable when [statement of conditions required to biodegrade – e.g., in backyard compost over a set period of time].

Another important consideration is the impact of changing language over time. By way of example, the term ‘ocean bound plastic’, refers to an understanding that regardless of where plastic originates from, it ends up residing in the ocean.¹⁴ Environmental groups have rightly raised concerns that plastics collected tens of kilometres away from a beach or the ocean are being classified as “ocean bound plastic” and very likely to not match consumer understanding of the term.¹⁵ Ocean bound plastic has only recently emerged as a widely used claim and requires definition, and we can be certain that more terms will continue to evolve over time. The Code needs to evolve regularly to capture these new terms.

Code Rule 3 further states that advertisers do not necessarily need to conduct a life cycle assessment or provide information about the full product life cycle in every claim, but should consider the overall impression of the claim. The durability of a product is extremely relevant for the vast majority of consumer purchases. This aspect of the code could be strengthened by incorporating durability and longevity to more directly encourage advertisers to provide information to consumers that is comparable and could positively influence their purchasing decisions.

¹⁴ Green matters, 2021, What is Ocean-Bound Plastic and What Can We Do About it?, <https://www.greenmatters.com/p/what-is-ocean-bound-plastic>.

¹⁵ Environmental Defender’s Office, 2023, Yoghurt manufacturer admits “100% ocean plastics” claims mislead consumers, <https://www.edo.org.au/2023/11/29/yoghurt-manufacturer-admits-100-ocean-plastics-claims-misled-consumers/>.

Recommendation 6. Include the following terms and phrases to the list of absolute, vague, broad or non-specific claims that should not be used without qualification, as called out in Code Rule 3:

<i>Bio</i>	<i>Clean</i>	<i>Environmentally correct</i>
<i>Biodegradable</i>	<i>Climate friendly</i>	<i>For the planet</i>
<i>Carbon friendly</i>	<i>Climate neutral</i>	<i>Gentle on the environment</i>
<i>Carbon neutral</i>	<i>Compostable</i>	<i>Natural</i>
<i>Carbon positive</i>	<i>Earth friendly</i>	<i>Nature's Friend</i>
<i>Circular</i>	<i>Energy efficient</i>	<i>Offset</i>

Recommendation 7. Conduct research with consumers to test consumer perception and understanding of a short list of alternative term descriptors that are specific, clear and comparable, for potential inclusion in the code.

Recommendation 8: Develop an evolving list of terms that can be added to over time, as a reference for advertisers making green claims.

Recommendation 9: Amend Code Rule 3 to encourage advertisers to outline information relating to the durability of a product, in the context of its broader life cycle value.

4. Genuine benefit, not insignificant

Code Rule 4 effectively identifies that emissions-intensive businesses, such as those relying on fossil fuels, should avoid making broad or unqualified green claims. As an example, Australia's gas lobby, the Australian Petroleum Production and Exploration Association (APPEA), were recently found to have misled consumers in an advertisement in which they claimed that gas is 'cleaner'.¹⁶ Code Rule 4 should be strengthened by stating that high-polluting sectors and businesses withhold from advertising green claims in any form, since their business models and practices arguably contradict positive environmental contributions.¹⁷

Code Rule 4 could be further improved by showing how colours, imagery and emojis should be used only where there is a genuine benefit to the environment owing to a product or service. CPRC research has found that the prevalence of emojis in social media advertising can exaggerate an environmental claim that may otherwise not exist. Emojis such as the Möbius loop and nature symbols (leaves, earth) were frequently identified across this advertising dataset. The Möbius loop is often used in ads of products and services that may or may not be recycled or made from recyclable materials. While an emoji may seem arbitrary in isolation,

¹⁶ Ad Standards Community Panel, 2023, Case Report, <https://adstandards.com.au/wp-content/uploads/2023/08/0119-23.pdf>.

¹⁷ CPRC and ADM+S, 2023, Seeing Green, <https://cprc.org.au/seeing-green/>.

when used in conjunction with specific colours, imagery and environmental claims, it may imply an environmental outcome that may or may not be accurate.¹⁸

Recommendation 10. Strengthen Code Rule 4 by recommending that high-polluting sectors and businesses withhold from advertising green claims in any form.

Recommendation 11. Further develop Code Rule 4 by stating that advertisers need to be cautious when using emojis and other images, to ensure they are not implying an environmental outcome exists when it may not be significant or substantially beneficial.

5. Future claims

Future environmental claims can be made in the form of a promise, forecast or prediction. We strongly agree with the sentiment of Code Rule 5, and in AANA's intent to keep advertisers accountable. It is particularly important that advertisers making future, forward looking claims report on progress towards achieving a future claim to consumers, while also regularly revising their goals and the practical and tangible progress being made.

Recommendation 12. Expand on Code Rule 5 to specify what is meant by 'reasonable grounds' when stating that 'environmental claims relating to aspirational targets or environmental goals should only be made if the advertiser has reasonable grounds at the time the claim is made', to better communicate expectations of advertisers making forward looking green claims.

Recommendation 13. Develop a checklist to accompany the code that is regularly updated and reviewed for evidence and applicability, for advertisers to work through and utilise when making a forward looking green claim.

Beyond the code

Self-regulation can only go so far

In our experience, self-regulation of advertising responds primarily to industry management of risks of public criticism rather than to the genuine information needs of consumers. Self-regulation generally also suffers from weak enforceability, inconsistent standards and interpretations, as well as limited transparency and accountability.¹⁹

¹⁸ CPRC and ADM+S, 2023, Seeing Green, <https://cprc.org.au/seeing-green/>.

¹⁹ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report, Vol 1, February 2019, page 105, <https://treasury.gov.au/publication/p2019-fsrc-final-report>, cited in: CPRC 2023, Submission to the Senate Inquiry into Greenwashing, <https://cprc.org.au/wp-content/uploads/2023/06/CPRC-Submission-Senate-inquiry-into-Greenwashing-June-2023.pdf>

Fundamentally, self-regulation of advertising relies on complaints from consumers or competitors to trigger investigations into potentially misleading claims. This reactive approach means that many problematic claims may go unnoticed or unchallenged until someone raises a concern. Given the vastness of advertising and promotions generally, it is almost impossible to proactively monitor the vast number of advertisements and claims being made.

While the AANA code can play a role in encouraging better industry practice and calling out some of the worst examples of unhelpful or misleading environmental claims, it cannot fully deal with the issue of greenwashing.

AANA's code must be accompanied by robust regulatory powers, resources and enforcement to ensure advertisers produce truthful and factual information to consumers. We encourage AANA to note the limits of its approach and encourage governments to address the issue of greenwashing holistically through stronger laws and regulations.