



AANA – Environmental Claims Code Review Submission

About Comms Declare

Comms Declare is an incorporated not-for-profit that represents more than 360 communications professionals, agencies and organisations who have declared they will not promote:

- the growth of fossil fuels
- high greenhouse gas pollution as 'business as usual'
- deception, distraction or spin around science or climate actions.

Comms Declare encourages agencies to work for the good of the climate. In recognition that Australia is a major exporter of fossil fuels, it runs the annual F-list awards and maintains a list of agencies working with fossil fuel clients. It also runs the Fossil Ad Ban campaign for tobacco-style restrictions on ads for high emissions products.

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Introduction

Thank you for the opportunity to make a submission on this timely and most welcome review of the Green Claims code.

Coal, oil, gas companies as well as those who sell high emissions products such as ICE cars and airlines are taking advantage of green-minded consumers by falsely pretending their companies and products are environmentally advantageous. They are doing this through overstating green attributes (greenwashing), using green imagery (green rinsing) and by omitting information about climate impacts of products and companies overall (silence).

We will address the questions relevant to our areas of expertise.

A summary of our recommendations are:

- Replace the requirement for the Community Panel to guess what the 'target market' is likely to believe, with what the 'general public' is likely to believe.
- Add independent, subject matter experts on sustainability, climate and clean energy to advise the Community Panel so decisions can be based on verified facts.
- Demand all emissions reduction or climate claims are backed by comprehensive, publicly available online modelled pathways consistent with the Paris Agreement
- Widen the definition of 'Environmental Claim' to include: the use of green or renewable imagery; claims about the production of products and delivery of services; claims about an entire industry; claims about an entire company or brand.
- Prevent carbon offsets being used as the basis of emissions reduction claims
- Update the Green Claims Code to reflect advancements overseas, particularly in the UK and EU.

Questions in the Discussion Paper

1. Changes to definition of Environmental Claims

The current definition is not sufficiently broad to stop general misrepresentations from advertisers about positive environmental attributes. Supran¹ writes that 'nature rinsing' is a form of deception used by high-emissions companies to give their company a 'green sheen'. This includes the use of nature-evoking imagery that can include logos whose colours or shapes imply a link with flowers or leaves or any images of trees, fields, clouds, animals, farms, blue skies, beaches, rivers etc. In the energy sector this is extended to the use of images of renewables such as wind turbines, bicycles and electric vehicles by companies whose clean energy investments only constitute a tiny fraction of their overall business. Examples are below.

¹ ['Three shades of greenwashing'](#), Geoffrey Supran and Algorithmic Transparency Institute, Harvard University, September 2022



APPEA print ad, 2021



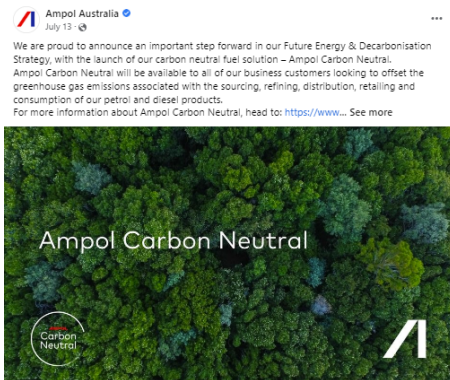
CommBank print ad, 2021



Frame from Origin Energy video, 2001



Australian Gas Networks logo, 2022



Ampol Facebook ad, 2022.

We suggest the definition of Environmental Claim be changed with additions in red:

*Environmental Claim means any express or implied representation that any aspect of a **company, brand, industry, product or service as a whole, or a component or packaging of, or a quality relating to, a company, brand, industry product or service, has a positive influence on the Environment.***

In summary, any communications from a company or product that does not have an overall environmental benefit, should not be using environmental imagery or making green claims.

Section 1 - Truthful and Factual Presentation

A sweep of websites by the European Commission found that 42% made exaggerated, false or deceptive green claims². However, Ad Standards has only upheld one out of 50 complaints under the Green Claims code, demonstrating that current rules are woefully inadequate and allowing consumers to be routinely deceived.

Facts must be presented by advertisers to back up their green claims. While it is not practical for the Panel to apply 'legal tests' there should at least be subject matter experts on hand to verify claims – especially in the complex and changing areas of clean energy and climate change.

In addition, the panel should not make assumptions about knowledge within a target market. The target market may believe in fairies, which should not excuse a company for running an ad that sells fairies. In addition, most communications are run across platforms and can reach beyond the original, intended audience.

Finally, it is not reasonable that audiences be expected to independently verify all green claims, or look at the small print. Audiences likely give ads less than a second's attention. Therefore the

² ['Screening of websites for 'greenwashing': half of green claims lack evidence'](#), European Commission, January 2021

headline in the ad, or the general impression of the ad, should be the primary consideration when deciding claims.

Proposed changes are below with additions in red:

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 **person is likely to be deceived by the primary (headline) impression of the advertisement.***

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.

- *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. **These claims should be based on the current scientific consensus and/or internationally recognised standards and be publicly available online when the claims are run.***
- *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 disclaimer should be as prominent as the headline statement.***

Section 1c

*The environmental claim should include **the whole life cycle of the product or the entirety of the company or industry or service.***

If it does not apply to the whole life cycle, it should be made clear which part of the life cycle the claim is referring to.

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.*

Section 2 – A genuine benefit to the environment

The United Nations high level group on greenwashing³ has laid out guidance to reduce insufficient net zero emissions commitments and claims. Its recommendations include:

- Non-state actors cannot claim to be net zero while continuing to build or invest in new fossil fuel supply. Similarly, deforestation and other environmentally destructive activities are disqualifying.
- Non-state actors cannot buy cheap credits that often lack integrity instead of immediately cutting their own emissions across their value chain.
- Non-state actors cannot focus on reducing the intensity of their emissions rather than their absolute emissions or tackling only a part of their emissions rather than their full value chain (scopes 1, 2 and 3).
- A net zero pledge must be a commitment by the entire entity, made in public by the leadership, and be reflective of the city, region or corporation's fair share of the needed global climate mitigation.
- A net zero pledge must contain stepping stone targets for every five years, and set out concrete ways to reach net zero in line with the Intergovernmental Panel on Climate Change (IPCC) or International Energy Agency (IEA) net zero greenhouse gas (GHG) emissions modelled pathways that limit warming to 1.5°C with no or limited overshoot.
- Non-state actors must publicly share their comprehensive net zero transition plans detailing what they will do to meet all targets, align governance and incentivise structures, capital expenditures, research and development, skills and human resource development, and public advocacy, while also supporting a just transition.

³ [‘INTEGRITY MATTERS: NET ZERO COMMITMENTS BY BUSINESSES, FINANCIAL INSTITUTIONS, CITIES AND REGIONS’](#), United Nations’ High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities, November 2022

The report makes it clear that offsets are not reasonable grounds for 'net zero' or 'carbon neutral' claims when a company is not reducing its overall Scope 1, 2 and 3 emissions in line with the Paris Agreement. Adhering to these recommendations would mean adopting the below changes as a minimum:

Practice Notes Section 2a

Environmental Claims must: (a) be relevant, specific and clearly explain the significance of the claim; (b) not overstate the claim expressly, by implication or images; (c) not imply that a company, brand, industry, product or service is socially or environmentally acceptable than it is.

Environmental claims should only be made where there is a genuine benefit or advantage. Environmental benefits should not be advertised if they are irrelevant, constitute an insignificant part of an entity's overall operations, or simply advertise the observance of existing law. Advertising and marketing communication should adequately explain the environmental benefits of the advertised company, brand, industry product or service. 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 and the available facts that are important. Advertising therefore should not inadvertently mislead consumers through vague or ambiguous wording or green imagery. Providing only partial information to consumers risks misleading them. Generally a claim should refer to the whole life cycle of a product.

Section 2b

Advertisers and marketers should avoid making claims that expressly or impliedly overstate an environmental benefit or initiative. Consideration should be given to whether there is sufficient disclosure of any negative impacts and the environmental impact of the entire company or organisation. 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 and the company, brand or industry overall. 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, advertisers should not imply their company is more environmentally beneficial to the public because of one product line, initiative or service. Also refer to AANA Code of Ethics clause 2.6 Advertisements shall not depict material contrary to prevailing community standards on health and safety.

When making 'net zero' or 'carbon neutral' claims, the entire company's, products or industry's absolute emissions throughout the value chain (Scope 1,2,3) must be represented. The advertiser must have online, easily available comprehensive transition plans that are in line with the Intergovernmental Panel on Climate Change (IPCC) or International Energy Agency (IEA) net zero greenhouse gas (GHG) emissions modelled pathways that limit warming to 1.5°C with no or limited overshoot. Offsets alone are not grounds to make carbon neutral or net zero claims.

Section 3 – Substantiation

Due to the changing and complex nature of climate change knowledge and clean energy, it is our opinion that the Community Panel should have independent climate or clean energy experts on hand to adjudicate climate claims. These panellists should be independent and have no conflicts of interest with advertisers.

In addition, climate claims should be linked to comprehensive business plans online.

Therefore, we suggested the following additions in red:

Practice Notes: Section 3a

*Environmental Claims in Advertising or Marketing Communication: (a) shall be able to be **easily** substantiated and verifiable **online**. Supporting information shall include **comprehensive** 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 **facts of the claim**.*

*Advertisers and marketers should have a **factual** 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.*

*In testing the validity of any claim the Board will rely on information/material provided by the advertiser and the complainant as well as **subject matter experts**.*

Factors to consider include:

- *The use of broad or unqualified general claims of environmental benefit should be avoided **and not used as headline claims**. All claims should be supported by a high level of **publicly available** 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”, “**net zero**”, “**cleaner**”, “**greener**”, “**clean**”, “**sustainable**”, “**clean energy**” or “green energy”.*
- *The use of unqualified general claims of environmental benefit should be avoided unless supported by a high level of **publicly available** substantiation or associated with a legitimate connection to an authoritative source.*
- *An unqualified general environmental claim may convey that the **company, brand, industry** 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 **publicly available** 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 **publicly available online at the time the claim is made**.*

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 **facts of the claim**. Similarly, claims relating to sponsorships, approvals, endorsement or certification schemes should be current.*

Other questions

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.

The UK's ASA CAP Code guidelines on green claims⁴ includes these points which should be considered in Australia.

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

11.4 "Marketers must base environmental claims on the full life cycle of the advertised product, unless the marketing communication states otherwise, and must make clear the limits of the life cycle."

30.7 "Advertising must not encourage behaviour grossly prejudicial to the protection of the environment."

The final point is especially relevant to the marketing of high emissions products such as meat, dairy and large ICE vehicles. We believe encouraging the unnecessary or excessive use of these products is contrary to the interests of the Environment and should be reasonable grounds for complaints.

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?

Creation of a 'blacklist' would reduce the burden on Ad Standards, regulators and the public to police advertising.

Comms Declare advocates for a ban on all marketing for fossil fuel products and companies. This has been voted for and/or implemented in 10 council areas across Australia in the last six months.

Another option is banning companies or industries whose overall environmental effect is negative from making any green claims. This would prevent greenwashing from fossil fuel companies, whose business model depends on the continued and growing extraction of highly polluting fossil fuels. Any

⁴ The environment: misleading claims and social responsibility in advertising
<https://www.asa.org.uk/static/d819e399-3cf9-44ea-942b82d5ecd6dff3/b142fdf6-ec36-4172-8b3321f3ebb9b53b/CAP-guidance-on-misleading-environmental-claims-and-social-responsibility.pdf>

green claims made by these companies are likely to be cherry-picked, trivial and misleading. An example is the recent case of Glencore⁵.

Similarly, we believe advertising of high carbon products such as red meat, dairy and large personal vehicles with ICE engines such as SUVs and Utes should be restricted or prohibited.

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?

Companies are currently able to advertise themselves as being climate friendly despite their business plans and investments being mainly directed to climate-damaging activities. The omission principle is especially important. Please see more in the answer to question 14.

⁵ <https://adstandards.com.au/sites/default/files/reports/0225-22.pdf>