



Greenwashing Senate Inquiry

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 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 inquiry into greenwashing.

Coal, oil, gas companies as well as those who sell high emissions products such as internal combustion engine (ICE) cars and airlines are taking advantage of green-minded consumers by pretending their companies and products are environmentally advantageous. Greenwashing is generally seen as overstating green attributes. However there are other forms of greenwashing such as misusing green imagery (green rinsing), using selective truthful statements to mislead (paltering) and omitting key information about climate impacts of products and companies (omission).

Greenwashing contributes to market failure and stops fair competition, as it prevents consumers from making rational and informed decisions. This is particularly concerning in Australia, which has some of the highest per capita emissions in the OECD and deeply entrenched social ties to highly-polluting products, especially fossil fuels, large vehicles and high carbon foods.

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

Our primary recommendations are:

- The introduction of new federal legislation banning advertising and sponsorships for coal, petroleum and gas products, similar to tobacco advertising bans.
- That 'net zero' or 'carbon neutral' claims cannot be based solely on offsets and must be backed by detailed plans modelled on Paris Agreement targets. The *Australian Consumer Law* carries an existing regime which would allow for the introduction of mandatory information standards for environmental claims like these.
- That advertising for high emissions products carry government-mandated eco labels. This might be achieved without legislative reform, utilising determinations under the *Greenhouse Gas and Energy Minimum Standards Act 2012* (Cth).

Questions in the Terms of Reference

- 1. The environmental and sustainability claims made by companies in industries including energy, vehicles, household products and appliances, food and drink packaging, cosmetics, clothing and footwear.**

We are particularly concerned with fossil fuel company marketing. Coal, oil and gas are responsible for 70% of all greenhouse gas emissions and nearly 90% of carbon emissions¹.

While only 1.3%² of capital expenditure from fossil fuel companies is spent on clean energy, green claims are made in around 60% of their ads³.

Most portray themselves as clean energy companies, highlighting the small portion of their work that helps the environment, while avoiding detailed claims that could be challenged under current consumer law or Ad Standards' Environmental Claims Code⁴.

Claims that companies are working towards 'net zero' and/or 'carbon neutral' goals also proliferate. Most do not come with budgeted or robust plans, are based on 'carbon intensity' rather than absolute emissions, do not include scope 3 emissions and/or all their products' entire life cycles.

Another concerning trend is co-opting environmental language in the gas sector. For example the terms 'renewable gas', 'biogas' or 'clean hydrogen', falsely represent methane gas products as being environmentally friendly or having no climate impact.

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<https://www.un.org/en/climatechange/science/causes-effects-climate-change#:~:text=Fossil%20fuels%20%E2%80%93%20coal%2C%20oil%20and,they%20trap%20the%20sun's%20heat>.

² <https://www.iea.org/reports/world-energy-investment-2021/executive-summary>

³ <https://grist.org/accountability/oil-companies-marketing-greenwashing-report/>

⁴ <https://aana.com.au/content/uploads/2018/03/180316-Environmental-Claims-Code.pdf>

CASE STUDY - SHELL NET ZERO



Frame from Shell Facebook Ad, 2022

Shell advertises it has a net zero goal by 2050⁵. Comms Declare with the Environmental Defenders Office (EDO) submitted a complaint about Shell's net zero claims to Ad Standards, ACCC and ASIC stating:

- Shell is still primarily an oil and gas company and is not significantly transitioning its business into renewable energy.
- Shell's climate targets deliberately exclude the petrochemical and trading parts of the business.
- Shell's net zero plan relies heavily on unproven Carbon Capture, Utilisation and Storage (CCUS) and offsets.
- Shell has no intention of implementing its net zero business plan according to evidence presented to the U.S House of Representatives. This included internal Shell emails that said net zero was not a Shell business plan and PR guidance that warned, *"Please do not give the impression that Shell is willing to reduce carbon dioxide emissions to levels that do not make business sense."*⁶

Ad Standards dismissed the complaint but it is now being investigated by ASIC⁷.

⁵ <https://www.shell.com.au/about-us/powering-progress/achieving-net-zero-emissions.html>

⁶

<https://oversightdemocrats.house.gov/news/press-releases/ahead-of-hearing-committee-releases-memo-showing-fossil-fuel-industry-is>

⁷ <https://commsdeclare.org/2023/03/22/asic-investigating-shell-greenwashing-complaint/>

CASE STUDY - AMPOL CARBON NEUTRAL FUEL



Ampol Facebook ad, 2022

Comms Declare, with the EDO, made a complaint about Ampol's carbon neutral fuel, claiming it gave the false impression that petrol or diesel would have no negative impact on the environment. The claims of carbon neutrality are based on offsets, which cannot be proven to neutralise all the emissions from the fuel.

The claim was dismissed by Ad Standards. However two similar overseas cases were successful. In 2021, the Dutch Advertising Code Committee (RCC) ruled a Shell carbon neutral fuel ad was misleading because offsetting claims could not be proven⁸. In 2021, claims of carbon neutral petrol by Shell in the UK were pulled by the Advertising Standards Authority (ASA) for being misleading⁹.

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<https://www.euractiv.com/section/all/news/shells-promotion-of-carbon-offsets-is-greenwashing-rules-dutch-watcdog/>

⁹ <https://www.asa.org.uk/rulings/shell-uk-ltd-g20-1049869-shell-uk-ltd.html>

CASE STUDY - GLENCORE 'ADVANCING EVERYDAY LIFE'



Frame from Glencore ad, 2022

In 2022 the world's largest coal exporter, Glencore, launched a brand campaign in Australia called 'Advancing Everyday Life'¹⁰. Its aim was to highlight the company's mining of so-called 'green metals' that are "laying the foundation for a low carbon future" giving the overall impression that the company is a renewables company and has a positive impact on the environment. Comms Declare, with Lock the Gate, the Plains Clan of Wonnarua people (PCWP) and EDO complained to Ad Standards and the ACCC stating:

- Glencore is Australia's biggest coal miner, but some ads did not mention coal.
- In 2020/21 Glencore invested around \$259 million in the expansion of thermal coal and only around \$2 million on the expansion of minerals supporting renewables.
- Of Glencore's 24 mines in Australia, 17 are involved in coal mining and some are being expanded.

Despite this, Ad Standards did not find that Glencore had overstated its role in a renewable energy future. The UK's ASA recently ruled against an HSBC ad for portraying itself as helping the climate while ignoring its investments in highly polluting industries.¹¹ And the Advertising Code Committee in the Netherlands ruled that Shell couldn't claim to be 'driving the energy transition' while simultaneously investing in fossil fuel production¹².

¹⁰

<https://www.glencore.com.au/media-and-insights/news/glencore-advancing-everyday-life-australian-advertising-campaign>

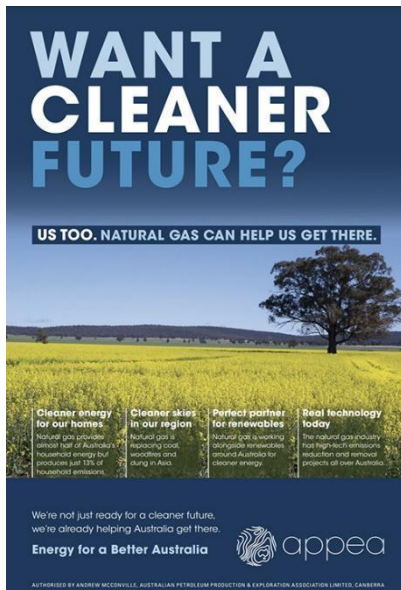
¹¹ <https://www.theguardian.com/business/2022/oct/19/watchdog-bans-hsbc-ads-green-cop26-climate-crisis>

¹²

<https://verbiedfossielereclame.nl/shell-may-not-call-itself-driver-of-the-energy-transition-rules-dutch-ad-watch-dog/>

CASE STUDIES - GREEN RINSING

Green claims extend beyond the text to images and logos - which give the false impression that fossil fuel companies or sectors have an overall positive environmental impact or are predominantly involved in clean energy. We submit this is misleading and should be prevented.



APPEA print ad, 2021



Frame from AGL video, 2021



Frame from Origin Energy video, 2021

2. The impact of misleading environmental and sustainability claims on consumers

The Consumer Policy Research Centre found at least half of Australian consumers are skeptical of green claims¹³. Another study by the UK's Behavioural Insights Team found that 57% of consumers were fooled by greenwashing¹⁴.

Decades of misinformation has helped create misunderstandings about fossil fuels. For example, in 2019 only 61% of Australians thought climate change is being caused by humans and most vastly overestimated the economic benefits of coal¹⁵.

Greenwashing campaigns work. For example, a campaign by the Minerals Council of Australia that focussed on coal mine rehabilitation while ignoring the negative impacts of coal, improved perceptions of mining across the community.¹⁶

We submit that greenwashing also affects the quality and accuracy of education of primary and high school students. Coal, oil and gas companies and their industry associations offer free educational materials to schools, especially in the areas of STEM. We believe these often gloss over the climate impacts of the products while overstating their use in renewable energy or other environmental benefits. For example, Woodside Petroleum sponsors a school program that teaches children to drill for oil using vegemite sandwiches¹⁷. One of the handouts stated: *"The "Enhanced Greenhouse Effect" or recent rapid warming of our*

¹³ https://cprc.org.au/wp-content/uploads/2022/12/CPRC-Green-Claims_Final.pdf

¹⁴

<https://medium.com/behavioural-insights/unfortunately-greenwashing-by-big-organisations-works-fortunately-we-know-how-to-protect-people-32ea3a199e9e>

¹⁵ <https://australiainstitute.org.au/wp-content/uploads/2020/12/Climate-of-the-Nation-2019-WEB.pdf>

¹⁶ <https://www.adnews.com.au/opinion/the-damaging-reverberations-of-awards-for-fossil-fuel-ads>

¹⁷ <https://commsdeclare.org/2022/08/26/stem-education-fossil-fuels-trojan-horse/>

atmosphere is the result of human/anthropogenic activities such as burning fossil fuel and industry (a point of some debate)”¹⁸

3. Domestic and international examples of regulating companies' environmental and sustainability claims

The European Parliament has adopted draft legislation ‘Empowering consumers for the green transition’ which:

- stops net zero claims based solely on the use of carbon offsets
- stops the use on non-sanctioned eco labels
- stops any environmental claim that is not *“supported by clear, objective, quantified, science-based and verifiable commitments and targets given by the trader, including a detailed and realistic implementation plan to achieve this future environmental performance. That plan should include concrete targets consistent with achieving the trader's long-term commitment, underpinned by a sufficient budget and allocation of sufficient resources.”*¹⁹

The UK's ASA CAP Code guidelines on green claims²⁰ includes the below points which are more prescriptive than existing Australian laws and should be considered for adoption here. They are;

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 petrol, gas, meat, dairy and large ICE vehicles. We believe encouraging increased use of these products is contrary to the interests of the environment and should be reasonable grounds for complaints.

¹⁸ <https://reneweconomy.com.au/climate-denial-still-features-in-fossil-fuel-funded-education-materials/>

¹⁹ https://www.europarl.europa.eu/doceo/document/TA-9-2023-0201_EN.pdf

²⁰ 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>

The ASA is also reportedly about to announce a ban on carbon neutral claims relying on offsets²¹.

The United Nations high level group on greenwashing²² has laid out guidance to reduce insufficient net zero emissions commitments and claims, which should also be adopted in Australia. 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.

The report also 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. Mandatory information standards issued under the ACL might be used to implement some of these rules as they relate to 'net zero' claims or pledges. Other rules may require new/amending legislation.

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<https://www.theguardian.com/environment/2023/may/15/uk-advertising-watchdog-to-crack-down-on-carbon-offsetting-claims-aoe>

²² ['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

4. Advertising standards in relation to environmental and sustainability claims

The system of advertising self-regulation in Australia has spectacularly failed to stop greenwashing or keep pace with international standards. The Australian Competition and Consumer Commission (ACCC) recently conducted a sweep of online claims, and of those, found that 57% of online green claims are 'concerning'²³. However, of the dozens of complaints made to Ad Standards about environmental claims, only one ad has been removed for being in breach of the Code²⁴.

The current system does not test claims on facts, but rather relies on information supplied by the advertiser and what the Community Panel thinks the target market is likely to believe - whether it's true or not.

In addition, the definition of an 'Environmental Claim' is too narrow to capture widely used deceiving practices.

Comms Declare wrote a submission²⁵ to the review of the Environmental Claims Code which recommended;

- Add independent, subject matter experts on climate and clean energy to supplement Community Panel decisions on these matters.
- Demand all emissions reduction or climate claims are backed by comprehensive, publicly available online modelled pathways.
- Widen the definition of 'Environmental Claim' to include the deceptive use of green or renewable imagery.
- Ensure broad or unqualified general claims should be supported by a high level of publicly available substantiation. Examples of problematic claims may include: "green", "environmentally friendly", "environmentally safe", "energy efficient", "recyclable", "carbon neutral", "renewable", "net zero", "cleaner", "greener", "clean", "sustainable", "clean energy" or "green energy".

²³

<https://www.accc.gov.au/media-release/accc-greenwashing-internet-sweep-uneartths-widespread-concerning-claims>

²⁴ <https://adstandards.com.au/issues/environmental-claims-determination-summary>

²⁵ <https://commsdeclare.org/2023/01/30/submission-on-green-claims-code/>

- Use the main claim or 'headline', and the general impression the ad gives, as the basis for decisions. If there is a disclaimer, it should be as prominent as the headline.
- Consider blanket bans on any fossil fuel company making environmental claims

5. Legislative options to protect consumers from green washing in Australia

The IPCC has recognised that legislation and widespread behaviour change are required for societies to reach net zero emissions targets and 'can result in a 40-70% reduction in greenhouse gas emissions by 2050'²⁶. It has also identified advertising regulation and eco-labelling as policy measures that can shift consumer behaviour to support net zero emissions objectives, as consumers will be better informed as to the environmental benefits of a product when making purchasing decisions²⁷.

Table 4.12 | Examples of policies that can help shift development pathways.

Drivers	Examples of policy measures
Behaviour	<ul style="list-style-type: none"> – Progressive taxation – Ecological tax reform – Regulation of advertisement – Investment in public transit – Eco-labelling
Governance and institutions	<ul style="list-style-type: none"> – Campaign finance laws – Regulatory transparency – Commitment to multilateral environmental governance – Public investment in education and R&D – Public-service information initiatives – Public sector commitment to science-based decision-making – Anti-corruption policies
Innovation	<ul style="list-style-type: none"> – Investment in public education – Public sector R&D support – Fiscal incentives for private investments in public goods – International technology development and transfer initiatives
Finance and investment	<ul style="list-style-type: none"> – International investment treaties support common objectives – Litigation and liability regulations – Reform of subsidies and other incentives not aligned with – Insurance sector and pension regulation – Green quantitative easing – Risk disclosure

IPCC, 2022

²⁶ Sixth Assessment Report, 4 April 2022, Chapter 15, page 31:
https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_Chapter_15.pdf.

²⁷ https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_FullReport.pdf

The UK government's Behavioural Insights Team recommends regulation of advertising and eco labels to help society reach net zero. Its report, since deleted from its website states; "Achieving Net Zero requires significant behavioural change, including rapid and widespread adoption of new technologies, and a significant reduction in demand for some high-carbon activities such as flying and eating ruminant meat and dairy. To achieve such a transformation, government will need to utilise all available policy levers and intervene at multiple levels." The report is included as **Annexure A**.

And the International Energy Agency says both are critical to the Net Zero scenario.²⁸

Marque Lawyers, acting for Comms Declare, has identified four broad options for stopping greenwashing and enabling advertising which promotes climate-friendly behaviour change in Australia. A copy of their whitepaper addressing these options in more detail is included at **Annexure B**.

1. Fossil Fuel Advertising Act

One approach would be for Australia to legislate a tobacco-style ban on fossil fuel advertising and sponsorships. This would apply to 'advertising' which directly or indirectly promotes the production or supply of coal, petroleum and gas, and would focus on fossil fuel products rather than a ban on advertising by fossil fuel companies. This would introduce specific, up-front (ex ante) obligations under a new federal legislation to complement existing misleading conduct laws (where enforcement action is retrospective).

This would be a strong market signal, reduce the visibility and social licence of fossil fuels, and reduce the burden on regulators to police greenwashing. France has banned fossil fuel advertising under its *Climate & Resilience Law*. Numerous cities in the UK and Europe have banned high carbon advertising²⁹. In Australia, the ACT and more than 10 councils have voted for, or enacted, bans on fossil fuel promotions³⁰.

²⁸ <https://www.iea.org/reports/behavioural-changes>

²⁹ <https://www.worldwithoutfossilads.org/>

³⁰ <https://fossiladban.org/news/>

2. Mandatory Information Standards

Under the *Australian Consumer Law*, there is an existing regime for introducing mandatory information standards. The federal government could mandate greenhouse gas information on products labels and advertisements.

Information standards for goods or services of a particular kind may:

- (a) make provision in relation to the content of information; or
- (b) require the provision of specified information; or
- (c) provide for the manner or form in which such information is to be provided; or
- (d) provide that such information is not to be provided in a specified manner or form; or
- (e) provide that information of a specified kind is not to be provided; or
- (f) assign a meaning to specified information about goods or services.

There is a broad range of options available including mandating disclosure of a company's emissions or climate warning labels. These would enforce transparency and improve consistency of climate claims such as 'net zero' or 'carbon neutral'. Warning labels are already used on gambling, alcohol, tobacco and therapeutic advertisements.

3. Emissions Information Labels

Australia currently requires disclosure of energy efficiency information on whitegoods and appliances and under the *Greenhouse and Energy Minimum Standards Act 2012 (Cth)* (GEMS Act). The existing regime under the GEMS Act could be extended to include labelling requirements on packaging and advertisements in respect of greenhouse gas emissions. Other legislation makes similar rules for the disclosure of CO₂ emissions information on new cars.

GEMS determinations are made by the Minister under the GEMS Act, and may:

- (a) provide level requirements for a product class, including the amount of energy used by operating products in that class and the amount of greenhouse gases resulting from operating products (s 25(a)(ii));
- (b) mandate labelling requirements, including the labels displayed on packaging for products or in advertising of the product (s 26); and/or

(c) specify requirements relating to the impact of products in that product class on the environment or the health of human beings (s 27(1)(c)).

The definition of a GEMS product is broad; it includes any product that uses energy or affects the amount of energy used by another product (s 11(1)(a)). Accordingly, there may be potential to expand the program and introduce determinations on other high-emissions products. For example, mandating CO₂ emissions information on advertising for high emissions products such as vehicles, airline travel, food and clothing. The benefit of this reform option is that it can be implemented under the existing GEMS Act and does not need parliamentary involvement.

There are examples abroad of energy labels requiring similar disclosures. In the EU there is a standard energy label. In France, they are required on advertisements for vehicles. In Sweden, petrol pumps carry the labels. Examples are below.



Petrol pumps in Sweden

MAZDA CX-5

6 ANS GARANTIE MAZDA
OU 156 000 KM

Pour les trajets courts, privilégiez la marche ou le vélo. #SeDéplacerMoinsPolluer

A
 B
 C
 D 146 g CO₂/km
 E
 F
 G

Gamme Mazda CX-5 :
 Concentration de carburant combinées de 5,6 à 7,6 l/100 km - Émissions de CO₂ combinées de 146 à 173 g/km.
 Contrat de garantie commercial Mazda 6 ans ou 150 000 km au 1^{er} terme échu.
 Mazda Automobiles France, 34 rue de la Croix de Fer - 78100 Saint Germain-en-Laye, SAS au capital de 204 898 € - RCS Versailles 434 455 910.

Facebook ad for Mazda in France

4. Strengthen Industry Codes

There is the opportunity for industries to take a lead and enact voluntary restrictions on promoting fossil fuels or high emissions products in industry codes. This may include voluntary promotion of eco messages on advertisements. It could also include advertising firms agreeing not to promote products or services which are large emissions drivers. Sectors such as sports or the arts could also prevent fossil fuel companies from advertising themselves through sponsorships. A voluntary code may also be mandated under the *Competition and Consumer Act 2012* (Cth), giving it legislative force and ACCC oversight.

6. Any other related matters

Private media companies could help stamp out greenwashing, but are unwilling. For example, Facebook runs climate information badges on some

climate-denying posts, but greenwashing ads by large polluters currently run unchecked³¹.

Greenwashing ads by fossil fuel companies also run on Google, YouTube and TikTok among others. Meta and TikTok currently allow influencers to promote fossil fuel products, such as gas appliances and petrol.

Some media companies, such as the Guardian, have voluntarily stopped accepting ads for fossil fuel products, and a growing number of sports, arts and cultural organisations are ending sponsorship arrangements with fossil fuel companies.

However, these voluntary measures will never stop greenwashing. Like tobacco, it will take mandatory and consistent laws to reduce the use and social acceptability of these damaging products.

Thank you for the opportunity to make a submission. We are available to assist the Committee in any way.

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<https://www.theguardian.com/environment/2021/aug/05/facebook-fossil-fuel-industry-environment-climate-change>