



Duty of Care Bill

Submission

About Comms Declare

Comms Declare is an incorporated not-for-profit that represents hundreds of communications professionals, advertising agencies and organisations that 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 advertising and sponsorships of fossil fuels and high emissions products.

Comms Declare

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Introduction

Thank you for the opportunity to make a submission on the *Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023*.

As the voice of climate action in the marketing industries, we support this Bill and urge the parliament to support it.

It recognises that current laws do not protect future generations from the effects of climate change and that meaningful climate action includes Scope 1, 2 and 3 emissions reductions across the whole economy. Scope 3 emissions includes “advertised emissions” - the emissions created by promoting high-emissions products.

Fossil fuel companies are directly targeting young people. Shell Australia and Ampol both run campaigns on Instagram and TikTok - using influencers to persuade younger audiences that their products are harmless, desirable and even cool. There are more than 60 programs where fossil fuel companies have access to millions of school children.

In addition to supporting the Bill we also recommend:

- Federal legislation banning advertising and sponsorships for coal, petroleum and gas products, similar to tobacco advertising bans.
- That advertising for high emissions products such as airlines and vehicles carry government-mandated labels revealing emissions information.
- That fossil fuel companies are banned from providing education or award programs in schools.

The Problem

Air pollution from burning fossil fuels is estimated to be responsible for the deaths of 11,000 Australians every year¹, in comparison to the road toll of just over 1,000 deaths per year.

Children are more vulnerable to breathing in polluted air because of the immune lungs' capacity to detoxify air toxins and more outdoor activities. Air pollution from burning fossil fuels is associated with poor lung function and asthma. Air pollution exposure also negatively affects children's mental health. For example, a study indicated that high prenatal exposure has associations with anxious/depressive symptoms in children aged 6–7 years².

Global warming will continue to have devastating effects on children ranging from social upheaval, increased spread of infectious diseases, food and water scarcity and psychological trauma.

Yet, coal, oil and gas are widely advertised without restrictions. Comms Declare estimates the top five fossil fuel advertisers spent a combined \$238 million in 2020/21 on marketing activities.

Advertising

Shell has an island inside Fortnite - the most popular game in the world. It encourages kids to take the "Shell ultimate road trips" and share the hashtag on social media³.

Media Matters found influencers pushing the game reached a potential audience of over 20 million people.

In Australia, these Instagram celebrities that have paid agreements with Shell:

- Maria Thattil
- Matty Fahd
- Sarita Holland
- Brodie Holland
- Rachel De Oliveira
- Therese Lum
- The Real Dads of Melbourne

1

<https://www1.racgp.org.au/newsgp/clinical/vehicle-related-air-pollution-may-cause-in-excess#:~:text=The%20research%2C%20conducted%20by%20Melbourne,6840%20respiratory%20hospitalisations>

2

<https://www.sciencedirect.com/science/article/pii/S2589791823000154#:~:text=Children%20are%20more%20vulnerable%20to,%5D%2C%20%5B43%5D%5D>

³ <https://www.fortnite.com/@teamunite/0314-6322-8548>

- Sanjna Pathania
- Grant Denyer
- Riana Crehan

Ampol is using Spotify, Twitch, YouTube, Pedestrian, TikTok and Instagram to reach younger and diverse audiences, who are likely to have less favourable feelings towards petroleum. The campaign has reportedly more than doubled brand awareness in people aged 18-35⁴.

Influencers it has used include:

- Tom Smallwood
- Sheri Vegas
- Jiny Maeng
- Cam Bostock
- Places in Sydney (Adrian Widjy)
- Hangry By Nature
- Brad Canning
- Amber Moran (Dizziebox)
- Andy Escapes
- Guy Sebastian

The laws governing advertising of coal, oil and gas need to consider the health and wellbeing impacts to children and the community as a whole.



Screenshot of "Shell Ultimate Road Trips" in Fortnite

⁴ <https://www.cmo.com.au/article/700641/cmo-profile-bringing-ampol-brand-back/>

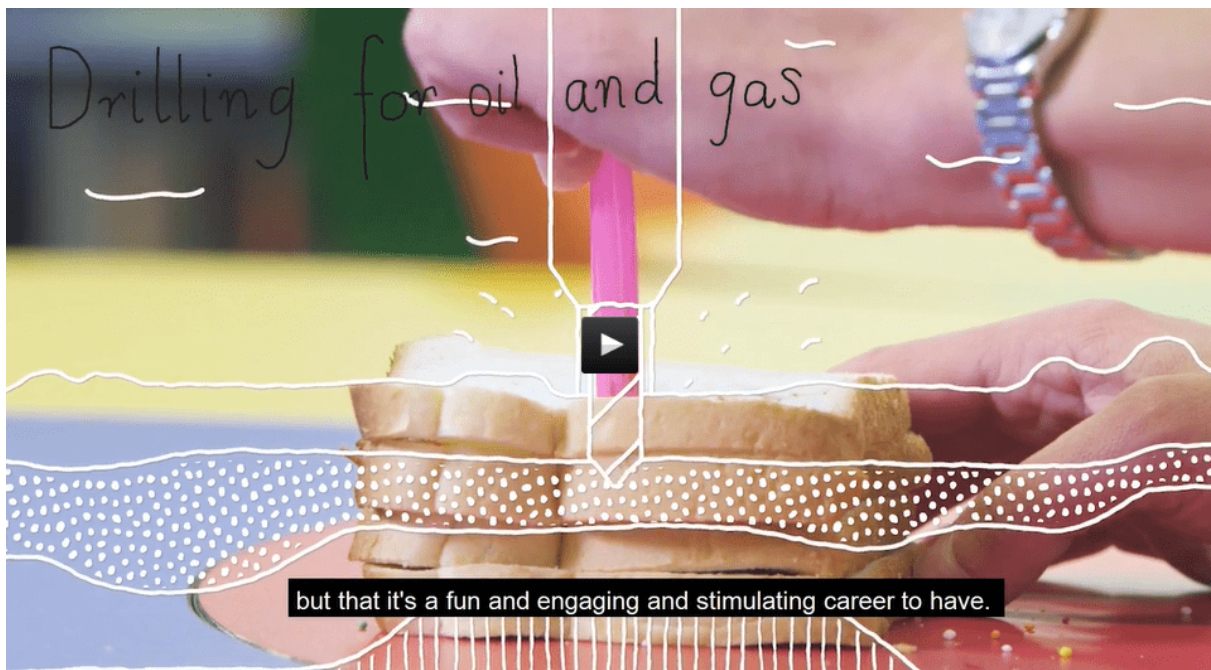
Sponsorships

Research by Comms Declare has found that coal, oil and gas companies sponsor more than 60 programs that are targeted at school children. These range from mentoring programs in indigenous communities to national awards and STEM incursions. These programs are in addition to numerous arts and sports programs also sponsored by big polluters.

For example, Australian Earth Science Education has reached 45,000 students with its Earth Education programs, sponsored by Chevron, Chamber of Minerals & Energy of WA, NSW Minerals Council, Whitehaven Coal, Santos, Woodside, BP and ConocoPhillips.⁵

Australian Earth Science Education holds incursions with Woodside Petroleum, one of the world's largest oil and gas companies. The partnership with Woodside Australian Science Project (WASP) is a vehicle for falsely portraying oil and gas as the future of energy, while casting doubt over climate science.

Woodside boasts how it has reached 10,000 students through this program, which includes teaching kids to drill for oil using vegemite sandwiches (below)⁶.



⁵ <https://ausearthed.com.au/#>

⁶

<https://web.archive.org/web/20201211124725/https://www.youtube.com/watch?v=5eU1xuOJ7i8&gl=US&hl=en>

These programs are acquisition channels for fossil fuel companies that allow them to influence the next generation of consumers, legislators and workers and give them the false impression that fossil fuel products and companies are an overall positive influence in their lives.

Legislative options to protect children from fossil fuel marketing

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 2050’⁷. 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 decisions⁸.

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

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

⁷ 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.

⁸ https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_FullReport.pdf

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.”

And the International Energy Agency says both are critical to the Net Zero scenario.⁹

Marque Lawyers, acting for Comms Declare, has identified four broad options for stopping greenwashing and enabling advertising which promotes climate-friendly behaviour change in Australia¹⁰.

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 advertising¹¹. In Australia, the ACT and 15 councils have voted for, or enacted, bans on fossil fuel promotions¹².

2. Mandatory Information Standards

Under the *Australian Consumer Law*, there is an existing regime for introducing mandatory information standards. The federal government could mandate

⁹ <https://www.iea.org/reports/behavioural-changes>

¹⁰ <https://commsdeclare.org/2023/07/12/fossil-fuel-advertising/>

¹¹ <https://www.worldwithoutfossilads.org/>

¹² <https://fossiladban.org/news/>

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



Gamme Mazda CX-5 :
 Concentration de carburant combinée 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.



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.

What we do in parliament now will shape our future - these decisions are crucial. The government has the ability to demonstrate its commitment to ending the climate wars hand in hand with young people, by adopting this bill and upholding their duty as elected representatives to hand over a future to coming generations that is safe and liveable.