



AANA DISCUSSION PAPER:

**AANA ENVIRONMENTAL CLAIMS IN
ADVERTISING & MARKETING CODE**

OCTOBER 2017

CONSULTATION

Background

The Australian Association of National Advertisers (AANA) is reviewing the *AANA Environmental Claims Advertising & Marketing Code* (the Code), to ensure that it continues to meet community requirements and expectations. The Environmental Code will continue to provide a robust framework for industry enforced self-regulation of environmental claims in advertising and marketing communication of products.

The AANA's general policy objective is to set standards that ensure advertising and marketing communication is legal, decent, honest and truthful and prepared with a due sense of responsibility to consumers and to society. The AANA is committed to ensuring that the advertising self-regulatory system continues to strike an appropriate balance in setting standards for environmental claims in advertising, taking into account:

- consumer confidence of the benefit of the environment, consumers and industry;
- the right of businesses to advertise their products responsibly;
- the right of consumers to receive responsible advertising for products that may be of interest to them;
- any evidence of harm, or a real potential for harm;
- the proportionate application of advertising restrictions to achieve a legitimate aim.

The purpose of this Discussion Paper is to stimulate informed input into the review of the Code. Submissions received in response to this paper will assist the AANA reviewing the requirements of the Code and making recommendation in relation to it, including preparing a revised version if necessary, for consideration by the AANA Board.

Consultation process

Consultation on the Discussion Paper will be undertaken through:

- written submissions from stakeholders nominated by the AANA; and
- discussions between those stakeholders and the AANA.

The AANA invites submissions by 5pm on 17 November 2017. Written submissions or enquires on this discussion paper may be made as follows:

By email: aanasubmissions@aana.com.au

By mail AANA Environmental Claims Code Discussion Paper
Suite 301, 100 William Street
Sydney NSW 2011

AANA requests that all submitters clearly identify:

- the name of the party making the submission;
- the organisation or interest group represented by the submission (where relevant); and
- contact details – including telephone number, postal address and email address (if available).

THE AANA AND SELF-REGULATION

1. Background

Advertising and marketing communication plays an important role in the national and international economy and society. It takes many forms, including advertising in traditional and digital media, consumer engagement on social media platforms and direct-to-consumer marketing. The advertising, marketing and media industry plays a fundamental economic role in society - contributing approximately \$40 billion to the Australian economy and employing over 200,000 people¹.

Advertising drives consumer choice in the commercial and non-commercial sectors and promotes competition. As a result, it helps consumers and the wider society to be better informed, to achieve insights and understandings and to secure value for money. As a key driver of demand, it enables innovation to be brought to market and stimulates economic growth and employment. More specifically, it underwrites the economic viability of commercial (and some public sector) media and enhances the variety of media content.

The AANA has been the peak national body for advertisers in Australia for over 85 years. It is engaged in a wide range of activities on behalf of its members, including the development of formal self-regulatory mechanisms. These self-regulatory mechanisms serve to protect the interests and rights of consumers by helping to ensure advertising and marketing communication is conducted responsibly. They are also designed to represent the common interests and obligations of companies across all business sectors involved in marketing communication.

The AANA's advertising self-regulatory scheme came into operation in 1997 following extensive consultation by the AANA with consumers and consumer groups, advertisers and business and government representatives. The system, which has the support of all major media owners and their associations, includes both code making expertise and a complaints handling system administered by the Advertising Standards Bureau (ASB), providing independent determinations regarding breaches of the AANA Codes via the Advertising Standards Board (Ad Standards Board). It is a national system that is technology and platform neutral and applies to advertising and marketing communication, whether or not the brand owner is an AANA member.

2. AANA Codes

General

The AANA Code of Ethics provides the overarching set of principles to which advertising and marketing communication, across all channels, should comply. The object of the Code of Ethics is to ensure that marketing communication is legal, decent, honest and truthful and that it has been prepared with a sense of obligation to the consumer and society and a sense of fairness and responsibility to competitors. The Code of Ethics is widely regarded as the standard for ethical behaviour by advertisers and marketers as well as advertising and marketing agencies. The vast majority of complaints dealt with by the ASB relate to elements of this over-arching Code.

In addition to the Code of Ethics, the AANA currently administers four other codes:

- Food & Beverages Advertising and Marketing Communications Code
- Code for Advertising & Marketing Communications to Children ("Children's Code")
- Environmental Claims in Advertising & Marketing Code

¹ Deloitte Access Economics, *Advertising Pays: the economic, employment and business value of advertising*, June 2016

- Wagering Advertising & Marketing Communication Code

The AANA codes are acknowledged and supported by government as an important self-regulatory mechanism to assist in achieving public policy outcomes. The self-regulatory system in Australia is rooted in the model of best practice developed with regulators, NGOs, consumer and public health groups, providing consensus not only on the model but the critical role that effective self-regulation plays to ensure robust qualitative advertising standards. The model ensures consultation of third parties in the development of codes and both complaints and decisions are dealt with transparently.

A key strength of the AANA self-regulatory system is the commitment to regular review and evolution of the Codes to maintain universality (application to all media and all brands) and to address specific problem areas.

Definition of advertising

In the AANA Codes, Advertising or Marketing Communication means:

any material which is published or broadcast using any medium or any activity which is undertaken by, or on behalf of, an advertiser or marketer, and

- *over which the advertiser or marketer has a reasonable degree of control, and*
- *that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct,*

but does not include:

- *labels or packaging for products*
- *corporate reports including corporate public affairs messages in press releases and other media statements, annual reports, statements on matters of public policy and the like*
- *in the case of broadcast media, any material which promotes a program or programs to be broadcast on that same channel or station.*

Medium is defined as *any medium whatsoever including without limitation cinema, internet, outdoor media, print, radio, television, telecommunications, or other direct to consumer media including new and emerging technologies.*

Packaging is not covered by the AANA Codes because it is fundamentally different from other forms of advertising or marketing communication in that packaging is considered to be an intrinsic part of the product. Packaging is, among other things, a medium for product information and branding. It conveys the brand logo and a range of key brand attributes which make each product unique and recognisable as such to the consumer.

In a competitive market economy it is essential to maintain brand owners' ability to convey the key features of brand identity to consumers. Packaging is key in this respect, as it is the most immediate interface between the brand and the consumer in the retail environment. The primary role of packaging as a medium for conveying brand communication is at point of sale, where purchasing decisions are usually made by adult consumers.

Similarly labels for products are also excluded from the definition of advertising or marketing communication. However, whether or not something is considered to be a label depends on the circumstances. For example, a tag which is not permanently affixed to the product and which is clearly intended:

- to promote the product and to encourage the purchase of the product; and
- to be removed from the product prior to its use,

is much less likely to be considered a label than material which is intended to remain on a product and to convey important information about the Product on an on-going basis. This kind of assessment is left to be

determined in the context of the surrounding circumstances, to ensure that where material is in fact considered to be a marketing communication, it can be assessed under the AANA Codes following a complaint.

Platform neutral, national approach

The AANA Codes do not make a distinction between traditional media advertising and digital advertising. The definition of “Advertising or Marketing Communication” in the AANA Codes ensures virtually all commercial communication is captured (including direct-to-consumer public relations material, online, social media and outdoor).

The platform neutral, national self-regulatory model allows complaints to be made without the consumer having to consider the medium or geographical location in which the relevant advertisement appeared. The AANA Codes will continue to evolve as new technology and means of communication evolve so that they remain relevant and universal.

3. Complementary regulation for environmental claims in advertising

The Code was first published in January 2010 after a lengthy consultation and development process to ensure rigorous standards are applied when making environmental claims in advertising and marketing communications in Australia. It was designed to increase consumer confidence that environmental claims in advertising are truthful, genuine and verifiable.

The current Code covers any environmental claim concerning a product or service. It aligns with the International Chamber Commerce (ICC) Consolidated Code of Advertising and Marketing Communications Practice - Environmental Claims in Marketing Communications².

The Code currently provides a range of requirements in relation to making environmental claims in advertising and marketing communication which are discussed in detail below. The key protections are that environmental claims in advertising and marketing communication must:

- be truthful and factual and not misleading or deceptive;
- not be vague, ambiguous or unbalanced;
- be relevant, specific and clear in explaining the claim;
- be able to be substantiated and verifiable.

In Australia, the Code interacts with the Australian Consumer Law (ACL) which applies to all forms of marketing, including claims on packaging, labelling and in advertising and promotion across all media. This means that any environmental claim need to be assessed against the requirements of the ACL as well as the Code.

There are two main provisions in the ACL affecting the way in which environmental claims may be made. Firstly, there is a broad prohibition of misleading and deceptive conduct.

Secondly, the ACL prohibits a variety of false or misleading representations about aspects of goods and services. There are two specific forms of prohibited misrepresentations that are especially relevant to environmental claims. Businesses must not:

- falsely represent goods as being of a particular standard, quality, value, grade, composition, style or model or having a particular history or previous use; or

²https://ec.europa.eu/digital-single-market/sites/digital-agenda/files/daelibrary/consolidated_icc_code_of_advertising_and_marketing_communication_practice.pdf

- represent that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have.

Labels and packaging must also fulfil any standards set by the International Organisation for Standardisation (ISO), which has developed standards that specifically govern environmental labelling, and Standards Australia. These standards are sets of rules and guidelines for how the environmental aspects of a product can legitimately be represented on a consumer-facing label or in a declaration. When applied by manufacturers, these internationally agreed standards ensure that the consumer is only being given valid purchasing information.

The Code was developed in 2009, and came into effect on 1 January 2010, ensuring consumers easy access to an effective complaints handling process to determine potential breaches of the Code.

Since then, the International Chamber of Commerce has issued a *Framework for Responsible Environmental Marketing Communications* that built on its existing *Consolidated Code of Advertising and Marketing Communication Practice* to further guide businesses in accurately explaining the 'green' attributes of their products. The Australian Competition and Consumer Commission also published a guide, *Green Marketing and the Australian Consumer Law*, to provide more information on the application of the ACL to environmental claims. The Code aligns well with both these requirements and guidelines.

In addition, the Organisation for Economic Cooperation and Development (OECD) has examined ways that information on the environmental characteristics of products could be improved so that consumers can make more informed choices. The OECD found that environmental claims were growing in frequency in marketing in all media, across a range of sectors including energy, motor vehicles, household products, building supplies, and food and drink. The OECD also found that consumers were increasingly expressing the desire to purchase environmentally-friendly goods and services but that there was potential for confusion about the meaning and veracity of self-declared environmental claims, particularly vague and unsubstantiated claims. It should be noted that the AANA Code specifically addresses such concerns.

4. Compliance

Advertising Standards Bureau (ASB)

The ASB administers the complaint handling service for the AANA Codes. Complaints to the ASB are adjudicated by the Ad Standards Board, made up of an independent panel of individuals who are representative of the wider community.

Advertisers who are in breach of the AANA Codes are required to withdraw or modify the material so that it is no longer published or broadcast in the offending format. The resulting commercial consequences of breaching the code include the direct and indirect costs of withdrawing an advertisement and possible reputational damage, including possible adverse media and social media coverage.

This complaints-based system provides a free, open and transparent mechanism to address concerns about the content of advertisements and other marketing communication. Further information on the complaints procedures and complaint outcomes is available at www.adstandards.com.au.

Complaint volumes and determinations

Environmental Claims in advertising is one of the least complained about issues and no advertising has been found to be in breach of the Code since its introduction. The majority of the complaints considered under the Code related to 'truth and accuracy' issues.

Year	2011	2012	2013	2014	2015	2016	2017
Cases considered	5	4	None	None	2	None	2

Of the provisions in the Environment Claims Code, the most commonly considered in relation to advertising material is Part 1, Section I:

Environmental Claims in Advertising or Marketing Communications shall not be misleading or deceptive or be likely to mislead or deceive.

While the number of complaints under the Code have been few, the breadth of products featured in the ads complained about, including natural gas, home appliances, lawns and plastic cups, illustrating the wide range of sectors which do make use of environmental claims. The advertising material similarly spanned a range of media. This supports the appropriateness of environmental claims advertising standards that apply to all advertisers in all media.

Without the Code there is no easy avenue for consumers to take issue with advertising claims that may be inaccurate or lacking substantiation. It should also be noted that the system places minimal burden on industry and no cost to government.

REVIEW OF THE AANA ENVIRONMENTAL CLAIMS CODE

The review of the Code will take into consideration the environment within which the Code exists, including the industry context and the existing regulatory framework. This will help to guide the scope, purpose and application of the Environmental Code. This section of the discussion paper describes the key features of the Code.

The Code contains three components with truthful and factual presentation; genuine benefit to the environment; and substantiation. The Code is supported by the AANA Environmental Claims in Advertising & Marketing Code Practice Note. This Practice Note would also be revised if any changes that are made to the Code.

Below are the provisions of the Code conflated with the details of the associated Practice Note for ease of reference. Given the information provided in Parts A and B of this Discussion Paper, please provide your response to the review bearing in mind some or all of the following questions:

- What, if any, changes should be made to the current Environmental Claims Code?
- Do you know of any other evidence-based research which could inform the evolution of the Environmental Claims Code? If so, please give details.
- Do you have any additional suggestions or comments on the operation of the Environmental Claims Code?

1. Code provisions

Part 1 – Truthful and factual presentation

SECTION I – Environmental Claims in Advertising or Marketing Communications shall not be misleading or deceptive or be likely to mislead or deceive.

An advertisement may be misleading or deceptive directly or by implication or through emphasis, comparisons, contrasts or omissions. It is not the intent for the Ad Standards Board to apply legal tests in its

determination of whether advertisements are, or likely to, mislead or deceive, or otherwise contravene prevailing community standards in the areas of concern to the Code.

Advertising 'puffery' or 'hyperbole' etc may be acceptable where the 'advertising or marketing communication' would not reasonably be understood to be literally true. Such statements do not require substantiation.

In testing the requirement that advertisements and/or marketing communications should not be designed to be misleading or deceptive, or otherwise contravene prevailing community standards, the Ad Standards Board will consider the advertiser's stated intention, but may also consider, regardless of stated intent, that an advertisement is by design misleading or deceptive, or otherwise contravenes the Code in regard to the stated or implied environmental claim.

SECTION II – Environmental Claims in Advertising or Marketing Communications must not be vague, ambiguous or unbalanced.

Advertisers should accurately consider the overall impression they convey to the general public.

SECTION III – Environmental Claims in Advertising or Marketing Communications must display any disclaimers or important limitations and qualifications prominently, in clear, plain and specific language.

A disclaimer can clarify, expand or reasonably qualify a representation but should not contradict, diminish or retract it. One matter that may be considered to contribute to a potential contradiction, diminution or retraction of a representation is the failure to mention a relevant matter in an advertisement.

As a general guideline, the main body of the advertisement, apart from the disclaimer, should be capable of standing alone without being misleading.

SECTION IV – Environmental Claims in Advertising or Marketing Communications must be supported by evidence that is current and reflects legislative, scientific and technological developments.

AANA acknowledges the dynamic nature of legislative, scientific and technological developments. AANA also recognises there may be various options that advertisers and marketers may take in meeting environmental aims, thus promoting innovation.

The intent of this section is not to require a consensus view in relation to scientific or technological matters; it is that advertisers and marketers support the claim with sufficient substantiation. What advertisers and marketers consider to be sufficient will vary from organisation to organisation, and in the circumstances, and is, ultimately, a commercial decision for the advertiser or marketer.

SECTION V – Environmental Claims in Advertising or Marketing Communications that make any claim relating to future matters or commitments must be based on reasonable grounds.

Claims relating to future matters carry the risk that the substance of those claims may not eventuate. However, even if the future matter does not come to pass, the Code will only be breached if, when the statement as to that future matter was made, there was no reasonable ground for believing that the state would come to pass. The fact that a person may believe in a particular state of affairs does not necessarily mean that there are reasonable grounds for the belief. Care needs to be taken with any claim that relates to a future matter to satisfy the requirement that there is a reasonable basis for the belief prior to making a claim.

SECTION VI – Environmental Claims in Advertising or Marketing Communications must not lead the consumer to conclude a business has voluntarily adopted an environmental practice if that practice has been legally mandated.

Self-evident.

SECTION VII – Environmental Claims in Advertising or Marketing Communications must not imply a product or service is endorsed or certified by another organisation when it is not.

Self-evident.

SECTION VIII – The environmental claim must not be extended, or implied to be extended, to a whole product or service when it relates only to one aspect of the product eg packaging or energy use, or service.

An environmental claim must represent the attributes or extent of the environmental benefits or limitations as they relate to a particular aspect of a product or service in a manner that can be clearly understood by the consumer. 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 only, the claim should not imply that it relates to the energy use in the manufacture of the packaging as well.

SECTION IX – Environmental Claims in Advertising or Marketing Communications must reflect the level of scientific or authoritative acceptance of matters relating to any claim; claims should not imply wide acceptance if this is not the case. Where evidence is inconclusive this should be reflected in the Advertising or Marketing Communication.

An environmental claim may be able to be substantiated (as required by the Code, see section IV above), but there is a dispute among relevant authorities as to the veracity, accuracy or completeness of the matter, or the claim is not widely accepted by the relevant scientific or technical community. In these circumstances, in addition to being satisfied that the claim is substantiated, the advertising or marketing communication needs to make it clear that the claim is not widely accepted. Section X is also relevant, as it is necessary to clearly identify the particular source that is relied on when there is scientific or authoritative disagreements.

SECTION X – Environmental Claims in Advertising or Marketing Communications that use of scientific terminology, technical language or statistics must do so in a way that is appropriate, clearly communicated and able to be readily understood by the audience to whom it is directed.

Publication of research results must identify the researcher and source reference unless there is an obligation of confidence or compelling commercial reason not to do so.

This section is intended to be read as two mutually exclusive parts. Scientific or technical terminology or presentation of statistics should be relevant and used in a way that can be readily understood by the intended audience without specialist knowledge. Irrelevant data and scientific terminology should not be used to make claims appear to have a scientific basis they do not possess. Technical terminology and jargon should not be used to 'blind with science' and to make simple claims sound impressive.

Publication of (published or unpublished) research results includes, but is not limited to, any direct or indirect reference to the research, a direct or indirect quote from the research, or paraphrasing the research results.

Part 2 – A genuine benefit to the environment

SECTION I – Environmental Claims must be relevant, specific and clearly explain the significance of the claim.

Self-evident.

SECTION II – Environmental Claims must not overstate the claim expressly or by implication.

Advertisers and marketers should avoid making or implying significant environmental benefit if the benefit is not significant. Consideration should be given to whether there is sufficient disclosure of any negative impacts. For example, whether negative impacts have been withheld which, if known, would diminish the positive attribute.

SECTION III – Environmental Claims must in comparative advertisements, be relevant and balanced either about the product/service advertised or class of products or services, with which it is compared.

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.

Comparisons should be made with like products, and if there are a number of different models or options, there must be a clear statement as to which product is in fact being compared.

Consideration should be given to quantifying the claims for example by use of percentages or absolute values, making comparisons against comparable products/services serving similar functions or making a claim against the advertisers own prior products/services or processes or another organisation's products/services or processes.

SECTION IV – Environmental Claims must not imply that a product or service is more socially acceptable on the whole. The use of Environmental Claims must not reduce the importance of non-environment attributes/detriments of a product or service.

Consideration should be given to the relationship of the environmental claims to other aspects of a product/service. 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 such as a product that is perceived by consumers to be better for them when there are community health concerns about the use of that product.

Also refer to AANA Code of Ethics clause 2.6 Advertisements shall not depict material contrary to prevailing community standards on health and safety.

SECTION V – Environmental Claims must not imply direct relationship to social initiatives of a business where there is no correlation to environmental benefits or attributes or improvements to a product or service.

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.

Part 2 Substantiation

SECTION I – Environmental Claims must be able to be substantiated and verifiable. Supporting information must include sufficient detail to allow evaluation of a claim.

Advertisers and marketers should have a reasonable 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. An advertiser’s own internal procedures may be able to provide the necessary substantiation.

In testing the validity of any claim the Ad Standards Board will only rely on information/material provided by the advertiser and the complainant. The Ad Standards Board may seek expert advice to assist in the consideration of material provided in relation to the complaint. It is not the intent for the Ad Standards Board to act as an arbiter of scientific fact, or of philosophical approaches to understanding or addressing environmental concerns.

SECTION II – Environmental Claims must meet any applicable standards that apply to the benefit or advantage claimed.

This section does not apply where standards exist that are not legally mandated i.e. the standard is a voluntary standard, however, the section will apply in circumstances where the advertiser represents voluntarily compliance with a specified voluntary standard.

SECTION III – The use of unqualified general claims of environmental benefit should be avoided unless supported by a high level of substantiation or associated with a legitimate connection to an authoritative source.

An unqualified general environmental claim may convey that the 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 substantiation, for example, such as that based on a full life-cycle assessment.

Unqualified claims, if they relate to an authoritative source, are not considered to necessarily require similar evidentiary material as those claims where they do not relate to an authoritative source. For example, where a claim is made relating to participation in a government program that happens to be titled with what could be considered an unqualified term, for instance, the Commonwealth Governments Green Car Innovation Fund.

Use (by themselves) of scientific terms, business names, trademarks that may be considered to be an unqualified general claim will not automatically constitute a breach of this section. However, use of such terminology in an advertisement may contribute to an 'advertising or marketing communication' to imply an environmental claim.

SECTION IV – Environmental Claims and comparisons that are qualified or limited may be acceptable if advertisers can substantiate that the product/service provides an overall improvement in environmental terms either against a competitor's or their own previous products.

An environmental claim should be relevant to the particular product or service and relate only to the environmental aspects that exist or are likely to be realised during that product or service's life.

SECTION V – Claims relating to sponsorships, approvals, endorsement or certification schemes must be current.

Self-evident.

SECTION VI – The use of any symbol or logo must 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.

In the case of symbols and logos associated with non-accredited certification schemes, special consideration should be given to any explanation of the scheme as it may have no independent audit or monitoring and therefore be open to question regarding achieving stated outcomes.

SECTION VII – Substantiation information should be readily accessible, or made available in a timely manner in response to a reasonable written request.

Consumers must be provided with all information reasonably necessary for them to make an informed purchase decision. Advertisers have a variety of avenues available for making such information available to consumers, for example, websites, brochures, labels, shelf-talkers; such information does not need to be included in the advertising or marketing communications itself.

SECTION VIII – Testimonials must reflect genuine, informed and current opinion of the person giving the testimonial.

Self-evident.

2. Other topics

The issues and related questions raised in this Discussion Paper are presented to facilitate discussions and are not intended to be exhaustive. Stakeholders are invited to comment on any other matters they may wish to raise.