



Submission to the

Senate Standing Committee Inquiry into Greenwashing

on behalf of

Australian Association of National Advertisers

June 2023

Introduction

Australian Association of National Advertisers (AANA) welcomes this opportunity to participate in the Senate inquiry into greenwashing practices in Australia. The AANA is the peak advertising industry body representing advertisers, agencies and media platforms in Australia, and we are committed to promoting responsible and ethical advertising practices across the industry.

The AANA is currently undertaking a comprehensive review of its AANA Environmental Claims Code. This review aims to strengthen the code to effectively address the issue of greenwashing and ensure that environmental claims made in advertising are accurate, transparent and substantiated.

The AANA recognises that greenwashing, the deceptive or misleading promotion of companies, products or services as environmentally friendly, can erode consumer trust and hinder progress towards sustainable development. We are committed to tackling greenwashing by equipping advertisers with the necessary tools and guidance to make truthful and meaningful environmental claims.

The AANA Environmental Claims Code, originally launched in 2004, provides guidance to advertisers on making accurate and verifiable environmental claims. As part of the current review, we are examining global best practices and emerging regulatory developments related to environmental claims and greenwashing. Our aim is to ensure that the revised code aligns with international standards and best reflects the evolving expectations of consumers, regulators, and the broader community.

To inform our review, the AANA has engaged with various stakeholders, including industry representatives, consumer groups, environmental organizations, and regulatory bodies, in particular the ACCC and the Department of Climate Change, Energy the Environment and Water. We have also sought input from advertising professionals, legal experts, and sustainability specialists to ensure a holistic and well-informed approach. Through this collaborative process, we are confident that the revised code will serve as a robust framework to combat greenwashing effectively.

The AANA is actively monitoring global regulatory developments pertaining to environmental claims and greenwashing. We are committed to aligning our code with international best practices and will continue to adapt it as necessary to stay ahead of emerging challenges. By maintaining an ongoing dialogue with international advertising self-regulatory bodies and sharing knowledge and insights, we aim to foster a global approach to combat greenwashing.

We believe that the advertising industry has an important role to play in not only ending greenwashing practices but also leading the shift towards a sustainable future. As the peak advertising industry body, we understand the power of positive storytelling and the importance of framing sustainability as something that will make Australians happier and healthier. People also tend to conform to social norms¹ so normalising sustainable practices could have a powerful impact by influencing shifts in consumer behaviour required for a low carbon future.

¹ Schultz PW , Nolan JM, Cialdini RB, Goldstein NJ, Griskevicius V. The constructive, destructive, and reconstructive power of social norms. *Psychol Sci.* 2007; 18(5): 429– 434.

AANA Environmental Claims Code

The Environmental Claims Code is part of the advertising industry's self-regulatory system that complements Australia's consumer protection laws.

Ad Standards administers the complaint handling service for the AANA Codes, including the Environmental Claims Code. Complaints are adjudicated by the Ad Standards Community Panel, an independent panel of individuals who are representative of the wider community. Complaints may be made by any member of the public and it only takes one complaint to spark a review of the advertisement by the Community Panel.

Advertisers who are found by the Community Panel to be in breach of the AANA Environmental Claims Code are required to withdraw or modify the material so that it is no longer published or broadcast in the same format. The resulting commercial consequences of breaching an AANA Code include the direct and indirect costs of withdrawing an advertisement and the reputational cost when a non-compliance decision is made public, including possible adverse 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.

Removal of an advertisement that breaches the AANA Environmental Claims Code does not prevent the ACCC taking enforcement action under the Australian Consumer Law (ACL). The purpose of the self-regulatory system is to put in place standards, training, advice and pre-vetting to reduce the likelihood of offending ads being produced in the first place and to also ensure swift removal of any advertisements that do not meet the Code's standards, thus reducing consumer detriment from an offending ad.

Complaint volumes

Complaints under the Environmental Claims Code represent a small but growing proportion of overall complaints adjudicated by the Ad Standards Community Panel each year. In 2021, 1.42% of total complaints related to issues covered by the Environmental Claims Code according to the Ad Standards Review of Operations², an increase from 0.45% the previous year.

AANA Environmental Claims Code Review

The formal review of the Environmental Claims Code launched in November 2022. All members of the public, government and industry are invited to provide input to the Code review. Submissions were received from a wide range of stakeholders, including environmental advocacy groups, investor groups and industry and direct engagement is ongoing with key regulators such as the ACCC.

Despite the disparate groups that submitted to the review, there were some common themes in the feedback, as follows:

- Overall comments reflected the belief that the AANA and wider advertising industry has a role to play in not only ending greenwashing but also supporting action to tackle climate change.
- General support for aligning with the Australian Consumer Law and guidance from the ACCC. The ACCC is currently updating its guidance on environmental claims and the AANA is working closely with the ACCC to ensure the AANA Code complements any new ACCC guidance.

² Ad Standards, *Review of Operations 2021*, p 20

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- Clear calls for explicit guidance and examples of what is ok/not ok and further guidance on specific claims such as net zero claims, disclaimers, certified trademarks (CTM), headline statements and any terms that should not be used without qualification (e.g. biodegradable).
- Where a CTM scheme (e.g. Redcycle) has failed, consensus is that industry should have time to transition to new packaging without the CTM logos however advertising and websites should be updated as soon as possible after the failure of the scheme and companies should proactively review CTMs to ensure they are valid and meet the truth test for the impression they give.
- There was wide support for substantiation to be widely available to justify claims - not hidden or hard to find.
- There were also calls for greater guidance around substantiation of absolute or broad claims (e.g. Planet Safe, Eco Friendly, Green Choice).

As part of the Code review, the AANA is looking at world best-practice measures and we aim to ensure the new Environmental Claims Code reflects best practice. The AANA will continue to proactively engage with government, regulators and other external stakeholders throughout the review process and we hope to release a revised Environmental Claims Code for comment by end 2023.

AANA Code Of Ethics & Environmental Claims

Environmental claims can also be dealt with under the AANA Code of Ethics. Section 1 of the Code of Ethics provides an alternative dispute resolution mechanism whereby businesses can complain about a competitor's advertising and have the issue resolved in an efficient and low-cost way without the need for recourse to the courts. Claims under this section are determined by the Industry Jury, a variable panel of 3 lawyers who specialise in advertising, competition and/or consumer law.

This mechanism provides businesses with a way to challenge environmental claims made by a competitor where they believe their competitor's environmental claim is:

- in breach of Commonwealth law or the law of the relevant State or Territory (section 1.1);
- misleading or deceptive or be likely to mislead or deceive (section 1.2);
- contains a misrepresentation, which is likely to cause damage to the business or goodwill of a competitor (section 1.3); or
- exploits community concerns in relation to protecting the environment by presenting or portraying distinctions in products or services advertised in a misleading way or in a way which implies a benefit to the environment which the product or services do not have (section 1.4).

A recent example of this scheme in action is the case brought by BioPak Pty Ltd against Pinnacle International Wholesalers Pty Ltd ('Pinnacle') regarding claims contained on Pinnacle's advertising for a range of disposable coffee cup products sold under Pinnacle's "Truly Eco" brand that the products do not contain plastic, are fully recyclable and compostable. The Industry Jury found that the claims could not be substantiated and were misleading, in breach of section 1 of the Code of Ethics. For further details, the case report can be found [here](#).

Global Developments

European Union

The European Union has introduced several developments in environmental claims regulation.

Firstly, the European Commission (EC) has [proposed](#) the adoption of standardised Environmental Footprint methods. These methods aim to guide both government and private sectors in making claims about the environmental performance of products or organisations throughout their life cycle. The proposal includes Product and Organization Environmental Footprint (PEF/OEF) methods and Life Cycle Assessment methods, covering 16 impact categories. The EC has developed its own methods to address gaps in existing approaches. The proposal also suggests introducing sector rules and benchmarks for easy comparison of product categories or organisational sectors. These benchmarks would be voluntary and could be used by companies to substantiate environmental claims, with validation and verification by independent third parties.

Secondly, the European Commission has [proposed](#) amendments to the Unfair Commercial Practices Directive (UCPD) and the Consumer Rights Directive (CRD) to enhance consumer protection against greenwashing and support the transition to a green economy. The proposal seeks to add ten new prohibited marketing practices to the UCPD's blacklist, including displaying sustainability labels without certification, making generic environmental claims without evidence, and omitting information about a product's limited durability or reparability. It also aims to explicitly mention environmental and social impact, durability, and reparability as main product characteristics and address misleading practices related to future environmental claims and advertising common practices as special benefits. Additionally, the proposal requires transparency in sustainability product comparison services.

Finally and most recently, the European Commission has [proposed](#) further changes to establish minimum requirements for the substantiation and communication of explicit environmental claims based on recognised scientific evidence and the latest technical knowledge. It proposes the establishment of a verification mechanism to verify environmental claims and ensure a level playing field for the EU market.

Overall, these developments in the European Union focus on standardising environmental performance assessment, combatting greenwashing, empowering consumers to make informed choices based on accurate environmental claims and providing industry participants with clear guidance.

ICC Code on Environmental Claims

The International Chamber of Commerce (ICC) Codes represent best practice for self-regulation. The current AANA Environmental Claims Code was based on the ICC Code.

In November 2021 the ICC's updated its [Framework for Responsible Environmental Marketing Communication](#). The updated Framework provides additional guidance on some established environmental claims and additional guidance on some emerging claims, including:

- **Climate-related claims:** including carbon footprint, carbon offset, carbon neutral, carbon negative, net zero, and climate positive. These may be aspirational claims related to goals of reducing, neutralising or compensating a company's climate impact of producing a product, component, package, service or a company's business operations over time.

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- **Circularity claims:** including circular, circularity, and circular economy
- **Additional “free-of” claims:** including “micro-plastics free” and “not made with fossil fuels”
- **Recyclability claims** and the use of material identification codes
- **Recycled content claims**
- **Degradable claims:** including biodegradable, marine degradable, oxo-biodegradable, and photodegradable

Standards for Verifying Environmental Claims

A challenge for industry, consumers and complaints handling bodies is how they measure, evaluate and verify environmental action and associated claims.

Companies that have made genuine and tangible progress in implementing sustainable practices into their business need independent, robust and respected standards of accreditation which will give them the independent assurance that they require in order to make environmental claims with certainty and confidence. There is currently a lack of standardised measures and tests to establish that a product or company has achieved something of environmental benefit.

Likewise, consumers, investors and regulators currently lack the independent and robust standards or calculators required to scrutinise and verify environmental claims. For example, in our Food & Beverages Advertising Code, healthy food must meet the Food Standards Australia nutrient profile score criterion which measures fats, salts and sugars compared to vitamins, minerals and other important nutrients like protein and fibre and gives the food a score which determines whether or not it can be classified as healthy. However, for environmental claims, there is no equivalent independent calculator or test for determining a sustainable business or product.

The increase in consumer, investor and regulator scrutiny of environmental claims has combined with the lack of independent and robust accreditation standards to make businesses increasingly fearful of communicating their sustainability efforts. While the elimination of greenwashing is something we are focussed on, we also want to empower those businesses taking meaningful steps towards a sustainable future to feel confident to communicate their positive actions and enable consumers and investors to reward them for their efforts.

We note the European Commission’s efforts to address this issue through standards for measuring environmental footprint of products and companies and their most recent proposal to set standards for substantiating environmental claims and establish a verification mechanism to verify claims.

We also note that the International Sustainability Standards Board (ISSB) is developing global accounting standards with the aim of providing a global baseline framework for sustainability and climate-related disclosures, consolidating existing voluntary reporting standards. We note that the framework is intended to provide investors and capital market participants with information about companies' sustainability and climate-related risks and opportunities. Such disclosure could also provide consumers, complaints handling bodies and regulators with a way to more easily verify environmental claims made by companies, particularly when it comes to claims relating to carbon emissions.

While we do not express a view on the specific rules being proposed by the ISSB, feedback received to the AANA Environmental Claims Code review indicates that there is a need for an independent and robust verification method against which environmental claims can be tested and verified.

The Role for Communication

Addressing climate change and moving to a sustainable future requires action at every level of society, including by consumers. In order to inspire and drive behavioural change as a mass-market level, we believe that the government needs to adopt evidence-based communication methods that are proven to be effective.

A paper published in the Translational Behavioral Medicine journal entitled “*Evidence-based recommendations for communicating the impacts of climate change on health*”³ highlighted communication methods that are proven to ‘improve knowledge uptake’ and ‘drive higher-quality decision making’ at the individual level. The recommendations include, amongst other things, that the communication should:

- come from trusted sources;
- leverage social networks in order to maximise influence;
- establish and maintain social norms – people are more likely to conform to social norms;
- use emotions and visual images; and
- include concrete action plans to empower informed behavioural change.

The AANA believes the advertising industry can play a crucial role to support government communication efforts to move to a low carbon and sustainable future.

Conclusion

The AANA is fully committed to addressing the issue of greenwashing and promoting responsible advertising practices in Australia. Our ongoing review of the AANA Environmental Claims Code and our engagement with global regulatory developments demonstrate our dedication to combatting greenwashing effectively. We look forward to sharing the revised code and its implementation plan with the Senate Greenwashing Inquiry in due course.

Thank you for considering our submission. We welcome the opportunity to provide further input or clarification as required.

Further Consultation

The AANA would welcome an opportunity to discuss in more detail with the Senate Committee the issues raised in the Discussion Paper. Please contact Megan McEwin at megan@aana.com.au regarding opportunities for further consultation.

³ *Evidence-based recommendations for communicating the impacts of climate change on health*, Ellen Peters, Patrick Boyd, Linda D Cameron, Noshir Contractor, Michael A Diefenbach, Sara Fleszar-Pavlovic, Ezra Markowitz, Renee N Salas, Keri K Stephens, Translational Behavioral Medicine, Volume 12, Issue 4, April 2022, Pages 543–553, <https://doi.org/10.1093/tbm/ibac029>, Published: 25 May 2022