



Supplementary Submission to the
Senate Standing Committee Inquiry into Greenwashing

on behalf of

Australian Association of National Advertisers

February 2024

Introduction

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.

This submission provides supplementary information on the draft new AANA Environmental Claims Code which was released on 18 January 2024 for further consultation as part of our public review of the Code. The review aims to strengthen the Code to support efforts to end greenwashing and ensure that environmental claims made in advertising are true, accurate, transparent and substantiated.

About

The AANA Environmental Claims Code, originally launched in 2004, provides guidance to advertisers on making accurate and verifiable environmental claims. 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.

Exposure Draft New AANA Environmental Claims Code

The draft new Environmental Claims Code (the Code) was released on 18 January for further feedback and appropriate change to ensure the Code is fit for purpose prior to being finalised and launched later in 2024.

The draft new Code:

- Broadens the Code's coverage to cover images, logos and vague/broad claims by redefining what is meant by the term "environmental claims";
- Aligns with the updated ACCC guidance on environmental claims; and

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- Includes more detailed guidance on the types of environmental claims that are no longer be acceptable.

We are calling for feedback on the draft new Code by 22 March 2024. During this consultation period AANA will also proactively engage with key government departments and regulators with a view to finalising and releasing a new Environmental Claims Code later in 2024. Once the new Code is announced, there will be a period of notice before the new rules take effect and AANA will undertake extensive training of advertisers, media and creative agencies to support compliance with the new Code.

Once the new Code takes effect, the Ad Standards Community Panel will determine complaints under the revised Code.

The provisions of the draft new Code are outlined in the following pages.

THE ENVIRONMENTAL CLAIMS CODE

EXPOSURE DRAFT

Objective

This Code has been adopted by the AANA as part of advertising and marketing self-regulation. The object of this Code is to ensure that advertisers and marketers apply rigorous standards when making Environmental Claims and to increase consumer confidence to the benefit of the environment, consumers and industry.

This Code is accompanied by a Practice Note which has been developed by the AANA. The Practice Note provides guidance to advertisers and complainants and must be applied by the Community Panel in making its determinations. In the event of any ambiguity the provisions of the Code prevail.

Definitions

In this Code, unless the context otherwise requires:

Advertising means:

- a) any advertising, marketing communication or material which is published or broadcast using any Medium or any activity which is undertaken by, or on behalf of an advertiser or marketer,
 - 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,
- b) 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, station or network.

Practice Note: Images of labels or packaging contained within 'Advertising' will be considered to be an element of that 'Advertising'.

The Community Panel means the panel appointed by Ad Standards from time to time, the members of which are representative of the community, to administer a public complains system in relation to Advertising.

Target Consumer means the ordinary, reasonable member of the target audience.

Environmental Claim means any message or representation (including text, images, graphic or symbolic representation) that gives the impression that an industry, business, product or service:

- (a) has a neutral or positive impact on the environment
- (b) is less harmful for the environment than alternatives, or
- (c) has specific environmental benefits.

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

Code Rules & Practice Notes

Code Rule	Practice Note
<p>1. Truthful and factual Environmental Claims in Advertising must:</p> <ol style="list-style-type: none"> a. Not be or likely to be misleading or deceptive to the Target Consumer. b. Be truthful and factual. The overall impression created by the Environmental Claim should not be false or inaccurate. 	<p>Any environmental claim should be accurate, true and factually correct. Even claims that are factually correct can sometimes still mislead consumers. Advertisers should consider the overall impression created, including through use of visual elements.</p> <p>Environmental Claims will be considered in the context of the Target Consumer and how the Target Consumer is likely to perceive the information or impression conveyed by the advertisement.</p> <p>Products or services being compared should be substitutable for one another or be intended for the same purpose. Comparative claims for products or services, whether the comparison is with the Advertiser's own previous process or product/service or with those of a competitor, should be worded in such a way as to make the comparison clear.</p> <p>Claims that a product “does not contain” a chemical or is “free” of that chemical are often used to establish a comparison between different versions of the same product, or to establish a comparison with a competitor’s products. Such claims can be misleading if in fact the product does contain the chemical or, even if it does not, contains a similar chemical with a similar environmental impact, or an alternative with another significant environmental impact.</p> <p>Advertising making top parity claims (e.g. "no one better") should have data backing up the claim.</p>
<p>2. Evidence Environmental Claims in Advertising must be supported by evidence.</p>	<p>Advertisers should:</p> <ul style="list-style-type: none"> • have reasonable grounds for making an environmental claim, based on evidence held at the time the claim is made; and • not misrepresent third party certifications and validations supporting an environmental claim. <p>Scientific claims should be consistent with the body of evidence.</p> <p>Where the scientific basis for a claim is under dispute or not conclusive, advertisers should not present the claim as being universally accepted.</p> <p>Environmental Claims in Advertising must be substantiated and verifiable. Supporting information held by Advertisers at the time a claim is made must include sufficient detail to allow evaluation of a claim.</p> <p>Advertisers must be able to support claims at the time the claim is made but are not necessarily required to include that supporting information in the actual advertisement unless it is required to make the claim true. Additional information provided must be</p>

	<p>truthful and not misleading. Test methods and statistical models may be appropriate however, they must be relevant to the particular attribute and product conditions of use, and to the particular environmental impact that the Advertiser is measuring.</p> <p>Broad and vague claims, such as “environmentally friendly” or “ecologically safe”, may imply that a product or an activity has no impact—or only a positive impact—on the environment. They should not be used unless robust evidence is available and the environmental benefit is qualified or explained.</p> <p>A specific claim about individual environmental attributes supported by reliable evidence could be linked to a claim of “sustainability” (for example, “our products are sustainable because they are made of 100% post-consumer recycled content and are recyclable”) however, advertising should not state or imply that a product is “sustainable” without qualification simply because it has some positive environmental benefits.</p> <p>If an Environmental Claim states or implies that a product has minimal negative environmental impact throughout its life cycle (for example, “from cradle to grave, the most eco-friendly product on the market”), the claim implies that it is supported by a Life-Cycle Assessment (LCA), and the advertiser should disclose the standard that was relied on to make the claim. If advertising makes a sustainability claim based on a single attribute, this must be made clear and be appropriately substantiated.</p> <p>Tests and statistics used to support environmental claims should relate to conditions likely to be experienced by the consumer to assure the test results provide a reliable scientific basis to substantiate the specific advertising claim.</p> <p>Further, tests should be conducted on the actual product (or one that is substantially identical) to assure the results are applicable to the product for which the claim is made. For example, tests on raw materials (e.g., compostability of a plastic resin) may not be fully representative of the performance of finished products (e.g., compostability of a plastic container made of that resin); if they are not, the tests may not provide adequate substantiation for the claim.</p> <p>Environmental Claims about compostability must be based on reliable evidence, for example a current compostable certification or similar. Advertisers should make it clear whether the product or packaging has been certified for home or industrial composting.</p>
<p>3. Clear and not vague Environmental Claims in Advertising should:</p>	<p>Advertisers must consider if there are any conditions that need to be met or steps that need to be taken for a claim to be true. If claims are only true in certain circumstances, advertisers should</p>

<p>a. Use clear language, having regard to the Target Consumer</p> <p>b. Avoid broad, vague or unqualified claims</p> <p>c. Include important limitations, conditions or qualifications in a way that is clear</p>	<p>explain this to consumers clearly. Any information or qualifications in small print should not conflict with the overall message of the Environmental Claim.</p> <p>This rule is not intended to limit or restrict marketers from offering additional useful information through website links, QR codes and other available means to support rather than contradict the overall message contained in the environmental claim.</p> <p>It should be clear if the environmental claim refers to an entire or part of a product, component, package, service or company's business operations.</p> <p>Scientific terminology or references are acceptable provided they are relevant and accurate. They should either be used in a way that can be readily understood by the Target Consumer or further information should be provided to explain the terminology (for example through website links, QR codes and other available means).</p> <p>Advertisers should avoid providing partial information where it may create a misleading overall impression. Absolute or vague claims which require qualification to be true should not be made without that qualification. This includes claims like: "Made from recycled materials", "Renewable", "Produced with renewable energy", "Plastic free", "Uses less water". Where such claims relate only to an aspect, portion or stage of a product, service or business, this should be made clear in the advertisement.</p> <p>Vague, broad or non-specific claims (sometimes called "general" claims) include claims such as "environmentally friendly," "eco friendly", "green", "go green", "choose green", "sustainable," or any other terms implying that a product or an activity has no impact — or only a positive impact — on the environment. Such claims should not be used without qualification unless a very high standard of proof is available, or the claim is linked to a specific properly substantiated environmental attribute that clearly limits the scope of the claim to such attribute.</p> <p>Providing some information while leaving out important details which contradict or qualify the environmental claim is misleading.</p> <p>Products and services have different environmental impacts across different stages of their life cycle. Advertisers do not necessarily need to conduct a LCA or provide information about the full product life cycle in every claim however should consider the overall impression created by the Environmental Claim. The broader the claim, the more likely the need to consider life cycle implications.</p> <p>It should always be clear to which stage or which part of an organisation, product or service an environmental claim refers. If an</p>
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	<p>environmental claim only relates to part of the life cycle, it should be made clear which part. For example, if a claim relates only to the transport of the product, it should not also suggest that it applies to the manufacture of the product.</p> <p>When making ‘recyclable’ claims, Advertisers should have regard to accepted Government or industry definitions of ‘recyclable’ (Australian Recycling Label for consumer packaging). Where Advertising contains the Australasian Recycling Label, the use of the label should comply with Australasian Recycling Label rules. Unqualified recyclable claims should only be made where publicly available or home recycling collection systems exist.</p>
<p>4. <u>Genuine benefit, not insignificant</u> Environmental Claims in Advertising should:</p> <ol style="list-style-type: none"> a. Be about a genuine benefit to the environment b. Not overstate the environmental benefit 	<p>Advertisers should not make claims that exaggerate an environmental benefit or understate an environmental harm.</p> <p>Environmental claims about a product, service or business should only be made when there is a genuine environmental benefit. Environmental claims should not be made where the environmental benefits are irrelevant or insignificant.</p> <p>Some claims that are literally true may be misleading because they exaggerate the benefits of the product. For example, a claim that a product contains “twice as much recycled content as before” when the amount was very low to begin with could be misleading.</p> <p>Emissions Intensive Businesses Advertising of emissions intense businesses, such as those that rely on or sell fossil fuels, must not understate the overall environmental impact of their business when making environmental claims because the overall environmental detriment of these industries is likely to overshadow any environmental improvements made by a business. For this reason, emissions intense businesses should avoid making broad or unqualified environmental claims.</p>
<p>5. <u>Future claims</u> Environmental Claims in Advertising about future environmental objectives must be based on reasonable grounds at the time the claim is made.</p>	<p>Environmental claims relating to aspirational targets or environmental goals should only be made if the Advertiser has reasonable grounds at the time the claim is made.</p> <p>The goals should be clear and achievable and the Advertiser must genuinely intend to meet those goals, with realistic and verifiable plans in place to make them happen and measure progress.</p> <p>Where relevant:</p> <ul style="list-style-type: none"> • the goals should also be based on accepted methodologies, resources or technologies that are effective and available now (or the Advertiser has a reasonable basis to consider they will be available to the Advertiser in the near future);

	<ul style="list-style-type: none">• updates should be provided about performance against the goals, including if the Advertiser is on track to achieve them or any setbacks; and• the Advertiser should regularly revise the goals where it becomes apparent the Advertiser will not meet them.
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Conclusion

The advertising industry plays a key role in ending greenwashing and the revised AANA Environmental Claims Code will support government and regulator efforts in the transition to a more sustainable future.

Thank you for considering our submission.

Further Consultation

We welcome the opportunity to provide further input or clarification as required.

Please contact Megan McEwin at megan@aana.com.au regarding opportunities for further consultation.