



**Sifting through greenwash: Submission to
ACCC Issues Paper on the *Trade Practices
Act* and carbon offset claims**

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Mark Byrne Senior Policy Officer

Hugh O'Neill Policy Officer

Introduction

The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) seeks to promote a just and democratic society by making strategic interventions on public interest issues.

PIAC is an independent, non-profit law and policy organisation that identifies public interest issues and works co-operatively with other organisations to advocate for individuals and groups affected.

In making strategic interventions on public interest issues PIAC seeks to:

- expose unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate;
- promote the development of law - both statutory and common - that reflects the public interest; and
- develop community organisations to pursue the interests of the communities they represent.

Established in July 1982 as an initiative of the Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only, broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Centre Funding Program. PIAC also receives funding from the NSW Government Department of Energy and Water for its work on utilities, and from Allens Arthur Robinson for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions

The current consultation

PIAC welcomes the opportunity to comment on the Australian Competition and Consumer Commission's (ACCC) Issues paper on the *Trade Practices Act 1972* (Cth) (TPA) and carbon offset claims. This submission recognises that the ACCC's interest is not in whether carbon offset claims produce environmental benefits but in whether they are false and misleading under the meaning of the TPA. It also recognises the ACCC's previous work on this issue, including the section on Carbon neutral claims in its recently released publication *Green marketing and the Trade Practices Act*, its fact sheet on Environmental claims, and the knowledge base revealed in the current Issues paper.

This submission therefore focuses on adding information relevant to PIAC's expertise on this issue, rather than attempting a comprehensive survey of the field. It follows the format on page 3 of the Issues paper, and no part is confidential.

Response to specific issues raised

PIAC's interest in this area of regulation

PIAC has been interested in the regulation of environmental claims in marketing for more than a decade, initially in response to the then Trade Practices Commission's *Guidelines on Environmental Claims for Marketing*.¹ Its concerns at that time were with issues such as:

- Whether meaningless, vague or misleading claims could lead to a lack of confidence from consumers in the environmental claims being made.
- The difficulty of proving some claims (though the burden of proof now falls on the person making the claim).
- The voluntary nature of many relevant marketing and environmental standards.
- The difficulty in calculating and comparing lifecycle impacts.
- The need for any independent accreditation standard to be properly resourced and promoted.

However, there are particular issues with regard to the emerging market in carbon offset products, including additionality, future offsets, terminology—for example, carbon neutral versus carbon offsets—and competing assessment methods and accreditation standards, each of which are discussed below.

In its past and present interest in the regulation of environmental claims in marketing, PIAC's overarching concerns have been in ensuring that consumers have as much usable and accessible information as possible in order to make an informed choice; that product providers do not make false or misleading claims; and that environmental claims produce positive outcomes for consumers and the environment.

PIAC's current interest in the issue of carbon offsets has arisen primarily through its Energy + Water Consumers' Advocacy Program (EWCAP) (formerly UCAP), with several energy retailers now offering carbon offset products. In general, PIAC's experience in the energy and water industries is that many residential consumers have little information or knowledge of the products in such complex industries and markets and therefore often make poor choices. Some retailers exploit this lack of knowledge for their own benefit.

For instance, in 2007 PIAC made a complaint on behalf of the Total Environment Centre to the ACCC alleging false or misleading claims made by EnergyAustralia and Jackgreen in relation to their renewable energy products. The complaint about EnergyAustralia resulted in an undertaking by EnergyAustralia in January 2008 that it would clarify the difference between accredited and non-accredited renewable energy products, and offer misled consumers access to accredited products at no extra cost. PIAC does not consider this a one-off case as it is currently investigating misleading claims about renewable energy products being made by another retailer.

To PIAC's knowledge there are currently four energy retailers offering carbon offset products, although this number is likely to rise in the near future. One of these, AGL, only offers its Green Balance carbon offset product to business,² while another, TRUenergy's Planet Neutral product, is not yet available to

¹ See, for example, Amanda Cornwall, Regulating Environmental Claims in Marketing (1996) *Competition & Consumer Law Journal*, 3, 261-281.

² See <http://www.agl.com.au/AGLNew/Business+solutions/Large+business/Products+and+services/Green+solutions.htm>.

the public. The other two, Origin Energy and Jackgreen, offer carbon offset products to residential consumers, and are discussed below.

Types of representations being made in this area and capacity to mislead

In general, the market for carbon offset products is very immature: consumers have very little knowledge of the nature of the products available and how to compare them for price or environmental outcome. Immature markets need strong regulation to protect consumers. PIAC therefore welcomes the ACCC's initiative on this issue as a first step towards increasing scrutiny and accountability in this rapidly growing market.

The section on carbon neutral claims in *Green marketing and the Trade Practices Act* discusses the issues of lifecycle emissions and additionality. However, perhaps the most fundamental way in which consumers may be being misled is by companies presenting the purchasing of offsets as a means of mitigating the current or potential impacts of carbon emission on climate change without referring to reducing consumption or increasing energy efficiency. These are more effective means of mitigating the impacts of climate change as they avoid emissions entering the atmosphere in the first place, rather than attempting to offset them.

For example, the Qantas website explicitly links its Fly Carbon Neutral program with 'the issue of climate change' and commits the company 'to actively managing our operations and growth in an environmentally sustainable manner.'³ The implication is that offsetting flights is an effective way to reduce the impact of climate change. Nothing is said of the carbon footprint of the rest of the company's operations, or of the greater impact on climate change that people would have (given the questionable nature of many offsets) by simply not flying. It may be misleading to give passengers the impression that they are helping the fight against climate change without actually reducing the frequency of their flights.⁴

Consumers should be encouraged to reduce (rather than offset) their consumption of greenhouse-polluting products and services wherever possible, or to increase their use of energy efficient products and services, if they want to reduce their carbon footprint. Any provider that claims that its offset product/s will help to tackle climate change may be engaging in false or misleading conduct unless they are also encouraging consumers to reduce their overall energy consumption.

Offsets obtained by tree planting are often represented by companies as a way to reduce a person's carbon emissions. However, companies making these representations may omit crucial facts such as that it may require up to 100 years for the emissions that have already entered the atmosphere to be offset. Given the high possibility of these trees dying in the interim (and therefore releasing their stored CO₂ into the atmosphere) or companies ceasing to operate before the whole of the claimed emissions can be offset, and the need for global emissions to be reduced quickly to prevent the likelihood of catastrophic impacts, there is considerable risk that consumers are being misled about the effectiveness of these offset schemes. There are also doubts about whether trees planted at temperate latitudes are actually net emitters of CO₂.⁵ Finally,

³ <<http://www.qantas.com.au/info/flying/flyCarbonNeutral/index>>.

⁴ VirginBlue's website gives more information about the need to reduce the emissions from a range of energy sources, but still neglects to inform consumers about the option of reducing their consumption of greenhouse-polluting energy sources: see <<http://www.virginblue.com.au/carbonoffset>>.

⁵ See, for example, Do carbon offsets live up to their promise? 10 January 2007: <http://www.stcwa.org.au/index.php?option=com_content&task=view&id=1084>.

some tree planting offset products may involve offsets from trees that may have been planted as long ago as 1990, thus failing the basic test of additionality.⁶

For all these reasons, as a 2007 Discussion Paper by the Total Environment Centre (TEC) notes, 'Tree planting projects are explicitly excluded by Gold Standard.'⁷ Yet there are numerous Australian offset products that involve tree planting,⁸ including the Federal Government's own Greenfleet program.⁹

The terms 'carbon neutral' and 'carbon offset' are a particular source of confusion. For instance, while the Issues paper concerns carbon offset claims, the table on page 2 refers to various 'Claims of carbon-neutrality'. The Australian Conservation Foundation's brochure *Consumers' guide to going carbon neutral*¹⁰ also conflates the two concepts. Likewise, the Qantas website refers to 'Prominent Australians flying "carbon neutral"', when in fact they are merely offsetting the emissions produced by their share of their flights.¹¹

Carbon offsets are intended to reduce or eliminate the negative environmental impact of carbon emissions resulting from various activities by engaging in other activities that have a positive impact on emissions. Carbon neutrality, on the other hand, represents a commitment to completely offset an organisation's or business's CO₂-producing activities or products - often as an aspirational goal by a certain date - and requires, *inter alia*, a more comprehensive accounting of the carbon footprint. As *Green marketing and the Trade Practices Act* points out, 'the entire life cycle of a product' - in this case, the airline industry - should be considered when making claims about carbon neutrality.¹²

Aspirational goals - for example, a company's promise to become carbon neutral by a certain date - are particularly problematic, as they are hard to verify.¹³ For instance, it may be hard to hold to account a company with a goal of becoming carbon neutral by 2010 if it was still increasing its emissions and not adequately offsetting them as late as 2009, as it could claim that the goal remains valid even if market conditions had created impediments to implementing the goal to date.

The ACCC could play a useful role in delineating carbon neutral from carbon offset claims, by requiring that the former is used to refer exclusively to claims to offset all emissions associated with the organisation or product throughout its/their lifecycle, ie, including upstream and downstream energy usage, or indirect emissions, rather than a single stage, or direct emissions, such as fuel usage. PIAC also recommends that aspirational goals for carbon neutrality be prohibited - or at least considered likely to mislead - unless they involve interim targets and are subject to independent annual verification.

⁶ See, for example, <http://truenergy.com.au/carbon_offset_projects/tree_planting.xhtml>. Note: this product is not yet publicly available & the weblink may be inactive.

⁷ Total Environment Centre, *Carbon Neutral Watch – Corporates, Consultants and Credibility* (2007) 18.

⁸ See EPA Victoria and RMIT's Carbon Offset Guide Australia: <<http://www.carbonoffsetguide.com.au>>.

⁹ See <<http://www.greenfleet.com.au>>.

¹⁰ <http://www.acfonline.org.au/default.asp?section_id=199&c=143055>.

¹¹ <<http://www.qantas.com.au/info/flying/flyCarbonNeutral/index>>.

¹² ACCC, *Green marketing and the Trade Practices Act* (2008) 14.

¹³ Australian companies with carbon neutral goals include News Corp (2010), National Australia Bank (2010), ANZ Bank (2009) and the Australian Football League (2009). The South Australian Government announced on 18 February 2008 that it would become carbon neutral by 2020: see <<http://au.news.yahoo.com/080218/2/15vcu.html>>.

Methodologies

Methods of assessing carbon offsets

PIAC has no specific expertise in relation to the independent methodologies currently used to assess carbon offsets and to certify, audit or verify whether the offsets have actually occurred. It is, however, concerned that the plethora of methodologies and standards is likely to confuse consumers, and that it is difficult to tell whether the claimed offsets have actually taken place without in-depth knowledge of each methodology or standard.¹⁴

For instance, a 2007 discussion paper by the Total Environment Centre notes that '[a] recent study by the Queensland Tourism Industry Council surveyed 10 carbon offset products and found that the level of emissions that each provider deemed to be associated with a flight from Australia to Europe varied from 3.5 to 11.5 tonnes.'¹⁵

There are also numerous energy use or carbon footprint calculators available on the internet¹⁶, including the websites of companies offering offset products.¹⁷ While these are useful tools to help consumers to understand and respond to their energy costs and carbon emissions, the methodology they employ is often not specified, so consumers must take them on trust. This lack of clarity and the potential to confuse need to be remedied.

Current conduct in the marketplace

Examples

Origin Energy's website states that 'Origin will invest your money in projects that reduce greenhouse gas emissions that go beyond business as usual programs'¹⁸, but does not:

- locate offsets in the broader context of the relative merits of various possible consumer responses to the problem of climate change, as discussed above;
- detail how the cost of the offsets is calculated;
- explain the investment strategy behind the various projects in which the offsets funds are invested, including tree planting (the offsetting benefits of which are subject to question in most circumstances);
- say how the projects are 'independently verified'.

Jackgreen's offset product, Jackgreen Balance, has similar issues to Origin's, with the exception of the final one. Instead, it details the verification standards it employs¹⁹, although the verification does not appear to

¹⁴ These standards include the Greenhouse Gas protocol, Greenhouse Friendly, the Gold Standard, the Voluntary Carbon Standard, the NSW Greenhouse Gas Abatement Scheme (GGAS) and ISO 14064:2006.

¹⁵ Total Environment Centre, *Carbon Neutral Watch – Corporates, Consultants and Credibility* (2007) 16.

¹⁶ See, for example, <http://www.1degree.com.au/carbon_calculator>; <<http://www.safeclimate.net/calculator>>; and <<http://www.epa.vic.gov.au/greenhousecalculator/calculator/default.asp>>.

¹⁷ See, for example, <<http://www.jackgreen.com.au/faq>> and <<http://www.trueenergy.com.au/Residential/EnergyCalculator.xhtml>>.

¹⁸ <https://www.originenergy.com.au/carbon/?_qf_p2_2_display=true> .

¹⁹ 'Jackgreen uses the Greenhouse Gas protocol published by the World Business Council for Sustainable development and the World Resources Institute, the Australian and International Standard AS ISO 14064 and the methodology used by the Australian Greenhouse Office in its Greenhouse Friendly program which is based on the ANZS ISO 14040 series of standards': <http://www.jackgreen.com.au/carbon_offsets/carbon_faq.php>

be done independently. On its website, Jackgreen also claims that it 'commits to only purchasing the carbon credits accredited by government agencies such the NSW Greenhouse Gas Abatement Scheme and the Australian Greenhouse Office'²⁰ and that 'Jackgreen surrenders the carbon credit to the NSW Greenhouse Gas Abatement Scheme. This ensures that the carbon cannot be used again or traded by anyone else.'²¹ This is a reasonable approach, although it will need to change once the NSW Greenhouse Gas Abatement Scheme transitions into the new national emissions trading scheme,

Guidance to industry

In response to some of the issues raised in this submission, in late 2007 PIAC partnered with the TEC and the Institute for Sustainable Futures at the University of Technology, Sydney to prepare a Carbon Offset Watch website, along the lines of the Green Electricity Watch website²² and drawing on previous work including the TEC's May 2007 discussion paper²³, the Voluntary Carbon Standard (VCS)²⁴, EPA Victoria's Carbon Management Principles²⁵, EPA Victoria and RMIT's Carbon Offset Guide Australia²⁶, and Clean Air-Cool Planet's *Consumers' Guide to Retail Carbon Offset Providers*.²⁷

The website, which will be online in mid-2008, will be a world's best practice comparison of the various offset products on the Australian market (currently over 30 and growing rapidly). It will differ from the Carbon Offset Guide Australia by rating the various products according to more comprehensive and detailed criteria including:

- Contribution to the transition to a sustainable future.
- Additionality, ie, offset products provide emissions reductions additional to what would otherwise have occurred.
- Offset matches emissions—eg, whether the offset has already taken place, or will take place over the next 70-100 years, in the case of some tree planting schemes.
- The quality of information available to consumers to assess the product, including:
 - carbon calculation tool;
 - information about the specific project;
 - product disclosure;
 - receipt/tax invoice.
- Audit trail and independent accreditation standard used.
- Risk assessment performed by the offset provider (ie, how safe are the product and provider?)
- Price.
- Qualitative factors such as efforts to educate the public.

In general, in order to prevent violations of section 52 of the TPA, PIAC recommends that the minimum standard of information provided to consumers should include the following:

- Context: that is, the role of offsets in reducing emissions vis-à-vis reduced consumption and increased energy efficiency; a summary of the other (non-greenhouse) environmental impacts of both the activity being offset (for example, the other forms of air pollution caused by burning fossil fuels) and the offset

²⁰ <http://www.jackgreen.com.au/carbon_offsets>.

²¹ <http://www.jackgreen.com.au/carbon_offsets/carbon_faq.php>.

²² See <<http://www.greenelectricitywatch.org.au>>.

²³ See <http://www.tec.org.au/index.php?option=com_content&task=view&id=563&Itemid=331>.

²⁴ See <<http://www.v-c-s.org>>.

²⁵ See <<http://www.epa.vic.gov.au/greenhouse>>.

²⁶ See <<http://www.carbonoffsetguide.com.au>>.

²⁷ See <<http://www.cleanair-coolplanet.org>>.

product itself (eg, the embedded energy even in renewable energy generation); and a glossary, including the distinction between carbon neutral and carbon offset claims.

- A calculator (preferably based on the Australian Greenhouse Calculator) to enable consumers to estimate their carbon footprint.
- Who is providing the offset product.
- The price per tonne of the CO₂ offset.
- The project location and type (especially whether the offset is generic, such as the purchase of NSW Greenhouse Abatement Certificates from the cheapest seller, or specific, such as investment in renewable energy generation).
- Access to an independent website comparing the pros and cons of different offset types and products, including the associated risks and benefits.
- An explanation of how additionality is ensured, and the ‘futurising’ of offsets is avoided.²⁸
- An explanation of the standard used for calculating the amount of offsets and the auditing procedure.
- The provision of a written receipt for the offset.
- Whether the company selling the product and the company doing the offsetting is offsetting its own emissions.

The ACCC should consider producing a detailed explanatory brochure addressing these points, which it then requires all offset providers to make available on their websites and to refer to in their promotional material.

It should also consider establishing a carbon offset labeling or certification scheme that either ranks the various products by a star rating system according to similar criteria as the ISF/TEC/PIAC Carbon Offset Watch website, or a simple pass/fail accreditation scheme based on one of the standards referred to earlier.²⁹

As discussed earlier, the ACCC should also discourage the use of the term ‘carbon neutral’ for products that are better described as offsets. It should also promote a clear distinction between carbon offsets and claims of carbon neutrality, and require aspirational goals of carbon neutrality to be subject to interim targets that are independently verified.

²⁸ PIAC supports the use of the following additionality tests applied by Clean Air-Cool Planet in the *Consumers’ Guide to Retail Carbon Offset Providers*:

Regulatory Test: does the project go beyond legal requirements?

Financial Test: is the project economically viable without offset revenues?

Barriers Test: are there significant non-financial barriers that a project needs to overcome?

Common Practice Test: does the project go beyond common business practice?

Timing Test: was the project started after a given date?

Monitoring and Verification: The offset project would be monitored and its offsets verified over time.

Registration: The offsets would be registered to provide a paper trail and to reduce the possibility that the same offsets might be sold multiple times.

²⁹ The introduction of such a national standard would need to consider its relationship to global standards, in view of the overseas projects currently included in offset products marketed in Australia and the potential for Australian projects to qualify for global accreditation.