

ACCC Draft guidance for business on environmental and sustainability claims

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About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is leading social justice law and policy centre. Established in 1982, we are an independent, non-profit organisation that works with people and communities who are marginalised and facing disadvantage.

PIAC builds a fairer, stronger society by helping to change laws, policies and practices that cause injustice and inequality. Our work combines:

- legal advice and representation, specialising in test cases and strategic casework.
- research, analysis and policy development; and
- advocacy for systems change and public interest outcomes.

Energy and Water Consumers' Advocacy Program

The Energy and Water Consumers' Advocacy Program works for better regulatory and policy outcomes, so people's needs are met by clean, resilient and efficient energy and water systems. We ensure consumer protections and assistance limit disadvantage, and people can make meaningful choices in effective markets without experiencing detriment if they cannot participate. PIAC receives input from a community-based reference group whose members include:

- Affiliated Residential Park Residents Association NSW;
- Anglicare;
- Combined Pensioners and Superannuants Association of NSW;
- Energy and Water Ombudsman NSW;
- Ethnic Communities Council NSW;
- Financial Counsellors Association of NSW;
- NSW Council of Social Service;
- Physical Disability Council of NSW;
- St Vincent de Paul Society of NSW;
- Salvation Army;
- Tenants Union NSW; and
- The Sydney Alliance.

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Public Interest Advocacy Centre



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The Public Interest Advocacy Centre office is located on the land of the Gadigal of the Eora Nation.

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1. PIAC concerns regarding energy industry claims

PIAC welcomes the opportunity to respond to the ACCC's draft guidance for business on Environmental and sustainability claims ('Draft Guidance'). The ACCC's renewed focus on issues concerning greenwashing, through this guidance and its enforcement activities, is very welcome.

Through our Energy and Water Consumer Advocacy Program, PIAC advocates on behalf of households and seeks to ensure they have access to reliable, accessible and accurate information regarding the environmental and sustainability performance of energy and water related products and services, including the companies that provide those services. PIAC's comments in this submission are directed to those concerns.

2. Questions for consumers and consumer advocates

2.1 What types of environmental or sustainability claims do you think are the most confusing for customers?

PIAC is particularly concerned about the potential to mislead consumers about climate change or greenhouse gas emissions related performance and impact of energy products, services and companies. This can include:

- Misstating total greenhouse gas emissions of an energy product or service through inaccurate or selective accounting.
- Basing net-zero emissions claims on poorly verified offsets and the implication that offsets can effectively negate the greenhouse gas impact of equivalent emissions.
- Misleading claims that the life cycle emissions from a specific energy source are less than from another form of energy. This includes making comparisons between emissions of gas and electricity, and not recognising the direct emissions impact of methane involved in gas use, as well as the emissions impact of its combustion.
- Using vague descriptors that have the potential to mislead e.g. "renewable gas" or "clean energy".
- Aspirational claims that net-zero will be possible due to the development of new products and technologies which are unproven, unlikely to be practical at a competitive cost (such as carbon capture and storage and distributed hydrogen), and/or highly unlikely to be viable within the timeframes necessary to have an impact.

Recent examples of these types of claims which are particularly confusing for household energy consumers include:

1. Claims by gas distribution network service providers that using natural gas home appliances are less costly and produce less emissions than grid electricity, when these selectively quote costs and emissions data. For example, claims make selective comparisons of appliances without acknowledging more efficient electric alternatives, or fail to acknowledge the rapid decarbonisation of the electricity network which makes point in time figures misleading. Claims may also exclude emissions from production or supply chains, or fail to acknowledge the lower emissions from household generated renewable energy.

2. Claims by gas distribution network service providers on the future adoption of ‘renewable gas’. These claims are opaque and largely aspirational.¹ Renewable gas is used to refer to a range of potential products with a wide range of actual potential climate and environmental impacts, with some of the more likely options in the near term having much less impact on emissions reduction (such as gas blends or hydrogen sourced from fossil gases).
3. Advertising and claims by energy retailers to consumers, including advertising ‘green tariffs’ or using images of renewables in adverts. Some such claims misrepresent the nature of the energy supplied and/or use of offsets.²

2.2 What type of environmental or sustainability information do you think needs to be provided to consumers to allow them to make informed purchasing decisions?

In purchasing choices for energy products or services, claims regarding environmental sustainability, including greenhouse gas emissions, can mislead consumers into incurring higher costs for little or no actual environmental benefit. This includes instances where consumers consciously choose to pay a ‘green premium’, or where consumers choose a ‘green’ product from an energy company which is doing little to reduce its overall reliance on polluting fossil fuels. Energy-related purchasing decisions already require consumers to navigate an often confusing range of options, the addition of environmental claims adds substantially to this confusion.

Consumers need clear and verifiable information about environmental performance or benefits, enabling simple and fair comparison of options and their prices. Consumers also need clear and simple information that enables them to assess claims of individual products against the overall environmental performance of the company supplying those products.

In the case of selecting household appliances, consumer’s purchasing choices involve large initial investments and sometimes long-term changes to household configuration. They can lock in choices about energy and emissions for many years. Claims regarding the sustainability and effectiveness of appliances and fixtures must include recognition of the relative impact of those appliances and fixtures over their likely life.

2.3 What do you think is the most useful way for businesses to provide information about their environmental or sustainability credentials to consumers?

For example, do you think information should be provided on product labels, websites, or through QR codes?

Do you think certified trademarks and other certification schemes help consumers better understand a business’ environmental or sustainability credentials?

¹ With respect to the problematic nature of the claims of ‘renewable gas’ see the Renew article, *Costly and impractical: IRENA warns against hydrogen blending in gas networks* <https://reneweconomy.com.au/costly-and-impractical-irena-warns-against-hydrogen-blending-in-gas-networks/>

² See the discussion under “Transparency in Marketing” in the *Green Electricity Guide Report* - <https://www.greenelectricityguide.org.au/report> and the assessment of individual companies marketing in the associated rankings, <https://www.greenelectricityguide.org.au/#rankings>. See also <https://www.theguardian.com/australia-news/2022/feb/08/cutting-through-the-greenwash-australian-energy-retailers-ranked-on-climate-action>

As the ACCC has acknowledged, certification schemes may be helpful for some consumers but can also become meaningless if there are multiple competing schemes for the same products, or if the certification process is not independent and verifiable.³ There is also a danger of legitimising vague or debatable claims through certification – for example, schemes which certify ‘carbon neutrality’ for businesses which purchase offsets but otherwise do not reduce their fossil fuel reliance. Certification schemes are only helpful where they are themselves based on robust, transparent information and assessments are independent. It is also important for certification schemes to consider and align with consumers general understanding of claims. For instance, it is likely that consumers generally understand ‘green’ energy to involve 100% renewable generation.

In respect of electricity and gas products and services, we believe there is a need for a government endorsed information source that provides a complete and verifiable picture of the costs and greenhouse gas emissions of different forms of energy sources for homes. This could take the form of a ratings scheme which represents that information clearly and simply to consumers, but is based on a detailed analysis of costs and greenhouse gas emissions for retailers and their products (including comparing electricity with gas) depending on location. This would address the issues associated with the presentation of selective data by energy companies. This information could be added to the existing Energy Made Easy website.⁴

2.4 Do you think that the principles in this draft guidance will assist businesses in making more trustworthy environmental and sustainability claims?

PIAC welcomes the principled approach adopted in the Draft Guidance to environmental claims and agrees with the ‘Eight principles for trustworthy environmental and sustainability claims’.

Articulating a clear and succinct set of principles is important for businesses and consumers using this document, particularly given the detail covered in the Draft Guidance. This level of detail enables businesses to understand their obligations and expectations for good practice. The inclusion of a concise summary or quick reference guide would be an important improvement to ensure the Guidance is practically useful and is used. We recommend further attention be given to the language and expression in the initial summary of the principles to ensure it is as plain, clear and succinct as possible.

We note the following aspects of the guidance as particularly valuable in relation to the claims of energy businesses:

- Making accurate claims which are meaningful and do not exaggerate benefits.
- Ensuring comparisons are transparent and fair. – This issue affects consumers of energy in particular, where comparisons are made between energy products which may not be ‘like for like’ or use up to date information.
- Representations about the future – This is a particular concern in relation to claims made about future use of natural gas and gases claimed to be broadly ‘renewable’.

³ <https://www.accc.gov.au/system/files/Greenwashing%20by%20businesses%20in%20Australia.pdf>

⁴ <https://www.energymadeeasy.gov.au/>, See further, PIAC’s detailed analysis of a retailer rating scheme as provided in its prior submissions *GreenPower Program Review Consultation*, (22 August 2022), pp.12-13, <https://piac.asn.au/2022/08/22/submission-to-oecc-and-nsw-treasury-greenpower-program-review-consultation/>

- Not hiding important information, and considering the full lifecycle of products and services – The guidance should be more explicit about the need, in the context of greenhouse gas emissions, to account for emissions across the lifecycle and emissions of all greenhouse gases, not just carbon dioxide.
- Broad unqualified claims and the use of vague terms like ‘green’ and ‘renewable energy’.
- Emissions related claims, addressing the issue of broad claims like ‘carbon neutral’ or ‘net zero’ – This is particularly important to address the widespread reliance on offsets to claim emissions benefits instead of actual emissions reductions.
- Claims in highly polluting industries – We welcome the recognition of the greater potential to mislead for emissions intensive businesses. Given the incentives for greenwashing may be even greater for such businesses, we consider a greater level of scrutiny should apply to claims made by those businesses.

2.5 Is there anything missing from this guidance that you think would help businesses when making environmental and sustainability claims or consumers when assessing claims?

PIAC welcomes the guidance under Principle 5 in the Draft Guidance, which refers to specific terms which may be used in misleading ways, like ‘green’ and ‘renewable energy’, as well as addressing emissions related claims like ‘carbon neutral’. However, we are concerned that the framing of the guidance as ‘good practice’ rather than a stronger level of expectation does not provide businesses with sufficient encouragement to adopt the suggested practices. We recommend articulating minimum expectations instead of ‘good practice’ suggestions. In addition:

- In relation to the use of ‘renewable’, guidance should refer specifically to identifying the source of the claimed renewable energy and the basis on which it is said to be renewable. For example, stating that the claimed renewable energy is sourced from wind or solar generation and, if applicable, that the purchase of that energy is certified under a relevant accredited scheme.
- Further examples of vague terms which should not be used without qualification should include ‘clean’ in relation to energy, and ‘low emissions’.
- Guidance should more explicitly caution against relying on offsets to support claims of future performance or ‘neutrality’ of emissions. PIAC prefers standards or guidance which require transparent explanation of the degree to which any claim relies on offsets.

We appreciate the Draft Guidance is intended to be a document for business, but consumers would benefit from an accessible summary of the guidance to enable them to understand whether businesses are acting appropriately. We encourage the ACCC to maintain (and update as appropriate) its web pages and/or other resources directed to consumers which provide a clear and simple explanation of the principles businesses are expected to follow, and what to do if someone thinks a business has breached these guidelines.

We encourage the ACCC to continue its efforts to address and respond robustly to greenwashing by businesses. Greenwashing will continue to be a growing threat to Australian consumers, particular energy consumers, as efforts to address climate change accelerate and the energy transition progresses. A strong and consistent regulatory response is vital to preventing consumer harm. We endorse the recommendation of the Environmental Defenders Office that the ACCC publish information about actions taken in relation to greenwashing to emphasise to businesses the importance of taking these issues seriously.