



Environmental
Defenders Office

**Submission to the Australian Competition and Consumer
Commission on draft guidance for business on
environmental and sustainability claims**

13 September 2023

About EDO

Environmental Defenders Office (**EDO**) is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

EDO is a legal centre dedicated to protecting the environment.

Submitted by email to EnforcementCoordination@accg.gov.au.

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EXECUTIVE SUMMARY

EDO welcomes the opportunity to comment on the Australian Competition and Consumer Commission's (ACCC) draft guidance for business regarding environmental and sustainability claims (**draft guidance**).

As part of a national community legal centre specialising in public interest environmental law, the work of the EDO Safe Climate (Corporate and Commercial) lawyers includes examining businesses' environmental and sustainability claims including in the context of potential greenwashing and related conduct.

A record number of businesses are making pledges and claims in response to the growing demand for strong climate action from government, industry and consumers. With this comes a corresponding boom in companies greenwashing their environmental and sustainability credentials.

In particular, EDO has observed a significant increase in the number of misleading climate claims, as well as other greenwashing claims concerning biodiversity and the environment more broadly. As a result, we have assisted clients in lodging over 18 complaints in relation to greenwashing across several industries to either ACCC, Australian Securities and Investments Commission (**ASIC**) or Australian Advertising Standards Authority (**Ad Standards**).¹ Further, we are currently representing a client in ongoing litigation in the Federal Court alleging misleading or deceptive conduct related to environmental claims.²

Greenwashing erodes consumer confidence, public trust and distorts competition. Moreover, greenwashing unfairly diverts investment away from products and services that may support a more sustainable future.

In the context of the urgent triple planetary crisis recognised by the United Nations³ – of climate change, pollution and biodiversity loss – and resonating calls for immediate and drastic action to address this crisis, it is essential that strong efforts are made at institutional and organisational levels to curb greenwashing.

EDO supports the ACCC's draft guidance for businesses regarding environmental and sustainability claims. We set out **below** a summary of our key recommendations in relation to this draft guidance and our responses to the consultation questions for consumers and consumer advocates.

¹ See Environmental Defenders Office, 'Corporate greenwashing' <<https://www.edo.org.au/corporate-greenwashing/>>.

² *Australasian Centre for Corporate Responsibility v Santos Ltd* (NSD858/2021).

³ See, for example, *United Nations Climate Change*, 'What is the Triple Planetary Crisis?' (13 April 2022) <<https://unfccc.int/blog/what-is-the-triple-planetary-crisis>>; *United Nations Environment Programme*, 'The triple planetary crisis: Forging a new relationship between people and the earth' (Speech, 14 July 2020) <<https://www.unep.org/news-and-stories/speech/triple-planetary-crisis-forging-new-relationship-between-people-and-earth>>.

KEY RECOMMENDATIONS FOR DRAFT GUIDANCE

We make the following key recommendations in relation to the draft guidance:

- 1 **Genuine emissions reduction versus offsets:** The draft guidance should make clear that offsets should not count towards an entity's emissions reductions except for small residual amounts after genuine reductions are achieved. The draft guidance should also provide that claims, based on carbon offsetting, related to future performance or related to a product or service having a neutral, reduced, compensated or positive greenhouse gas emissions impact on the environment should not be made. This is consistent with international standards and current science. For example, the Science Based Targets initiative's (**SBTi**) Corporate Net Zero Standard says that the use of carbon credits must not be counted as emission reductions toward the progress of companies' near-term or long-term science-based targets, and carbon credits may only be considered as an option for neutralising residual emissions or to finance additional climate mitigation beyond their science-based emission reduction targets.⁴ Similarly, the United Nations' High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities (**UN Expert Group**) says that non-state actors must prioritise urgent and deep reduction of emissions across their value chain and cannot use carbon credits to achieve their emissions reduction targets.⁵

We note that Principle 5 (Avoid broad and unqualified claims) of the current draft guidance recommends, that businesses are transparent about emissions reductions activities versus reliance on purchased offsets, and includes a good practice example of a business using offsets where emissions reductions are 'not immediately available'. We consider this is insufficient, and the guidance needs to go further in relation to offsets.

- 2 **Scope 3 emissions:** The draft guidance should make clear that scope 3 emissions should be accounted for in any claims about a product and its environmental or climate impact, including in relation to net zero or carbon neutral claims. The significance of scope 3 emissions, particularly in the fossil fuel sector, has been widely recognised. For example, the World Benchmarking Alliance's Oil and Gas Benchmark in 2023 observed that oil and gas companies' scope 3 emissions account for more than 80% of the company's total emissions, and that 'companies only set targets for reducing scope 1 and 2 emissions, using the "net-zero" label to obscure the truth from the public'.⁶

⁴ SBTi Corporate Net-Zero Standard (April 2023) <<https://sciencebasedtargets.org/resources/files/Net-Zero-Standard.pdf>> page 51.

⁵ UN High Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities, *Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions* (8 November 2022) <https://www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf> page 19.

⁶ World Benchmarking Alliance, '2023 Climate and Energy Benchmark in the Oil and Gas Sector: Insights Report' (June 2023) <https://assets.worldbenchmarkingalliance.org/app/uploads/2023/06/2023-Insights-report_Climate-and-Energy-Benchmark-in-the-oil-and-gas-sector.pdf>.

We consider the draft guidance could better address this problem in two ways. First, Principle 3 (Do not hide important information) should explicitly state that whole of lifecycle includes scope 3 emissions and that the positive aspects of a product (e.g. scope 1 and 2 emissions) should not be highlighted where scope 3 emissions impacts are omitted. Second, the need to account for scope 3 emissions should also be made clear in Principle 5 (Avoid broad and unqualified claims), particularly regarding emissions-related claims and environmental claims in high-polluting industries.

- 3 All greenhouse gas emissions:** The draft guidance should place greater emphasis on businesses accounting for *all* greenhouse gas emissions in making environmental and sustainability claims. In our experience, businesses often only account for carbon dioxide without accounting for more potent greenhouse gases. Methane, for example, is 84 times more potent a greenhouse gas than carbon dioxide over a 20-year period,⁷ and there are concerns that methane emissions are being significantly underreported.⁸

The draft guidance helpfully states that businesses should ‘account for all types of greenhouse gas emissions’ in relation to Principle 5 (Avoid broad and unqualified claims) in the section on emissions-related claims. We consider this should be made clear as a general principle in respect of all relevant claims, including claims about businesses’ ‘net zero’ commitments.

- 4 Claims covering a corporate group:** The draft guidance should provide some commentary about environmental and sustainability claims in the context of corporate group structures. In particular, that businesses should be careful not to overstate the positive impact of one part of a corporate group when other parts may be involved in different activities. For example, where one company is a solar energy company but is related to other companies which are involved in fossil fuels, care should be taken not to overemphasise the renewable activities of the corporate group as a whole.
- 5 In Principle 1 (Make truthful and accurate claims),** the section on representations about the future should clarify that businesses are expected to have detailed plans in relation to claims about things that will (or will not) happen in the future. For example, if a business publicly articulates emissions reduction targets, they should have a detailed plan of how and when emissions reductions will be made in line with those targets and not merely aspirations or ambitions.
- 6 In Principle 2 (Have evidence to back up your claims),** the draft guidance should state that any terms or concepts used in businesses’ environmental and sustainability claims

⁷ Penny D Sackett, ‘Expert Report on the Greenhouse Gas and Climate Implications of the Narrabri Gas Project 40 (SSD6456)’ (9 August 2020)

<https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2020/03/narrabri-gas-project/correspondence/edo/sackett-narrabri-gas-project-ipc-advice-revised_final.pdf> page 7.

⁸ International Energy Agency, ‘Methane emissions from the energy sector are 70% higher than official figures’ (Press Release, 23 February 2022) <<https://www.iea.org/news/methane-emissions-from-the-energy-sector-are-70-higher-than-official-figures>>.

should be consistent with the meaning of those terms according to the best available science.

- 7 In **Principle 2** (Have evidence to back up your claims), the draft guidance should clarify that all information necessary to understand the claim must be provided where the claim is made, and that any additional information or evidence provided separately to the claim must not alter the impression created by the claim.
- 8 In **Principle 3** (Do not hide important information), the draft guidance should provide some information and examples about where disclaimers are *not* appropriate. For example, where a business claims to be or be aiming for ‘net zero’ but has a disclaimer excluding scope 3 emissions and/or non-carbon dioxide greenhouse gas emissions and/or no clear plans to achieve emissions reductions.
- 9 In **Principle 5** (Avoid broad and unqualified claims), the examples in the draft guidance of broad headline claims (‘carbon neutral’, ‘climate neutral’ and net zero’) could be expanded to include additional terms including ‘clean’, ‘low emissions’ and ‘lower emissions’.
- 10 In **Principle 7** (Visual elements should not give the wrong impression):
 - (a) the draft guidance should go further than suggesting that it is ‘good practice to offer consumers details of further information on the scheme’, and advise that businesses should ensure that consumers are able to access specific information including about the ownership of the scheme, the criteria underlying the accreditation, and procedures for dealing with non-compliance;
 - (b) the draft guidance should caution against the use of industry and self-certification schemes and should explicitly say that if a product has been self-certified, businesses must make this clear where the certification claim is made or label is used; and
 - (c) the draft guidance should make clear that businesses’ claims about a third-party certification, including through the use of a label, may be found to be misleading or deceptive even where they have obtained a certification. For example, where a misleading impression is created about what part of the business or product the claim applies to or what environmental or sustainability benefits are actually being accredited by the scheme. In this regard, an example of a business using a third-party label or certification which it has obtained in a way that is likely to be misleading or deceptive should be included in the draft guidance.
- 11 We also reiterate our recommendation that the **guidance should be reviewed and updated at regular intervals**, and that a consistent approach between regulators, including industry regulatory bodies such as Ad Standards, should be adopted.

12 We also note the comments in the draft guidance in relation to the ACCC's compliance and enforcement approach. In this respect, we would suggest that it may be helpful to businesses, consumers and interest groups for the ACCC to **publish information about the actions taken** in relation to greenwashing in order to provide greater clarity and to emphasise the seriousness of these issues. This may take a similar form to ASIC's report 'ASIC's recent greenwashing interventions' which outlines the regulator's interventions between 1 July 2022 and 31 March 2023 in relation to greenwashing concerns.

These key recommendations are discussed further below in response to the consultation questions.

RESPONSES TO CONSULTATION QUESTIONS FOR CONSUMERS AND CONSUMER ADVOCATES

1. Which types of environmental claims are most confusing to consumers?

Based on our experience, we consider the following categories of environmental and sustainability claims to be of particular concern:

- (a) claims that fossil fuels are ‘clean’ or ‘cleaner’ energy;
- (b) net zero claims and targets without a reasonable basis;
- (c) claims of carbon neutrality without a reasonable basis;
- (d) claims disregarding the whole of life cycle of products or services;
- (e) positive environmental claims based on offsetting schemes;
- (f) vague claims such as ‘sustainable’ or ‘ethical’ which are not warranted;
- (g) unclear uses of environmental and sustainability labels and trademarks; and
- (h) an ancillary category to environmental and sustainability claims, relating to companies overstating their concern and respect for the interests of First Nations peoples.

We note that the majority of EDO’s work in relation to greenwashing has concerned the fossil fuel industry and, as such, our observations derive primarily from that area. However, our work has also included considering certain claims made by the plastics industry, aviation industry, automotive industry, timber industry, superannuation industry and finance industry, which also inform our observations.

Examples of concerning claims in each of these categories, and further details about why such claims are of concern, are set out in EDO’s submission to the Senate Standing Committees on Environment and Communications’ inquiry into greenwashing (**Senate Greenwashing Inquiry Submission**).⁹

⁹ Environmental Defenders Office, ‘Submission to the Senate Standing Committees on Environment and Communications on Greenwashing’ (9 June 2023) available at https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Greenwashing/Submissions.

2. What types of environmental or sustainability information do you think needs to be provided to consumers to allow them to make informed decisions?

Where businesses make environmental and sustainability claims, the information which supports those claims should be readily available and easily accessible to consumers to the greatest extent possible. In particular:

- (a) businesses should make publicly available the information which supports any environmental and sustainability claims made;
- (b) businesses should not make generic or vague environmental or sustainability claims in the absence of publicly available evidence of excellent performance relevant to the claim; and
- (c) environmental and sustainability claims should be consistent with the best available science, including in relation to 'net zero' claims.

To ensure transparency and clarity for consumers, businesses should publish detailed information, evidence and data to support their environmental and sustainability claims. This information should be easily accessible and all relevant information should be provided together. This is important for consumers to verify and trust claims and to make informed choices. This should include information which enables comparison with similar products or services. In this regard, we support Principle 2 (Have evidence to back up your claims) of the draft guidance.

Vague or general environmental and sustainability claims in the absence of supportive evidence have the potential to confuse consumers and distort competition. In this regard, we support Principle 5 (Avoid broad and unqualified claims) of the draft guidance. Consistent with the approach in the European Union's proposed amendments to the Unfair Commercial Practices Directive and Consumer Rights Directive, we consider that greater clarity may be achieved by indicating that it is misleading or deceptive to make generic environmental claims for which a business does not provide evidence of the recognised excellent environmental performance relevant to the claim.¹⁰

We also note that businesses' environmental and sustainability claims should be consistent with the best available science, including the way in which terminology and concepts are used. This will avoid confusion and enable businesses' claims to be more easily compared and verified. For example, where businesses make claims relating to 'net zero', the meaning of that term should be consistent with international standards and best available science, including the SBTi's Corporate Net Zero Standard and the recommendations of the UN Expert Group. While net zero commitments are increasingly prevalent among businesses, the credibility of those commitments varies markedly, partly

¹⁰ Report on the proposal for a directive of the European Parliament and of the Council on amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information' (11 May 2023) <https://www.europarl.europa.eu/doceo/document/TA-9-2023-0201_EN.html>, Amendment 6.

due to the absence of a required standard. This gives rise to significant difficulties for consumers trying to compare and assess the veracity of companies' commitments and plans. For example, by 31 March 2023, 61% of ASX200 companies had made a net zero commitment.¹¹ However, inconsistently with the UN Expert Group recommendations and SBTi Corporate Net Zero Standard, many of those commitments covered only scope 1 and 2 emissions or did not provide clear detail on what emissions were covered.¹²

We **recommend** that the draft guidance better address this issue by amending Principle 2 (Have evidence to back up your claims) to state that any terms or concepts used in businesses' environmental and sustainability claims should be consistent with the meaning of those terms according to international standards and the best available science, with references to useful guidance documents to assist companies. The ACCC should also consider publishing standards or other more detailed guidance for certain claims, including net zero commitments or claims. In this regard, we reiterate our Recommendation 1 to the Senate Greenwashing Inquiry recommending the introduction of legally enforceable standards on environmental and sustainability claims that:

- (a) set out the substantiation requirements for all environmental and sustainability claims;
- (b) for certain environmental and sustainability claims, set out the specific requirements which apply, reflecting best available scientific and technical information, including relevant international standards, and provide that uses of those claims which are inconsistent with the requirements are misleading or deceptive; and
- (c) set out the further substantiation, communication and verification requirements for the use of environmental and sustainability labels.

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

- (a) For example, do you think information should be provided on product labels, websites, or through QR Codes?**

It is essential that environmental and sustainability claims are clear and easy to understand, and all information necessary to understand the true meaning of a claim is available where the claim is made. While it is useful for detailed information to be available

¹¹ Australian Council of Superannuation Investors, 'Promises, Pathways & Performance Climate Change Disclosure in the ASX200' (August 2023) <<https://acsi.org.au/wp-content/uploads/2023/08/Promises-Pathways-Performance-Climate-reporting-in-the-ASX200-August-2023.pdf>> page 8.

¹² Ibid.

to consumers separately to environmental and sustainability claims, that detail should not change or qualify the impression created by the claim.

We support businesses providing more detailed information linked to claims, for example underlying data or detailed plans, via a QR code or reference to a website. However, it is essential that this information is only further detail which is consistent with the claim and does not in any way change the impression created by the claim. Businesses should not rely on consumers reading information outside of the claim to clarify its meaning. Examples of this include claims about ocean plastic that rely on detailed information about the underlying industry definition, and claims based on trademarks such as the Responsible Wood certification trademark which rely on underlying certification criteria. Claims on products however may give the misleading impression that a higher threshold has been met than required by the underlying definition or criteria. These examples are discussed further below.

The way in which a claim is presented should also be appropriate to the medium where it is made. For example, disclaimers are generally not appropriate on product labels as it is difficult to read the fine print and consumers are often making quick purchasing decisions based on the claims on the product and comparisons between several products. Consumers should not be expected to spend considerable time reading the entire product label to properly understand the claim.

Under Principle 2 (Have evidence to back up your claims), the draft guidance suggests that evidence can be provided 'directly where the claim is made, or through accessible click-through links if you are selling online'. We note that, while we consider this suitable for evidence which is consistent with the overall impression created by the claim, caution should be taken in relation to click-through links where the linked page includes details that may change the overall impression or scope of the claim.

In this regard, we **recommend** that the draft guidance in relation to Principle 2 (Have evidence to back up your claims) clarifies that all information necessary to understand the claim must be provided where the claim is made, and that any additional information or evidence provided separately to the claim must not alter the impression created by the claim.

(b) Do you think certified trademarks and other certification schemes help consumers better understand a business' environmental and sustainability credentials?

In our view, certification schemes and certification trademarks are only beneficial where the certification scheme itself is credible and is aligned with what consumers expect the scheme trademark or label represents. The increasing proliferation of certification schemes, including industry schemes or schemes based on self-certification, minimises their utility as they are difficult to compare and create confusion for consumers.

We have observed an increasing number of certification marks or labels that are underpinned by potentially problematic schemes. For example, EDO assisted The Australia Institute in making a complaint to the ACCC regarding allegedly misleading representations by Climate Active about the Climate Active trademark program.¹³ The complaint raised concerns that consumers may be misled into thinking that companies using the Climate Active trademark have met a higher threshold than is required by the certification scheme. The Department of Climate Change, Energy, the Environment and Water is currently conducting a consultation on the future direction of Climate Active, which is considering a range of issues including the use of the Climate Active trademark.¹⁴

These concerns extend to approved certification trademarks (**CTMs**). Certification schemes are a particularly problematic area as there is a reasonable expectation that the schemes are subject to rigorous assessment and review mechanisms. In our Senate Greenwashing Inquiry Submission, we outlined concerns in relation to the Responsible Wood CTM.¹⁵ The Responsible Wood CTM is said to help companies and consumers identify and promote materials from sustainably managed forests. We are concerned that the use of the word ‘responsible’ in the CTM may have the potential to mislead consumers. Contrary to what consumers may expect when they see the words ‘Responsible Wood’ on an end product, the certification rules do not certify ethical practices but rather a sustainable forest management system which is based on general criteria developed by Responsible Wood. For example, a report from a Responsible Wood certifier BSI Australia found no nonconformance with the CTM in relation to VicForests despite a finding in the Federal Court that VicForests past and proposed logging breached Victorian logging laws.¹⁶ Forestry Corporation of NSW has also retained its certification despite significant prosecution by the Environmental Protection Agency in recent years, including for breaching conditions of its integrated forestry operations approval,¹⁷ breaching conditions of a biodiversity licence,¹⁸ and breaching conditions of a threatened species licence.¹⁹

We have also found that industry generated and self-certified schemes are of limited value. For example, EDO assisted Tangaroa Blue Foundation to lodge a complaint with the ACCC which raised concerns in relation to the use of the terms ‘ocean plastic’ and ‘ocean bound plastic’ without communicating an exact definition. The complaint noted that the industry definition of ‘ocean bound plastic’ may be at odds with what ordinary consumers understand the term to mean, for example plastic already in the ocean or shoreline. The plastics industry has defined ocean bound plastics as ‘any plastics located within 50km

¹³ ‘Climate Active trademarks – carbon neutral claims’ (February 2023) <<https://australiainstitute.org.au/wp-content/uploads/2023/02/Australia-Institute-complaint-Climate-Active-WEB.pdf>>.

¹⁴ ACCC, ‘Department of Climate Change, Energy, the Environment and Water – CTM application – 2042153’ <<https://www.accc.gov.au/public-registers/certification-trade-marks-register/departments-of-climate-change-energy-the-environment-and-water-%E2%80%93-ctm-application-%E2%80%93-2042153>>.

¹⁵ Senate Greenwashing Inquiry Submission, page 24.

¹⁶ *VicForests v Friends of Leadebeater’s Possum Inc* [2021] FCAFC 66.

¹⁷ *Environment Protection Authority v Forestry Corporation of NSW* [2022] NSWLEC 75

¹⁸ *Environment Protection Authority v Forestry Corporation of New South Wales* [2022] NSWLEC 70.

¹⁹ *Chief Environmental Regulator of the Environment Protection Authority v The Forestry Corporation of New South Wales* [2017] NSWLEC 132.

from shores where waste management is inefficient and therefore could end up in the ocean'.¹⁰

We consider that the draft guidance section on third-party labels and certification, under Principle 7 (Visual elements should not give the wrong impression), is useful. However, we make the following **recommendations** to strengthen this section of the draft guidance:

- (a) the draft guidance should go further than suggesting that it is 'good practice to offer consumers details of further information on the scheme', and advise that businesses should ensure that consumers are able to access specific information including about the ownership of the scheme, the criteria underlying the accreditation, and procedures for dealing with non-compliance;
- (b) the draft guidance should caution against the use of industry and self-certification schemes and should explicitly say that if a product has been self-certified, businesses must make this clear where the certification claim is made or label is used; and,
- (c) the draft guidance should make clear that businesses' claims about a third-party certification, including through the use of a label, may be found to be misleading or deceptive even where they have obtained a certification. For example, where a misleading impression is created about what part of the business or product the claim applies to or what environmental or sustainability benefits are actually being accredited by the scheme. In this regard, an example of a business using a third-party label or certification which it has obtained in a way that is likely to be misleading or deceptive should be included in the draft guidance. It may also be important to ensure that, where a certification scheme is related to overseas products, it is clear what checks should be undertaken by any business relying on those claims in Australia. For example, many overseas ocean plastic products are not appropriately certified and this is often difficult for a business based in Australia to determine. Similar issues arise in relation to offsets based overseas, as highlighted in the Australian Broadcasting Network's Four Corners investigation into a carbon offset project in Papua New Guinea which revealed environmental devastation in some of the areas which had been the subject of offsets relied upon by Australian companies.²⁰

We also reiterate the following **recommendations** in EDO's Senate Greenwashing Inquiry Submission:

- (a) Recommendation 1: The introduction of legally enforceable standards on environmental and sustainability claims (as set out in full above);

²⁰ Australian Broadcasting Network, 'Carbon Colonialism: Can carbon credits really save the planet?' (13 February 2023) <<https://www.abc.net.au/news/2023-02-13/carbon-colonialism/101968870>>.

- (b) Recommendation 3: Urgent review of existing CTMs to ensure that those CTMs are sound having regard to the principles of competition, unconscionable conduct and consumer protection, and having regard to the best available technical and scientific information; and,
- (c) Recommendation 4: Reforms to the mechanisms for review of CTMs, including enabling ACCC to independently initiate a review of a CTM and to withdraw approval for a CTM or require changes to the CTM rules.

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

In our view, the principles and examples in the guidance will assist businesses in understanding how to make accurate and trustworthy environmental and sustainability claims.

However, we consider that clearer standards would provide more certainty and ease of enforcement. In this regard, we reiterate our Recommendation 1 to the Senate Greenwashing Inquiry of the introduction of **legally enforceable standards on environmental and sustainability claims** (as set out in full above). This is particularly important for net zero claims. We are frequently encountering situations where companies are selectively using only the few emissions scenarios that suit their existing strategies rather than considering and presenting a broader range of scenarios and the underlying assumptions such as the level of reliance on currently uncertain technologies like carbon capture and storage.²¹ In our experience, this is particularly prevalent in the fossil fuels industry and highlights the need for guidance for fossil fuel companies to be stronger. This is critical because many fossil fuel companies currently have expansion plans that are simply not consistent with a credible net zero claim, despite making public representations that they are committed to net zero.

We also **recommend** that the guidance should be reviewed and updated regularly to continue to assist businesses, including updated examples relevant to current issues. Further, a consistent approach between regulators, including industry regulatory bodies such as Ad Standards, should be adopted in relation to environmental and sustainability claims.

²¹ See, for example, Carbon Brief, 'Guest Post: How not to interpret the emissions scenarios in the IPCC report' (30 March 2022) <<https://www.carbonbrief.org/guest-post-how-not-to-interpret-the-emissions-scenarios-in-the-ipcc-report/>>.

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?

We consider the draft guidance articulates broad principles which make good sense in assisting businesses and consumers to make and understand environmental and sustainability claims.

In our view, there are some respects in which the guidance could offer greater clarity, having regard to our above responses to the consultation questions.

As noted above, we recommend the draft guidance provide greater clarity in relation to offsets, scope 3 emissions, accounting for all types of greenhouse gases, claims covering corporate groups, requirements for future representations, the use of terms and concepts consistently with the best available science, the provision of all relevant information where a claim is made, the use of disclaimers, additional examples of broad headline claims, and requirements in relation to certification schemes. In addition, we recommend that the draft guidance is reviewed at regular intervals, that a consistent approach be adopted between regulators, and that the ACCC publish information about the actions taken in relation to greenwashing.