



# Climate Active Program Direction Consultation

**ACCC submission to the Department of Climate  
Change, Energy, the Environment and Water Climate  
Active Program Direction Consultation**

15 December 2023

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# Part 1: Introduction

## Introduction

The Australian Competition and Consumer Commission (**ACCC**) welcomes the opportunity to make this submission to the Department of Energy, Environment, Climate Change and Water (**the Department**) on the direction of the Climate Active program.

The Department notes that the voluntary climate action landscape has changed significantly since 2010 when the program was first introduced.<sup>1</sup> The ACCC welcomes the Department's proposal to update the Climate Active program to take into account evolving consumer expectations, and international best practice, in relation to voluntary claims about climate change action.<sup>2</sup>

## Increasingly, many consumers want to make more sustainable purchasing decisions

Many Australian consumers want to reduce the negative impacts of their consumption choices on the environment, and purchase goods and services that are marketed using claims about environmental impact. It is important for consumer protection that when businesses choose to make voluntary claims about their efforts to address climate change or other environmental issues – including through promoting their certification by a third party – that the claims are accurate, substantiated, and aligned with the understanding of the ordinary and reasonable consumer.

It is critical that Australian consumers wishing to support businesses taking voluntary climate action are provided with accurate and transparent information to inform their purchasing decisions. This promotes informed consumer choice, and also helps make sure that efforts by business to invest in sustainability initiatives (and make related claims) are not undercut by competitors making similar claims without foundation.

Demand from consumers creates an incentive for businesses to take steps to reduce the environmental impacts of their operations, and to promote this to prospective customers. Where a business can differentiate its operations from competitors, they should do so, and in turn, they should receive the benefits of that innovation. This will prompt a competitive response.

In this context, efforts to promote accurate environmental claims will help deliver economic and environmental benefits by promoting competitive markets that incentivise the allocation of consumer and business capital toward voluntary sustainability initiatives.

## Trust marks can play an important role in assisting consumers and business

Many consumers do not have the ability to easily and accurately verify environmental claims made by business. Trust marks, which certify a business as having demonstrated environmental credentials, can be a simple mechanism to assist consumers, and are increasingly common in the Australian market.

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<sup>1</sup> Department of Climate Change, Energy, the Environment, and Water, [Climate Active Program Direction Consultation 2023](#), Consultation paper, p 4.

<sup>2</sup> Department of Climate Change, Energy, the Environment, and Water, [Climate Active Program Direction Consultation 2023](#), Consultation paper, pp 4 and 8.

Climate Active is one of the most prominent environmental trust marks operating in the Australian market. It is intended to support consumer confidence in, and enhance consistency between, claims about voluntary climate action,<sup>3</sup> defined by the Department as action by businesses and organisations to avoid, reduce and offset emissions without a legislated requirement to do so.<sup>4</sup> Climate Active is also intended to provide a framework to help facilitate efforts by Australian businesses, organisations and individuals to take ambitious and meaningful action on climate change.<sup>5</sup>

### Importance of trust marks for consumers

For trust marks to enhance consumer trust and confidence, they need to be underpinned by robust standards that are aligned with the consumer understanding of what the trust mark represents. This helps facilitate easy consumer identification of products, services and businesses that they wish to support.

It is also important that consumers that rely on trust marks are able to access additional clear and detailed information about the requirements for certification and how the certification has been achieved and maintained by the particular business, if they wish to do so.

### Importance of trust marks for business

It is not essential for businesses that choose to make environmental claims to rely on a trust mark. However, a trust mark can support businesses that make environmental claims by providing a basis for any claims. Trust marks can also assist businesses, particularly small to medium enterprises, by providing accessible frameworks and guidance that make it easier for businesses to take steps to engage with sustainability. This can encourage investment by promoting certainty about what action is required to support a claim, thereby reducing 'greenhushing'<sup>6</sup> risk.

The ability of a trust mark to support business in this regard is enhanced if the trust mark is accessible to any business that is able to demonstrate compliance with the standards for certification. Material barriers to participation can undermine the effectiveness of the program. From a small business perspective (many of which may not have access to significant resources to dedicate to sustainability), a key consideration is the cost of participation in a scheme and this must be weighed against the benefits of participation. It is therefore important that unnecessary costs are minimised (otherwise achievement of a trust mark can become cost-prohibitive), though this cannot come at the expense of the integrity of the certification standards.

## About the ACCC

The ACCC is an independent Commonwealth statutory agency that promotes competition, fair trading and product safety for the benefit of consumers, businesses and the Australian community. The primary responsibilities of the ACCC are to enforce compliance with the competition, consumer protection, fair trading and product safety provisions of the

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<sup>3</sup> Department of Climate Change, Energy, the Environment, and Water, [Climate Active Program Direction Consultation 2023](#), Consultation paper, p 4.

<sup>4</sup> Department of Climate Change, Energy, the Environment, and Water, [Climate Active Program Direction Consultation 2023](#), Consultation paper, p 4.

<sup>5</sup> Department of Climate Change, Energy, the Environment, and Water, [Climate Active Program Direction Consultation 2023](#), Consultation paper, pp 4 and 7.

<sup>6</sup> 'Greenhushing' refers to a situation where a business withholds environmental information that would be of use to consumers due to concerns about growing public scrutiny or regulatory action being taken in relation to such claims.

*Competition and Consumer Act 2010* (Cth), regulate national infrastructure and undertake market studies.

## Concerns relating to environmental claims are a compliance and enforcement priority for the ACCC

The ACCC, together with state and territory consumer protection agencies, enforces prohibitions on businesses engaging in misleading or deceptive conduct or making false or misleading representations about goods or services under the Australian Consumer Law.<sup>7</sup>

Environmental claims that are false or misleading - where a claim represents a product, service or the business itself as better for or less harmful to the environment than it really is (often referred to as 'greenwashing') - can harm the competitive process and lead to consumer detriment. Greenwashing can:

- limit a consumer's ability to make informed choices between different businesses, products or services in the market and undermine consumer trust;
- lead consumers to pay more for the value of an environmental impact that does not exist, including missing out on cost savings over the long term;
- disadvantage businesses that have invested in a product or service which is genuinely more environmentally sustainable; and
- create a disincentive for businesses to genuinely reduce their environmental footprint and develop and invest in new goods and services which are more environmentally sustainable.

Consumer, product safety, fair trading and competition concerns in relation to environmental claims and sustainability is a compliance and enforcement priority for the ACCC in 2023–24.<sup>8</sup> This follows from the ACCC's 2022 sweep of online environmental claims, which found that 57% of 247 businesses were making potentially misleading green claims.<sup>9</sup> The ACCC is currently investigating a range of consumer, product safety, fair trading and competition concerns in relation to environmental claims and sustainability.

To assist business in understanding their obligations, the ACCC published guidance about making environmental and sustainability claims.<sup>10</sup>

## Certification trade marks

Under the *Trade Marks Act* 1995, the ACCC has a role in assessing certification trade mark (CTM) applications that are lodged with IP Australia. A certification trade mark indicates to consumers that a product or service meets a particular standard (for example, goods are of a particular quality, or manufactured at a particular location with a particular process).

All certification trade marks have rules about the standards that must be met in order to use the mark or logo. Before a certification trade mark can be registered, the ACCC is required to have regard to the principles relating to competition, unconscionable conduct and consumer protection concerns, including whether the CTM may be misleading or deceptive to the public. Registration provides certification trade mark owners with the exclusive right to:

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<sup>7</sup> The Australian Securities Investment Commission (ASIC) is responsible for enforcing prohibitions on misleading or deceptive conduct in relation to financial services.

<sup>8</sup> ACCC '[Compliance and enforcement policy and priorities](#)'.

<sup>9</sup> ACCC, '[Greenwashing by businesses in Australia – findings of ACCC's internet sweep](#)', 2 March 2023.

<sup>10</sup> ACCC, '[Making environmental claims: A guide for business](#)', December 2023.

- use the certification trade mark; and
- allow others to use the certification trade mark.

## Status of Climate Active certification trade mark application

The ACCC understands that Climate Active is currently operating under a license model, whereby the Department licenses the right to display the climate active mark (in exchange for a licence fee) to businesses that have met the relevant Climate Active certification requirements.

On 8 October 2019, the Department (then known as the Department of Industry, Science, Energy and resources) applied to IP Australia to register the Climate Active Carbon Neutral certification trade mark intended to certify businesses for reducing and offsetting greenhouse gas emissions.

On 22 March 2021, IP Australia provided the CTM rules to the ACCC for evaluation. Since that time, the Department has provided 3 revised versions of the rules following engagement with the ACCC.

On 16 June 2023, the Department requested the ACCC suspend its assessment of the CTM rules due to the Departments consultation on the future direction of the Climate Active program.

The ACCC's assessment of the Climate Active certification trade mark application is suspended until future notice.

## ACCC Sustainability Taskforce

In December 2022, the ACCC established a Sustainability Taskforce within the ACCC to develop the ACCC's expertise in relation to sustainability and facilitate an integrated approach across its competition and consumer functions.

## Part 2: ACCC submission in relation to proposed reforms to Climate Active program

### Context of ACCC submission

The ACCC understands that the Department has developed the proposed reforms to the Climate Active program in the context of changing expectations of best-practice voluntary climate action,<sup>11</sup> and that the proposed reforms have been informed by stakeholder engagement as well as work being completed by other Australian Government departments (eg, Treasury) and the ACCC.<sup>12</sup>

Several of the reforms proposed by the Department seek to promote principles of consumer protection by seeking to better align the requirements to achieve certification within the program with the expectations of consumers. Many of the issues being considered by the Department as part of the Climate Active program reform process are also being considered

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<sup>11</sup> Department of Climate Change, Energy, the Environment, and Water, [Climate Active Program Direction Consultation 2023](#), Consultation paper, p 2.

<sup>12</sup> Department of Climate Change, Energy, the Environment, and Water, [Climate Active Program Direction Consultation 2023](#), Consultation paper, p 5.

by the ACCC, and other domestic and international competition and consumer agencies and policy makers.

The ACCC understands that the Climate Active program has the potential to provide various benefits to consumers and other market participants, including promoting market integrity, offering a transition pathway for business, promoting competitive conduct, and providing a tool for business (e.g, in identifying supply chain partners) and consumers to make purchasing decisions.

This ACCC has limited the scope of its submission to feedback on the Department's proposed reforms to the extent that they relate to the ways that consumers understand voluntary emissions related claims (and consequential impacts on competition between businesses and actions to attract consumers). Some of the issues discussed in this submission may also be relevant to market participants other than consumers (e.g, other businesses) that rely on the mark.

The ACCC has not commented on aspects of the proposed reforms or questions asked by the Department which we do not consider relate to consumer and competition protection issues.

The ACCC's feedback on the Department's proposed reforms is set out below.

## **Proposals 1 and 2: Emission reduction targets**

Proposals 1 and 2 put forward by the Department are designed to strengthen the emissions reduction requirements under the Climate Active program. The Department proposes to introduce a requirement that all participating business and organisations set a near-term and long-term gross emissions reduction target aligned with Australia's Nationally Determined Contribution. Certification will also be limited to businesses and organisations that can credibly demonstrate that they are on track to meet their near-term gross emissions reduction targets.

The ACCC understands that Proposals 1 and 2 were developed partly in response to stakeholder feedback that consumer expectations have shifted to prioritise direct emissions reductions (i.e, before offsetting) by businesses and organisations that engage in voluntary climate action.<sup>13</sup> The Department has also noted that these proposals would more closely align the program's requirements to the mitigation hierarchy for voluntary climate action where emissions should first be avoided, then reduced through further direct mitigation actions, and finally offsetting any residual emissions.<sup>14</sup>

Proposals 1 and 2 will help bring certification requirements within the program in line with community expectations about businesses' voluntary climate action initiatives. Reduced discrepancy in relation to how certification can be achieved will also build coherence between claims. These factors should assist consumers (and may also benefit other market participants) to identify businesses that are capable of, and choosing to, take action to reduce their climate change impact.

The ACCC considers that the following principles will remain important to facilitate transparency for consumers as Proposals 1 and 2 (in conjunction with other proposals being

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<sup>13</sup> Department of Climate Change, Energy, the Environment, and Water, [Climate Active Program Direction Consultation 2023](#), Consultation paper , p 9.

<sup>14</sup> Department of Climate Change, Energy, the Environment, and Water, [Climate Active Program Direction Consultation 2023](#), Consultation paper , p 5.

considered by the Department such as the development of certification claims and pathways under Proposals 7 and 8) are further developed:

- a. Consumers should be able to distinguish between the different actions that businesses have made to reduce their emissions (or the emissions of a product / service) as opposed to offsetting them. If this distinction is not clear, it creates the potential for two competing businesses, products or services to obtain, and trade on, the same certification despite having very different inherent environmental impacts, which may reduce the ability of consumers to make informed purchasing decisions.
- b. It is important that consumers can identify businesses, products and services that have inherently high emissions intensity (e.g, fossil fuel products). Consumers should be able to identify these businesses, and make decisions about whether or not they wish to support them.
- c. In relation to reduction targets, these need to be supported by genuine, realistic plans to achieve them. Goals should be clear and achievable (with realistic and verifiable steps in place to action them based on accepted methodologies, resources and technologies), and businesses should genuinely intend to meet them and have a reasonable basis to expect they will do so.
- d. Protections should be in place to ensure that businesses are not able to use creative emissions accounting to overstate, and therefore potentially mislead consumers, about their emissions reduction efforts. For example, businesses should not be able to artificially inflate their 'baseline' emissions to give the impression that they have reduced emissions by more than they actually have in subsequent years, and should not be able to misleadingly 'double count' emissions abatement.<sup>15</sup>

### **Proposal 3: Emissions boundary and mandatory inclusions**

The Department is proposing to develop additional guidance to support businesses and organisations in establishing the emissions boundary for certifications. The Department notes in its consultation document that this will help improve the completeness, consistency and comparability of claims that are made under the Climate Active Program.<sup>16</sup>

The ACCC understands that the Department is implementing this change in response to feedback from stakeholders in relation to the process for determining which emissions are required to be included within an emissions boundary for a Climate Active certification. The Department has noted that it has received feedback that:<sup>17</sup>

- a. The process of participants making judgements about which emissions sources are relevant can make business-to-business emissions comparisons difficult and create confusion for consumers.
- b. Some members have a more comprehensive coverage of emissions than others, which risks reducing public understanding of 'carbon neutral' claims made within Climate Active.

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<sup>15</sup> For example, double counting of abatement attributable to offset projects can occur if offsets are not cancelled in the relevant offset registry, or if the owner of the offset project accounts for emissions abatement achieved in its own accounts, and also generates and sells offset units to a third party. As discussed below, double counting may also occur in the context of emissions abatement achieved by investment in renewable energy.

<sup>16</sup> Department of Climate Change, Energy, the Environment, and Water, [Climate Active Program Direction Consultation 2023](#), Consultation paper, p 13.

<sup>17</sup> Department of Climate Change, Energy, the Environment, and Water, [Climate Active Program Direction Consultation 2023](#), Consultation paper, p 11.

The ACCC considers that the Department’s proposal to reduce discretion regarding which emissions sources are included in the emissions boundary will increase consistency between claims. Consistency of which emissions sources must be included will limit the potential for competing businesses to obtain the same certification despite applying different methodologies in relation to which emissions are / are not included in an emissions boundary. This will reduce the risk that decision making of consumers that rely on the mark is impeded by a lack of understanding about which emissions are included.

The Department is proposing to mandate the inclusion of specific indirect emissions (known as ‘scope 3’ emissions) as part of the emissions boundary for all certifications. The ACCC understands that this is consistent with developments domestically and internationally to mandate climate disclosure for certain companies.<sup>18</sup> Further, an increasing number of businesses that are making consumer-facing claims are choosing to voluntarily account for and mitigate their scope 3 emissions in order to win consumer demand and gain a competitive advantage.<sup>19</sup>

As the Department develops guidance in relation to which emissions are to be included within an emissions boundary, the ACCC encourages the Department to consider the following to ensure that there is clarity for consumers about what certification represents:

- a. The emissions boundary for each certification category should include all emissions that an ordinary and reasonable consumer would understand to be included when they view the certification. In many cases, this will include the lifecycle impacts of a product, service or organisation.
- b. There should be no ability for businesses to exercise discretion to exclude material sources of emissions that an ordinary and reasonable consumer would expect them to have accounted for when viewing the mark.
- c. If the Department decides to retain multiple certification categories within Climate Active, it should be clear to consumers when they view the mark what each certification category represents, including which emissions have been included in the emissions boundary.
- d. The Department states that some stakeholders have noted that different sectors have different decarbonisation pathways, and minimum program requirements should consider these differences.<sup>20</sup> While the ACCC recognises that there may be different options available to different businesses in terms of steps that they can

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<sup>18</sup> The Australian Government is implementing mandatory climate-related financial disclosure requirements for certain entities from July 2024. Initially only scope 1 and 2 emissions will be required to be disclosed, however, disclosure of material scope 3 emissions is expected to be phased in for all reporting entities from their second reporting year onwards. See: [https://www.aasb.gov.au/admin/file/content105/c9/AASBED\\_SR1\\_10-23.pdf](https://www.aasb.gov.au/admin/file/content105/c9/AASBED_SR1_10-23.pdf). In November 2022, the EU adopted the Corporate Sustainability Reporting Directive which requires companies to disclose information on sustainability matters that affect the company including scope 3 emissions when reporting on emission targets. See: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022L2464>. The state of California in the US is also expected to pass a bill requiring public and private companies that operate in California and earn more than \$1 billion a year to disclose their emissions, including scope 3 emissions. While these requirements relate to corporate claims to investors, they are illustrative of evolving expectations around what is required in order to properly understand the environmental impact of a business.

<sup>19</sup> For example, in order to make a claim pursuant to the Voluntary Carbon Markets Integrity Initiative (which the ACCC understands is considered a global leader in relation to standards for consumer-facing, voluntary, emissions based claims), a business must maintain a publicly available emissions inventory covering all scope 1, 2, and 3 emissions in accordance with the Greenhouse Gas Protocol (or equivalent). For near-term targets, companies are required to follow the Science Based Targets Initiative (SBTI) criteria for setting the target boundary and emissions coverage (this means 95% coverage of scope 1 and 2 emissions, and 67% coverage of scope 3 emissions, if scope 3 emissions represent over 40% of the inventory from all scopes). See: <https://vcmintegrity.org/wp-content/uploads/2023/06/VCMI-Claims-Code-of-Practice.pdf>.

<sup>20</sup> Department of Climate Change, Energy, the Environment, and Water, [Climate Active Program Direction Consultation 2023](#), Consultation paper, p 8.

take to reduce or mitigate their emissions, a business operating in a hard-to-abate sector<sup>21</sup> should not be treated differently in relation to the emissions that it is required to quantify and account for as part of its emissions boundary. Where businesses choose to use the mark, it is important that they provide transparent information to consumers about the environmental impact of their business, product or service, as well as any steps they are taking to mitigate that impact. Consumers are then empowered to make an informed purchasing decision as to whether or not they choose to support that business.

## **Proposal 4: Recognised offset units and offset integrity**

The Department is proposing to reduce the number of international offset units which are eligible under the Climate Active program by introducing a 5-year rolling vintage requirement (Proposal 4).

The Department has explained that Proposal 4 is consistent with the recommendation of the Climate Change Authority to bring offset rules within Climate Active in closer alignment with the standards and rules of the Paris Agreement.<sup>22</sup>

The ACCC understands that by introducing stricter requirements in relation to the offsets recognised under Climate Active, Proposal 4 aims to enhance the integrity of offsets recognised under the program, as well as reduce the variation between the different offset units that underpin certifications.

Effective efforts to enhance the integrity and reduce variations in the quality of offsets recognised within Climate Active are important from a consumer protection and market integrity perspective and will help build trust in, and facilitate reliance on, the Climate Active program. This is because:

- a. When a business makes a sustainability claim, consumers expect that the business has taken action that has resulted in a real world outcome that matches the claim. When a business makes a sustainability claim that is underpinned by offsets, this means that the relevant offsetting activities must result in scientific impacts that match the claim. Claims underpinned by offset projects that lack integrity (ie, where the offset projects do not cause actual emissions removal or avoidance, or where the abatement achieved by the offset project is double counted) may risk misleading consumers about the extent of environmental benefit that has been achieved.
- b. Less variation between the integrity of offset projects that are eligible to support a Climate Active certification helps promote certifications that are readily comparable in terms of environmental impact. There are a number of offset units on the market, with significant variations in price (which the ACCC understands is a common indicator of how the market perceives offset integrity). Significant variations in the quality of recognised offsets undermines coherence between certifications, which may make it difficult for consumers that are relying on the mark to identify the products, services and business that they wish to support.

Significant variations in the quality and price of eligible offset projects recognised under the program may also financially incentivise the purchase of lower cost offsets (i.e, because low

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<sup>21</sup> 'Hard-to-abate' refers to sectors that have high levels of emissions and a high barriers to reducing those emissions, for example due to a lack of viable technology, or high capital cost technology.

<sup>22</sup> Department of Climate Change, Energy, the Environment, and Water, [Climate Active Program Direction Consultation 2023](#), Consultation paper, p 14.

cost offsets can be used to obtain the same certification – and advantage in the marketplace – as a competitor that has purchased high integrity offsets). This may undermine the incentives for businesses to invest in high integrity projects to underpin voluntary claims within the program.

Given the importance of offset integrity to the veracity of claims to both consumers and other businesses, the ACCC encourages the Department to continuously take steps to promote and verify the integrity of offset projects recognised within the program, including regularly monitoring to ensure that eligible units within the program are of high integrity.<sup>23</sup>

Participants in the Climate Active program should still take reasonable steps to verify the integrity of the offset projects they support, and provide information about those projects to consumers. As noted in the ACCC's guidance to businesses on making environmental and sustainability claims, when a business chooses to make a claim that is underpinned by offsetting, it is good practice to provide information about the types of projects that offsets have been generated from, and:<sup>24</sup>

- a. take reasonable steps to verify the integrity of project, including verifying that the emissions abatement to the offset project has not already been claimed by the project owner, and that offsets representing the same emissions benefit have not been issued under multiple different registries;
- b. provide up-to-date information about the registry on which they are listed with details of the offsets relinquished or cancelled each year; and
- c. where practicable, make this information readily accessible to consumers.

## Proposal 5: Electricity emissions

Under Proposal 5, the Department is proposing to:

- a. Mandate the use of the market-based accounting method when calculating greenhouse gas emissions from electricity use within the Climate Active program.
- b. Introduce a new requirement that participants source a minimum percentage of renewable energy under market-based accounting methods.

Under current requirements, businesses report the emissions resulting from their electricity use using both the market-based and location-based accounting method, but choose which method they use for the purposes of calculating their emissions liability. This impacts the quantum of offsets that a business is required to purchase in order to achieve certification.

The use of different accounting methods can mean that similar consumer facing claims about emissions related to electricity use may not be readily comparable. The ACCC therefore considers that the Department's proposal to require all businesses within Climate Active to use the same, market-based emissions accounting system, will help facilitate consistency within the program in terms of how businesses quantify their electricity emissions and consequently make claims. This will improve coherence between claims, increasing the ability of consumers to rely on the mark.

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<sup>23</sup> For example, the Climate Active integrity principles require that abatement is additional, permanent, measurable, transparent, address leakage, independent audited and registered, Department of Climate Change, Energy, the Environment, and Water, [Climate Active Program Direction Consultation 2023](#), Consultation paper, p 12.

<sup>24</sup> ACCC, ['Making environmental claims: A guide for business'](#), December 2023.

The Department is also proposing to introduce a requirement for participants to source a minimum amount of renewable energy to be calculated under the market-based method. The ACCC considers this will improve consistency between the actions that participants are required to take – in relation to electricity emissions – to achieve certification, which will improve coherence between claims made under the Climate Active program.

Together, these proposals will enhance consistency between voluntary claims made about electricity emissions within the Climate Active program and contribute to greater transparency for Australian consumers that rely on the mark.

As the Department develops its market-based accounting standards, it will be important that principles of competition and consumer protection are considered *within* the market-based framework. For example, to the extent that a business is claiming to use renewable energy, it is important that this claim is not double counted. For example, by both using and claiming to use renewable energy onsite (e.g. in manufacturing production) while simultaneously generating and on-selling certificates to third parties who then also claim to be using the same renewable electricity. Double counting in this context can mean that representations to consumers about electricity emissions reduction efforts may be overstated and / or inaccurate.

As the ACCC has noted previously<sup>25</sup>, the simultaneous use of location based and market based accounting methods across the broader economy may result in multiple businesses claiming the emissions benefit of the same renewable energy. The ACCC will continue to consider complex competition and consumer issues associated with the simultaneous use of different accounting methods more broadly, including in relation to voluntary consumer facing claims made outside of the revised Climate Active program.

## Proposals 7 and 8: Carbon neutral certification and certification pathways

Through Proposals 7 and 8, the Department is proposing to:

- a. Discontinue the term 'carbon neutral' and to introduce a different term to describe the certified claim within the Climate Active program. The Department notes that it is proposing this reform in response to stakeholder feedback that there is some confusion around the term 'carbon neutral' for both businesses and consumers.<sup>26</sup> The ACCC understands that this is consistent with emerging international trends around the use of similar terms in the context of voluntary corporate claims about emissions.<sup>27</sup>
- b. Introduce a certification pathway for the program, which would allow businesses (that are not certified) to be recognised for taking steps toward certification. The Department notes that this proposed reform responds to feedback that certification

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<sup>25</sup> ACCC, [Submission to Senate Environment and Communications References Committee](#), June 2023

<sup>26</sup> The Department notes for example the Voluntary Carbon Markets Integrity Initiative's Claims Code of Practice, available at [VCMI Claims Code of Practice](#); United Nations High Level Expert Group on the Net-Zero Emissions Commitments by Non-State Entities report, [Integrity Matters: Net-Zero Commitment by Business, Financial Institutions, Cities and Regions](#); Department of Climate Change, Energy and the Environment and Water, [Climate Active Program Direction Consultation 2023](#), Consultation paper, p 16.

<sup>27</sup> For example, in September 2023 the European Parliament and Council reached provisional agreement on new [rules](#) to protect consumers, which includes banning generic environmental terms such as 'climate neutral' without proof of recognised excellent environmental performance relevant to the claim. The ACCC is also aware of growing international jurisprudence considering the degree of explanation required to underpin a 'climate neutral' claim in product advertising, see Regional Court of Frankfurt am Main, judgment of 17.03.2022, ref 3-10 O 14/22; Regional Court Mönchengladbach, judgment of 11.01.2022, ref. 8 O 17/21 – *Climate-neutral jam*; Regional Court Stuttgart, judgment of 05.12.2022, ref. 53 O 169/22.

should be reserved for organisations achieving best-practice climate action (in line with consumer expectations about what certification represents), but also that the program should assist all businesses to understand and be accountable for their emissions.<sup>28</sup>

The ACCC considers that as the Department further considers each of these proposals, it will be important that:

- a. the meaning of a new term(s) for certified claims; and
- b. the different stages of the proposed certification pathway (and the terms used to describe them),

are clear to consumers and aligned with their expectations. This will help ensure consumers and market participants have information about what a business has or has not achieved, which facilitates informed purchasing decisions.

## Importance of enforcement and review of the Climate Active scheme

To ensure the Department's proposed reforms are effective, and to promote consumer and business trust in the Climate Active program, it is also important that the program standards (and revised standards once reforms are implemented) and other requirements of the Climate Active program are properly enforced. This should include regular and robust auditing of participants, and appropriate enforcement for non-compliance with program certification standards, marketing guidelines and other requirements.

Additionally, it is important that any supporting evidence behind the certification is publicly available, easy to find and understand. This assists in building trust in the program and also enables consumers who wish to look 'behind the mark' to better understand the detail of the efforts that different certified businesses have made to achieve certification.

It is also important that the Climate Active program is subject to routine review to align the certification standards with developments in consumer understanding of 'voluntary' climate action (for example, as governments mandate more stringent requirements for the business community or international best practice develops).

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<sup>28</sup> Department of Climate Change, Energy, the Environment, and Water, [Climate Active Program Direction Consultation 2023](#), Consultation paper, p. 16.