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Contact: Tim Kelly

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Australian Competition and Consumer Commission
EnforcementCoordination@accc.gov.au

Gawler



Town of Gawler Administration Centre
43 High Street
Gawler East SA 5118
PO Box 130
Gawler SA 5118
Phone: (08) 8522 9211
council@gawler.sa.gov.au
gawler.sa.gov.au

To the ACCC Enforcement and Coordination Team

RE: Town of Gawler Submission to the ACCC - *Environmental and Sustainability Claims - Draft Guidance for Business, July 2023.*

Thank you for the opportunity to provide feedback on the *Environmental and Sustainability claims – Draft Guidance for Business*. This guidance is important for businesses, consumers and all entities towards having clear and consistent rules relating the products and services that they buy, and how end user claims are made.

The Town of Gawler was the first council in South Australia to declare a Climate Emergency and has now inspired 15 other South Australian Councils to declare a climate emergency and take action. Council has established a Climate Emergency Action plan to lead in its reduction of emissions towards net zero and to enable households and businesses in our community to also take strong action towards achieving net zero emissions. However, Councils and communities receive mixed messages and conflicting guidance relating to renewable electricity and carbon offset products, services and claims.

Since 2020, the Town of Gawler has strongly advocated for clear and consistent rules for renewable electricity and carbon offsets so that there can be confidence in these products, fair pricing structures and meaningful guidance for customer claims to prevent greenwashing and double counting.

Whilst the *Draft Guidance (2023)* builds on current ACCC documents: *Your consumer rights (2011)* and: *Environmental claims and Green marketing and the Australian Consumer Law (2011)*, it does not provide the clear and consistent guidance relating to renewable electricity and carbon offset abatement claims which are a major cause of uncertainty and concern for low carbon markets including for Councils and their communities as consumers.

It is noted that the ACCC has listened to concerns of Council and that it is not the rule maker in regard to carbon accounting and government voluntary schemes. It is also important to acknowledge that without clear and consistent rules established in legislation for the trading and claims relating to low carbon goods and services, greenwashing and double counting cannot be prevented, even when unintentional.

Please find attached to this letter the Town of Gawler's Submission on the ACCC draft *Environmental and Sustainability Claims - Draft Guidance for Business*.

Once again, I thank you for the opportunity to provide feedback on this important area of policy. I ask that if you have any further questions to please contact Councils Environment and Sustainability Officer, Mr Tim Kelly on (08 8522 0143) or via email at Tim.Kelly@gawler.sa.gov.au

Yours faithfully



Henry Inat
Chief Executive Officer

Telephone: (08) 8522 9221
Email: Henry.Inat@gawler.sa.gov.au

Attached

Town of Gawler Feedback on the Draft *Accounting for Environmental and Sustainability Claims - Draft Guidance for Business*

Feedback on the Principles

The eight following principles identified in the *Draft Guidance* are noted:

- Principle 1:** Make accurate and truthful claims
- Principle 2:** Have evidence to back up your claims
- Principle 3:** Don't leave out or hide important information
- Principle 4:** Explain any conditions or qualifications on your claims
- Principle 5:** Avoid broad and unqualified claims
- Principle 6:** Use clear and easy-to-understand language
- Principle 7:** Visual elements should not give the wrong impression
- Principle 8:** Be direct and open about your sustainability transition

Of these principles, there is concern that the rules that underpin renewable electricity and abatement relating to carbon offsets, continue to not be underpinned by a legislated market-based accounting framework and the accreditation schemes do not address systemic double counting matters. Consequently, it is not possible for businesses to adhere to Principles 2, 3 or 4.

Where businesses and consumers are not provided with the full information to understand the products and services they are consuming and there is mixed messaging from Government agencies and scheme guidance, the outcome is that businesses cannot provide consumers with the necessary information and evidence about the products and services being traded.

In this submission the Town of Gawler (Council) responds to the discussion questions with respect to Principles 2, 3 and 4.

Council also suggests the addition of three additional principles to assist markets to operate with greater clarity and integrity:

Principle 9: No Double Counting

There should not be two or more end user claims for the same renewable electricity or abatement.

Principle 10: Legislated foundation for the trading of products and services that cannot be physically viewed or touched

This principle refers specifically to the attributes that are being claimed, not just the assurance certificates.

Principle 11: Consumers should not be charged for more than 100%

When consumers seek 100% renewable electricity or 100% offset electricity products, they should not be charged for more than 100% renewable electricity, without full disclosure.

It is acknowledged that the proposed Principles 9 and 10 cannot be implemented by businesses in the absence of Government and departments designing the accounting and accreditation schemes to prevent all forms of double counting, underpinned with appropriate legislation/legislative instruments. Without clear and consistent legislated rules administered by Government agencies, Principles 2, 3, 4 and 11 cannot be implemented.

Consultation questions

Questions for businesses and industry associations

1. What are you most unsure about when making environmental or sustainability claims?

Environmental and sustainability claims can be accurately disclosed where there are real tangible projects, initiatives and actions that can be demonstrated, sighted, measured quantified and disclosed.

It is important to note through where attributes of actions are traded and sold or managed through accounting and market schemes, the claims are only as good as the integrity of those schemes.

Renewable electricity use, greenhouse gas emissions and carbon offsets are essential for Local Government and their communities to progress towards net zero emissions but the current legislation, accounting frameworks, rules and product disclosure are not fit for purpose and create problems such as systemic double counting and unfair pricing.

Councils are not certain of what methods should be utilised to claim renewable electricity use, account for electricity emissions or carbon offset emissions. This is because there are conflicting methods that are promoted in different schemes at the same time, and no single market wide legislated accounting framework applies.

Council is not confident in the environmental claims relating to renewable electricity, ACCU Carbon offsets and other products and services that integrate renewable electricity and carbon offset claims in supply chain products and services.

Council is also not confident in its default allocation for renewable electricity as a result of its mandatory contributions to the Renewable electricity target, because the Department of Climate Change, Energy, the Environment and Water (DCCEEW) and the Clean Energy Regulator (CER) do not publish data for general default consumer renewable electricity use as the starting point for buying extra renewable electricity towards 100%.

There are several schemes that provide accreditation for products and/or organisations such as GreenPower, Climate Active, the Corporate Emissions Reduction Transparency Report, CER Voluntary surrender of Large-Scale Certificates and CER Voluntary retirement of ACCUs. However, these accreditation schemes are not yet underpinned by a legislated market-based accounting framework to apply consistently across the market. Such schemes all include market based ACCU Carbon Offsets and renewable electricity methods that contradict the NGER and National Greenhouse Accounts (NGA) Factors location-based accounting methods. This results in systemic double counting and confusion across the entire market.

As the ACCC stated in its recent submission to the Senate Greenwashing Inquiry:

The ACCC is considering challenges arising from the different accounting methods (including location based and market based scope 2 accounting). These accounting methods cannot be used simultaneously without double counting of the 'zero emissions attribute' of renewable electricity across the economy.

The problem equally applies to carbon abatement claimed through Australian Carbon Credit Units (ACCUs) where the abatement is allocated 'on site' and in the 'sector of origin', as well as being claimed by ACCU carbon offset end users. A market-based approach would apply debit and credit rules to transfer the abatement as a negative scope 3 emission, but market-based debit and credit rules have not yet been created to enable offset trading and claims.

There are compounding uncertainties associated with:

- large scale renewable electricity production and consumption behind the meter where Large-scale Generation Certificates are created and sold, to cause another source or rapid growth in double counted renewable electricity.
- Small scale renewable production and consumption behind the meter where this has been entirely allocated to the grid, without informing households and other small scale system owners that this was occurring. From 1 July 2023, DCCEEW has allocated 47% of small-scale renewables to the system owner and 53% to the grid. There are however some residual issues to be addressed being that:
 - 53% of the hot water, heat pump and air pump renewables are still being allocated to the grid when this cannot occur based on the laws of physics.
 - GreenPower and voluntary renewable electricity customers are not yet protected from paying for the mandatory grid allocated component twice.

2. Do you feel confident that you know how to express an environmental or sustainability claim clearly and accurately?

No,

In so far as renewable electricity, carbon offset and net zero claims are made, it is not yet possible to receive an environmental claim that has legislative integrity and is not double counted. It is therefore not yet possible to make a further environmental claim without misleading stakeholders.

3. How do you decide which claims to make and what evidence you have to support those claims?

The Town of Gawler adopted its Climate Emergency Action Plan in August 2022 which includes the actions targets and goals that Council is seeking to achieve. Council claims are and will be based on monitoring the data and progress compared against its 2018-19 baseline performance.

Council has an aspirational target for net zero emissions in Council operations by 2030 and is taking steps to achieve this outcome. Council also has an aspirational goal that "Communities are enabled to achieve net zero emissions by 2030".

Key subordinate targets compared to a 2018-19 baseline include:

- A 100% renewable electricity target
- An 25% energy efficiency improvement target
- Transitioning to electric vehicles
- A greening of Gawler canopy target
- A target for 20 water sensitive urban design projects

4. What influences your decision on whether you make an environmental or sustainability claim?

When the administration reports progress to Council or community in the public domain, environmental progress becomes an environmental claim.

RENEWABLE ELECTRICITY

Council is claiming its renewable electricity performance in accordance with a Council approved *Interim method* to define renewable electricity use in the absence of a legislated method definition provided by Government.

Council is not confident in any renewable electricity values due to the current state of the accounting and scheme frameworks and has instead prepared its Interim Method to describe what Council is claiming and why.

ENERGY EFFICIENCY

For Energy efficiency, Council can report on achievements through individual projects and comparing electricity consumption annually compared to the baseline year using data from electricity bills.

TRANSITIONING TO ELECTRIC VEHICLES

As fossil fuel powered vehicles in Council's vehicle fleet are replaced with electric vehicles, council will report progress as a percentage of vehicles.

GREENING OF GAWLER CANOPY TARGET

Published data describes the Town of Gawler canopy for green cover at 15% in 2015. Since that time the State Government has undertaken a range of remote sensing including thermal imagery, near infrared imaging, Canopy Cover assessment and LIDAR capture. The newer data and other updated sources will be used to assess changes in canopy cover for reporting.

5. Are there environmental or sustainability claims in your industry that are concerning?

GENERAL CONCERNS REGARDING THE ACCOUNTING AND ASSURANCE FRAMEWORKS

Claims relating to renewable electricity and carbon offsets are of concern to Council as the products purchased or may purchase, and the subsequent claims that Council may make are not adequately underpinned by legislation and are double counted.

SPECIFIC CONCERN ABOUT WHETHER ACTIONS ARE ADDITIONAL

When consumers purchase low carbon goods or services from the market there are two common conditions being sought in a transaction These are:

- a need for green consumers to be allocated an attribute such as renewable electricity use or low emissions.
- a desire by green consumers to be confident that what they are buying is additional, to make a difference. If an outcome was already required by policy or law, then why would a customer pay more to achieve an outcome that was already required.

Consumers can generally justify paying for goods and services when at least one of these conditions are met but if both conditions are not met, there is cause for greater concern.

There is a risk that accredited renewable electricity and abatement claimed through ACCU carbon offsets to not satisfy either of these conditions.

Currently, accredited renewable electricity at zero emissions and abatement from ACCU carbon offsets is not legally allocated to consumers buying those products.

There is also a concern that the design of Australia's Nationally Determined Contribution (NDC) to the Paris Climate Agreement means that voluntary action is not additional to Australia's reduction target of 43% below 2005 levels by 2030. The current design counts all actions as part of the NDC. The Federal Government has stated that Australia's NDC is a floor and not a ceiling on climate action but, without a mechanism to establish these voluntary actions as additional to the NDC, more action from voluntary consumers may result in less action being required from large emissions intensive businesses.

6. Do you think this draft guidance will improve business confidence when making environmental or sustainability claims?

The guidance to businesses could work if the accounting frameworks and assurance schemes were reformed. Without comprehensive reform, the market, businesses and consumers cannot act with clarity and integrity. For low carbon markets, the same issues

relating to unclear information will be encountered when trying to implement the proposed 2023 guidance as exist with the current 2011 ACCC guidance.

7. *Is there anything else you would like to have more guidance about? Environmental and sustainability claims*

There are issues that all businesses face when using frameworks which may include significant systemic flaws, and this is the case with accredited renewable electricity and ACCU carbon offset abatement. If businesses are to comply with **Principle 3: Do not hide important information**, is there also requirement to disclose the issues relating to the claims even where these may be products sold under Government accreditation schemes?

For example:

- With GreenPower claims, should Council disclose our understanding that the claim of renewable electricity use at zero emissions is double counted and not supported in legislation?
- With ACCU carbon offset claims, should Council disclose that there is a risk that the abatement may be claimed at the site of a project and the Council abatement claim may be double counted and not supported in legislation?
- Should the way voluntary renewable electricity and ACCU Carbon abatement claims are not additional to Australia's international commitments also be disclosed?

Questions for consumers and consumer advocates

1: *Which types of environmental or sustainability claims do you think are the most confusing for consumers?*

Response:

For renewable electricity, carbon abatement and net zero aspirations every claim is difficult to justify and difficult for consumers. The more information that consumers have and the more accreditation schemes that are created, the more confusing the claims become, because they are not underpinned by an accurate single market-based accounting framework that makes sense.

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?*

Response:

For renewable electricity, carbon abatement and supply chain purchasing decisions, the most important information is that which can demonstrate integrity, fairness and prevents double counting.

Ensuring fairness includes that consumers should not be charged for more than 100% renewable electricity when paying for 100% renewable electricity.

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?*

Response:

For companies selling products and services that include renewable electricity and low carbon claims, product disclosure statements should be made available prior to and during sales.

For companies making direct consumption and reputational claims, disclosure should be made regarding what has contributed to underpin the claim.

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

Response:

Trademarks and certification schemes are only as good as the legislation, accounting practices and standards that underpin the claim.

In Australia, both the accredited renewable electricity and carbon offset standards and schemes are not adequately underpinned by legislated market-based accounting, despite this being essential for the success of allocating renewables use and abatement to consumers. The NGER Determination and national Greenhouse accounts allocate these attributes with location-based accounting first and then allow market based accounting as an optional choice. As a consequence, all renewable electricity and abatement from renewables and offsets is double counted. No debit and credit rules apply to the abatement.

Climate Active, GreenPower, the LGC voluntary surrender mechanism and Corporate Emissions Reduction Transparency report scheme are all impacted by the lack of legislated market-based accounting rules to apply equally across the economy. These schemes do not disclose key information that stakeholders and consumers should be informed of.

It is acknowledged that the GHG Protocol Scope 2 Guidance and the International Financial Reporting Standards promote dual reporting but within dual reporting, in order for market based claims to have integrity, the location based claims are for context and comparison only, not for reputational, product and service based claims. Dual reporting must not be allowed to become double counting.

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

Response:

When renewable electricity and ACCU abatement claims are made there is a need for a higher standard of assurance because these are not products that can be physically handed over, sighted or touched in a way that the consumer can know that they have received the allocation that they have paid for. Renewable electricity allocation and abatement are not like a block of chocolate, a car, or a bottle of milk so there is a need for clearly defined tradable units, a legislated accounting framework and basic debit and credit rules to protect against double counting. A significant improvement would be achieved by establishing the following three Principles to the ACCC guidance:

PRINCIPLE 9 - No Double Counting – that is, there should be no two end user claims for the same renewable electricity or abatement.

PRINCIPLE 10 - A legislated foundation for the trading of products and services that cannot be physically viewed or touched – this Principle refers specifically to the attributes that are being claimed, not just the assurance certificates.

PRINCIPLE 11 - Consumers should not be charged for more than 100% - when consumers seek 100% renewable electricity or 100% offset products, they should not be charged more than 100%, without full disclosure.

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

Response:

In conclusion, businesses require clear and consistent rules for renewable electricity, use of carbon offsets and low carbon products and services in order to be adequately informed so that they can avoid greenwashing misleading their customers and stakeholders. The products and services they buy and the accreditation frameworks that assure these products and services must be defensible against concerns raised and if this is not possible then issues should be acknowledged, addressed and fixed.

The issues are caused by a lack of inclusion in legislation as follows:

LARGE-SCALE RENEWABLE ELECTRICITY CERTIFICATES (LGCs)

Part 2, Subdivision A Section 18 of the *Renewable Energy (Electricity) Act 2000* describes how Large-scale Generation Certificates (LGCs) are created but does not describe what they are, nor does it describe attributes that the units contain, nor does it describe how any attributes might be traded in a way that prevents double counting.

No debit and credit rules apply to the renewable electricity use at zero emissions under this Act or any other legislative instrument.

EXTRACT - Renewable Energy (Electricity) Act 2000

Subdivision A—Large-scale generation certificates for accredited power stations

17 C Large-scale generation certificates

Certificates created under this Subdivision are large-scale generation certificates.

18 Creating certificates for additional renewable electricity

- (1) The nominated person for an accredited power station may create a certificate for each whole MWh of electricity generated by the power station during a year that is in excess of the power station's 1997 eligible renewable power baseline.
- (1A) A certificate must not be created in respect of a whole MWh of electricity generated partly in 1 year and partly in the following year.
- (2) If the amount of electricity generated by an accredited power station during a year that is in excess of the power station's 1997 eligible renewable power baseline is less than 1 MWh but greater than or equal to 0.5 MWh, the nominated person for the power station may create 1 certificate in respect of the electricity generated during the year.
- (3) The amount of electricity generated by an accredited power station is to be worked out in accordance with the regulations.
- (4) Electricity is to be excluded from all calculations under this section:
 - (a) to the extent that the electricity was generated using any energy sources that are not eligible energy sources; or
 - (b) to the extent that the electricity was generated during any period of suspension of the accreditation of the accredited power station under section 30D or 30E; or.....

The legal foundation for voluntary renewable electricity markets to operate, appears to be absent.

AUSTRALIAN CARBON CREDIT UNITS (ACCUs)

Part 2, Division 1, Section 11 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* describes how Australian Carbon Credit Units are created but does not describe what they are, nor does it describe attributes that the units contain, nor does it describe how any attributes might be traded in a way that prevents double counting. No debit and credit rules apply to the abatement.

No debit and credit rules apply to the abatement claimed through ACCUs under this Act or any other legislative instrument.

EXTRACT - Carbon Credits (Carbon Farming Initiative) Act 2011

Division 2—Issue of Australian carbon credit units in respect of offsets projects

11 Issue of Australian carbon credit units in respect of offsets projects

Scope

(1) This section applies if a certificate of entitlement is in force in respect of an eligible offsets project for a reporting period.

Note: For certificate of entitlement, see section 15.

Issue of units

- (2) If the project has resulted in eligible carbon abatement, the Regulator must, as soon as practicable after the day on which the certificate was issued, issue to the holder of the certificate a number of Kyoto Australian carbon credit units equal to the number specified in the certificate as the unit entitlement for that certificate.
- (3) If the project has not resulted in eligible carbon abatement, the Regulator must, as soon as practicable after the day on which the certificate was issued, issue to the holder of the certificate a number of non-Kyoto Australian carbon credit units equal to the number specified in the certificate as the unit entitlement for that certificate.
- (5) The Regulator must not issue an Australian carbon credit unit to a person in accordance with subsection (2) or (3) unless the person has a Registry account.

Note 1: See also section 49 (issue of Australian carbon credit units to registered native title bodies corporate).

Note 2: See also section 141 (issue of Australian carbon credit units in relation to projects with multiple project proponents).

The legal foundation for voluntary carbon offset abatement markets to operate, appears to be absent.