



ASIC
Australian Securities &
Investments Commission

Climate Active Program Direction Consultation 2023

Submission by the Australian Securities and Investments Commission

December 2023

Overview

- 1 The Australian Securities and Investments Commission (ASIC) welcomes the opportunity to provide a submission to the Department of Climate Change, Energy, the Environment and Water (DCCEEW) in response to the Consultation Paper: *Climate Active Program Direction Consultation 2023*, issued October 2023 (the Consultation Paper).
- 2 The Consultation Paper seeks views on the direction of the Climate Active program, an Australian Government program that seeks to drive voluntary climate action.
- 3 This submission concerns the proposals in the Consultation Paper for reforms to Climate Active's 'carbon neutral' trademark, and the inclusion of specified scope 3 emissions when Climate Active certification is sought. ASIC supports both proposals, in order to improve understanding by consumers and investors of the meaning of the Climate Active certification.
- 4 We would also encourage alignment of the Climate Active program settings with forthcoming sustainable finance reforms, including mandatory climate reporting by large businesses and financial institutions, development of a sustainable finance taxonomy, and introduction of a labelling scheme for sustainable investment products, to ensure that consumers and investors will not need to navigate conflicting concepts or settings under concurrent climate-related frameworks.

ASIC's role

- 5 ASIC is Australia's integrated corporate, markets, financial services and consumer credit regulator. Our core objectives under the *Australian Securities and Investments Commission Act 2001* include promoting fair and efficient markets, and confident and informed investor and consumer participation in the financial system.
- 6 The physical impacts of climate change and the growing emphasis on decarbonisation, alongside the response of government and businesses to these dynamics, are transforming our economy. Reflecting this, we have seen increased demand for sustainable products and services, and for companies to communicate their environmental, social and corporate governance credentials. With this demand comes increased risk of greenwashing.

- 7 For this reason, one of ASIC’s key current enforcement priorities, which will continue in 2024, is targeting misleading conduct in relation to sustainable finance, including greenwashing.
- 8 In May 2023, we released [Report 763 ASIC’s recent greenwashing interventions](#), outlining regulatory interventions taken by ASIC in relation to potential greenwashing in the financial system (including enforcement action in relation to ‘carbon neutral’ representations). ASIC has also issued [Information Sheet 271](#), which provides guidance to market participants about how to avoid greenwashing when offering or promoting sustainability-related products.
- 9 Although ASIC does not play a role in the administration of the Climate Active program, Climate Active certification is available to, and has been obtained by, members of ASIC’s regulated population, and in relation to products and services within ASIC’s regulatory remit.
- 10 ASIC is also supporting the Government’s work on a suite of sustainable finance reforms, and will be administering the forthcoming mandatory climate reporting regime. These reforms will likely intersect with the Climate Active program in some areas.

Proposal 7 – Discontinuing the term ‘carbon neutral’

- 11 ASIC supports Proposal 7 set out in the Consultation Paper to discontinue the term ‘carbon neutral’ in the Climate Active certification trademark.
- 12 We consider that the current ‘carbon neutral’ terminology may cause confusion or misunderstanding for consumers and investors, by reason of both the rules that underpin the trademark, and the manner of use of the trademark by businesses.

Rules for trademark

- 13 We understand that Climate Active certification is available for various certification categories, including for organisations, products, services, events, buildings and precincts, and that certification is open to businesses and organisations that are assessed as meeting the requirements of the relevant Climate Active Carbon Neutral Standard, as developed and administered by DCCEEW.
- 14 We also understand that Climate Active 'organisation' certification does not necessarily cover the entirety of a business’s operations, and can be obtained in relation to part of its operations (for example a business's head office operations).

15 Similarly, we understand that Climate Active 'product' certification can be obtained on the basis of a particular product line, a single product or suite of products, or in relation to opt-in options offered by an entity.

Use of trademark

16 We have seen market and financial system participants use the Climate Active 'carbon neutral' certification trademark in concerning ways, particularly in circumstances where the certification is displayed in website, advertising or disclosure material (including market announcements) without adequate clarity as to the basis and scope of the certification.

17 For example, a company might display its Climate Active 'carbon neutral' organisation trademark in a way that could be misunderstood by consumers or investors to represent that all, or a significant proportion of, the company's business operations were carbon neutral. In reality, the certification might have been obtained on the basis of only a small proportion of the company's business operations, or on the basis of emissions sources that represent a small percentage of the company's total scope 1, 2 and 3 emissions.

18 Similarly, a company might display its Climate Active certification for a 'carbon neutral' product in a way that suggests that all products offered by the company are carbon neutral, when the certification applies only to a specific product or products offered by the company.

19 In these circumstances, it might be difficult for consumers or investors to discern the boundaries of a company's Climate Active certification and the extent of their carbon neutrality. This could lead to confusion or mistaken assumptions that the product a consumer is purchasing, or the company that they are investing in, is wholly carbon neutral, when it is not.

20 We have also observed companies using their Climate Active 'carbon neutral' certification to support or substantiate other claims that the company is "carbon neutral", "net zero", or has "zero carbon emissions". Companies may not have a reasonable basis to make these claims if their Climate Active certification is based on only a proportion of their business or a particular product, rather than the business as a whole.

Proposal 7 – Replacing the term 'carbon neutral'

21 Proposal 7 of the Consultation Paper also suggests replacing the term 'carbon neutral' with a new term.

22 We do not consider that it is necessary to replace the term 'carbon neutral' (once discontinued) with another term. However, if replacement terminology

is to be adopted, we agree with the observations in the Consultation Paper that it should be meaningful, and not general or ambiguous in nature.

- 23 We would also suggest that any replacement term be consumer-tested before adoption, to ensure that it does not give rise to confusion or misunderstanding.

Proposal 7 – Other suggested changes

- 24 In addition to discontinuing use of the term ‘carbon neutral’, we would also suggest that consideration be given to revising the Climate Active ‘organisation’ certification. The current terminology tends to suggest that the entirety of a business (including all of its products and services) is carbon neutral, when this is often not the case.
- 25 In the alternative, consideration could be given to limiting the issue of the ‘organisation’ certification to circumstances in which the entirety of a business (including all of its products and services) is carbon neutral.
- 26 Further, we would suggest consideration be given to requiring entities using the Climate Active certification trademark, or making claims about Climate Active certification, to clearly disclose any use of carbon offsets to achieve certification. In our view, consumer and investor understanding of the meaning of Climate Active certification would be advanced by clarity as to whether the certification has been obtained with reliance on offsets, or through emissions reductions alone.

Proposal 3 – Guidance on emissions boundaries

- 27 We understand that currently, whilst scope 1 and scope 2 emissions sources must be included when seeking a Climate Active certification, scope 3 emissions sources are only included if assessed as relevant by the entity seeking certification.
- 28 Proposal 3 of the Consultation Paper seeks feedback on mandating the inclusion of certain scope 3 emissions sources for all Climate Active certifications.
- 29 ASIC supports this approach. Requiring entities to include scope 3 emissions sources within the emissions boundary of their Climate Active certification would reduce the greenwashing risk attaching to use of the ‘carbon neutral’ trademark, particularly for common scope 3 emissions sources. Inclusion of scope 3 emissions would also be consistent with the forthcoming mandatory climate reporting regime, which will require disclosure of scope 3 emissions by reporting entities.

- 30 Further, removal of the ability for entities to self-assess relevant scope 3 emissions will address a current weakness of the Climate Active program. The current setting could result in inconsistent treatment of scope 3 emissions by entities, impairing the ability of consumers and investors to make sound comparisons between entities and between products.
- 31 More generally, greater consistency and comparability in emissions boundaries across certified entities may also promote consumer and investor certainty in the financial system, increasing confidence and knowledge about the emissions footprint of these entities.

Alignment with mandatory climate reporting and other sustainable finance reforms

- 32 The Australian Government has committed to introducing mandatory climate reporting requirements for a range of large businesses and financial institutions, which is currently proposed to commence from 1 July 2024.
- 33 We would encourage consideration to be given to aligning the Climate Active certification requirements, including in particular any disclosure requirements in relation to climate metrics and targets, with the incoming climate reporting requirements (see, for example, paragraphs 33 to 37.1 of the Draft Australian Sustainability Reporting Standard 2 released by the Australian Accounting Standards Board). This will ensure that there is consistency and comparability across disclosures to assist consumer and investor understanding, while also reducing regulatory burden for participating organisations.
- 34 The Government's broader sustainable finance strategy also proposes the introduction of a sustainable finance taxonomy, as well as a labelling scheme for sustainable investment products. There is similarly potential for terminology or requirements adopted under these frameworks to conflict with aspects of the Climate Active program.
- 35 In the interests of ensuring that consumers and investors are not faced with inconsistent climate-related concepts and settings under each of these different regimes, it may be desirable for the Climate Active program to be revisited once this suite of reforms is further progressed, with broader consideration given to whether participation in the Climate Active program should remain open for entities or products captured by the reforms.