

# Eligible Carbon Claims In The Voluntary Carbon Market

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# Objective

- The interaction of carbon claims with the competition regulatory framework in Australia.
  - *Trade Practices Act 1974 (Cth) (TPA)*.
- Precautions that corporations should take to ensure that a carbon claim does not constitute misleading and deceptive conduct pursuant to the *TPA*.

# Carbon Claims

- ‘Carbon claims’ are a popular method to achieve an environmental conscious image.
- For example, by advertising products to be:
  - low in carbon; or
  - carbon neutral.

Capital West is  
Carbon Neutral



We're living  
up to our name.

SunChips® snacks are now made with  
the help of solar energy in California.

As of April 22nd, one of our plants is using solar energy to help  
make SunChips® snacks not just because it's in our name,  
but because it's part of our vision for a healthy planet.  
It's a small step, but a step in the right direction.



I WENT  
FOR A  
BURRITO  
AND  
STAYED TO  
SAVE THE  
PLANET.



Eco-Gifts

Proudly Carbon Neutral



Google's  
**GREEN SIDE**

In 2007, Google  
reached its **goal** of becoming

**CARBON  
NEUTRAL.**



# Definitions

- Participants in the voluntary market:
  - Providers:
    - Businesses that invest in offset projects and generate carbon offsets for sale in the form of carbon credits.
  - Business Purchasers:
    - Businesses that purchase carbon credits.
  - Individuals:
    - Consumers who purchase carbon credits to offset their personal emissions.

# Available Guides

- ACCC:
  - *Carbon Claims and the Trade Practices Act*
  - *Green Marketing and the Trade Practices Act*
- The Department of Climate Change:
  - National Carbon Offset Standard (NCOS) in January 2010

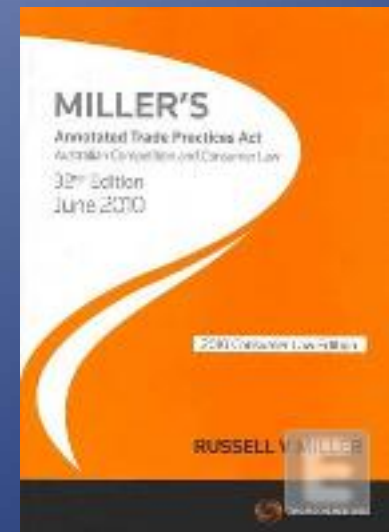


# NCOS

- NCOS is susceptible to being overwhelmed by the introduction of a mandatory scheme e.g. CPRS.
  - BUT the CPRS has been delayed.
- NCOS seeks to:
  - ‘ensure that consumers have confidence in the voluntary carbon offset market and the integrity of the carbon offset and carbon neutral products they purchase.’

# *Trade Practices Act 1974 (Cth)*

- S.52
  - ‘a corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.’



# *Trade Practices Act 1974 (Cth) (Cont)*

- ‘Misleading and deceptive’
  - Describing conduct that conveys a meaning inconsistent with the truth.
  - Often used interchangeably.
  - Objective test on representative member of the class of persons to whom the conduct was directed at.

# *Trade Practices Act 1974 (Cth) (Cont)*

- S.53:
  - A corporation that makes a representation with respect to a future matter without reasonable grounds is misleading.
- It is also an offence for a corporation to engage in conduct that may mislead the public as to the:
  - nature;
  - manufacturing process;
  - characteristics; and
  - quality of goods.

# Misleading and deceptive carbon claims

- Carbon claims may be misleading and deceptive through false representations or non-disclosure regarding:
  1. the quality of carbon credits;
  2. the quantity of carbon credits; and
  3. substantiating carbon claims.

# *ACCC v GM Holden* [2008] FCA 1428 (*Saab Case*)

- GM Holden advertised in newspapers and magazines.
  - ‘Grrrreeeeen’
  - ‘Every Saab is green. With carbon emissions neutral across the entire Saab range’
  - ‘Shift to neutral’
  - Represented that GM Holden would plant 17 native trees which would offset the carbon dioxide emissions for the life of that motor vehicle

# The new Grrrrrrreen.

New Saab 9-3. Sleek. Powerful. Grrrrreen.  
Carbon emissions are offset across the entire Saab range.



# Grrrrrrreen.

Every Saab is green. Carbon emissions are neutral  
across the entire Saab range.

[- CLICK HERE TO SHIFT TO NEUTRAL](#)



# Quality of Carbon Credits

- Additionality
  - What is it?
- Eligible sources of carbon credits
  - What are they?

# Quality of Carbon Credits

- Additionality:
  - ‘Requirement that a project or activity provide(s) abatement that is additional to any that would occur in the absence of the project or activity and that is additional to abatement that would occur anyway...’
  - Determine a clear and credible baseline and ensure that carbon credits referred to in carbon claim are additional.

# Quality of Carbon Credits

- Eligible sources of carbon credits include:
  - voluntary retirement of Australian Emissions Units;
  - certain units achieved by projects approved under the CDM and JI projects under the Kyoto Protocol; and
  - credits issued under the Voluntary Carbon Standard and Gold Standard.

# Quantity of Carbon Credits

- Business Purchasers need to determine the quantity of carbon credits to be purchased by calculating the carbon footprint.
- *Saab Case*:
  - Declared by the Federal Court to be misleading.
  - Implied that the carbon emissions for the car's life had been offset when only emissions to the first year of a car's use had been taken into account.



# Quantity of Carbon Credits

- Recommended steps:
  1. A Business Purchaser must decide whether to make carbon claim in relation to one product or business entity as a whole.
  2. Calculate the carbon footprint associated with the claim.
  3. 'Low carbon' or 'carbon neutral'?
  4. Purchase sufficient carbon credits to offset the carbon footprint associated with the claim.

# Substantiating Carbon Claims

- Issues:
  - forward purchasing;
  - retirement of carbon credits;
  - security of carbon credits; and
  - representations regarding future matters.

# Substantiating Carbon Claims

- Forward purchasing:
  - Forward selling: Where carbon claims are sold prior to the actual occurrence of the offset.
  - Risk that the carbon credits sold may never eventuate and the carbon claim made by the Business Purchaser to an End Consumer may not be fulfilled.

# Substantiating Carbon Claims

- Prevent through:
  - buffer funds; and
  - certainty through contractual clauses.

# Substantiating Carbon Claims

- Retirement of carbon credits:
  - Carbon credit in the voluntary market only offsets another greenhouse gas emission when it is 'retired'.
  - Business Purchasers should verify with the Provider that the carbon credits of a project will be registered on a transparent and easily accessible registry.

# Substantiating Carbon Claims

- Security of carbon credits
  - Permanence:
    - ‘... the generation of offsets to have actually occurred and the carbon stored or sequestered not to be released into the atmosphere in the future.’
  - Business Purchasers should have some assurance from Providers that carbon will be captured by some permanence.



# Substantiating Carbon Claims

- Include a reasonable time limit before emissions will be offset.

# V8 Supercars

- V8 Supercars Australia Pty Ltd announced that it would plant 10 000 native trees to fully offset carbon emissions from the V8 Championship series.
- ACCC concerned that this announcement implied that the trees would quickly absorb the carbon emissions when it was going to take several decades for trees to absorb the emissions.



# Substantiating Carbon Claims

- Representations regarding future matters
  - Ensure that a carbon claim is supported by a structured implementation strategy.



# Conclusion

- So, where to from here?

