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File Title:	PARENTS FOR CLIMATE LTD (ACN 637 293 746) v ENERGYAUSTRALIA PTY LTD (ACN 086 014 968)
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Important Information

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Form 17
Rule 8.05(1)(a)

Further Amended Statement of claim

Amended on 6 June 2024 pursuant to order 3 of the order of Wigney J dated 6 June 2024

No. NSD833 of 2023

Federal Court of Australia

District Registry: New South Wales

Division: Commercial and Corporations NPA

Regulator and Consumer Protection Sub-area

~~Australian~~ Parents for Climate ~~Action~~ Ltd (ACN 637 293 746)

Applicant

EnergyAustralia Pty Ltd (ACN 086 014 968)

Respondent

Note: All references to "relevant times" are references to the period from around 2019 to the date of this pleading.

A. Parties

A.1 ~~AP4CA~~Parents for Climate

1. The Applicant (**~~AP4CA~~Parents for Climate**) is:

   (a) a corporation incorporated under the laws of Australia; and

   (b) capable of suing in its corporate name.

2. ~~AP4CA~~Parents for Climate:

   (a) is a not-for-profit advocacy organisation and registered charity;

   (b) has as its mission increasing political will for climate action by engaging and empowering parents across Australia to advocate for climate action within their communities; and

   (c) in furtherance of its mission, provides parents with information about how they can reduce the climate change impacts of their household energy use.

Filed on behalf of (name & role of party) ~~Australian~~ Parents for Climate ~~Action~~ Ltd
Prepared by (name of person/lawyer) David Barnden
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A.2 EnergyAustralia

3. The Respondent (**EnergyAustralia**) is:

   (a) a corporation incorporated under the laws of Australia;

   (b) capable of being sued in its corporate name.

4. At all relevant times, EnergyAustralia's business involved:

   (a) the generation and supply of electricity;

   (b) the sale of electricity to residential and business customers; and

   (c) the sale of natural gas to residential and business customers.

5. At all relevant times, the energy generated by EnergyAustralia and supplied to its customers was primarily sourced from the combustion of fossil fuels.

Particulars

The "Our business" section of EnergyAustralia's website records that EnergyAustralia controls around 5,500 MW of electricity generation capacity in the National Electricity Market.

In around November 2022, EnergyAustralia published its "Climate Change Statement". That document records that "EnergyAustralia owns half of the Cathedral Rocks wind farm and has the rights to more than 900 MW of solar and wind farm power purchase agreements." The Applicant understands that the balance of EnergyAustralia's electricity generation (4,600 MW) is from the combustion of fossil fuels, primarily coal-fired power plants.

B. The EA Website

6. At all relevant times, EnergyAustralia maintained and maintains a website at the URL address <energyaustralia.com.au> (**EA Website**).

7. The EA Website was and is used by EnergyAustralia to:

   (a) promote its business and products to customers; and

   (b) provide information to customers and potential customers about its business and its products.

8. The class of persons who access the EA Website included and include:

   (a) persons browsing and comparing different energy plans;

(b) persons consciously looking to reduce the impact of their energy usage on the environment or the climate;

(c) persons who are in the practice of reducing or attempting to offset the greenhouse gas (**GHG**) emissions associated with their daily activities, and those who are not;

(d) persons who have an accurate understanding of what 'carbon credits', 'offsets' and 'carbon neutral' mean, and those who do not; and

(e) persons who have an accurate understanding of the different types of 'carbon credits' or 'offsets', and those who do not,

(the **Relevant Class**).

C. The Go Neutral Program

9. EnergyAustralia has a program that it refers to as 'Go Neutral'.

10. The 'Go Neutral' program has been available for:

(a) consumers of EnergyAustralia's electricity products since 2016; and

(b) consumers of EnergyAustralia's gas products since 2020.

11. EnergyAustralia customers with an active residential electricity or gas account can opt in to the 'Go Neutral' program through the EA Website.

12. If a customer opts into the 'Go Neutral' program, EnergyAustralia agrees to 'offset' the carbon emissions from the customer's electricity and/or gas consumption for no extra cost:

(a) on and from the date the customer opts in, if the customer is an existing customer and had an account with EnergyAustralia for at least six months;

(b) from the six month anniversary of the date the customer's EnergyAustralia account is established, if the customer is a new customer or a customer where the account has been with EnergyAustralia for less than six months.

Particulars

Terms and conditions published on the EA Website at <https://www.energyaustralia.com.au/home/electricity-and-gas/go-neutral/opt-in-for-carbon-neutral/>.

13. If the customer moves premises or their EnergyAustralia account number changes, the 'Go Neutral' option on their account is cancelled and they would need to opt in again to access the 'Go Neutral' program.

Particulars

Terms and conditions published on the EA Website at <https://www.energyaustralia.com.au/home/electricity-and-gas/go-neutral/opt-in-for-carbon-neutral/>.

14. At the relevant times, EnergyAustralia purported to 'offset' the carbon emissions from 'Go Neutral' customers' electricity and/or gas consumption by:

    (a) calculating the GHG emissions associated with those customers' electricity and/or gas consumption (expressed in tonnes of carbon dioxide equivalent (**tCO2e**); and

    (b) purchasing carbon credits which represented an equivalent number of tCO2e deemed to be avoided or removed by an accredited project.

D. The Go Neutral Representations

D.1 The Go Neutral Material

15. EnergyAustralia promoted and promotes the 'Go Neutral' program on the EA Website.

16. The EA Website displays the following material concerning the 'Go Neutral' program:

    (a) on the home page, the text and images reproduced at **Annexure A**;

    (b) when a user clicked on the 'Carbon neutral' logo or 'Go carbon neutral' tab, the text and images reproduced at **Annexure B**;

    (c) when a user clicked 'Go Neutral news and carbon offset projects', the text and images reproduced at **Annexure C**;

    (d) when a user clicked 'FAQs' under the sub-heading 'Go Neutral', the text and images reproduced at **Annexure D**; and

    (e) when a user clicked the 'electricity and gas' tab, the text and images reproduced at **Annexure E**,

    (the **Go Neutral Material**).

17. The Go Neutral Material has been continuously displayed on the EA Website from around 2019 and continues to be displayed as at the date of this pleading, other than the material at Annexure A which was amended to remove references to the 'Go Neutral' program in around April 2024.

D.2 The Representations

18. By publishing the Go Neutral Material, EnergyAustralia has made and continues to make the following representations to the public (including members of the Relevant Class)

about the electricity and gas purchased by customers who opt in to the 'Go Neutral' program:

(a) their energy usage is 100% carbon neutral;

(b) all GHG emissions associated with their energy usage are cancelled out;

(c) all GHG emissions associated with their energy usage are negated; and

(d) their energy usage does not result in an increase in the atmospheric concentration of GHGs,

(together and severally, the **Go Neutral Product Representations**).

Particulars

The representations pleaded in sub-paragraphs (a), (b) and (c) are express and are contained in the parts of the EA Website reproduced at Annexures A, B, C and D.

The representation pleaded in sub-paragraph (d) is partly express and partly implied. To the extent it is implied, it is implied from the ordinary meaning of the words and phrases 'carbon neutral', '100% carbon neutral', 'cancel', 'negated', 'fully offset' and 'positive impact' as used in the context of the Go Neutral Material.

19. Further or alternatively, by publishing the Go Neutral Material, EnergyAustralia represented and continues to represent to the public (including members of the Relevant Class) that customers who opt into the 'Go Neutral' program and purchase electricity and gas from Energy Australia through that program, will:

(a) have a positive impact on the environment;

(b) make a real difference to the environment;

(c) support global efforts to address and mitigate climate change; and

(d) not cause any additional harm to the climate or the environment by using electricity or gas sourced from fossil fuels,

(together and severally, the **Go Neutral Impact Representations**).

Particulars

The representations pleaded in sub-paragraphs (a) and (b) are express and are contained in the parts of the EA Website reproduced at Annexures A, B, C and D.

The representation pleaded in sub-paragraphs (c) and (d) are partly express and partly implied. To the extent they are implied, they are implied from the express references to the impact of fossil fuels on climate change in the Go Neutral Material and/or the ordinary meaning of

the words and phrases 'carbon neutral', '100% carbon neutral', 'cancel', 'negated', 'fully offset', and 'positive impact' as used in the context of the Go Neutral Material.

D.3 The PureEnergy Conduct

20. At all relevant times, EnergyAustralia had another program known as 'PureEnergy'.

21. When a customer opted to add 'PureEnergy' to their energy plan:

    (a) the customer could choose a percentage of their energy usage (10, 20 or 100%) to be accredited with 'green energy'; and

    (b) EnergyAustralia would purchase accredited renewable energy (from Australian sources such as solar, wind and biomass) on behalf of the customer and add the renewable energy into the electricity grid.

22. At all relevant times, EnergyAustralia:

    (a) did not disclose the existence of the 'PureEnergy' program:

        (i) on the home page of the EA Website;

        (ii) on the parts of the EA Website addressing the 'Go Neutral' program (including the Go Neutral Material);

        (iii) on the EA website landing page for 'Electricity and gas', including failing to reference it in the breakout box styled 'Clean Energy' (where there is reference to the 'Go Neutral' program), and

    (b) only included information about the 'PureEnergy' plan on the EA Website on a separate 'Go Green' page;

    (c) only allowed existing customers to add 'PureEnergy' to their electricity plan by contacting EnergyAustralia rather than through an online form (as was available for the 'Go Neutral' product);

    (d) did not provide sufficient or sufficiently prominent information on the EA Website to allow customers and potential customers (including members of the Relevant Class) to make an informed choice about which of the 'Go Neutral' or 'PureEnergy' products best addressed the climate change impacts associated with the customer's electricity usage,

    (together and severally, the **PureEnergy Conduct**).

E. True Position

E.1 Climate change

23. The combustion of fossil fuels to generate energy:

(a) is one of the largest sources of GHGs emitted into the atmosphere; and

(b) by reason of the matter pleaded in sub-paragraph (a), contributes to climate change and global warming.

Particulars

This is acknowledged on the EA Website which states: 'We know one of the largest sources of GHG emissions is from burning fossil fuels for energy. These carbon emissions increase the effects of climate change'.

*See also Hoesung Lee et al, 2022, 'Synthesis Report of the IPCC Sixth Assessment Report (AR6): Longer Report' (**IPCC AR6 SYR**), pp. 6-8.*

*See also report of Prof David Karoly dated 3 May 2024 (**Karoly Report**), [9]-[27].*

24. Carbon dioxide (**CO_2**), once emitted, can remain in the atmosphere for longer than 1,000 years.

Particulars

*The IPCC, 2021: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA (**IPCC Physical Science Basis 2021**), p. 2237 (definition of 'lifetime'). The definition of 'lifetime' states, among other things:*

> *'15 to 40% of an emitted CO2 pulse will remain in the atmosphere longer than 1,000 years, 10 to 25% will remain about ten thousand years, and the rest will be removed over several hundred thousand years.'*

See also Karoly Report, [14].

24A. Methane, once emitted, will:

(a) remain in the atmosphere for, on average, about 12 years;

(b) thereafter be removed from the atmosphere, predominantly by oxidation to form CO_2.

Particulars

The IPCC estimates that the 'lifetime' of methane is ~9 years and that the 'perturbation time' of methane is ~12 years: Physical Science Basis 2021, p. 824. See also Physical Science Basis 2021 pp. 835-836.

See also Karoly Report, [28].

25. Climate change and global warming have material adverse effects on the environment.

Particulars

Human-caused climate change is already affecting many weather and climate extremes in every region across the globe, resulting in heatwaves, heavy precipitation, droughts and tropical cyclones: IPCC AR6 SYR, pp. 12-14.

26. To address global warming, and the resulting environmental impacts, there is global agreement that it is necessary to seek to limit temperature increases to well below 2ºC above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5ºC above pre-industrial levels by:

(a) undertaking rapid reductions in GHG emissions in accordance with best available science; and

(b) achieving a balance between anthropogenic emissions by sources and removals by sinks by 2050.

Particulars

Paris Agreement adopted by 196 parties at the UN Climate Conference (COP21) in Paris, France on 12 December 2015, Article 4(1).

See further IPCC, 2018, Global Warming of 1.5ºC: An IPCC Special Report on the impacts of global warming of 1.5ºC above pre-industrial levels and related global GHG emission pathways in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty, Cambridge University Press, Cambridge, UK and New York (2019).

27. Limiting global temperature increases to a specific level requires limiting cumulative net carbon dioxide (**CO2**) emissions to within a finite 'carbon budget', along with strong reductions in other GHGs.

Particulars

IPCC AR6 SYR, pp. 46-50.

In this context, carbon budget means the maximum amount of cumulative net global anthropogenic CO2 emissions that would result in limiting global warming to a given level with a given probability, taking into account the effect of other anthropogenic climate forcers. This is referred to as the ***total carbon budget*** *when expressed starting from the pre-industrial period, and as the* ***remaining carbon budget*** *when expressed starting from a recent specified date: IPCC AR6 SYR, Annex I, p. 18 (glossary entry for 'carbon budget').*

See also Karoly Report, [32]-[37].

28. As a result of the GHG emissions released by humans to date:

(a) the majority of the total carbon budget for limiting temperature increases to the levels pleaded in paragraph 26 has already been exhausted; and

(b) temperature increases can only be limited to levels pleaded in paragraph 26 by limiting cumulative CO_2 emissions so as to achieve net zero or net negative CO_2 emissions.

Particulars

IPCC AR6 SYR, pp. 46, 50-51.

The IPCC estimates that historical cumulative net CO2 emissions between 1850 and 2019 amount to about four fifths of the total carbon budget for a 50% probability of limiting global warming to 1.5°C and to about two-thirds of the total carbon budget for a 67% probability of limiting global warming to 2°C: IPCC AR6 SYR, p. 47.

See also Hoesung Lee et al, 2022, 'Synthesis Report of the IPCC Sixth Assessment Report (AR6): Summary for Policymakers' at B.5.3 and B.6:

'If the annual CO2 emissions between 2020-2030 stayed, on average, at the same level as 2019, the resulting cumulative emissions would almost exhaust the remaining carbon budget for 1.5°C (50%), and deplete more than a third of the remaining carbon budget for 2°C (67%). Estimates of future CO2 emissions from existing fossil fuel infrastructures without additional abatement already exceed the remaining carbon budget for limiting warming to 1.5°C (50%) (high confidence). Projected cumulative future CO2 emissions over the lifetime of existing and planned fossil fuel infrastructure, if historical operating patterns are maintained and without additional abatement, are approximately equal to the remaining carbon budget for limiting warming to 2°C with a likelihood of 83% (high confidence).' (citations omitted)

See also Karoly Report, [32]-[37].

28A. The IPCC defines "carbon neutrality" as the condition in which anthropogenic CO_2 emissions associated with a subject are balanced by anthropogenic CO_2 removals.

Particulars

See IPCC Physical Science Basis 2021, Annex VII (Glossary), p. 2221.

E.2 Types of carbon credits

29. A carbon credit represents one tCO2e deemed to be stored or avoided by an accredited project.

30. Carbon credits may be:

(a) **avoidance credits** which involve the reduction of forecast GHG emissions that it is expected would otherwise have been released into the atmosphere; or

(b) **removal credits** which involve taking existing CO2 from the atmosphere and storing it.

Particulars

Examples of avoidance credits include credits for:

A. the deployment of renewable energy to replace planned fossil fuel power plants;

B. programmes to update inefficient cook stoves;

C. *installing carbon capture and storage on industrial point sources or gas power stations, to physically store carbon emissions that would otherwise have been released.*

Examples of removal credits include credits for:

A. *biological carbon sequestration (planting trees, soil carbon enhancement, etc);*

B. *bioenergy with carbon capture and storage;*

C. *direct air capture with geological storage;*

D. *converting atmospheric carbon back into rock through remineralisation.*

*See also report of Dr Danny Cullenward dated 2 May 2024 (**Cullenward Report**), [13] and Section 3.3.1.*

31. Removal credits may be further categorised into:

(a) **removal credits with short-lived storage** which involve the storage of carbon in biotic stores, generally in the order of decades; and

(b) **removal credits with long-lived storage** which involve the storage of carbon in fossil stores, generally in the order of centuries or millennia.

Particulars

Examples of removal credits with short-lived storage include credits for methods of storing carbon which have an uncertain or higher risk of being reversed within decades. This includes biological storage methods like afforestation, reforestation and soil carbon enhancement, as any changed land use may result in trapped carbon being emitted.

Examples of removal credits for long-lived storage include credits for methods which have a low risk of reversal over centuries to millennia. This includes storing CO2 in geological reservoirs or mineralising carbon into stable forms, subject to robust monitoring and verification of the permanence of storage.

See also Cullenward Report, Section 3.3.2.

31A. To provide any benefit to the climate or the environment, carbon credits must reflect climate benefits that would not have otherwise occurred (referred to as **additionality**).

Particulars

To be "additional" the purported climate benefits must be additional to what would have happened, counterfactually, without the carbon credit project: Cullenward Report, [17(g)(i)].

E.3 Environmental impact of different types of carbon credits

32. Purporting to offset GHG emissions from the combustion of fossil fuels with avoidance credits:

(a) may slow the rate of GHG emissions being released into the atmosphere;

(b) however, does not:

(i) remove any GHGs from the atmosphere;

(ii) reduce concentrations of GHGs in the atmosphere; or

(iii) result in a balance between human-caused GHG emissions and removals; and

(c) in the premises, results in an increase in the atmospheric concentration of GHGs contributing to further climate change and global warming.

Particulars

The effect of relying on avoidance credits is illustrated in the following example:

A. Company A and Company B each intend to emit one tonne of CO2. This would result in two tonnes of CO2 being released into the atmosphere.

B. By purchasing an avoidance credit, Company A pays Company B not to release its emissions (e.g., to use a renewable source of power rather than fossil fuels). This results in one tonne of CO2 not being released into the atmosphere. However, Company A proceeds to release its emissions into the atmosphere, a proportion of which will remain there for over 1,000 years.

C. The result is that one tonne of CO2 is still released into the atmosphere, contributing to climate change.

See also Cullenward Report, Section 3.3.1; Karoly Report, [49]-[54].

~~*Further particulars may be provided following the service of evidence.*~~

32A Further or alternatively, purporting to offset GHG emissions from the combustion of fossil fuels with avoidance credits which lack additionality:

(a) does not provide any benefit to the climate or the environment as the avoided emissions would have occurred in any event;

(b) results in further increases in the atmospheric concentration of GHGs (additional to the increases referred to in paragraph 32 above) contributing to further climate change and global warming.

Particulars

Cullenward Report, [17(g)(i)], Section 3.4.

32AA. Further or alternatively, purporting to offset GHG emissions from the combustion of fossil fuels with avoidance credits results, with certainty, in GHG emissions being released into the atmosphere through the combustion of fossil fuels in circumstances where there is inherent uncertainty as to whether an equivalent amount of GHG emissions have in fact been avoided by virtue of the purchase of the avoidance credits, because there is no equivalent certainty that:

(a) the reductions in GHG emissions purportedly achieved would not have otherwise been achieved without the purchase of the relevant credits; and/or

(b) the reductions in GHG emissions purportedly achieved by reducing project emissions below a hypothetical baseline are not overestimated, including because of:

i. an inaccurate assessment of the project's baseline emissions;

ii. an under-estimation of the project's actual emissions; and/or

iii. a failure to account for indirect effects of greenhouse gas emissions at other sources.

Particulars

An example of how this issue arises is as follows:

A. Company A intends to emit one tonne of CO2. This would result, with certainty, in one tonne of CO2 being released into the atmosphere.

B. Company B has been accredited to generate avoidance credits calculated by reference to the amount of energy it supplies to a power grid overseas. It is eligible to generate those credits because it has developed a project that will supply electricity to a local grid without generating material CO2 emissions (e.g., a windfarm), and has satisfied the requirements set by the relevant issuing authority (e.g., the UNFCCC Clean Development Mechanism or CDM). Those requirements provide, among things, that if Company B demonstrates certain matters then the issuing authority will assume that, if the project had not been developed, then additional electricity demand would have been met by fossil fuel power, resulting in additional CO2 emissions. Because those matters pertain to a counterfactual, they are necessarily based on a number of assumptions.

C. Company A purchases one of those credits which nominally represents one tonne of CO2 that may have been released into the atmosphere had Company B's project not been operating. However,

Company A proceeds to release its emissions into the atmosphere, a proportion of which will remain there for over 1,000 years. There is no way of knowing whether (over the life of the project) the purported reductions for which the credits are being generated would not otherwise have been achieved without the credits, or whether the reductions in GHG emissions purportedly achieved by reducing project emissions below a hypothetical baseline are not overestimated.

D. *The result is that one tonne of CO2 is still released into the atmosphere, contributing to climate change. Further, it is uncertain whether the purported reduction would have been achieved in any event without the carbon credit and/or whether the reductions purportedly achieved are overestimated.*

See also Cullenward Report, Section 3.5.

~~*Further particulars may be provided following the service of evidence.*~~

32B. Further or alternatively, purporting to offset GHG emissions from the combustion of fossil fuels with avoidance credits which, in whole or in part, purport to avoid the emission of methane will, over time scales longer than about 12 years, result in further increases in the atmospheric concentration of GHGs (additional to the increases referred to in paragraph 32 above) contributing to further climate change and global warming.

Particulars

An example of how this issue arises is as follows:

A. *Company A intends to emit one tonne of CO2. This would result, with certainty, in one tonne of CO2 being released into the atmosphere.*

B. *Company B has been accredited to generate avoidance credits calculated, in whole or in part, by reference to the amount of methane produced from landfill which is captured and flared.*

C. *Flaring converts methane – a potent, short-lived GHG – to CO2 which is then released into the atmosphere. The amount of carbon credits generated for each tonne of methane flared is calculated by reference to the "global warming potential" (**GWP**) of methane over a 100 year period as compared to CO2. Where the GWP (100 years) of methane is specified to be 25, this means that Company B is assumed to have avoided 25 tonnes of CO2 for each tonne of methane flared, thereby generating approximately 25 carbon credits.*

D. *Company A purchases 25 of those credits and emits 25 tonnes of CO2 into the atmosphere. A proportion of these emissions will remain in the atmosphere for over 1,000 years. The one tonne of methane avoided, on the other hand, would have been removed from the atmosphere after around 12 years, predominantly forming CO2.*

E. The result is that, in addition to the matters referred to in paragraphs 32 and 32A above, at any time after the purportedly avoided methane would been removed from the atmosphere by natural processes (including dates when average global temperatures are expected to peak):

a. the difference between the hypothetical baseline scenario and scenario where the project has been implemented is minimal; and

b. a further 25 tonnes of CO2 have been released into the atmosphere, further contributing to climate change.

See also Cullenward Report, Section 3.3.3; Karoly Report, [57]-[61].

33. Purporting to offset GHG emissions from the combustion of fossil fuels with removal credits with short-lived storage:

(a) may temporarily reduce the amount of GHGs in the atmosphere as compared to the amount of GHGs that would have been in the atmosphere if there were no attempt to offset the GHG emissions;

(b) however, results in carbon being shifted from fossil sinks to biotic sinks, thereby:

(i) increasing the amount of carbon in the active carbon cycle;

(ii) increasing the risk of carbon being released as CO_2 into the atmosphere in the future due to natural processes or human activity; and

(c) in the premises, results in an increase in the atmospheric concentration of GHGs contributing to further climate change and global warming.

Particulars

The net effect of relying on removal credits with short-lived storage is illustrated in the following example:

A. Company A emits one tonne of CO_2 into the atmosphere, a proportion of which will remain there for over 1,000 years.

B. To purportedly offset this emission, Company A purchases one unit of a removal credit from an afforestation project. This results in an estimated one tonne of CO_2 being captured and stored in trees planted. This carbon will be released when the tree dies, which may occur through natural processes or human action.

C. The net result is that there are net zero emissions for so long as the carbon is stored, but the one tonne of additional CO_2 is likely to be released into the atmosphere much earlier than would have been the case had it remained in fossil sinks.

The active carbon cycle involves the natural and continuous exchange of CO2 between the atmosphere, land and oceans: see IPCC Physical Science Basis 2021, p. 682 (Figure 5.2)

See also Cullenward Report, Section 3.3.2; Karoly Report, [55]-[56].

34. Purporting to offset GHG emissions from the combustion of fossil fuels with removal credits with long-lived storage:

(a) may assist in:

(i) reducing the amount of GHGs in the atmosphere as compared to the amount of GHGs that would have been in the atmosphere if there were no attempt to offset the GHG emissions; and

(ii) balancing human-caused emissions and removals;

(b) in the premises, may result in net zero emissions being released into the atmosphere, thereby not contributing to the atmospheric concentration of GHGs and not contributing to further climate change and global warming.

Particulars

The effectiveness of the purported offset in achieving the matters pleaded in this paragraph will depend on robust monitoring and verification of the permanence of storage of GHGs captured.

See also Cullenward Report, Sections 3.3.1 and 3.3.2; Karoly Report, [52].

35. Generating energy from renewable sources:

(a) does not involve any emission of GHGs into the atmosphere;

(b) in the premises, does not increase the atmospheric concentration of GHGs and does not contribute to climate change and global warming.

E.4 EnergyAustralia's reliance on avoidance and short-lived storage credits

36. At all relevant times, of the carbon credits purchased by EnergyAustralia as part of the 'Go Neutral' program:

(a) over 99% were avoidance credits; and

(b) over 96% were avoidance credits created by international projects.

Particulars

The projects from which EnergyAustralia's avoidance credits were purchased were:

A. *the development of wind farms to replace fossil fuel power across India and Chile (2,662,099 credits over the relevant times);*

B. *replacing incandescent lights with energy-efficient fluorescent lights in India (164,311 credits);*

C. *the development of geothermal energy to replace fossil fuel power in Java, Indonesia (1,535,000 credits);*

D. *the conversion of methane to carbon dioxide at a solid waste centre in Rio de Janeiro, Brazil (628,937 credits); and*

E. *planned burning of Australian savanna areas during the early dry season to reduce the risk of late dry season wild fires (80,700 credits).*

The credits referred to in paragraph D above are avoidance credits which, in whole or in part, purport to avoid the emission of methane.

36A Further, many of the avoidance credits purchased by EnergyAustralia as part of its 'Go Neutral' program related to projects that:

(a) lacked additionality; or

(b) alternatively, presented a material risk that they were not additional.

Particulars

The projects are:

A. *the wind energy projects in India (including the Jath, Maharashtra project (CDM 9154); and*

B. *the geothermal power plant project in Indonesia.*

See Cullenward Report, Section 3.4.

37. At all relevant times, other carbon credits purchased by EnergyAustralia as part of the 'Go Neutral' program were removal credits with short-lived storage.

Particulars

These projects were human induced regeneration (HIR) projects in Australia, such as the Tallering Station Human Induced Regeneration Project ERF121770.

See Cullenward Report, [43].

38. For the reasons pleaded in paragraph 32, 32A, 32AA and/or 32B above, the avoidance credits purchased by EnergyAustralia, when used to purportedly offset GHG emissions from the combustion of fossil fuels:

(a) do not:

(i) remove any GHGs from the atmosphere;

(ii) reduce concentrations of GHGs in the atmosphere; or

(iii) result in a balance between human-caused GHG emissions and removals; and

(b) in the premises, mean that the combustion of fossil fuels to generate energy purchased pursuant to EnergyAustralia's "Go Neutral" program will result in net positive emissions being released into the atmosphere, thereby increasing the atmospheric concentration of GHGs and contributing to further climate change and global warming.

(c) further or alternatively, results, with certainty, in GHG emissions being released into the atmosphere through the combustion of fossil fuels in circumstances where there is inherent uncertainty as to whether an equivalent amount of GHG emissions have in fact been avoided by virtue of the purchase of the avoidance credits, because there is no equivalent certainty that:

(i) the reductions in GHG emissions purportedly achieved would not have otherwise been achieved without the purchase of the relevant credits; and/or

(ii) the reductions in GHG emissions purportedly achieved by reducing project emissions below a hypothetical baseline are not overestimated;

(cc) further or alternatively, to the extent that the credits lack additionality, result in further increases in the atmospheric concentration of GHGs (additional to the increases referred to in paragraph 38(b) above) contributing to further climate change and global warming;

(d) further or alternatively, to the extent the credits purport to avoid methane emissions, result, over time scales longer than about 12 years, in further increases in the atmospheric concentration of GHGs (additional to the increases referred to in paragraph 38(b) above) contributing to further climate change and global warming; and

(e) in the premises, mean that there is no equivalence between the certain GHG emissions from the combustion of fossil fuels to generate energy purchased pursuant to EnergyAustralia's "Go Neutral" program and the emissions purportedly avoided by virtue of the purchase of the avoidance credits purchased by EnergyAustralia.

39. For the reasons pleaded in paragraph 33 above, the removal credits with short-lived storage purchased by EnergyAustralia, when used to purportedly offset GHG emissions from the combustion of fossil fuels:

    (a) result in carbon being released from fossil sinks and stored in biotic sinks, thereby:

        (i) increasing the amount of carbon in the active carbon cycle;

        (ii) increasing the risk of that carbon being released into the atmosphere in the future due to natural processes or human activity; and

    (b) in the premises, increase the atmospheric concentration of GHGs and contribute to further climate change and global warming.

40. By reason of the matters pleaded in paragraphs 23 to 38(e), the purchase and use of electricity and gas from EnergyAustralia as part of the 'Go Neutral' program:

    (a) is not 100% carbon neutral;

    (b) does not involve all GHG emissions associated with customers' energy usage being cancelled out or negated; and

    (c) instead, results in an increase in the atmospheric concentration of GHGs contributing to climate change and global warming.

41. Further or alternatively, by reason of the matters pleaded in paragraphs 23 to 40, customers who opt into the 'Go Neutral' program and use electricity or gas supplied by EnergyAustralia through that program:

    (a) do not have a positive impact on the environment;

    (b) do not support global efforts to address and mitigate climate change; and

    (c) cause additional harm to the climate and the environment by using electricity or gas sourced from fossil fuels in circumstances where the emissions associated with that electricity or gas usage are not fully and/or permanently offset by equivalent reductions or removals of GHG emissions.

42. Further or alternatively, by reason of the matters pleaded in paragraphs 23 to 41, by opting into the 'PureEnergy' program, customers:

    (a) support the production of electricity from government-accredited renewable sources (such as solar, wind and biomass);

(b) ensure that an equal amount of renewable energy to their usage is added to the electricity grid;

(c) reduce, on average, the proportion of their electricity sourced from fossil fuels; and

(d) reduce the extent to which they cause harm to the climate and the environment by using electricity sourced from fossil fuels.

F. Misleading conduct

43. Each of the:

(a) Go Neutral Product Representations;

(b) Go Neutral Impact Representations; and

(c) PureEnergy Conduct,

was conduct engaged in by EnergyAustralia in trade or commerce.

44. The Go Neutral Product Representations and/or the Go Neutral Impact Representations were and are misleading or deceptive or likely to mislead or deceive customers or potential customers (including members of the Relevant Class), because:

(a) those representations were and are contrary to the true position as pleaded in paragraphs 38 to 41;

(b) further or alternatively, those representations had and have a tendency to lead customers or potential customers (including members of the Relevant Class) into error in respect of the true position as pleaded in paragraphs 38 to 41.

45. The PureEnergy Conduct was and is misleading or deceptive or likely to mislead or deceive customers or potential customers of EnergyAustralia (including members of the Relevant Class), because:

(a) that conduct prevented and prevents customers or potential customers (including members of the Relevant Class) from effectively comparing the 'Go Neutral' program and the 'PureEnergy' program, including in respect of the matters pleaded in paragraphs 38 to 42;

(b) further or alternatively, that conduct had and has a tendency to lead customers or potential customers (including members of the Relevant Class) into error, in that they may reasonably conclude that the 'Go Neutral' plan was and is the best or

only option available from EnergyAustralia to address the impact of their energy usage on climate change.

46. In the premises, EnergyAustralia has contravened and continues to contravene section 18 of the *Australian Consumer Law*.

G. Relief

47. In the premises, ~~AP4CA~~Parents for Climate is entitled to the relief it seeks in its Originating Application.

This pleading was prepared by Robert Dick SC and Jerome Entwisle, counsel for the Applicant.

Certificate of lawyer

I David Barnden certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 6 June 2024~~5 October 2023~~

Signed by David Barnden
Lawyer for the Applicant

Annexure A – EA Website landing page

<energy.australia.com.au>

Why choose EnergyAustralia?

Simple, more affordable energy. We're more than just an electricity & gas provider.

Award winning

Awarded No. 1 Digital Customer Experience 2020 by Global Reviews for 6 years running.

Great range

Looking for our cheapest electricity plan or high feed-in tariff? Find the plan for you.

Carbon neutral

100% carbon neutral energy in your home at no extra cost.***

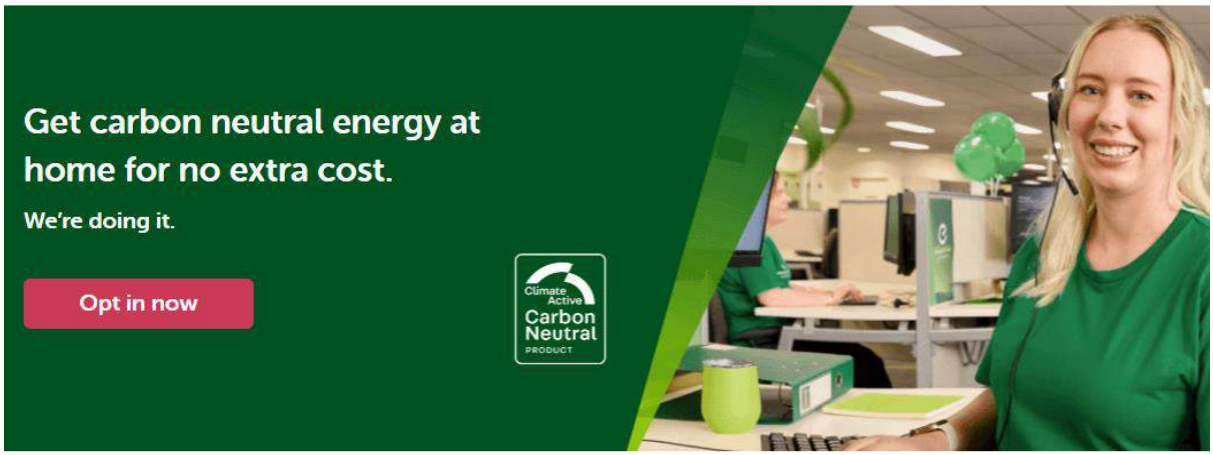
Powering Australia

We are the energy provider for more than 1.6 million Australian customers.

***Find out more energyaustralia.com.au/go-neutral

Annexure B – Go carbon neutral page

<https://www.energyaustralia.com.au/home/electricity-and-gas/go-neutral>



Opt in for carbon neutral for your home energy – your electricity or gas, or both - and have a positive impact on the environment.

We know one of the largest sources of greenhouse gas emissions is from burning fossil fuels for energy. These carbon emissions increase the effects of climate change.

When you opt in to our carbon neutral product, Go Neutral, we calculate the emissions associated with your household energy use – your electricity or gas, or both - and purchase corresponding carbon offsets to cancel out the emissions, making your home energy use carbon neutral.

And it's all at no extra cost to you.

How Go Neutral works

1. Carbon emissions are created from your household electricity and gas use

2. We offset emissions through carbon offset units from climate action projects at no cost to you

3. The result? Carbon neutral energy, positive environmental and community benefits

Our carbon offsets come from accredited climate action projects in Australia and around the world. Many of these projects provide economic, social and environmental benefits to communities, in addition to offsetting carbon emissions.

Ready to opt-in?

You can opt in to go carbon neutral at any time on any of our home electricity or gas plans and it costs you nothing.

Opt in at any time. Offsetting starts from the six month anniversary of the date each account is established.

Opt in now

We also have a carbon neutral product for Business.

Find out more

You'll feel good about it

- Virtual Power Plant
- Compare electricity and gas plans
- How to disconnect and reconnect your energy connection
- Compare electricity and gas plans
- Get an energy quote
- Go Neutral
  - Opt-in for carbon neutral
  - FAQs
  - Go Neutral news and carbon offset projects
    - Solid efforts to reduce emissions in Brazil
    - Savanna Fire Management, Arnhem Land, Northern Territory
    - Top End wildfire management
    - Light bulb moments in India
- New meters and installations
- Go Green
- Energy saving and safety
- PowerResponse
- Energy Plan Information

Be part of something big

More than 400,000 EnergyAustralia customers are making a real difference to the environment with Go Neutral.

It's now one of Australia's largest carbon emissions offset programs and has offset 4.1 million tonnes of carbon emissions since 2016.

That's the equivalent of taking around 1,281,250 cars off the road for a year.*

*Using a factor of 3.2 tonnes/passenger car/year. Based on 2016 passenger vehicle numbers (Australian Bureau of Statistics Motor Vehicle Census) and 2016 greenhouse gas emissions for cars (National Greenhouse Gas Inventory's AEGIS database).

Contribute to real projects with real impacts

We buy carbon offset units from climate action projects that not only offset your emissions but also bring about positive economic and social benefits. For example, the **large scale lighting swap out scheme in India** replaces old incandescent light globes with highly efficient ones that consume less energy, helping low income families.

These offset units are eligible according to the Australian Government's Climate Active program, one of the most rigorous and credible carbon neutral certifications available in Australia.

Examples of climate action projects include:

- Grid-connected renewable energy projects at wind farms across India.
- Stopping greenhouse gases escaping through landfill waste management in Brazil.
- Savanna fire management in Australia to prevent large bushfires that generate emissions.
- Removing carbon dioxide from the air through forest regrowth in Australia.

EnergyAustralia is part of the Climate Active Network

The **Climate Active Network** is an Australian network of climate leaders and companies. The goal of the Climate Active Network is to take collective action on climate change and protect Australia's environment. Look for the Climate Active logo on all our Go Neutral communications. Climate Active certification for products like Go Neutral makes it easier for consumers to make a conscious decision to identify and choose certified products that are making a difference.

Certified

Go Neutral Product is certified under the Australian Government's Climate Active Carbon Neutral Standard (formerly the National Carbon Offset Standard).
Our **Public Disclosure Statement** shows how we calculate your energy's carbon neutrality in full detail.

Annexure C – Go Neutral news and carbon offsets projects

<https://www.energyaustralia.com.au/home/electricity-and-gas/go-neutral/go-neutral-news-and-carbon-offset-projects>

You're doing good things for the environment

Since the launch of our carbon neutral program in 2016, 370,000 customers have chosen to make a positive impact on our environment by opting in to Go Neutral for their home electricity or gas, or both.

Together we've been able to offset more than 4.1 million tonnes of carbon emissions since 2016 – that's the equivalent of taking around 1,281,250 cars off the road for one year.*

Your decision to take part in Go Neutral (at no extra cost to you) helps us to support climate action projects that offset your carbon emissions and benefit communities around the world.

*Using a factor of 3.2 tonnes/passenger car/year. Based on 2016 Australian passenger vehicle numbers (Australian Bureau of Statistics Motor Vehicle Census) and 2016 greenhouse gas emissions for cars (National Greenhouse Gas Inventory's AEGIS database).

Virtual Power Plant
Compare electricity and gas plans
How to disconnect and reconnect your energy connection
Compare electricity and gas plans
Get an energy quote

Climate action projects making a difference

We buy carbon offset units from climate action projects that reduce or remove carbon emissions to offset the impact of your energy use. These offset units are eligible according to the Climate Active Carbon Neutral Standard (formerly the National Carbon Offset Standard).

Geothermal Project, Indonesia

Image credit: Star Energy Geothermal

Located on the island of Java in Indonesia, the Wayang Windu Phase II project taps into Indonesia's geothermal resources to generate power for the local Jawa-Madura-Bali (JAMALI) grid, avoiding greenhouse gas emissions associated with electricity generation from fossil fuels. This project supports Indonesia's transition to renewable energy and helps improve infrastructure and the local community with jobs and education opportunities.

Wind Farms, India

These are grid-connected renewable energy projects at wind farms across India aimed at helping to reduce carbon emissions. They make up the largest proportion of contributions to our Go Neutral carbon offsetting program.

Go Neutral
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Go Neutral news and carbon offset projects
Solid efforts to reduce emissions in Brazil
Savanna Fire Management, Arnhem Land, Northern Territory
Top End wildfire management
Light bulb moments in India
New meters and installations
Go Green

Solid Waste Management, Brazil

The Santa Rosa Centre for Solid Waste Treatment – also known as CTR Rio – is a landfill site near Rio de Janeiro. Receiving all sorts of waste, including plastics, metals, batteries and biomass, CTR Rio was, like many landfills in Brazil, hazardous and unsanitary. Now, CTR Rio has been restructured to convert the enormous amounts of methane – a very potent greenhouse gas created by the landfill - to carbon dioxide, which is less severe for the environment. Long term, the goal is to convert the methane into energy. Through CTR Rio, safety and environmental problems usually linked to waste management in Brazil have been reduced and there have also been local social and economic benefits. Read more.

Carbon reduction program in the Top End, Australia

Carbon emissions are reduced through strategic fire management in Arnhem Land and Cape York Peninsula with planned burning helping to protect important wildlife and flora. Read more.

Picaninny Plains. Image credit: Australian Wildlife Conservancy.

Savanna Fire Management, Arnhem Land, Northern Territory

This initiative avoids emissions by helping to prevent large bushfires. Managing fires early in the dry season in Arnhem Land reduces the risk and extent of high intensity wildfires. Through knowledge being passed down, the connection between Aboriginal communities and their land is strengthened, and biodiversity is protected. Read more.

Energy saving and safety
PowerResponse
Energy Plan Information

Climate Active Carbon Neutral PRODUCT

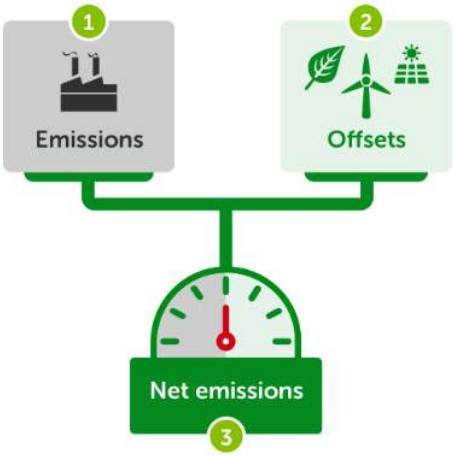
Go Neutral is Climate Active certified

Find out more

Renewable Lighting Scheme, India

This scheme avoids emissions through improved energy efficiency. The Bachat Lamp Yojana project replaces energy intensive globes with more energy efficient ones (compact fluorescent lamps, or CFLs), benefiting the environment and helping low-income families in India by saving them money. Read more.

How carbon offsetting works



1. If you're using energy derived from fossil fuels, this is releasing carbon into the atmosphere.
2. To reduce the environmental impact of your carbon emissions, we purchase certificates that fund projects that remove or cancel the equivalent amount of greenhouse gases i.e. 'offset' emissions.
3. The resulting 'net' level of those emissions is zero – which is great for the environment!

Remind me how it works

When you made the decision to opt in, we buy enough carbon offset units to fully offset the carbon emissions associated with your home's energy use - electricity or gas, or both - at no extra cost to you. It's an easy, cost free way for you to get involved and make a difference to the environment.

Find out more

Annexure D – FAQs

<https://www.energyaustralia.com.au/home/electricity-and-gas/go-neutral/carbon-neutral-and-go-neutral>

What does carbon neutral mean?

Carbon neutral is achieved when the net greenhouse gas emissions associated with an activity are cancelled out or negated through emissions reduction and/or the purchase and cancellation of carbon offset units.

What's your carbon neutral product?

At EnergyAustralia, our carbon neutral product is called Go Neutral.

If you opt in for carbon neutral energy, we'll fully offset the emissions associated with your home energy use – your electricity or gas, or both - through the purchase and cancellation of carbon offset units from projects eligible under Climate Active.

Through Go Neutral, we source offset units from a range of Australian and international climate action projects.

Does Go Neutral cost me anything?

Not at all. We've chosen to offer Go Neutral at no extra cost to you, so you can easily opt in to make a difference. We're covering all the costs and administration involved and don't pass them on to you.

What's a carbon offset unit?

A carbon offset unit represents the removal of one tonne of carbon dioxide equivalent (t CO2-e) from the atmosphere, or the avoidance of one tonne of emissions.

What's Climate Active?

Climate Active is an Australian Government backed program that sets the rules for measuring, reducing, offsetting and reporting emissions, so that organisations like ours can make a carbon neutral claim.

When you opt in to Go Neutral, we follow a set of requirements for measuring, reducing, reporting and offsetting your carbon emissions from your home energy use, according to the Climate Active Carbon Neutral Standard.

Carbon neutral claims made against Climate Active Carbon Neutral Standard must meet certain criteria, including:

- Credible greenhouse gas measurement techniques, which ensure the emissions and emissions sources covered by a claim of carbon neutrality can be understood and evaluated
- Independent auditing every second year, to ensure emissions have been accurately measured, offset and reported
- A reasonable attempt has been made to reduce in-house emissions before using offset credits
- Genuine offsets units have been purchased and cancelled to compensate for all emissions associated with the claim
- Activities and achievements related to the carbon neutral claim are transparently reported.

More information.

How does my home electricity and gas use impact the environment?

Burning fossil fuels produces large amounts of carbon dioxide, which is harmful to our environment and increases the effects of climate change.

For electricity, the impact occurs when fossil fuels such as coal, oil or gas are burnt at power plants in order to produce electricity. For gas (which is a fossil fuel), the impact occurs when you use (i.e. burn) it in your home.

What happens when I choose to offset the carbon emissions from my home electricity or gas, or both?

We calculate how much carbon dioxide your home's electricity or gas, or both emits into the atmosphere and purchase carbon offsets issued by accredited climate action projects to offset the equivalent amount of carbon dioxide from the atmosphere.

I want to sign up my home electricity or gas, or both with EnergyAustralia. When can I opt in to Go Neutral?

If you're a new customer, you can easily opt in for carbon neutral energy when you choose your new energy plans. After six months of being with us (for each eligible account), we'll automatically start offsetting your household energy emissions.

How do you calculate the carbon dioxide emitted into the atmosphere from my electricity or gas?

Our **Climate Active Public Disclosure Statement** outlines our calculations for residential electricity carbon neutrality.

What's the difference between carbon offsets and renewable energy?

Renewable energy resources generate no or very little carbon as they produce energy from natural resources that don't run out, like solar (sun) and wind. Carbon offsetting involves investing in projects that prevent or reduce emissions being released. For example, we calculate the emissions from your home electricity use and purchase the equivalent amount of carbon offsets to neutralise your electricity emissions – making your electricity use carbon neutral.

What offset projects will I be helping with, by opting in?

We support climate action projects accredited under Climate Active.

These currently include:

- Top End wildfire management in Australia
- Savanna fire management in Australia
- Forest regrowth in Australia
- Energy efficiency in India
- Greenhouse gas containment in Brazil

How will I be kept updated about Go Neutral activities?

When you opt in, you'll receive regular updates about our carbon neutral activities including offset projects both in Australia and overseas.

Can I offset emissions from my residential gas too?

Yes, you can now offset emissions associated with your home's gas use.

Can I offset my business' energy use carbon emissions too?

Yes, we recently made Business Carbon Neutral available to our business electricity customers (note, it is not available for your business' gas). **Read more** about signing up to Business Carbon Neutral.

What else are you doing to address climate change?

Our purpose is to lead and accelerate the clean energy transformation for all.

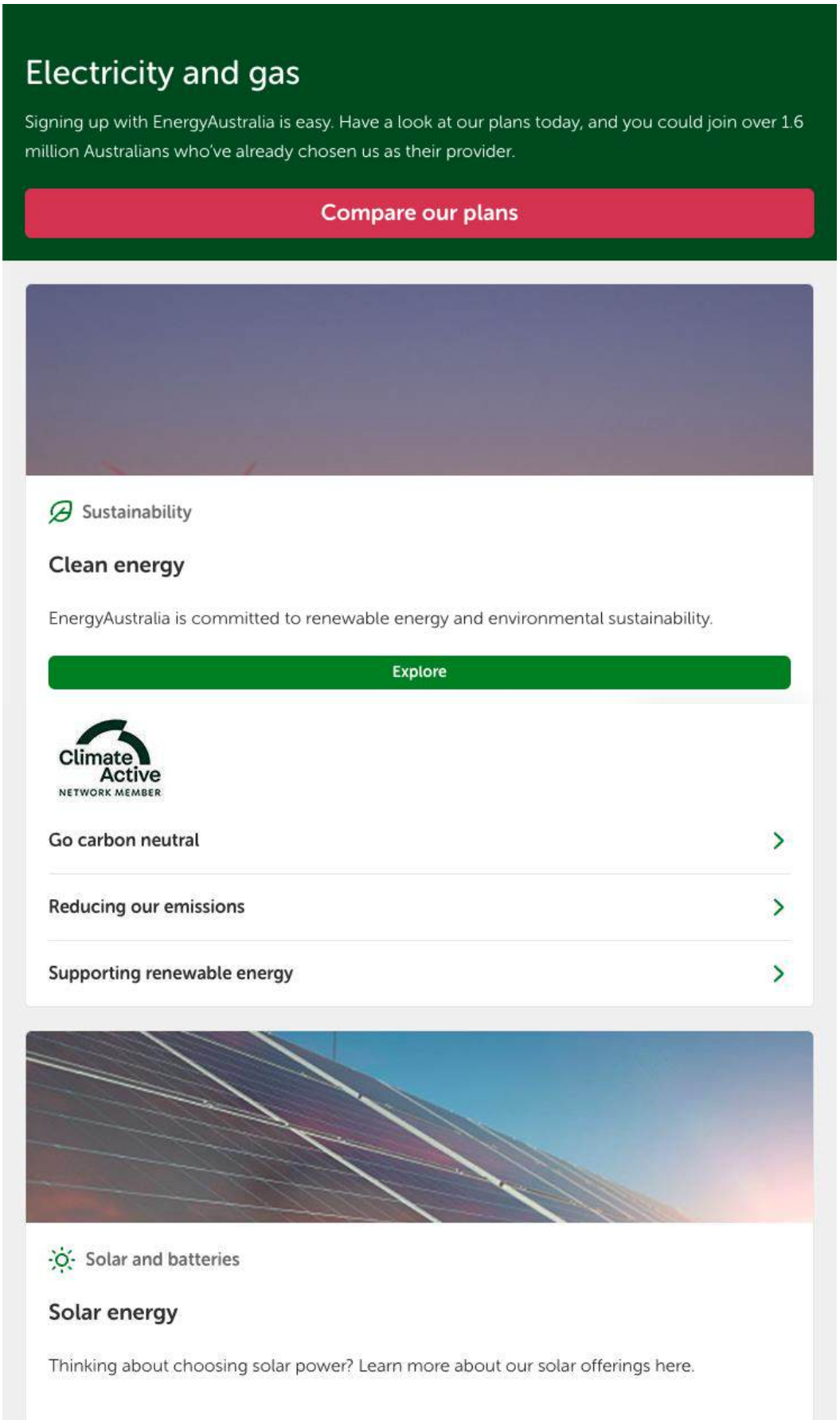
By investing in the next generation of technology that will meet customers' energy needs, and offsets for remaining emissions, our goal is to be **carbon neutral by 2050**.

We believe any decision we make or any project we do should be socially and environmentally acceptable.

Listening to our stakeholders, minimising our impact on the environment, working safely and providing economic opportunities for local businesses and workers are just some of the things we do so our operations are sustainable.

Our parent company CLP Group has **strict sustainability principles** governing how all its businesses, including EnergyAustralia, should operate sustainably.

Annexure E – Gas and electricity landing page
<https://www.energyaustralia.com.au/home/electricity-and-gas>



All about solar

Solar feed in tariffs

Earn rewards with VPP

Solar plans for your home

Solar for your business

New meter installations

Apply online for new electricity/gas connections and meters.

Find out more

Energy saving and safety

Learn how to save energy and reduce bills in your home.

Find out more

How to disconnect and reconnect

When you move with us, we can disconnect your old address and reconnect your new one in one go.

Find out more