

NOTICE OF FILING

Details of Filing

Document Lodged: Reply - Form 34 - Rule 16.33
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 5/07/2024 4:10:41 PM AEST
Date Accepted for Filing: 8/07/2024 11:42:07 AM AEST
File Number: NSD833/2023
File Title: PARENTS FOR CLIMATE LTD (ACN 637 293 746) v
ENERGYAUSTRALIA PTY LTD (ACN 086 014 968)
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Reply

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

1. The Applicant joins issue with each of the allegations in the Defence to the Further Amended Statement of Claim dated ~~20 October 2023~~ 21 June 2024, save as to the admissions therein and the matters set out below (adopting the defined terms in the Further Amended Statement of Claim):
2. In response to sub-paragraphs 18(c) and 19(c) of the Defence, the Applicant:
 - a. denies the sub-paragraphs; and
 - b. says that the statements made in the Go Neutral Material, including the Go Neutral Product Representations and the Go Neutral Impact Representations, were expressed, and would reasonably have been understood by the Relevant Class, as statements of objective fact.
3. In the alternative to paragraph 2 above, the Applicant says that to the extent the Go Neutral Product Representations and the Go Neutral Impact Representations were expressed, or would reasonably have been understood, as expressions of opinion (which is denied), then:
 - a. by making those representations, EnergyAustralia conveyed to a reasonable member of the Relevant Class that the opinions were honestly held and based on reasonable grounds;

Filed on behalf of (name & role of party) ~~Australian Parents for Climate Action Pty Ltd, Applicant~~
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b. in the premises, by making the representations, EnergyAustralia engaged and continues to engage in misleading or deceptive conduct in contravention of section 18 of the *Australian Consumer Law*, as:

- i. EnergyAustralia's opinions were not based on reasonable grounds;
and/or

Particulars

- A. ~~The Applicant relies on the matters pleaded at paragraphs 38 to 41 and paragraph 44 of the Amended Statement of Claim, which matters were either known or ought reasonably to have been known by EnergyAustralia at the time it made the representations. particularised in Schedule 1 to this Reply.~~
- B. *EnergyAustralia has not identified the reasonable grounds on which the alleged expressions of opinion were based.*
- C. *Further particulars may be provided following ~~discovery~~the service of EnergyAustralia's evidence.*

- ii. EnergyAustralia misstated the facts on which the opinion was based;
and/or

Particulars

- A. *The Go Neutral Material misstated the basis on which EnergyAustralia was making its carbon neutrality claims, including by stating that when customers opted into the 'Go Neutral' Program, EnergyAustralia would calculate the emissions associated with their energy use and purchase carbon offsets to "cancel out" or "fully offset" the emissions (Annexures B and C of the Amended Statement of Claim).*
- B. *The Go Neutral Material did not state that the representations were based on accreditation by the Climate Active Network or any other external accreditation*

- iii. EnergyAustralia made the representations in circumstances where, to its knowledge, customers and potential customers had a poor understanding of the term "carbon neutral" and the expression of any opinion on this topic had a tendency to lead those customers into error.

Particulars

- A. EnergyAustralia's internal documents record that it was aware of research that "there [was] a poor consumer understanding of the term 'carbon neutral'" and "[l]ow awareness of carbon neutrality" (EA.300.006.7502 at .7530-7531; EA.300.008.7416 at .7425; EA.300.006.4486 at .4504; EA.300.006.5142 at .5143;

- EA.300.006.0951). Further, when designing and promoting the “Go Neutral” program, EnergyAustralia deliberately tailored its message to “[a]ppeal to the heart not the head...” of customers (see EA.300.006.7502 at .7538).
- B. By no later than June 2017, EnergyAustralia had commissioned its own research that concluded that “although customers do not full understand carbon neutrality, it benefits from a halo effect – they presume that it means good things for the environment” (EA.900.016.3483 at .3526).
- C. By no later than October 2020, EnergyAustralia had commissioned a survey of Australian energy users for the stated purpose of “ad testing”. The findings of that survey indicated that “many are not confident in the meaning of the term [carbon neutral]” and “fewer consumers have a deeper understanding of the term, and there are those who attribute it to energy sources that do not emit carbon dioxide or use coal” (EA.300.016.3672 at .3673 .3678)
- D. By no later than February 2022, EnergyAustralia had conducted a focus group on its “Go Neutral” advertising that concluded that “Customers don’t understand carbon offsetting”, with a common misunderstanding being that “carbon offsetting is emissions reductions made by individuals” (EA.900.015.1273 at 0006 and 0016).

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 reply filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 5 July 2024

A handwritten signature in black ink, appearing to read 'DBO', followed by a horizontal line extending to the right.

Signed by David Barnden
Lawyer for the Applicant

Schedule 1: Further particulars to Paragraph 3(b)(i) of the Reply

EnergyAustralia did not have reasonable grounds for any opinion conveyed by the Go Neutral Product Representations or Go Neutral Impact Representations for one or more of the following reasons:

Quality of carbon credits purchased

1. The carbon credits purchased to support EnergyAustralia's claims were predominantly cheap Certified Emission Reductions (CERs) issued under the Clean Development Mechanism.
 - a. In calendar year 2019, EnergyAustralia purchased CERs relating to wind farm projects in India (representing 92.5% of all carbon credits purchased by EnergyAustralia in 2019) at **\$0.55, \$0.59 and \$0.63** per credit; and it purchased CERs relating to the flaring of landfill gas in Brazil (representing 3.8% of the credits purchased by EnergyAustralia in 2019) at **\$0.95** per credit: EA.300.006.3055.
 - b. In calendar year 2020, EnergyAustralia purchased CERs relating to wind farm projects in India (representing 88.6% of all carbon credits purchased by EnergyAustralia in 2020) at **\$1.00 and \$1.05** per credit; and it purchased CERs relating to the flaring of landfill gas in Brazil (representing 9.4% of the credits purchased by EnergyAustralia in 2020) at **\$0.93 and \$0.95** per credit: EA.300.006.3055.
 - c. In calendar year 2021, EnergyAustralia purchased CERs relating to wind farm projects in India (representing 25.5% of all carbon credits purchased by EnergyAustralia in 2021) at **\$0.55, \$0.59, \$0.62, \$0.63 and \$1.05** per credit; and it purchased CERs relating to the flaring of landfill gas in Brazil (representing 6.0% of the credits purchased by EnergyAustralia in 2020) at **\$0.93** per credit: EA.300.006.3055.
2. EnergyAustralia knew or ought reasonably to have known (either at the time the Go Neutral program was first launched or anytime thereafter) that there were serious doubts as to the quality and additionality of the cheap CERs purchased, because:
 - a. The CERs were purchased for around AUD \$1 each – often less than \$1. These are very low prices, which can be associated with “junk” status that reflects very limited demand (Cullenward Report, para 96).

b. EnergyAustralia was aware of the relationship between the price of a carbon credit and the quality or integrity of that carbon credit, and continued to buy cheaper credits, as recorded in internal documents including:

i. Internal presentations from as early as 2017 identifying the additionality risks associated with landfill gas projects, lighting schemes, wind farm projects, and Australian revegetation projects (EA.300.004.9185 at .9189 to .9199)

ii. Internal presentations outlining the risks of EnergyAustralia's Go Neutral program (EA.300.002.9666), which identified as a risk that:

"The use solely of CERs is likely to attract criticism that our product is a "cop out", it is cheap and doesn't really reduce emissions, of no benefit to Australia or the climate...."

"Our competitors could attack us for not providing genuine abatement compared to their Australian offsets and generation mix."

The same presentation indicated that EnergyAustralia sought to mitigate the risk identified by purchasing "a small proportion" of domestic offsets so as to "enhance the credibility of our product": at .9677. For calendar years 2019-2022, that small proportion was 1.9%.

iii. An internal paper titled "Green Hedging Strategy" dated 9 July 2020 (EA.300.004.2862) which stated (at .2884):

"Prices vary widely between the various eligible offsets and within the class of offsets depending on the perceived quality of the project. EA has a yearly strict budget to adhere to which will inform the offsets that are purchased. The budget is \$1.21/tCO2 through the program."

iv. A document titled "MD interim report to the EAH Board" dated March 2020 (EA.300.052.5380) which stated (at .5390):

"Ideally, a mix of Australian and international project offset certificates are purchased, delivering a range of positive outcomes in addition to emission reductions. However, prices vary widely between the various eligible offsets (Australian Carbon Credit Units (ACCU), Voluntary Emission Reduction Unit, Certified Emission Reduction Units and the Voluntary Carbon Standard Units) and within the class of offsets depending on the perceived quality of the project. EA's Trading team follow a strict annual budget which informs which offsets are purchased."

- v. An internal presentation dated July 2023 (EA.300.044.0357) which noted that:
1. carbon credit prices “have seen a significant increase in recent years”, in part driven by the fact that “Quality certificates are also in demand” (at .0359).
 2. “Science Based Target initiative (SBTi) only allows use of Carbon Removal Units such as Environmental Planting. Accessing such units are difficult and these are priced higher. ... Access to Removal Units are limited due to supply constrains and these are also valued higher in the market. Although not possible to transition immediately – EnergyAustralia should transition to such offsets as they become readily available at a reasonable price in future.” (at .0368).
 3. “As prices increase with emphasis put on quality – in absolute terms this will require greater investment on offsets to meet net-zero targets.” (at .0368).
 4. “Offsets generated from energy generation may lack additionality (not always) and new certificate issuances are banned by Verra and Gold Standard. If buying offsets from energy generation - purchase these from countries labelled as ‘Least Developed Countries’ (LDC) by the UNREDD+ projects are tainted by over crediting claims. These could see similar bans from registries in future.” (at .0368).
- vi. An internal document titled “Greenhouse Gas Offset Procurement Policy” dated 2 July 2021 (EA.300.015.5545) which identified the risk of purchasing low quality offsets and identified measures to address that risk, including prioritising more recent projects with the strongest additionality claims (at .5548) and prioritising CERs dated from 2016 onwards (at .5550). The recommendations do not appear to have been adopted during the period the subject of this proceeding.
- vii. An email exchange between EnergyAustralia employees on 16 September 2021 (EA.300.009.4108), discussing the Greenpeace report referred to in paragraph 9(b) below. On 29 September 2021, Melinda Green asked “In terms of offsets, do you think we could be doing anything better for the longer term (and we are over-emphasising Aust inits in our marketing)? Not saying that we follow what GP say, but to think through

what is the best and achievable balance of: usage reduction, renewables and offsets?” (at .4108). On 30 September 2021, Sean Lochhead wrote “In terms of offsets, the better quality we can get the better - in our budget” (at .4108).

3. Further or alternatively, EnergyAustralia knew or ought reasonably to have known (either at the time the Go Neutral program was first launched or anytime thereafter) that there were serious doubts as to the quality and additionality of the cheap CERs purchased, because of the following international developments:
 - a. In 2013, the European Union restricted the use of CERs in its carbon market due to concerns as to the additionality of projects generating CERs. In 2020, the European Union stopped accepting CERs for use in its carbon market (Cullenward Report, para 55).
 - b. By no later than 2019, other companies had publicly announced additional processes to ensure carbon offset projects that they supported were additional and permanent (as recognised in EA.300.006.7502 at .7525).
 - c. At the COP26 meeting in Glasgow, UK, on 13 November 2021, the parties to the Paris Agreement decided to prohibit the use of CERs where the project was registered before 1 January 2013 due to widespread quality concerns (Cullenward Report, paras 93-99). More than 99% of the CERs purchased by EnergyAustralia had project registrations dates before 1 January 2013.
4. That EnergyAustralia knew or ought to reasonably have known of the matters particularised in the preceding paragraph is proved or to be inferred from the following matters or circumstances:
 - a. Those matters were the subject of regular monitoring and review by EnergyAustralia’s product team, as recorded in:
 - i. a presentation titled “Go Neutral: Plan summary and Fact pack: input for Marketing Brief” dated December 2019 (EA.300.006.7502), which addressed the approach taken by other companies to carbon offsetting (at .7524-7525 and .7518);
 - ii. a document titled “Greenhouse Gas Offset Procurement Policy” dated 2 July 2021 (EA.300.015.5545), which recorded that the Clean Development Mechanism was being reviewed at the UN Conference of the Parties in November 2021 and concerns about the quality of older vintage CERs (at .5550, .5547);

- iii. a presentation titled “Carbon Neutral Commercial Strategy” and dated July 2023 (EA.300.044.0357) that recorded (at .0367) the findings of the review of international offsets by the Climate Change Authority in respect of the COP26 meeting and developments in Europe;
 - iv. emails between EnergyAustralia and its parent company, CLP Power Hong Kong Limited, in November 2022 (EA.300.087.8241) discussing developments in relation to international credits, including Article 6 implementation.
- b. Those matters were widely publicised in media reports which it can be inferred EnergyAustralia was monitoring as part of their “Go Neutral” program, including:
- i. “Factbox: Carbon offset credits and their pros and cons,” dated 26 February 2021 (<https://www.reuters.com/article/business/factbox-carbon-offset-credits-and-their-pros-and-cons-idUSKBN2AP1FZ/>);
 - ii. “EU considers bringing emissions removal credits into carbon market,” dated 18 April 2024 (<https://www.reuters.com/markets/europe/eu-considers-bringing-emissions-removal-credits-into-carbon-market-2024-04-17/>);
 - iii. “U.N. climate summit reaches carbon markets deal” dated 14 November 2021 (<https://www.reuters.com/business/cop/outline-carbon-markets-deal-emerges-un-climate-summit-2021-11-13/>);
 - iv. “COP26: Nations strike deal in Glasgow after late watering-down of coal phase-out clause” dated 13 November 2021 (<https://www.spglobal.com/commodityinsights/en/market-insights/latest-news/energy-transition/111321-cop26-nations-strike-deal-in-glasgow-after-late-watering-down-of-coal-phase-out-clause>).
- c. EnergyAustralia’s recognition that to meet the National Carbon Offsets Standard for products and services it needed to undertake its own due diligence assessment of the originating projects and underpinning methodologies for each unit purchased, as well as consulting the department’s website for any updates on eligibility (EA.300.008.4677). The National Carbon Offsets Standard was rebranded to “Climate Active” in 2019 but the Climate Active Carbon Neutral Standard for Products and Services has an identical due diligence requirement (see clause 2.5.1 of the 2022 Climate Active Standard for Products and Services: <https://www.climateactive.org.au/be-climate-active/tools-and-resources/climate-active-carbon-neutral-standard-products-and-services>). EnergyAustralia believed that it adhered to the Climate Active Carbon Neutral Standard (see

EA.300.009.4108 at .4108). Had this due diligence been properly conducted, it would have revealed the matters identified (to the extent EnergyAustralia was not already aware of those matters).

5. The individuals who were aware or ought reasonably to have been aware of the matters identified in paragraph 3 are the persons who created or received the documents referred to in paragraphs 4.a) and (c) /or any other persons within EnergyAustralia who were responsible for developing the “Go Neutral” program and ensuring the accuracy of the representations made in respect of that program. Further particulars may be provided after the service of evidence.
6. Further, EnergyAustralia identified the need to engage an environmental auditor or consultant to perform project assessments according to certain criteria. However, it did not proceed to engage an auditor or consultant to perform assessments of the projects generating the carbon credits it was purchasing which addressed all relevant criteria. This was despite recognising that it did not have the internal capacity to conduct such assessments (EA.300.018.5305). EnergyAustralia also did not engage a third party to conduct any assessment of several projects generating the carbon credits it was purchasing, including CDM 0673 Darajat Unit III Geothermal Project, from which EnergyAustralia purchased 30.2% of the credits relied upon in calendar years 2019-2022: Cullenward Report, para 79 and Table 10.

Type of carbon credits purchased

7. The carbon credits purchased to support EnergyAustralia’s claims were primarily avoidance credits or removal credits with short-lived storage (as those terms are defined in the Further Amended Statement of Claim).
8. Avoidance credits and removal credits with short-lived storage do not have the effect of cancelling out, negating, or otherwise neutralising the release of greenhouse gases into the atmosphere for the reasons pleaded at paragraphs 38 to 41 and 44 of the Further Amended Statement of Claim.
9. EnergyAustralia was aware or ought reasonably to have been aware of the fact referred to in paragraph 8 because a series of well-publicised studies and media reports have raised serious concerns about the use of these types of credits to support carbon neutrality claims, including:
 - a. In 2016, a report titled “Land Carbon: No substitute for action on fossil fuels” by Professor Will Steffen et al, available at <https://www.climatecouncil.org.au/uploads/aadc6ea123523a46102e2be45bfcedc8.pdf>. The report “describes the carbon cycle and how moving carbon from the

atmosphere back to the land by planting trees or other means is useful but cannot offset fossil fuel emissions”.

- b. In September 2021, a report titled “Hero to zero: Uncovering the truth of corporate Australia’s climate action claims” by Greenpeace, available at <https://www.greenpeace.org.au/static/planet4-australiapacific-stateless/2024/01/6cabffb4-hero-to-zero-report-greenpeace-australia-pacific.pdf>. The report claimed that “in almost all circumstances, carbon offsetting is ineffective and no more than corporate ‘greenwashing’”. The report is also referred to in internal EnergyAustralia correspondence (EA.300.009.4108).
- c. In November 2021, a paper titled “Do carbon offsets offset carbon?” by Professor Raphael Calel et al, CESifo Working Paper No. 9368, available at <https://www.cesifo.org/en/publications/2021/working-paper/do-carbon-offsets-offset-carbon>. The paper concludes that there is widespread non-additionality of CER wind farm projects in India (a class of carbon credits representing more than 50% of the carbon credits relied upon by EnergyAustralia during the relevant period). The paper received media coverage including in the Wall Street Journal (article titled “Renewables’ Success Skews Carbon Market --- Wind and solar projects, viable on their own, still sell offsets to polluters, say critics” by Shane Shifflett dated 9 September 2022) and in a segment on Last Week Tonight with John Oliver titled “Carbon Offsets” which aired on 21 August 2022.
- d. On 23 August 2022, an article titled “John Oliver on corporate ‘net zero’ proposals: ‘We cannot offset our way out of climate change’” by Adrian Horton, *The Guardian*, available at <https://www.theguardian.com/tv-and-radio/2022/aug/22/john-oliver-net-zero-climate-change-last-week-tonight>.
- e. On 21 November 2022, an article titled “Junk Carbon Offsets Are What Make These Big Companies ‘Carbon Neutral’” by Akshat Rathi et al, *Bloomberg*, available at: <https://www.bloomberg.com/graphics/2022-carbon-offsets-renewable-energy/>. The article said that many large companies made claims based on the purchase of “low-quality carbon offsets that experts rate as useless ... rely[ing] heavily on the cheapest and most suspect type of offset — those tied to renewable-energy projects”.
- f. On 10 March 2023, an article titled “A tonne of fossil carbon isn’t the same as a tonne of new trees: why offsets can’t save us” by Wesley Morgan, *The Conversation*, available at: <https://theconversation.com/a-tonne-of-fossil-carbon-isnt-the-same-as-a-tonne-of-new-trees-why-offsets-cant-save-us-200901>.

- g. On 10 March 2023, an article titled “These companies are certified carbon neutral. But that may not mean what you think it does” by Nick Kilvert, ABC News, available at <https://www.abc.net.au/news/science/2023-03-10/carbon-neutral-emissions-climate-active-greenwashing-companies/101991904>.
 - h. On 30 June 2023, an article titled “New guidelines tighten criteria for voluntary carbon offset market” by Ben Potter, The Australian Financial Review, an online version of which is available at <https://www.afr.com/policy/energy-and-climate/platinum-gold-and-silver-guidelines-for-carbon-offsets-20230629-p5dkih>.
 - i. On 21 July 2023, an article titled “Government’s Climate Active program should be probed for potential greenwashing, Allan Fels says” by Graham Readfearn, The Guardian, available at <https://www.theguardian.com/australia-news/2023/jul/21/governments-climate-acti-program-should-be-probed-for-potential-greenwashing-allan-fels-says>.
 - j. On 18 August 2023, an article titled “Australia’s most popular carbon credit scheme, Human Induced Regeneration, questioned by experts” by AshlyInne McGhee and Hannah Meagher, ABC News, available at <https://www.abc.net.au/news/2023-08-18/experts-criticise-carbon-offset-scheme-730/102736696>.
 - k. On 20 September 2023, an article titled “Revealed: top carbon offset projects may not cut planet-heating emissions” by Nina Lakhani, The Guardian, available at https://www.theguardian.com/environment/2023/sep/19/do-carbon-credit-reduce-emissions-greenhouse-gases?CMP=Share_AndroidApp_Other.
10. That EnergyAustralia knew or ought to reasonably have known of the matters particularised in the preceding paragraph is proved or to be inferred from the fact that the publications referred to above were widely disseminated. It can be inferred EnergyAustralia was monitoring all or some of this media as part of their “Go Neutral” program (noting the express reference to the publication particularised at paragraph 9.b) in EA.300.009.4108).
11. The individuals who were aware or ought reasonably to have been aware of the matters particularised in paragraph 8 above are those persons within EnergyAustralia who were responsible for developing the “Go Neutral” program and ensuring the accuracy of the representations made in respect of that program. Further particulars may be provided after the service of evidence.
12. Further, on 1 November 2022, EnergyAustralia’s parent company, CLP Power Hong Kong Limited, received a request for comments from reporters at Bloomberg:

EA.300.087.8257 at 8261. The email noted, among other things, that many experts say that renewable energy offsets are “as good as junk” and “are not living up to the claim of compensating for ongoing pollution”. These claims were raised with EnergyAustralia employees. Nonetheless, EnergyAustralia continued to retire and rely upon carbon credits from cheap CER renewable energy projects for calendar year 2022.

13. Further, in June 2023 the Voluntary Carbon Markets Initiative (VCMI) published its Claims Code of Practice, including a “Supplementary guidance on communicating climate claims”. This document received media attention, including in the *Australian Financial Review* article referred to in paragraph 9(h) above. One of the primary functions of the VCMI is to facilitate entities making claims in relation to the purchase of carbon credits. The supplementary guidance:
 - a. “[S]uggests that companies avoid making compensation claims entirely” because use of claims such as “carbon neutral” puts the company “more at risk of accusations of greenwashing and of litigation for what could be interpreted as a misleading claim”: page 4; and
 - b. Says further that “A claim must not seek to distract key audiences from a company’s most detrimental impacts on the climate and environment ... if a product is marketed as ‘carbon neutral’, additional information surrounding this headline claim must ensure the consumer understands the need for truly zero-carbon products to replace the current product marketed as carbon neutral (i.e., it should be clear that the need for carbon compensation is temporary and not a permanent solution) and, through this informative communication, the consumer could take action immediately or in the near future that is more ‘climate friendly’.”: page 5.
14. That EnergyAustralia knew or ought to reasonably have known of VCMI Claims Code of Practice is proved or to be inferred from the fact that the publication of that document was widely publicised and because the VCMI’s work was referred to in EnergyAustralia’s internal documents, including:
 - a. emails between EnergyAustralia and its parent company, CLP Power Hong Kong Limited, in November 2022 (EA.300.087.8257), which attached a draft response to a Bloomberg query that referred to CLP supporting the work of VCMI (EA.300.087.8263).
 - b. a presentation titled “Carbon Neutral Commercial Strategy” and dated July 2023 (EA.300.044.0357) that recorded the findings of the review of International Offsets by the Climate Change Authority, including that the Climate Active

Technical Guidance Manual would be updated to reflect VCMI's code once finalised (at .0367);

15. The individuals who were aware or ought reasonably to have been aware of the matters identified in paragraph 13 are the persons who created or received the documents referred to in paragraph 14 and/or any other persons within EnergyAustralia who were responsible for developing the "Go Neutral" program and ensuring the accuracy of the representations made in respect of that program. Further particulars may be provided after the service of evidence.

External assessments

16. EnergyAustralia could not rely on the reports provided by Ndevr Environmental to support the claims made because:
- a. Ndevr Environmental was engaged to vet for "reputational risk" (EA.300.016.7083 at .7084);
 - b. Ndevr Environmental did not establish the adequacy of the carbon credit type, the additionality of the carbon credit's putative climate benefits, nor a comparable level of certainty between the carbon credit's putative climate benefits and the harms of the greenhouse gas emissions it would be retired to offset (Cullenward Report, Sections 4.1-4.2); and
 - c. Ndevr Environmental identified significant risks with projects that were issued carbon credits which EnergyAustralia ultimately purchased (Cullenward Report, Sections 4.1-4.2).
17. EnergyAustralia could not rely on its "Climate Active" certification to support its claims because:
- a. EnergyAustralia was responsible for identifying and conducting due diligence on particular offset projects according to the Climate Active Carbon Neutral Standard for Products and Services (see paragraph 4(c) above); and
 - b. Climate Active only provided guidance on the sort of offsets that must be used to obtain the certification and did not certify the offsets purchased (EA.300.016.5798).
18. Further particulars may be provided following the service of EnergyAustralia's evidence and/or any evidence in reply.