

On 14 July 2023, the Australian Competition and Consumer Commission (ACCC) published long-awaited draft guidance on its regulatory views on companies' environmental and sustainability claims and their relevant obligations under the Competition and Consumer Act 2010 (Cth) (i.e. Schedule 2, titled the Australian Consumer Law (ACL)). The draft guidance on environmental and sustainability claims contains various examples and eight guiding principles, with a particular focus on greenwashing.

Environmental and sustainability claims can, and currently do, have a significant influence on consumer and investor behaviour. The release of the draft guidance paper follows a recent uptick in regulatory action by the Australian Securities Investment Commission (ASIC) on greenwashing in late 2022 and 2023 so far (as discussed in [our previous note in January 2023](#)).

While the ACCC's regulatory ambit primarily focuses on products and services and ASIC is responsible for financial products and financial services, these two regulatory bodies are working closely together on the detection and investigation of misleading or deceptive environmental claims.

Given this crackdown on misleading or deceptive statements relating to environmental issues, this draft guidance comes at a perfect time to assist you and your business when making environmental and sustainability claims, and this note highlights the key takeaways to keep in mind when making such claims.

Eight Guiding Principles When Making Environmental and Sustainability Claims

The ACCC identifies eight key principles that it considers will assist you in complying with your obligations under the ACL and ensure any environmental claims that you make establish trust in your business and allow consumers to make informed decisions. These eight principles are:

- 1. Make accurate and truthful claims** – Environmental claims must be accurate, true and correct. It is important that there is scientific evidence or research to substantiate your claim and that the environmental benefit is not exaggerated or, on the other hand, is not understated. By making environmental claims only when there is a genuine environmental benefit associated with your product, service or business, you can mitigate the risk of misleading consumers.
- 2. Have evidence to back up your claims** – You must have a reasonable basis for, and be able to substantiate your, environmental claims. To minimise the risk of enforcement action, you should make a genuine effort and take the appropriate steps to verify the accuracy of any information you have relied on and make the information relied upon publicly available.
- 3. Do not leave out or hide important information** – It is important to include all information (including the full life cycle) of your product or service. You should refrain from relying on small print disclaimers, disclosures or clarifications as an excuse for making misleading environmental claims.
- 4. Explain any conditions or qualifications on your claims** – You should ensure that you provide enough information about what is required for your claims to be true, including any conditions or qualifications.
- 5. Avoid broad and unqualified claims** – To reduce the risk of misleading consumers, you should avoid using overly broad, vague terms, as they may not explain the environmental impacts of your product, service or business. Some common broad or unqualified terms to avoid are "green", "environmentally friendly", "eco-friendly" and "sustainable". Further, if you use the terms "recyclable", "recycled", "renewable energy" and "free", you should accompany them with a qualifying statement and appropriately explain the relevant terms. You should exercise particular caution when making emission-related claims, such as "carbon neutral", "climate neutral" or "net zero". Making emission-related claims should always be transparent, be based on a thorough emissions baseline assessment and, if made on future matters, have reasonable grounds.



6. **Use clear and easy-to-understand language** – Your environmental claims should be easy to understand for the ordinary and reasonable consumer. It is good practice to avoid using scientific and technical language and when using this language, it is good practice to clearly define the relevant terms.
7. **Visual elements should not give the wrong impression** – Exercise caution when using symbols, trust marks (e.g. the use of a green tick alongside the words “biodegradable approved”) and third-party labels or certifications. The visual elements of your marketing, products and packaging can ultimately convey certain (potentially misleading) things to your consumers.
8. **Be direct and open about your sustainability transition** – You should be aware of where you are in your sustainability transition, and ensure you are conveying a truthful stage to consumers accurately. It is good practice to avoid promoting goals or making claims about your sustainability transition that are not factual.

Key Takeaways

In light of the ACCC’s draft guidance paper, businesses should review their existing environmental and sustainability claims in line with these guidelines and remain cognisant of them when making new ones. Further, the paper includes useful commentary for businesses to consider on the ACCC’s compliance and enforcement approach, highlighting the potential use of its compulsory information-gathering powers, substantiation notices, infringement notices and penalties.

The ACCC has flagged its intention to take enforcement action where a person makes environmental claims about future matters and it is satisfied they did not have the proper grounds to make the future-focused statement. This is an important reminder that businesses must have reasonable grounds for making future matter representations regarding environmental outcomes, have a real and measurable plan or intention to implement the initiatives and make representations carefully with appropriate detail and qualifications.

The draft guidelines also signal the ACCC’s willingness to use its statutory investigations powers, such as the power to issue notices requiring the production of information and documents, or to give evidence, to investigate whether companies making environmental claims are compliant with the ACL. For this reason, companies should have appropriate regulator-facing documents and information appropriately stored to provide to substantiate their environmental claims if a notice is received.

The regulatory action surrounding greenwashing and the release of these guidelines reaffirms that environmental-related claims are certainly one of the ACCC’s and ASIC’s enforcement priorities for 2023. It is often crucial to obtain independent external legal advice before potentially misleading sustainability-related statements are made.

The ACCC is seeking submissions on the guidance paper before 15 September 2023, from various stakeholders, businesses, and industry associations, as well as consumers and consumer advocates.

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