



Senate Inquiry into Greenwashing

**ACCC submission to Senate Environment and
Communications References Committee in response to
terms of reference**

22 June 2023

Contents

Key points.....	2
1. The ACCC's role.....	4
2. Greenwashing in practice	7
3. Impact of greenwashing	16
4. How environmental claims can be improved.....	18

Key points

The ACCC welcomes the opportunity to make this submission to the Senate Environment and Communications References Committee inquiry into greenwashing.

Many consumers want to reduce the negative impact of their consumption choices on the environment, and hence actively seek out goods and services that claim reduced environmental impacts. This creates an incentive for businesses to take steps to reduce the environmental impacts of their operations, and to promote this to consumers. However, the inability of most consumers to accurately verify environmental claims also incentivises businesses to exaggerate or make false environmental claims.

False and misleading environmental claims (often referred to as 'greenwashing') can lead to substantial economic and environmental harm. Such claims:

- limit a consumer's ability to make informed choices
- lead consumers to pay more for the value of an environmental impact that does not exist
- unfairly disadvantage businesses which make investments in genuinely pursuing more sustainable goods or services, and
- undermine consumer trust in environmental claims in general and can create a disincentive for businesses to invest in sustainability.

The ACCC's 2022 sweep of online environmental claims made by 247 businesses found that 57% of those businesses were making potentially misleading claims. The ACCC is using the sweep results to:

- update the ACCC's guidance for business on environmental claims, and
- identify and prioritise claims for investigation and potential enforcement action under the Australian Consumer Law.

Environmental claims are a compliance and enforcement priority for the ACCC in 2022-23 and 2023-24. The ACCC has established a Sustainability Taskforce within the ACCC to develop the ACCC's expertise in relation to sustainability, and facilitate an integrated approach across the ACCC's functions.

However, there are limitations in what can be achieved through the Australian Consumer Law. In particular, the prohibitions on misleading claims cannot require a business to make an environmental claim nor require a claim to be made in a prescribed format, as is the case for energy rating, water rating and country of origin claims.

The European Union and United Kingdom are currently considering reforms to specifically address environmental claims including by:

- creating standardised definitions of commonly used environmental terms
- setting minimum standards that environmental claims must meet
- requiring the mandatory disclosure of certain information in relation to the performance of a product, and
- requiring independent verification and certification of environmental claims, and controlling the establishment of certification schemes.

This is a rapidly developing policy area, reflecting the role of consumption policies in supporting governments' environmental and sustainability objectives.

The ACCC and other Australian Consumer Law regulators can play an important role in stamping out false claims. Noting the imperative to transition to a low carbon sustainable economy, consumer preferences articulated above and the limitation of the current law in relation to positive claims the ACCC considers there is merit in examining a framework to encourage or require environmental claims in a manner that is meaningful to consumers.

1. The ACCC's role

The ACCC is an independent Commonwealth statutory agency that promotes competition, fair trading and product safety for the benefit of consumers, businesses and the Australian community. The primary responsibilities of the ACCC are to enforce compliance with the competition, consumer protection, fair trading and product safety provisions of the *Competition and Consumer Act 2010* (Cth), regulate national infrastructure and undertake market studies.

In relation to environmental claims, the ACCC's roles include:

- enforcement of the prohibitions in the Australian Consumer Law (**ACL**) on businesses engaging in misleading or deceptive conduct, or making false or misleading representations about goods or services, and
- assessment of certification trade mark applications under the *Trade Marks Act 1995* (Cth) to ensure the rules for the use of a certification trade mark are satisfactory having regard to the principles of competition, unconscionable conduct and consumer protection.

Protecting consumers from misleading environmental claims

The ACL, set out in Schedule 2 of the *Competition and Consumer Act*, is applied as a Commonwealth, State and Territory law, administered by the ACCC and State and Territory fair trading agencies respectively.

Section 18 of the ACL provides that a person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive. In particular:

- The prohibition applies even if there was no intention to mislead or deceive.
- Representations as to future matters are taken to be misleading if the person did not have reasonable grounds for making the representation.¹
- A person that has suffered loss or damage as a result of a breach of section 18 will be entitled to seek damages.

In addition to the blanket prohibition under section 18, section 29 of the ACL prohibits certain types of false or misleading representations about goods and services. In particular:

- This includes representations in relation to quality, sponsorship, price, the availability of spare parts, place of origin and the existence or effect of any warranty or guarantee.
- Unlike contraventions of section 18, a contravention of section 29 may also constitute an offence giving rise to significant penalties. The [maximum penalties](#) for corporations for each contravention of section 29 are the greater of:
 - \$50,000,000
 - if the Court can determine the 'reasonably attributable' benefit obtained, 3 times that value, or
 - if the Court cannot determine the benefit, 30% of the corporation's adjusted turnover during the breach turnover period for the offence.

¹ ACL section 4.

In addition, sections 33 and 34 prohibit a person, in trade or commerce from engaging in conduct that is liable to mislead the public as to the nature, characteristics, manufacturing process, suitability for their purpose or quantity of goods and services. The same pecuniary penalties that apply to contraventions of section 29 of the ACL also apply to contraventions of sections 33 and 34.

Similar protections against misleading or deceptive conduct and false or misleading representations are contained in the *Australian Securities and Investments Commission Act 2001* (Cth) in respect of financial products (defined to include Australian carbon credit units) and financial services. The ACCC works closely with the Australian Securities and Investments Commission, along with other regulators including the Clean Energy Regulator, to take a coordinated and consistent approach to address the broad range of issues relating to environmental claims.

Certification trade marks

Increasingly, goods and services carry a trade mark such as a symbol or logo to convey to consumers the environmental credentials of the good or service. A 'certification trade mark' is a type of trade mark that can be used to certify to consumers that a good or service meets a particular standard. These standards usually relate to matters such as:

- quality
- composition
- place of origin
- manufacturing method
- suitability for a particular task.

Some organisations are using certification trade marks as a means to represent that goods or services meet certain environmental or sustainability standards.

All certification trade marks have rules about the standards that must be met in order to use the mark or logo. Under section 175 of the *Trade Marks Act*, before a certification trade mark can be registered, the ACCC must consider whether the:

- attributes a person must have to become an approved certifier are sufficient to enable the person to assess whether goods and/or services meet the certification requirements, and
- rules would not be to the detriment of the public, and are satisfactory having regard to the principles relating to competition, unconscionable conduct and consumer protection set out in the *Competition and Consumer Act*.

As a practical application of these criteria, the ACCC considers whether (among other things), the:

- rules would require or encourage users of the certification trade mark to engage in anti-competitive conduct such as cartel conduct, anti-competitive agreements or exclusive dealing, and
- requirements for certification in the rules are consistent with what the certification trade mark represents to consumers, such that consumers are not misled when they see the mark or logo on goods and services.

Registration by IP Australia provides certification trade mark owners with the exclusive right to:

- use the certification trade mark in accordance with the rules, and
- allow others to use the certification trade mark in accordance with the rules.

Examples of relevant certification trade marks that are currently being considered by the ACCC include:

- [Department of Climate Change, Energy, the Environment and Water's](#) current application to register the Climate Active Carbon Neutral trade mark to certify a business has taken action to reduce or offset greenhouse emissions
- [Circular Energy's](#) current application to register the Sustainable Energy Commitment trade mark to certify that an organisation has made a commitment to acceptably meet Sustainable Energy Commitment Criteria.

2. Greenwashing in practice

Terms of Reference –

- (a) *The environmental and sustainability claims made by companies in industries including energy, vehicles, household products and appliances, food and drink packaging, cosmetics, clothing and footwear;*

When businesses make environmental or sustainability claims that are false or misleading, it is often referred to as 'greenwashing'.

To understand the nature and prevalence of environmental and sustainability claims made by businesses in Australia, the ACCC conducted a sweep of businesses' websites in 2022, specifically examining environmental claims made on those websites. This section of the submission covers the:

- results of that sweep
- factors leading to problematic environmental claims, and
- categories of problematic environmental claims that the ACCC and international counterparts have observed in practice.

2.1. ACCC internet sweep

The ACCC's internet sweep took place between 4 and 14 October 2022 and examined the websites of 247 different businesses and/or brands across 8 sectors.²

The ACCC identified that 141 businesses (57%) made potentially misleading environmental or sustainability claims. The sweep identified that some sectors are more prone to potentially misleading environmental claims. The three sectors with the highest proportions of potentially misleading claims were:

- Cosmetics and personal care (73%)
- Clothing and shoes (67%)
- Food and beverages (65%)

The proportions of potentially misleading claims in the remaining sectors were:

- Energy (64%)
- Takeaway packaging (55%)
- Household and cleaning products (50%)
- Electronics and Home Appliances (46%)
- Motor vehicles (11%)

The results are consistent with a sweep of online environmental claims conducted by the European Commission and national consumer protection agencies, under the umbrella of the International Consumer Protection and Enforcement Network. The 2021 report arising from that sweep found that 42% of the claims were exaggerated, false or deceptive and could potentially qualify as unfair commercial practices under European Union rules.³

² ACCC, [Greenwashing by businesses in Australia: Findings of the ACCC's internet sweep of environmental claims](#) (May 2023).

³ <https://icpen.org/news/1146>; https://ec.europa.eu/commission/presscorner/detail/en/ip_21_269; <https://www.gov.uk/government/news/global-sweep-finds-40-of-firms-green-claims-could-be-misleading>.

Problematic environmental claims

The ACCC's sweep identified eight key concerns:

- **The use of vague and unqualified claims.** This includes businesses using terms such as 'eco-friendly' or 'sustainable', as well as making environmental claims without providing adequate explanation or specificity.
- **The overall lack of substantiation provided by businesses.** Very few businesses provided evidence to back up their claims. Where evidence was provided, this often did not assist consumers.
- **The use of strong, absolute claims.** Some businesses made absolute claims about their products (e.g. 100% recyclable), in circumstances where this was likely to be false or create a misleading impression.
- **The use of unhelpful comparisons.** For example, stating that a product uses fewer materials, but without stating how much less was used.
- **Overstating benefits or omitting relevant information.** There were a variety of different examples of this type of conduct. This included promoting the sustainability benefits of a product without referencing the total environmental impact of the product over its entire lifecycle.
- **Making broad aspirational claims.** Many businesses set out sustainability goals for their businesses but did not provide any detail about how these goals would be achieved or provide clear updates on progress.
- **The use of third-party certification.** Some businesses did not adequately describe claimed certification, or referred to certification in a misleading way. The sweep also identified a plethora of certification schemes, many for the same category of product. It is likely to be difficult for consumers to understand what each of these schemes are.
- **The use of symbols that appear to be trust marks.** These symbols may mislead consumers into believing that the product or business is certified by a third-party, when in fact it has been 'self-certified' by the business making the product.

Each of these issues are explained in more detail in the ACCC's [2023 report](#).

2.2. Factors leading to potential greenwashing

The ACCC has observed differences in the approaches taken by businesses across different industries in relation to environmental and sustainability claims. This is due to a range of factors, including consumer preferences and government regulatory requirements.

Consumer preferences & competition

There is growing evidence that consumers take environmental considerations into account in their life and are increasingly seeking to shop sustainably. According to many studies,⁴ a large share of consumers considers the environment to be an important factor in their future purchasing decisions. Research conducted by the Consumer Policy Research Centre in 2022 suggests that 45% of Australians always or often consider sustainability as part of their purchasing decision-making.⁵

⁴ See for example, Katherine White, David J. Hardisty, and Rishad Habib, 'The Elusive Green Consumer', *Harvard Business Review* (July-August 2019) and Tensie Whelan and Randi Kronthal-Sacco, 'Actually, Consumers Do Buy Sustainable Products', *Harvard Business Review* (July 2019).

⁵ Consumer Policy Research Centre, [The Consumer Experience of Green Claims in Australia](#) (2022).

Given the size of the market and growth in demand, there are obvious incentives for businesses to deliver sustainable goods and services. There is also an incentive for businesses to falsely claim to deliver such goods and services by engaging in greenwashing. It is difficult for consumers to verify the accuracy of an environmental claim as consumers have less information than the business making the claim (information asymmetry).

The risk of consumer harm is heightened because many consumers are also time poor. Only a very small portion of consumers will spend time researching an environmental claim prior to purchase. This is particularly the case where consumers are making everyday purchases at the supermarket or at a clothing retailer.

Other factors

However, it is important to note that there are a range of other factors that lead businesses to take environmental action and/or make these types of claims including:

- Domestic obligations – there have been extensive changes in the environmental regulatory framework in recent years which have a direct impact on the claims made to consumers.
- International obligations – in responding to the requirements of environmental and consumer law in other jurisdictions, businesses may be required to disclose information about manufacturing and supply chain processes.
- Shareholders – increasingly some shareholder and investor groups are requiring that businesses implement and report on various Environmental, Social and Governance policies to respond to climate change.
- Supply chain terms of trade – to meet terms and conditions for the supply of goods, some retailers require wholesalers and manufacturers to meet various Environmental, Social and Governance requirements in relation to the provenance and manufacturing process of goods.

In heavily polluting sectors, greenwashing concerns tend to relate more to corporate accountability. Environmental claims are more often driven by meeting government or shareholder requirements.

The ACCC also recognises the challenges at both the product and business level in developing claims, particularly for small businesses and businesses with long supply chains. For instance, it can be difficult for businesses – and especially small businesses – to confidently discern the environmental impacts of all the component products or services used in a specific multi-component supply chain where many of those may be produced or provided in overseas locations. Even in situations where most components in a supply chain are sourced domestically, differences in emission or resource use calculation methodologies, and geographic and temporal variations in production systems can create considerable variations in apparent environmental footprints.

The Australian Government Department of Climate Change, Energy, the Environment and Water publishes a number of guides to assist businesses to voluntarily calculate their greenhouse emissions, although notes the calculation methods detailed in these are not mandatory, and in some sectors there can be considerable variation in results depending on assumptions utilised.

2.3. Categories of environmental claims

Environmental and sustainability claims may be made in a variety of ways including:

- **Product specific claims** – these may appear on packaging, websites, or advertisements or social media posts by influencers.
- **Company-wide claims** – are generally used to enhance brand recognition and trust and often appear on websites, advertisements or in corporate social responsibility statements and reporting documents.⁶
- **Claims using logos and symbols (including certification trade marks)** – these can appear on product packaging, websites, or advertisements.

Through the [International Consumer Protection and Enforcement Network](#), the ACCC has been working with overseas consumer agencies on greenwashing issues. Areas of international focus include:

- explicit claims
- implicit claims
- omissions or missing information
- claims made in highly polluting industries, and
- emissions related claims.

These five areas are discussed in more detail below.

Express/explicit claims

Explicit claims are usually express statements made in relation to the environment or sustainability. Examples of issues include:

- **Express claims that are vague/general**
 - The most common issue identified in the ACCC's sweep was the high proportion of vague and unqualified claims. Many businesses used vague terms like 'green', 'kind to the planet', 'eco-friendly', 'responsible' or 'sustainable' to describe their products.
 - The United States Federal Trade Commission [Green Guides](#) provides the example of the term 'Eco-friendly'. This likely conveys that the product has far-reaching environmental benefits and may convey that the product has no negative environmental impact. Because it is highly unlikely that the marketer can substantiate these claims, the use of such a term is deceptive.
 - The UK Competition and Markets Authority, in 2022, opened an [investigation](#) into three fashion brands (ASOS, Boohoo and George at Asda) to scrutinise their environmental claims. Issues included that:
 - the statements and language used by the businesses were too broad and vague, and may create the impression that clothing collections – such as the 'Responsible edit' from ASOS, Boohoo's 'Ready for the Future' range, and 'George for Good' – are more environmentally sustainable than they actually are

⁶ As set out in section 1 of this submission, representations in respect of financial products and services are covered by the *Australian Securities and Investments Commission Act*.

- the criteria used by some of these businesses to decide which products to include in these collections may be lower than customers might reasonably expect from their descriptions and overall presentation – for example, some products may contain as little as 20% recycled fabric
 - some items have been included in these collections when they do not meet the criteria used by the business
 - there is a lack of information provided to customers about products included in any of the companies’ eco ranges, such as missing information about what the fabric is made from
 - any statements made by the companies about fabric accreditation schemes and standards are potentially misleading, such as a lack of clarity as to whether the accreditation applies to particular products or to the businesses’ wider practices.
 - The UK action follows an investigation by the Netherlands Authority for Consumers and Markets into misleading environmental claims in the clothing sector. The investigation revealed, for example, that Decathlon (a sporting goods retail chain) and H&M (a clothing retail chain) offered their products using general terms such as ‘Ecodesign’ and ‘Conscious’ without immediately specifying clearly the sustainability benefits associated with the claim. In 2022, Decathlon and H&M made [commitments](#) to:
 - adjust or no longer use sustainability claims on their clothes and/or websites
 - inform consumers more clearly to minimise the risk of misleading practices involving sustainability claims, and
 - make donations of 400,000 euros and 500,000 euros, respectively, to different sustainable causes to compensate for their use of unclear and insufficiently substantiated sustainability claims.
- **Future claims**
 - These can include:
 - Claims about what will happen to a product in the future. For example, claims that a product will biodegrade in landfill conditions within a certain time period.
 - Claims about a business’ aspirations or goals it will achieve in the future. This may include emissions reduction targets (e.g. net-zero targets and interim targets) or claims about reducing the use of raw materials by a certain date.
 - These types of claims can be problematic, as consumers have no way of knowing whether the claimed benefit or promise will ever be achieved despite the brands seeking to gain credibility or trade off these goals and aspirations now. If a business makes claims about events that will occur in the future, they must have a reasonable basis for these claims.
 - While the Australian Consumer Law can provide a remedy where there is no reasonable grounds for making a representation with respect to a future matter, what constitutes ‘reasonable grounds’ in the context of future claims relating to emissions is yet to be tested.

- **Product disposal claims**

- Product disposal claims refer to explicit environmental claims relating to the disposability of products. Often, businesses use claims such as ‘recyclable’ or ‘compostable’ without further specification. For example, when a product is labelled as ‘recyclable’, a consumer may not understand whether the package, the product itself, or both are recyclable. Also, the consumer may not understand whether the product or package is merely capable of being recycled under specific conditions or using specific technology, or can actually be recycled utilising processes or technology readily available in the local community.
- The New Zealand Commerce Commission took enforcement action against a manufacturer of plastic rubbish bags, [Eco-Pal](#), in relation to ‘oxo-biodegradable’ bags it marketed and sold.
 - The Court found that the website and product claims were liable to mislead the public as the bags would not biodegrade in a landfill readily or swiftly, or within the timeframe the average consumer expects (whether 12 months or 24 months or less).
 - The Court also found that statements on the website were liable to mislead the public because important limitations on the availability of composting options in New Zealand were not made clear.

- **Sustainability collection/filter**

- As discussed above in relation to vague claims, businesses are increasingly using a ‘sustainable collection’ or filter on their website to highlight and allow consumers to select more sustainable products.
- The Netherlands Authority for Consumers and Markets [Guidelines on Sustainability Claims](#) includes an example of a clothing company that offers consumers the option of filtering the clothing range by ‘sustainability’ but does not explain which sustainable criteria the displayed clothing meet.

- **Comparative claims**

- Environmental claims may suggest that a good or service has a more positive impact on the environment or is less damaging to the environment than competing goods or services. Goods or services bearing such comparisons should be assessed against similar goods or services.
- The European Commission’s [Guidance on Unfair Commercial Practices](#) includes the example of a press advertisement for a gas company that was headed ‘A step forward to greener living’. It stated: ‘When you install a high efficiency gas condensing boiler you reduce your carbon footprint compared to using oil or electricity’. A sub-heading stated: ‘The facts show which fuel is greener’ followed by data that compared the amount of carbon dioxide that the business claimed was needed to produce a kWh of energy from different fuels. A complaint about the ad was upheld by the UK Advertising Standards Authority which considered that, because the claim was not based on the most relevant comparison data, the advertisement was misleading.⁷

⁷ [ASA Adjudication on Guernsey Gas Ltd](#); 7 July 2010.

Implicit/implied claims

An implicit environmental claim is less specific than an explicit claim and is not directly stated. When viewed in context by a reasonable consumer, these claims imply that there is an environmental benefit.⁸

Research has shown that the use of the colour green or of pictograms of a tree or leaf can give consumers the impression that a product has certain environmental benefits or meets the requirements of a label.⁹

Examples of issues include **eco-labels, trust marks and certification**:

- In each country, requirements for the use, and quality, of certification labels may vary. Generally, the UN Guidelines consider third-party certification with independent verification a more reliable mechanism. Self-declared and self-assessed labels are considered the least reliable option.¹⁰
- The ACCC is observing an increasing number of businesses seeking certification for their products or business operations. It is important that businesses clearly explain the relevance of the certification program, and do not overstate its benefits or implications. For example, the ACCC's internet sweep found broad claims that a business is 'certified' by a scheme when only its products were certified, and not the entire business. The sweep found examples of the word 'certified' used in relation to an entire product, when only certain components of the product were certified.
- The US Federal Trade Commission's [Green Guides](#) state that because consumers might expect that a certification may cover attributes beyond those that the certification actually covers, businesses should either clarify what the certification covers on the label or qualify the certification.

Trust marks and certification are further discussed in section 4 of this submission.

Omissions or missing information

The omission of environmental information can also mislead consumers. This includes:

- making a claim but not providing the additional explanatory information needed for it to be understood
- omitting key information regarding the good's environmental performance i.e. its durability, lifespan, repairability and recyclability, and
- hiding information or focussing only on the positives, when these relate to a minor element of a good or service and the good or service as a whole has a major environmental impact (this is further discussed in relation to highly polluting industries and emissions related claims).

Claims by highly polluting businesses

A key issue that has arisen is whether, in highly polluting industries where goods or services are always negative for the environment, certain claims, images and packaging can be misleading. For example:

⁸ See also the International Chamber of Commerce (ICC) [Advertising and Marketing Communications Code](#). Article D5 – Signs and symbols.

⁹ Eva van der Zee and Arnout Fischer, 'Green Pictograms on EU Foods: A Legal Study Informed by Behavioral Science' (2018)(1) *Journal of European Consumer and Market Law* 15-22.

¹⁰ United Nations Environment Programme, [Guidelines for Providing Product Sustainability Information](#) (2017) p. 20.

- In France, it is no longer acceptable to portray a motor vehicle in an off-road natural environment.¹¹ The [French Climate and Resilience Law](#) (discussed further in section 4 of this submission) also prohibits advertising of fossil fuel products from 2022, and bans advertising of the most carbon-emitting cars from 2028.
- The Netherlands [Authority for Consumers and Markets](#) took action against an airline company, Ryanair, in relation to the CO₂ compensation (carbon offset) scheme that it offered to consumers when booking airline tickets online. Following the investigation, the company made changes to its website including: adding a clear message that CO₂ compensation does not make flying itself more sustainable; displaying the calculation and amount of CO₂ that is compensated; and providing additional clarity about the projects on which the CO₂ compensation is spent.
- The [Swedish Competition Authority](#) took action against a dairy business in relation to its net-zero advertising claims. [The Swedish Patent and Market Court](#) found that the business was misleading consumers in relation to its net-zero advertising claims.
- The UK Advertising Standards Authority found that newspaper, TV and poster advertisements by oil companies [Shell UK Ltd](#), [Repsol SA](#) and [Petronas](#) were misleading for advertising their investment activity in renewable energy without mentioning the extent of each company's significant carbon emissions. For example, the ruling in relation to [Shell](#) concludes that consumers were likely to be misled by advertisements that 'misrepresented the contribution that lower-carbon initiatives played, or would play in the near future, as part of the overall balance of a company's activities'. This also followed a ruling against [HSBC UK Bank](#) in relation to a poster that advertised the bank's investment in renewables without mentioning its funding of fossil-fuel infrastructure.

Emissions related claims

Climate change is a particularly significant environmental and economic issue, and the transition to a net-zero economy is impacting businesses in Australia and globally.

Many businesses are voluntarily taking steps to mitigate their emissions that go beyond the requirements of environmental law. Many of these businesses are also making consumer facing claims about their emissions mitigation efforts. Given the significance of climate change as an environmental and economic issue and the complexities that can underpin emissions related claims, this is a key area of focus for the ACCC.

It is important that consumers can readily identify and distinguish between the steps that businesses are taking to reduce their greenhouse gas emissions and impact on climate change. This may include:

- understanding the details and extent to which businesses have chosen to invest in decarbonisation initiatives that result in them producing less emissions (e.g. increasing energy efficiency), and
- distinguishing those businesses from others relying on the purchase of offsets to reduce their 'net' emissions position.

¹¹ The French advertising self-regulatory organization ARPP [Sustainable Development Code](#) states that the representation of a motor vehicle on a natural area is prohibited. On the other hand, its representation on a public or private road or area open to traffic, recognizable as such and clearly distinguished from the natural area is permitted.

The ACCC is considering a number of challenges in the context of environmental claims based on emissions offsetting and renewable energy generation, and how these challenges may be impacting consumers. For example:

- To the extent that offsets rather than emissions reductions underpin claims, it is important that:
 - this is transparently disclosed to consumers
 - the offsets used achieve the scientific outcome that they represent and are not double counted, and
 - information is provided about the types of offset projects used, the extent to which they have been verified and transparent information is provided about the registry and relinquishment details.
- Similarly, to the extent that a business is claiming to use renewable energy it is important this claim is not double-counted, for example by both using and claiming to use renewable energy onsite, for example in manufacturing production, while simultaneously generating and on-selling certificates to third parties who then also claim to be using the same renewable electricity.

There are also challenges created by the different accounting methods used across mandatory and voluntary reporting frameworks which mean consumer facing claims may not be readily comparable. For example:

- The ACCC is considering challenges arising from the different accounting methods (including location based and market based scope 2 accounting). These accounting methods cannot be used simultaneously without double counting of the 'zero emissions attribute' of renewable electricity across the economy.
- Double counting in this context can mean that representations to consumers about scope 2 emissions reduction efforts are not scientifically accurate.

The ACCC will continue to consider these complex issues and how they may be contributing to representations that mislead or confuse Australian consumers. Similar issues are also being considered overseas.

3. Impact of greenwashing

Terms of Reference –

(b) The impact of misleading environmental and sustainability claims on consumers;

3.1. Consumer harm

The OECD's [Recommendation on Consumer Policy Decision Making](#) (2014) defines 'consumer detriment' as the harm or loss that consumers experience, when, for example:¹²

- they are misled by unfair market practices into making purchases of goods or services that they would not have otherwise made
- they pay more than what they would have, had they been better informed, or
- the goods and services that they purchase do not conform to their expectations with respect to delivery or performance.

False or misleading environmental claims can harm consumers in a variety of ways including:

- **Financial harm** – where the consumer has purchased a good or service that they otherwise would not have purchased or paid a premium based on the environmental claim.
 - Section 2 of this submission provides the example of the action taken by the Netherlands [Authority for Consumers and Markets](#) against an airline company in relation to the CO₂ compensation (carbon offset) scheme that it offered to consumers when booking airline tickets online.
- **Non-financial personal detriment** – this harm is more difficult to measure but reflects the abuse of consumers' trust and values. This erosion of trust in turn impacts consumers' reliance on environmental claims more broadly.
 - A survey of consumers in nine countries found that almost half of the surveyed consumers (49%) said they do not have any information to verify sustainability claims made regarding a product and 44% did not trust those claims.¹³ This was also reflected in recent national surveys from Australia¹⁴ and Germany.¹⁵
 - A 2011 OECD report refers to a 2010 survey of consumer habits in 17 countries, which found that consumer cynicism about environmental claims is leading to a reduction in eco-friendly purchases in some countries.¹⁶

¹² The measurement of consumer detriment and the impact of consumer policy is discussed more broadly in OECD, [Measuring consumer detriment and the impact of consumer policy: Feasibility study](#) (OECD Digital Economy Papers, No. 293, 2020).

¹³ The countries were: France, Germany, India, Italy, Netherlands, Spain, Sweden, UK and US. Capgemini Research Institute, [Consumer Products and Retail - How Sustainability is Fundamentally Changing Consumer Preferences](#) (2021).

¹⁴ Consumer Policy Research Centre, [The Consumer Experience of Green Claims in Australia](#) (2022).

¹⁵ Anke Zühlsdorf et al, [Green advertising claims on food products: Consumer study on the understanding of environmental and climate-related advertising claims](#) (2023).

¹⁶ OECD, [Environmental Claims: Findings and Conclusions of the OECD Committee on Consumer Policy](#) (DSTI/CP(2010)16/FINAL, March 2011).

3.2. Business & environmental harms

Improving the veracity of environmental claims is not just about protecting consumers. It also creates a level playing field between businesses, and supports competitive conduct in markets.

False or misleading environmental claims make it difficult for consumers to identify and support businesses that are genuinely making efforts to mitigate their environmental impact. Many businesses go to significant lengths to make their goods and services more sustainable. This innovation and investment needs to be protected from the behaviour of other businesses making equivalent claims without genuinely investing to mitigate their environmental impact.

Where businesses are not able to realise the full competitive benefits of making environmental improvements, greenwashing has a chilling effect on investment. This distortion of market incentives in turn impacts the ability of the Australian Government to transition Australia to a net zero¹⁷ and circular¹⁸ economy through demand-side drivers.

Ultimately the objectives of government, consumers and businesses are the same – to ensure that:

- Consumers are not misled by environmental claims and have transparency about businesses' environmental efforts and impact.
- Businesses have the certainty they need to invest and do not succumb to greenwashing because of a fear of breaching the Australian Consumer Law or uncertainty about what they can and cannot say or do.
- Markets are operating efficiently, and businesses are not competitively disadvantaged by false or misleading environmental claims made by competitors.
- New markets emerging as a result of the transition to net zero and a circular economy are developing in competitive ways.

¹⁷ The [Climate Change Act 2022](#) incorporates, in domestic law, Australia's nationally determined contribution under the *Paris Agreement*. The Act sets a greenhouse gas emission reduction target of 43% reduction against a 2005 baseline by 2030 and net zero emissions by 2050.

¹⁸ [Environment Ministers Meeting](#) (21 October 2022). Ministers agreed:

- To work collectively to achieve a national target to protect and conserve 30% of Australia's landmass and 30% of Australia's marine areas by 2030.
- To note the Commonwealths' intention to establish a national nature repair market and agreed to work together to make nature positive investments easier, focusing on a consistent way to measure and track biodiversity.
- To work with the private sector to design out waste and pollution, keep materials in use and foster markets to achieve a circular economy by 2030.

4. How environmental claims can be improved

Terms of Reference –

- (c) domestic and international examples of regulating companies' environmental and sustainability claims;*
- (d) advertising standards in relation to environmental and sustainability claims;*
- (e) legislative options to protect consumers from green washing in Australia; and*
- (f) any other related matters*

This section outlines the ACCC's approach to addressing greenwashing in relation to consumer goods and services. The ACCC has not undertaken any study on broader policy options but is aware of significant reforms being considered in other countries. To assist the Committee, this section also includes a brief overview of these reform processes.

4.1. ACCC guidance & enforcement

The ACCC's [Compliance and Enforcement Priorities for 2022-23](#) include:

- Consumer and fair trading issues in relation to environmental claims and sustainability.

For [2023-24](#), the ACCC has expanded this priority to:

- Consumer, product safety, fair trading and competition concerns in relation to environmental claims and sustainability.

As set out in the annual [Compliance and Enforcement Priorities](#), the ACCC uses four flexible and integrated strategies to achieve its compliance objectives:

- encouraging compliance with the law, particularly by educating and informing consumers and traders
- enforcement of the law, including resolution of possible contraventions both administratively and by litigation
- undertaking market studies, or reporting on emerging competition or consumer issues, and
- working with other agencies to implement these strategies, including through coordinated approaches.

In December 2022, the ACCC established a Sustainability Taskforce within the ACCC to develop the ACCC's expertise in relation to sustainability, and facilitate an integrated approach across the ACCC's functions and its work with other agencies. This follows similar initiatives at international counterparts including:

- United Kingdom's Competition and Markets Authority
- Netherlands' Authority for Consumers and Markets
- the French Competition Authority (Autorité de la concurrence), and
- the Japan Fair Trade Commission.

Encouraging compliance

The ACCC is using the results of its 2022 internet sweep to update the ACCC's 2011 [guidance for business on green claims](#). A revised draft will shortly be released for public comment.

While there is a need for further guidance, the basic principle is simple: Businesses should step into the shoes of a consumer who is looking to make a more sustainable purchasing decision. Before making any environmental and sustainability claims about their product or overall business, the business should consider:

- What does an ordinary consumer understand these claims to mean?
- Does the product or business live up to this understanding?

If the answer to the second question is no, then there is a significant risk of greenwashing.

Some of the key principles that our guidance will seek to address include:

- Make accurate and truthful claims
- Provide evidence to back up your claims
- Don't leave out or hide important information
- Explain any conditions on your claims
- Avoid broad and unqualified claims
- Use clear and easy-to-understand language
- Visual elements should not give the wrong impression
- Be honest about your sustainability transition

In looking at claims, the ACCC is concerned about what the ordinary consumer will understand the claim to mean. An ordinary consumer generally is not someone that:

- has undertaken extensive scientific research into the composition of a product
- is aware of the technical or scientific meaning that may be attributed to words that also have an ordinary meaning
- has extensively reviewed all the extrinsic material used to back up a marketing claim, or
- has researched the complex supply chains involved in the manufacturing of a product.

Enforcement

The results of the 2022 internet sweep are also being used by the ACCC to identify and prioritise claims for investigation and potential enforcement action under the Australian Consumer Law. The ACCC prioritises matters using the factors set out in its annual [Compliance and Enforcement Priorities](#). The ACCC gives particular consideration to those matters which also have the following factors:

- conduct that is of significant public interest or concern
- conduct that results in substantial consumer or small business detriment

- national conduct by large traders, recognising the potential for greater consumer detriment and the likelihood that conduct of large traders can influence other market participants
- conduct involving a significant new or emerging market issue or where the ACCC's action is likely to have an educative or deterrent effect
- where the ACCC's action will help to clarify aspects of the law, especially newer provisions of the Act.

To investigate claims, the ACCC uses some of the same methods that businesses use to determine how consumers respond to specific advertising techniques, such as focus groups and surveys.

However, there are limitations in what can be achieved though the prohibitions in the Australian Consumer Law on misleading claims. In particular:

- The ACL cannot require a business to make an environmental claim nor require a claim to be made in a prescribed format, such as energy rating, water rating and country of origin labels, to enable consumers to easily make comparisons between competing products.
- The absence of a single consistent approach to environmental claims (including emissions accounting) creates uncertainty for businesses and consumers, and makes it more likely that businesses will inadvertently engage in misleading or deceptive conduct.
- *Ex ante* regulation is able to be more certain and targeted in prescribing positive industry requirements, particularly in relation to labelling standards, and may be more timely than an *ex post* enforcement approach.
- Improving information asymmetry will not address other barriers to consumers choosing greener goods and services such as price and availability. It is important to recognise that information asymmetry is only one of the barriers to consumers making sustainable consumption decisions.

Trust marks

In Australia and overseas, there is an increase in trust marks associated with certification schemes being used by businesses. Trust marks are often a simple mechanism to convey the environmental credentials of a business.

As noted in the ACCC's internet sweep report, many businesses claimed affiliation with a wide variety of certification schemes through the use of trust marks as part of their corporate or product branding. The ACCC's report indicates that there are instances where:

- businesses did not clearly describe the nature of the certification scheme, or how it applied to their product or business
- it is unclear whether the certification applies to the entire product range, only certain products, or to business operations
- it is unclear how or why the certification was relevant to individual products
- references to 'certified' were potentially misleading creating an impression among consumers that the organisation was certified when it only applied to a select product or process.

These schemes are increasingly common, and a variety of different certification schemes may exist for the same type of product. While a robust certification scheme can enhance consumer trust and confidence, it is becoming difficult for consumers to understand what every trust mark means or to assess how robust the scheme is. Some businesses have also created their own certification schemes for their own products.

The growth of these marks is potentially leading to a situation where the value of these marks will decrease and be of little benefit to consumers or businesses.

The extent to which the *Trade Marks Act 1995* can address these issues is limited. Certification trade marks under the *Trade Marks Act* differ from standard trade marks in that a certification trade mark is used or intended to be used to distinguish goods or services which have been assessed as meeting the certification standards set by the registered owner from those of other traders who have not sought certification or do not meet the required standard. A standard trade mark is intended to operate as a mark to distinguish the trade origin of the particular goods or services, e.g. to protect the brand or logo used on goods or services.

However, in practice, standard trade marks can achieve a similar outcome as certification trade marks without the need for ACCC approval as part of the registration process. This is because a standard trade mark gives exclusive intellectual property rights to the owner, and the owner is able to license the use of a standard trade mark to third parties.

In addition:

- Businesses can make credence claims (premium claims about the attributes of a product) and use images such as logos, symbols and other marks as part of marketing without registering either a standard trade mark or a certification trade mark.
- Certification trade marks can be used before the ACCC has assessed the rules.
- Consumers will continue to be faced with a range of environmental labels and other claims that make it difficult to compare competing products.

4.2. Other approaches

The ACCC has not undertaken a comprehensive review but is aware of broader reforms to improve green claims. This section briefly outlines these developments.

Misleading environmental claims legislation

It is interesting to observe some reforms internationally in relation to misleading environmental claims. In many countries, as in Australia, misleading environmental claims are covered by broad, economy-wide legislation prohibiting misleading claims. In most of these countries, this legislation is integrated in consumer protection provisions. For example:

- The United States [Federal Trade Commission Act](#) declares unfair or deceptive acts or practices in or affecting commerce unlawful.¹⁹

¹⁹ 15 U.S.C. § 45) (section 5). A list of enforcement actions involving environmental claims is available at <https://www.ftc.gov/news-events/media-resources/truth-advertising/green-guides>.

- In countries within the European Union, the UK and Norway, claims must comply with the provisions regarding unfair commercial practices in the [Unfair Commercial Practices Directive](#).²⁰

However, some jurisdictions have also implemented, or are considering, legislation to specifically address environmental claims including:

- creating standardised definitions of commonly used environmental terms
- setting minimum standards that environmental claims must meet
- requiring the mandatory disclosure of certain information in relation to the performance of a product, and
- requiring independent verification and certification of environmental claims, and controlling the establishment of certification schemes.

Colombia

Colombia has enacted legislation regulating environmental claims, including claims about climate compensation.²¹ Claims advertising the qualities, characteristics or environmental attributes of any product must comply with several requisites including that:

- the claim must be complete, truthful, transparent, timely, verifiable, up-to-date, understandable, accurate and suitable and must not omit relevant information that could mislead consumers
- studies must be based on the application of recognised technical and scientific procedures, and
- claims must indicate whether the advertised quality, characteristic or attribute is provided by the product, its packaging or a portion or component thereof, and also specify the environmental benefit it represents.

France

From 1 January 2023, under the [French Climate and Resilience Law](#), if a product or service is advertised as having net zero emissions, then the company must provide an annual report on all of the greenhouse gas emissions associated with that product's entire life cycle.

This obligation concerns claims that a product or service is carbon neutral or any wording of equivalent meaning or scope.

United Kingdom

The UK Competition and Markets Authority provided [advice](#) in 2022 to the UK government on how competition and consumer laws can help meet the UK's environmental goals. In relation to the consumer regime, the advice proposes the following key changes:

- Clarify the legislation to create standardised definitions of commonly used environmental terms, to which businesses must adhere in marketing and labelling

²⁰ Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market.

²¹ Decree 1074 of 2015, issued by the Ministry of Trade, Industry and Tourism. Article 2.2.2.36.3. For further information, see www.sic.gov.co.

their products. The advice refers to terms such as biodegradable, compostable or recyclable, and carbon neutral or negative.

- Confirming in legislation a requirement for mandatory disclosure of certain information (such as environmental impact, recyclability, repairability and durability). This would require businesses to provide environmental information in all circumstances, not just where businesses choose to make a claim.
- Legislating to require businesses to provide better environmental information to their business customers (supply chain transparency).
- Adding misleading and/or unsubstantiated environmental claims to the list of banned practices under consumer law. This would extend consumer protection remedies to address the harm to the environment caused by commercial practices directed at consumers.

The advice also refers to existing policy initiatives to address planned obsolescence, for example through a 'right to repair' (where, for certain goods, manufacturers are required to make spare parts available for an extended period of time). The advice is currently being considered by the UK government.

European Union

The European Commission adopted, in March 2022, a [proposal](#) for a Directive on empowering consumers in the green transition. The proposal includes the following changes to the Unfair Commercial Practices Directive:

- Amending the list of product characteristics about which a trader should not deceive a consumer to include 'environmental or social impact', durability' and 'repairability'.
- Prohibiting environmental claims related to future environmental performance without clear, objective and verifiable commitments and targets and an independent monitoring system.
- Adding additional practices associated with greenwashing to those commercial practices which are considered unfair in all circumstances, including:
 - Displaying a sustainability label which is not based on a certification scheme or not established by public authorities.
 - Making a generic environmental claim for which the trader is not able to demonstrate recognised excellent environmental performance relevant to the claim.
 - Making an environmental claim about the entire product when it concerns only a certain aspect of the product.
 - Presenting requirements imposed by law on all products in the relevant product category on the Union market as a distinctive feature of the trader's offer.

In support of these proposed changes to the Unfair Commercial Practices Directive, the European Commission, in March 2023, adopted a [proposal](#) for a Green Claims Directive. The proposal includes requirements for:

- the substantiation of explicit environmental claims including:
 - specifying if the claim relates to the whole or part of the product or business activities
 - relying on scientific evidence
 - demonstrating that the claim is not equivalent to requirements imposed by law
 - a comparison to the common environmental performance of the relevant product group or traders, and
 - separating any greenhouse gas emissions offsets used from greenhouse gas emissions, specifying whether those offsets relate to emission reductions or removals, and describing how the offsets relied upon are of high integrity and accounted for correctly to reflect the claimed impact on climate
- the substantiation of comparative explicit environmental claims
- the communication of explicit environmental claims and comparative environmental claims, and
- environmental labels – this is intended to stop the uncontrolled establishment of new labelling schemes by private operators. Member State authorities will have to validate the development of such schemes based on their added value. It would mean that ‘self-certified’ sustainability labels, where no third-party verification and regular monitoring takes place are prohibited.

In particular, the proposal refers to European Commission studies which found that:

- of a sample of 150 environmental claims, 53% of claims gave vague, misleading or unfounded information and 40% of claims were unsubstantiated, and
- there are around 230 active ecolabels (trust marks, quality marks or equivalent) in the European Union, and that, for around half of these labels, verification was either weak or not carried out.

The proposal has the following key objectives:

- Increase the level of environmental protection and contribute to accelerating the green transition towards a circular, clean and climate neutral economy in the European Union.
- Protect consumers and companies from greenwashing and enable consumers to contribute to accelerating the green transition by making informed purchasing decisions based on credible environmental claims and labels.
- Improve the legal certainty as regards environmental claims and the level playing fields in the internal market, boost the competitiveness of economic operators that make efforts to increase the environmental sustainability of their products and

activities, and create cost saving opportunities for such operators that are trading across borders.

The European Commission's proposed Directive on empowering consumers in the green transition and Green Claims Directive are now subject to the approval of the European Parliament and Council of the European Union. Member States will then need to incorporate the requirements into their national law.

The European Commission's proposals form part of a broader framework including:

- The 2019 [European Green Deal](#) which provides a road map for making the European Union's economy sustainable.²²
- The March 2020 new [Circular Economy Action Plan](#) which aims to 'provide high-quality, functional and safe products, which are efficient and affordable, last longer and are designed for reuse, repair, and high-quality recycling'. This includes restricting single-use and countering premature obsolescence.
- The [Sale of Goods Directive](#) which introduces an obligation for sellers of goods with digital elements to ensure that the consumer is informed of and supplied with updates, including security updates, that are necessary to keep those goods in conformity. On 22 March 2023, the European Commission also adopted a [proposal](#) on common rules promoting the repair of goods.
- The [Ecodesign Directive](#) which sets out design requirements for specific product categories.
- The [farm to fork strategy](#) and the [related legislative framework for sustainable food systems](#).
- Existing European Union labels and schemes including the [EU Ecolabel](#) (voluntary label for environmental excellence for products) and [Eco-Management and Audit Scheme](#) (to improve the environmental performance of companies).

Self-regulation

Examples of self-regulatory schemes include:

- [ISO 14000 standards](#) developed by the International Organization for Standardization
- United Nations [Global Compact Network](#) (see also the United Nations Conference on Trade and Development [Guidelines for Consumer Protection](#) and United Nations Environment Programme [Guidelines for Providing Product Sustainability Information](#))
- OECD's [Guidelines for Multinational Enterprises](#) and [Due Diligence Guidance for Responsible Business Conduct](#)
- International Chamber of Commerce [Framework for Responsible Environmental Marketing Communications](#) which builds on the [Advertising and Marketing Communications Code](#)
- National advertising self-regulatory bodies including, in Australia, the Australian Association of National Advertisers [Code of Ethics](#) and [Environmental Claims Code](#)

²² Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee of the Regions, The European Green Deal, COM(2019)640.

(which is currently being [reviewed](#)). The Code of Ethics provides a mechanism for complaints to be adjudicated by the Ad Standards Industry Panel and Community Panel.

- International Social and Environmental Accreditation and Labelling Alliance ([ISEAL Alliance](#)) (an association of voluntary international standard-setting and conformity assessment organisations) which codifies best practice for the design and implementation of social and environmental standards.

Effective self-regulation schemes can provide a positive guide for businesses on best practice benchmarks, going further than outlining minimum legal behaviour. Such schemes can also allow a rapid, cost-effective response to rapidly changing markets. However, self-regulation schemes also have limitations. In particular:

- The schemes are not mandatory. For example, the Australian Association of National Advertisers Code of Ethics is not underpinned by any legislation, and any panel determination arising from an alleged breach of the code is not legally binding, although Ad Standards has a high level of compliance with determinations. The Codes also do not apply to all representations made by businesses such as claims made on labels or packaging for products.
- Industry technical standards can sometimes:
 - use industry definitions for environmental and sustainability terms that do not accord with ordinary consumer understanding or behaviours
 - be watered down to achieve industry support, and
 - distort competition by providing incumbent businesses with an unfair competitive advantage over new entrants e.g. by embedding the incumbent's technology.

4.3. Other related matters

The development of policy responses to support sustainable consumption by consumers is rapidly evolving. It is a key priority for the OECD as:

- in most OECD countries, consumer spending accounts for around 60% of gross domestic product,²³ and
- supply-side policy responses alone will not be sufficient to halve global greenhouse gas emissions by 2030 and reach net-zero by 2050. According to a recent report by the Intergovernmental Panel on Climate Change, demand-side mitigation (which includes behavioural change of consumers) can reduce emissions in end-use sectors by 40-70% by 2050 compared with baseline scenarios.²⁴

The ACCC is participating in a study by the OECD Committee on Consumer Policy on the barriers to sustainable consumption including consumer understanding of green claims, and possible remedies.²⁵ OECD members have also proposed a meeting of consumer affairs ministers in late 2024, to focus on the digital and green transitions.

²³ OECD [Data: Household Spending](#) (2022).

²⁴ IPCC, [Sixth Assessment Report: Climate Change 2022 - Impacts, Adaptation and Vulnerability](#) (2022). See also United Nations, [Sustainable Development Goals](#) (2015). Goal 12 focuses on sustainable consumption and production patterns.

²⁵ For further information on the OECD Committee on Consumer Policy, see www.oecd.org/sti/consumer/.

Some of the issues that are likely to be considered include:

- The interaction between economy-wide consumer policy and sector specific regulatory requirements, including financial and corporations law obligations, and the need for consistency, including in relation to terminology. It is important to recognise that some initiatives, such as the [Task Force on Climate-Related Financial Disclosures](#), could have a broad impact across a range of other markets.
- The desirability of consistency across countries. Markets are global in nature, and this is particularly the case with consumer goods.
- The importance of trust marks as a tool to promote environmental and sustainability credentials. While some trust marks are robust and consumers can legitimately rely on them, the integrity of these marks vary.
- The need to recognise that many consumers cannot afford to pay more for sustainable products, and that price, accessibility, and convenience will always remain key decision factors for consumers.

Sustainability and environmental claims are also a key focus in Australia's region, including under work programs in support of the ASEAN Australia and New Zealand Free Trade Area, Regional Comprehensive Economic Partnership, and Singapore-Australia Green Economy Agreement.