



Australian
Competition &
Consumer
Commission

Green marketing and the Australian Consumer Law

Australian Competition and Consumer Commission
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Important notice

This guideline is designed to give you basic information; it does not cover the whole of the Competition and Consumer Act and is not a substitute for professional advice.

Moreover, because it avoids legal language wherever possible, there may be generalisations about the application of the Act. Some of the provisions referred to have exceptions or important qualifications. In most cases the particular circumstances of the conduct need to be taken into account when determining how the Act applies to that conduct.

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Introduction

Environmental claims can be a powerful marketing tool. Companies are increasingly using environmental claims in an attempt to differentiate themselves and their products from the competition. These claims come in a wide range of forms, including statements about environmental sustainability, recycling, energy and water efficiency or impact on animals and the natural environment.

Companies realise that consumers today have an increased awareness of the environmental impact that modern goods may have. Environmental claims are now relevant to a larger product range, from small household items such as nappies, toilet paper, cleaners and detergents to major whitegoods and appliances. Many consumers consider environmental claims, such as water or energy efficiency, as a major factor when evaluating products to purchase.

Therefore, it is essential that consumers are provided with accurate information in order to make informed decisions.

Firms which make environmental or 'green' claims should ensure that their claims are scientifically sound and appropriately substantiated. Consumers are entitled to rely on any environmental claims you make and to expect these claims to be truthful.

Not only is this good business practice; it is law.

For the first time, from 1 January 2011, Australian businesses and consumers have the same legal protections and expectations in relation to advertising and selling practices wherever they are in Australia. These are contained in the Australian Consumer Law (ACL), which is a schedule to the Competition and Consumer Act 2010. The ACL applies nationally and contains simple rules to ensure that businesses trade fairly with consumers.

The ACL states that businesses must not mislead or deceive consumers in any way, and it carries serious penalties for businesses that fail to meet these requirements.

Green marketing and the Australian Consumer Law

The purpose of this guide is to educate businesses about their obligations under the ACL . It aims to assist manufacturers, suppliers, advertisers and others to assess the strength of any environmental claims they make and to improve the accuracy and usefulness to consumers of their labelling, packaging and advertising. This guide is divided into four parts:

Part 1 examines the law—the Australian Consumer Law—and how it applies to environmental claims.

Part 2 examines some of the broad principles you should consider when making environmental claims. This part provides a framework for examining your existing or upcoming advertising to ensure it complies with the law. It also includes a quick reference for some common and problematic claims. If your advertising contains any of these claims you should assess it against this part of the guide.

Part 3 examines some regulatory schemes, such as energy ratings and water efficiency labelling. These schemes are particularly important for businesses in the appliance manufacturing or retailing sector.

Part 4 is a checklist for marketers against which you can check your claims to help identify any misleading material.

1. The Australian Consumer Law

The ACL applies to all forms of marketing, including claims on packaging, labelling and in advertising and promotion across all mediums (print, TV, radio and internet). This means that any environmental claims you are considering need to be assessed against the requirements of the ACL. Failure to abide by the rules set out in the ACL can result in serious penalties.

What does the law say?

There are two main provisions in the ACL affecting the way you make environmental claims.

Misleading and deceptive conduct

The ACL contains a broad prohibition of misleading and deceptive conduct.

Businesses have an obligation not to engage in any conduct that is likely to mislead or deceive consumers. Note that the conduct only needs to be **likely to** mislead or deceive; it does not matter whether the conduct **actually** misled anyone, or whether the business **intended** to mislead—if the conduct was likely to mislead or deceive, the ACL is contravened.

Broadly speaking, the conduct will be considered likely to mislead or deceive if there is ‘a real or not remote possibility’ that members of its target audience have been misled. Plainly put, if part of the audience to which it is directed could be misled, there may be a contravention of the ACL.

The class of **people likely to be affected** by your advertising can be relatively wide. Therefore, it is important to carefully consider your audience when making environmental claims. Not all members of your audience will be especially educated, so claims should be clear and unambiguous. This also makes the use of technical or scientific jargon especially risky.

The **nature of the product** is an important consideration. A consumer may be unlikely to go through a lengthy decision-making process when buying a small household item, so you should consider the immediate impression made on them by your environmental claims.

Misleading conduct can include silence if in all the relevant circumstances there is an obligation to say something or if a reasonable expectation is created that matters will be disclosed, if they exist. For example, putting ‘made from recycled material’ on a product when only a part of the product (such as the packaging) is made from recycled material could be misleading by silence.

Misleading conduct can include predictions if the maker had no reasonable ground for making it, or if the prediction should have been qualified and was not. A marketer making a statement about something that will happen in the future, such as ‘by 2010 this product will be made entirely from wood pulp from plantation trees’, could be found to be misleading if the marketer could not show there were reasonable grounds for making the statement at the time it was made.

Misleading conduct can also include advertising. The law will allow a degree of latitude when **statements are clear puffery** on the basis that most reasonable consumers are aware that some vague or generalised exaggeration occurs in advertising. For example, a claim such as ‘world’s best pies’ would likely be mere puffery. However, you should still exercise caution when making such claims, as you may be in breach of the law if consumers could be misled by your statements.

Business names could be misleading if they imply green credentials that do not exist. For example, a business that promotes itself as an environmentally responsible energy company using a name such as ‘Completely Clean & Green Energy’ may be at risk of misleading its customers if it in fact produces energy from an unclean source.

False or misleading representations

In addition to the general rule against misleading or deceptive conduct, the ACL prohibits a variety of false or misleading representations about specific aspects of goods and services. False and misleading representations are more serious than general misleading and deceptive conduct and, where criminal proceedings are taken, can carry serious penalties under the ACL—including fines of up to \$1.1 million.

There are two specific forms of prohibited misrepresentations that are especially relevant to environmental claims.

The ACL requires that a business not falsely represent goods as being of a particular standard, quality, value, grade, composition, style or model or having a particular history or previous use.

Put simply, goods must comply with any description that is provided in advertising or labelling. This is especially relevant to claims regarding recycled and recyclable content or the environmental impact of components used in the product, such as refrigerants.

The ACL also requires that a business not represent that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have. Those most relevant to environmental claims are:

- **Sponsorship**—this connotes some form of backing by another party. The unauthorised use of a trademark may breach this provision.
- **Approval**—this provision is mainly used when a business claims to have approval from a government agency or licensing board for its products, when no such approval has been given.
- **Performance characteristics**—companies should not falsely claim that their goods or services have certain capabilities or effects they do not have.
- **Benefits**—companies should not claim that a particular good or service has certain environmental benefits if these claims cannot be substantiated.

2. Making environmental claims

As discussed in the previous section, the ACL applies to all forms of advertising, including claims on packaging, labelling and in advertising and promotions in all mediums.

Special care must be taken when you refer to characteristics of the product or service that will probably be very important to your customers, such as environmental claims.

Not only do questionable advertising practices disenchant consumers; they carry serious legal risks. It is vital businesses ensure that any messages promoted in their advertising to consumers give the whole picture and will not mislead or deceive them.

You should be careful that the **overall** impression you create about the goods or services you sell is not misleading. In other words, it is not enough for each representation to be technically or narrowly correct. It is just as important to look at the overall impression created in the minds of average consumers in the target audience.

If you wish to make environmental claims about your business or your product, they should be clearly and accurately explained. Generally, a claim should:

- be honest and truthful
- detail the specific part of the product or process it is referring to
- use language which the average member of the public can understand
- explain the significance of the benefit
- be able to be substantiated.

Principles to consider

As long as claims concerning environmental benefits are accurate, able to be substantiated and stated in plain language, they will assist consumers to purchase products in accordance with their principles and to distinguish between other comparable products.

Competition in environmentally friendly products benefits the environment too—if manufacturers see the market share of a product with environmental advantages increase, it will encourage them to minimise the environmental impact of their own products in order to compete. This leads to cleaner, more efficient industry—which benefits us all.

However, vague, unsubstantiated, misleading, confusing, false or deceptive claims serve the opposite purpose. They reduce consumers' confidence in environmental claims, disadvantaging ethical traders.

Therefore, the ACCC will vigorously pursue businesses which breach the law.

Claims must be accurate

Any claim you make must be accurate and not mislead consumers in any way. Whether a representation is false or misleading is a question of fact, and it does not matter if there was intent to mislead.

A manufacturer of washing machines claims that their new model reduces water usage by 75 per cent. In fact it only reduces water usage by 25 per cent in most normal households. This claim is almost certain to be misleading.

Claims should be able to be substantiated

You should be able to substantiate any environmental claim you make, whether on your packaging, in your advertising or through your representatives. Being able to substantiate claims you make is a good way to show you have a good faith basis for making the representation.

A dishwasher manufacturer claims that their new model is '60 per cent more water efficient'. Without scientific or test data to back this up, the manufacturer may not have a good faith basis for making this claim. This may risk misleading consumers and breaching the provisions of the ACL.

A company that produced a range of environmentally friendly plastic kitchen, garbage and freezer bags promoted their products with several environmental claims including 'even if this bag isn't thrown in the bin it won't end up as litter' and 'this bag won't contribute to the landfill problem. It will make it disappear'.

Additionally, the company claimed on its website that its bags would 'compost just like kraft paper bags, sticks and twigs, yard trimmings and food scraps which are quickly broken down' and stated that when composted its bags would biodegrade in 28 days.

The company claimed the environmental benefits were due to the tapioca starch used to make the bags but could not substantiate these claims.

The court declared the company had engaged in false or misleading conduct or conduct likely to mislead or deceive, misrepresented the benefits and performance characteristics of the bags and misled the public on the nature and characteristics of the bags.

Claims should be specific, not unqualified and/or general statements

Unqualified statements are risky because they may not adequately explain the environmental benefits of your product to your target audience. This risks misleading consumers, even if you did not mean to. It is not the intent of the person making the claim that will determine whether it is considered misleading; it is the overall impression given to the consumer that is important. It is important that your advertising does not inadvertently mislead consumers through vague or ambiguous wording.

As with unqualified claims, it is also risky to make claims about the environmental benefits of a product without adequately explaining those benefits. Providing only partial information to consumers risks misleading them. Generally a claim should refer to a specific part of a product or its production process such as extraction, transportation, manufacture, use, packaging or disposal.

For example, the statement 'safe for the environment' could have many meanings depending on the audience—some may believe this means your product is biodegradable; others may infer that it contains no toxic components or ingredients. Without further explanation consumers may not know what you mean and you risk misleading at least some portion of the audience.

In promoting its goods and services, a company used the image of a frog, the words 'green', 'green air conditioning'; 'environmentally preferred' and the logo 'Ozone Care' in association with FR 12 in its technical and promotional materials to air conditioning installers.

FR 12 is a replacement gas used in automotive air conditioners and contains an ozone-depleting potential component.

After ACCC inquiries, the company agreed to stop making unqualified representations about air conditioning gas. They agreed to clarify the environmental and performance comparisons, cease using general terms such as 'environmentally preferred' or general 'green' claims with respect to FR 12. The company also removed the frog image and the Ozone Care logo directly in relation to FR 12 in its future publications of technical and promotional materials.

Claims should be in plain language

The use of scientific language or technical jargon can confuse average consumers who are not familiar with it. Consumers who are unfamiliar with technical terms will often make assumptions and may be misled.

A product labelled '10%—CROSS-LINKED ELASTIN CLR SOL N' was held to be misleading to consumers. It was determined that consumers were likely to believe the critical ingredient 'elastin' was present in the cosmetic in 10 per cent concentration, whereas in fact the ingredient was present in only a 0.05 per cent concentration but in a solution which formed 10 per cent of the product.

Claims should only be made for a real benefit

Environmental claims should only be made where there is a genuine benefit or advantage. You should not advertise environmental benefits where they are irrelevant, insignificant or simply advertise the observance of existing law.

A claim which may be relevant at one time can become less relevant and ultimately meaningless over time and therefore potentially misleading. One example is claims such as 'CFC free', as no other competing products now contain CFCs because authorities prohibit their use in almost all aerosols.

Claims must not overstate a benefit

You should not make claims that expressly or implicitly overstate an environmental benefit. When producing your marketing material, avoid implications of significant environmental benefits if the benefit is negligible. Remember, it is the overall impression that counts.

A claim of 'now 50 per cent more recycled content' is of no real benefit if a product was previously only 1 per cent recycled content in the first place. It is likely to convey the false impression that you have significantly increased the use of recycled material and is likely to mislead consumers.

Pictures can also be representations

Images such as those of forests, the earth or certain endangered animals can also be representations. The use of environmental images may be capable of making a sweeping claim of environmental benefit that may be misleading. Particularly, some images may suggest environmental benefits or advantages to consumers and must be used with care.

Using a symbol that is widely accepted as having a particular meaning or affiliation when no such link exists can be misleading and should only be used with qualification.

A picture of a dolphin on a tuna product may be taken by consumers as a symbol to mean the tuna has been fished in a manner that does not harm dolphins. If this is not the case then the use of the picture risks misleading consumers.

Claims should make it clear whether claimed benefits refer to packaging or content

You should specifically refer to the part of a product or its production process that claims the environmental benefit if the benefit is limited to that part of the product.

This has particular relevance where a non-recyclable (or non-recycled) product has been packaged in recyclable (or recycled) materials. You should ensure that your claims specifically explain this distinction to consumers—a simple 'packaged in recyclable material' could prevent you misleading your customers.

Claims should consider the whole product life cycle

When making claims about a particular characteristic or part of a product, you should also consider the whole product life cycle. The manufacturing, recycling, destruction and disposal process should be taken into account before making any environmental claims regarding the relevant characteristic or part.

A car is manufactured to be extremely fuel efficient and advertised as 'green' or 'eco-friendly'. This does not take into account the harm to the environment of the production process or the disposal of the car at the end of its life cycle, which may have a large environmental impact. Advertising the car as being 'fuel efficient' rather than 'green' could help avoid misleading consumers.

Claims using endorsement or certification should be used with caution

Consumers may be unfamiliar with local or international environmental endorsement schemes and the certification on your product. You should be aware that when using a logo from such a scheme, consumers may make assumptions and consequently be misled. Offering consumers details of further information on the scheme may help alleviate these concerns.

A logo depicting a red panda is used on paper and stationery products. Consumers unfamiliar with the logo may believe that the production of the products do not harm the natural habitat of red pandas. In actual fact the red panda logo represents a scheme that plants trees to offset those logged in the production of the paper products. Without some kind of qualification or further information given, the use of this logo on the paper products risks misleading consumers.

Claims should not overstate the level of scientific acceptance

Where the scientific basis for your claim is under dispute or not conclusive, you should be especially careful not to present your claim as being universally accepted.

Broad or unqualified claims that can be problematic

Broad or unqualified claims can be risky as they are ambiguous and do not explain any specific environmental benefit. Below are some common claims that may raise concerns.

‘Green’

This statement is very vague, and conveys little information to the consumer—other than the message that your product is in some way less damaging to the environment than others. This term invites consumers to give a wide range of meanings to the claim, which risks misleading them.

‘Environmentally friendly’ or ‘environmentally safe’

These claims are also vague and could potentially mislead consumers into thinking that the product causes no harm to the environment in its production, usage and disposal. Few, if any, products could make this claim. Almost all products have some adverse impact on the environment in their manufacture, packaging, use or disposal.

A company that manufactured air conditioners issued a brochure with claims such as ‘environmentally-friendly HFC R407C added’ and ‘for a new ozone era—keeping the world green’.

The court declared that the brochure was misleading and deceptive, and that it contained false and misleading representations in breach of the ACL by representing that its air conditioning units were environmentally-friendly when in fact some of the gases employed in its air conditioning units were powerful greenhouse gases which contribute to global warming, are ozone depleting substances and do not benefit the environment.

‘Energy efficient’

Energy efficiency claims should be quantified by comparison to existing benchmarks or rating systems, or otherwise explained in more detail. Simply claiming that a product is ‘energy efficient’ makes it difficult for consumers to compare products, and they may be misled into drawing incorrect conclusions by your material.

A company that manufactured washing machines released several models claiming they were ‘4A Rated’ by Water Services Association of Australia (WSAA).

The machines had not been certified at the time of sale. Further, such certification would have allowed consumers who bought the machines to claim a rebate through the WA Water Corporation.

The company also issued a brochure stating the machines were 4A certified and published similar information on its Australian website.

The ACCC accepted court enforceable undertakings from the company to correct the misleading representations and to write to all retailers supplied with the machines explaining the effect of its conduct.

‘Recyclable’

These claims can be potentially dangerous if the product is not recyclable, or if the facilities to recycle it are not available in Australia. Manufacturers and retailers should verify that their product can actually be recycled before using such claims.

Consumers are likely to understand the term 'recyclable' or recycling symbols on products to mean that the product is likely to end up in a recycling facility. If there are very few facilities, such facilities do not exist at all or they exist only as pilot plants, then the use of the term or symbols may be misleading.

When making a claim that your product contains recycled material, consumers may take this to mean that the product has been through a previous life cycle or that it has been recycled by another consumer. If, however, the material has been recovered from the waste stream during manufacture and reused, this should be made clear by using words such as 'materials reclaimed from manufacturing'.

'Carbon neutral'

Increasingly, companies are making claims regarding the 'carbon neutrality' of their products and services. Any claims you make about carbon neutrality should be factually based and not overstated.

You should also consider the entire life cycle of a product when making claims about carbon neutrality. Claiming that your product is carbon neutral if it only applies to the carbon produced in the manufacture of the product—and not its actual use and operation—may risk misleading consumers that the product is carbon neutral for its entire life cycle.

For example, advertising a motorcycle as carbon neutral if you had offset the carbon formed in the manufacturing process up to the point of sale could potentially be misleading. Consumers may be led to believe the motorcycle is carbon neutral for its entire life cycle, whereas in actual fact, the carbon produced after the consumer drives it away would not be offset.

When advertising participation in a carbon-offset program or other similar programs, you should also be careful to distinguish between past activities and those that are planned. It could be misleading to claim a product as neutralised by a carbon-offset program but not distinguish between trees that had already been planted in reforestation projects and trees that you pledge to plant as carbon-offsets.

'Renewable' or 'green' energy

Sustainable or renewable energy sources are important to many consumers and so it is essential they have accurate information on which to base their purchasing decisions. You should be careful when advertising renewable or green energy that any representations made about cost, amounts supplied or the associated benefits are truthful and correct.

For example, a company advertising their energy as 'green' or 'renewable' should disclose the percentage of energy which is obtained from renewable sources if it is less than 100 per cent.

Penalties and remedies for breaching the ACL

The ACCC, consumers and competitors can all take legal action if an environmental claim potentially breaches the ACL . The business or person making the environmental claim in contravention of the ACL can be sued for damages.

The ACCC's enforcement powers and remedies are extensive and include monetary penalties of up to \$1.1 million for companies and up to \$220 000 for individuals, as well as injunctions, adverse publicity orders, corrective advertising orders, community service orders, disqualification orders and ancillary orders of various kinds.

These orders are wide ranging, and will generally vary depending on the circumstances and conduct in question.

Avoiding a breach of the law

Having a trade practices compliance program in place can help your business avoid breaches of the ACL . It is designed to identify and reduce the risk of breaching the ACL and to rapidly and effectively remedy any breach that may occur. This involves training and education for management and staff about their obligations under the ACL , and is aimed at preventing future breaches occurring as a result of ignorance of the law. Often, this training will be accompanied by a robust framework—such as stricter approval procedures for advertising, management sign-off on display materials and regular compliance checks throughout the company—for ensuring that future breaches do not occur.

Having someone with legal expertise in trade practices law approve any promotional material can also help identify any misleading material and reduce the possibility of any potential breaches occurring.

3. Key environmental efficiency schemes

There are several government administered schemes that cover environmental endorsements. Such schemes often have their own mechanism for regulation and enforcement; however, the ACL also applies for misleading and deceptive conduct regarding such schemes.

Two important schemes which regulate environmental claims are the Equipment Energy Efficiency Program and the Water Efficiency Labelling and Standards Scheme.

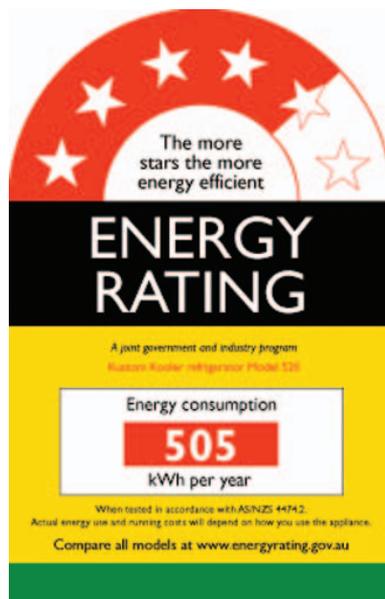
The Equipment Energy Efficiency Program

The Equipment Energy Efficiency Program is a joint Australian and New Zealand government (federal, state and territories) initiative that aims to improve product energy efficiency through consistent labelling and energy performance regulations.

It is currently mandatory for many household electrical products offered for sale in Australia to be labelled with an approved energy label.

The following products must carry an approved energy label to be offered for sale in Australia:

- refrigerators and freezers
- clothes washers
- clothes dryers
- dishwashers
- air conditioners (single phase mandatory, three phase voluntary).



The following products are also regulated on the basis of minimum energy performance standards (MEPS):

- refrigerators and freezers
- mains pressure electric storage water heaters
- small mains pressure electric storage water heaters (<80L) and low pressure and heat exchanger types
- three phase electric motors
- single phase air conditioners
- three phase air conditioners
- ballasts for linear fluorescent lamps
- linear fluorescent lamps
- distribution transformers
- commercial refrigeration.

You should refer to www.energyrating.gov.au for more information on the requirements for each of the above products as there are limits to the coverage under many of the above.

All products within the scope of energy labelling or MEPS must be registered with an Australian regulator to be legally sold in Australia. Product suppliers are required to test the energy performance of their products under strict test procedures outlined in the relevant Australian standard. They then provide the test reports or data as part of their registration as evidence that their products comply with the standard.

The Department of Climate Change and Energy Efficiency coordinates independent product tests ('checktesting') to determine whether products meet MEPS and/or suppliers' claimed energy efficiency values on labels. Checktesting is generally conducted on products which are suspected of being non-compliant with MEPS and/or suppliers' claimed energy efficiency values. In 2005–06, just under half of the 40 checktested products were found to be non-compliant.

Selling unlabelled products and/or non-MEPS compliant products is a breach of state legislation and penalties apply. Apart from breaching labelling and energy performance regulations, false representations by a supplier of a product's performance or energy efficiency may also constitute serious offences under the ACL. The Department of the Environment, Water, Heritage and the Arts can refer instances of non-compliance to the ACCC for further action.

Five air conditioner models from the same company were tested. The models did not comply with the energy efficiency values claimed on the rating label. Australian regulators de-registered the models and the matter was referred to the ACCC for further action. Over 15 000 mislabelled appliances had been sold. The company gave court enforceable undertakings to compensate buyers for potential increases in running costs resulting from the actual energy efficiency ratings being lower than claimed. The \$3.1 million compensation package included: implementing new testing procedures, publishing corrective notices in major city newspapers, advising buyers in writing, and a review and upgrade of the company's trade practices compliance program.

Independent checktesting identified two models of washing machine manufactured by a company that failed several testing criteria when tested at the claimed capacity. The ACCC accepted court enforceable undertakings from the manufacturer and the reseller regarding the sale of the washing machines. The reseller was ordered to send letters to all appliance purchasers and offer a full refund provided by the manufacturer. In addition, both organisations committed to implementing comprehensive trade practices compliance programs.

The Australian Government is committed to maintaining the integrity of the energy labelling and MEPS schemes through compliance initiatives. It is important that consumers are protected from misrepresentations and misleading or deceptive claims through enforcement action against suppliers and manufacturers.

Water Efficiency Labelling and Standards (WELS) Scheme.

The WELS **water-rating label** provides water efficiency information for water-using household products.

The WELS scheme requires products to be labelled according to their water efficiency, allowing consumers to compare and purchase water efficient products to reduce their water consumption, saving money on water and energy bills. The scheme allows industry to showcase their most water-efficient products.

The WELS scheme can also require minimum water efficiency standards for a product. Toilets sold in Australia must meet a minimum water efficiency requirement: the maximum average flush can be no more than 5.5 litres.

The *Water Efficiency Labelling and Standards Act 2005* provides the legal framework for the WELS scheme, including determination of the WELS standard.

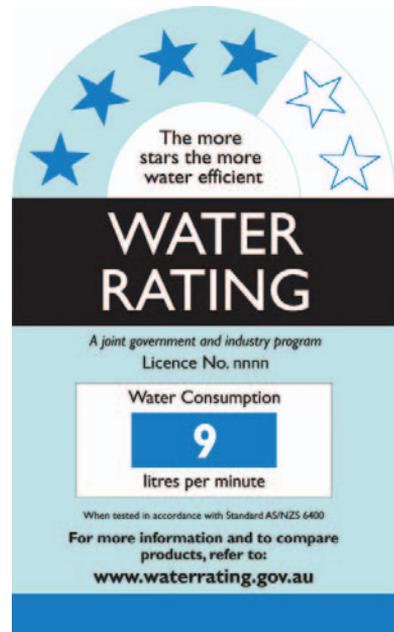
The WELS water rating label is similar in appearance to the energy rating label—the more stars the better. As well as a star rating the labels also show a water consumption or water flow figure.

The label shows:

- A one-to-six star rating that allows a quick comparative assessment of the model's water efficiency. The more stars on the label the more water efficient the product.
- A figure showing either the water consumption per wash or program or the litres used per minute for the product based on laboratory tests.

The following products are covered by the WELS scheme:

- showers
- tap equipment
- flow controllers (optional)
- toilet (lavatory) equipment
- urinal equipment
- clothes washing machines
- dishwashers.



Under the WELS Act penalties apply for:

- **Registration**—you cannot supply an unregistered product that is required to be registered under the WELS standard.
- **Labelling**—you cannot supply a registered WELS product without the correct labelling as required by the WELS standard. Under the WELS Act all suppliers along the supply chain from manufacturer to retailer (including importers, wholesalers and leasing businesses) must make sure that the correct label is on the product and remains intact.
- **Efficiency and performance**—you cannot supply a WELS product that does not comply with any registration, minimum water efficiency or minimum general performance requirements.
- **Misusing the WELS standard**—when supplying a WELS product you must not use the WELS standard or information in a manner inconsistent with the standard. This relates to labelling, packaging, documents or material provided in connection with the supply of the product, and advertising and promotion.

The WELS regulator enforces the scheme, using a permanent team of inspectors. Enforcement powers under the ACL including the ability to:

- impose significant fines and penalties
- compel the withdrawal of product and to deregister product
- advertise convictions.

The ACL also applies to misleading and deceptive conduct regarding claims of water efficiency.

The WELS scheme is administered by the Department of Sustainability, Environment, Water, Population and Communities. For further information, refer to www.waterrating.gov.au.

4. Checklist for marketers

When making environmental claims on your products or in your advertising, you should check the following:

- ✓ Avoid using terms like 'safe' and 'friendly' and unqualified pictures or graphics. At best they are unhelpful and encourage skepticism; at worst they are misleading.
- ✓ Spell out exactly what is beneficial about a product in plain language that consumers can understand.
- ✓ Link the environmental benefit to a specific part of the product or its production process, such as extraction, transportation, manufacture, use, packaging or disposal.
- ✓ Make sure any claims you make about your product can be substantiated. Think about how you would answer a query regarding the environmental benefits you are claiming about your product. For example, what scientific authority could you use to justify the basis of your claim?

✓ Explain how a product's characteristic is beneficial to the environment. For example, explain that a phosphate-free product is less damaging in river systems because phosphate promotes algal growth, which can clog up rivers.

✓ Avoid giving the impression that your product is completely environmentally benign if it is not.

✓ Use the claim only in an appropriate context or setting. For example, do not claim that a product is not tested on animals if it is a product that would never be tested on animals anyway.

Testing your environmental claims against these guidelines may help remove any misleading impressions. Having someone with legal expertise in trade practices law check the promotional material can further reduce the risk to your business of breaching the ACL and misleading your customers.

Contacting the ACCC

ACCC Infocentre

Infoline: 1300 302 502

Website: www.accc.gov.au

Small business helpline: 1300 302 021

For other business information, go to www.business.gov.au

