



Your consumer rights: Environmental claims

More Australians are considering the environmental impacts of their purchasing decisions. As a result, businesses are increasingly making environmental claims in an attempt to differentiate themselves and their products from the competition.

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.

What are environmental claims?

Environmental 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.

The *Competition and Consumer Act 2010* and the Australian Consumer Law (ACL) contained within it state that businesses must not mislead or deceive consumers, or make false or misleading representations. Penalties (criminal and civil), injunctions and/or damages may be sought where businesses fail to meet these requirements.

Some common environmental claims

If environmental impacts are important to your purchasing decisions, think carefully about the claims that are being made. Here are some tips to help you understand and evaluate some common environmental claims.

'Green', 'environmentally friendly', 'eco-friendly' or 'environmentally safe'

Businesses should clearly and accurately explain why their products are 'greener', or more environmentally 'safe' or 'friendly' than other similar products. If no other information is provided to support such claims, they should not be relied upon and could, in some circumstances, be considered misleading.

Things for you to think about:

- What are the positive environmental benefits of choosing one particular product over another?
- Is there evidence to support the environmental claims being made?

'Recyclable' and 'recycled'

These claims (including the Mobius loop symbol) can be misleading if the product is not recyclable or if the facilities to recycle them are not available in Australia.



Things for you to think about:

- What proportion of the product is made from recycled material?
- Has the whole product been recycled (i.e. re-used or reconditioned) or has it been produced from recycled material?
- Was the material recycled from 'post-consumer' waste (e.g. household recycling) or was it recovered from the waste stream during manufacture?

'Certified' products

Many products carry a symbol, logo or other trade mark to show they are 'certified' to a particular standard. These standards can relate to the product's quality, performance, composition and/or means of production. If a product is claiming certification when it has not been certified, this is likely to be a breach of the *Competition and Consumer Act 2010*.

Things for you to think about:

- The minimum standards required to get certification may vary. Before you rely on a certification claim, consider how reputable the certification scheme is and what it covers.
- Many of these schemes are run by industry associations. You could find out more by contacting the association or company which has certified the product.

Water/energy/fuel efficiency claims

Motor vehicles and many major appliances have government-endorsed rating systems which provide useful information about a product's efficiency. These rating systems often have their own mechanism for regulation and enforcement—however, the *Competition and Consumer Act 2010* also applies for misleading and deceptive conduct regarding these ratings.

Two of the biggest rating systems are:

- The Equipment Energy Efficiency Program (www.energyrating.gov.au)
- The Water Efficiency Labelling and Standards Scheme (www.waterrating.gov.au).

'Renewable' or 'green' energy

These claims should disclose the proportion of energy which is obtained from renewable sources if it is less than 100 per cent. The source of the energy (e.g. solar, wind, hydro or biomass) and whether it is new renewable energy should also be disclosed. The means by which you may be contributing to beneficial environmental outcomes by purchasing 'green power' are complex and should be clearly explained to you when you elect to sign up.

Things for you to think about:

- Several state and territory governments operate a GreenPower accreditation scheme to help consumers select between different renewable energy offerings.
- You can find out more about renewable energy by visiting the GreenPower website at www.greenpower.gov.au.

'Carbon neutral', 'carbon offsets' and 'greenhouse gas emission' claims

Some businesses make claims about the levels of greenhouse gas emissions associated with their products and the measures they have in place to 'offset' them.

Things for you to think about:

- How are the carbon offsets generated? Does the offset have any other negative or positive side effects?
- Do claims about carbon offsets or carbon neutrality relate to the whole life cycle of the product?
- Do claims relate to emissions from the production of the product, emissions from the product's use, or both?
- Has the offset been independently audited? What standard is used?
- Would there have been a reduction in emissions without your help? Emission reductions from the offsets you purchase should be in addition to what the government requires of business.

'Sustainable'

Some businesses make claims that their product or their business is sustainable. For a practice to be sustainable, it must be able to be sustained indefinitely.

Things for you to think about:

- Be aware of the environmental impacts through all phases of the product's life cycle—the sourcing of raw materials, manufacturing, distribution, use, recycling and, finally, disposal.
- Just because packaging is recyclable or a product is made from recycled materials does not mean that the product or the company producing the product is sustainable.

Environmental claims and the ACL

The ACL applies to all representations a business makes to you about their products, whether it is in an advertisement, over the phone, on their website or on product packaging.

Environmental claims should relate to real environmental benefits, but should not overstate those benefits.

Misleading and deceptive conduct

It is illegal for a business to make an environmental claim that is misleading or deceptive, or is likely to mislead or deceive consumers.

Consumers will have different levels of knowledge, so conduct which would not mislead some consumers may mislead others and could therefore be illegal.

A claim that a product is biodegradable is likely to mislead consumers if the product takes a very long time or requires quite specific conditions before it will degrade.

Environmental claims that are vague, or that cannot be easily substantiated, are more likely to be misleading or deceptive. Treat these kinds of claims with caution.

False and misleading representations

It is illegal for a business to make a false representation about a product. In particular, a business must not falsely represent that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or previous use.

A claim that a product is 'recycled' when only the packaging was made from recycled material could be considered a false representation.

Also, a business must not represent that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have.

A claim that a product is certified or accredited when this is not true—for example, false claims that a product is certified as 'organic'—is likely to breach the *Competition and Consumer Act 2010*.

The role of the ACCC

The Australian Competition and Consumer Commission (ACCC) is a national agency responsible for enforcing the *Competition and Consumer Act 2010* and the ACL contained within it. The aim of the Competition and Consumer Act is to ensure that Australians can benefit from the promotion of competition and fair trading and to provide consumer protection.

Consumers can use their purchasing decisions to encourage businesses to develop products that have less adverse impact on the environment. However, vague, unsubstantiated, misleading, false or deceptive claims reduce consumers' confidence in environmental claims, disadvantaging ethical traders.

Therefore, the ACCC will vigorously pursue companies that breach the law.

Taking legal action

The ACCC can take legal action against a trader for breaches of the *Competition and Consumer Act 2010*. It particularly targets conduct that is widespread, blatant, occurring in more than one state or involving serious detriment to consumers.

Consumers, businesses and environmental organisations that have been harmed can also take legal action against businesses for a breach of the *Competition and Consumer Act 2010*.

No financial penalties apply to misleading or deceptive conduct; however, the ACCC or any other person can seek a court injunction to stop the conduct. Any person suffering loss or damage as a result of the conduct can seek damages.

Financial penalties apply for false representations, including fines of up to \$1.1 million for businesses and \$220 000 for individuals.

ACCC contacts

ACCC Infocentre
1300 302 502

ACCC website
www.accc.gov.au

Callers who are deaf or have a hearing or speech impairment can contact the ACCC through the National Relay Service
www.relayservice.com.au.

TTY or modem users—phone 13 3677 and ask for 1300 302 502.

Voice-only (speak and listen) users—phone 1300 555 727 and ask for 1300 302 502.

If you think you have seen a misleading, deceptive or false environmental claim, report it to the ACCC Infocentre. The ACCC Infocentre can also provide you with information about your consumer rights.

ACCC publications about your consumer rights

The ACCC has a range of publications available to help consumers understand their rights and obligations:

These publications as well as others can be ordered through the ACCC Infocentre or you can download electronic copies for free from the website.

Australian Competition and Consumer Commission
23 Marcus Clarke Street, Canberra,
Australian Capital Territory 2601

© Commonwealth of Australia 2011

ISBN 978 1 921887 48 2

ACCC 03/11_30681_291

Important notice

The information in this fact sheet is for general guidance only. It reflects the ACCC's views on what is required to comply with certain provisions of the *Competition and Consumer Act 2010*. It does not constitute legal advice and should not be relied on as a statement of the law relating to the *Competition and Consumer Act 2010*. You should obtain legal advice if there is doubt about whether any conduct may breach the *Competition and Consumer Act 2010*.

Other federal or state-based laws may impose additional requirements or responsibilities on your businesses when dealing with other businesses or consumers, beyond the requirements of the *Competition and Consumer Act 2010*.