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12 January 2024

Senator Sarah Hanson-Young
Chair
Senate Environment and Communications References Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Sent electronically: ec.sen@aph.gov.au

Dear Senator

Re: Inquiry into greenwashing

Thank you for the invitation of 20 December 2023, to the Australian Competition and Consumer Commission (ACCC), to make a supplementary submission to the Senate Environment and Communications References Committee Inquiry into greenwashing (the Inquiry).

The ACCC continues to prioritise consumer, product safety, fair trading and competition issues in relation to environmental claims and sustainability.

Following the ACCC's submission to the Inquiry of 22 June 2023 ([Submission No. 60](#)), the ACCC, on 12 December 2023, published its final [guidance for businesses on making environmental claims](#) (Attachment A to this letter). As set out in the ACCC's [media release](#), the ACCC will also be releasing further:

- guidance for businesses and consumers on emission and offset claims,
- information for businesses and consumers on the use of trust marks, and
- guidance to help consumers confidently assess and rely on environmental claims.

The role of trust marks and emission claims is also addressed in the ACCC's [submission](#) of 15 December 2023 to the Australian Department of Climate Change, Energy, the Environment and Water in response to the [Climate Active Program Direction Consultation 2023](#) (Attachment B to this letter).

Should you wish to discuss any part of this supplementary submission, please contact Lisa Anne Ayres, General Manager, Executive Office

Yours sincerely



Scott Gregson
Chief Executive Officer

Attachments

- A ACCC, Making environmental claims: A guide for business (12 December 2023)
- B ACCC, Submission to the Australian Department of Climate Change, Energy, the Environment and Water Climate Active consultation (15 December 2023)



Making environmental claims

A guide for business

December 2023



Acknowledgment of country

The ACCC acknowledges the traditional owners and custodians of Country throughout Australia and recognises their continuing connection to the land, sea and community. We pay our respects to them and their cultures; and to their Elders past, present and future.

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Eight principles for trustworthy environmental claims

Many consumers care about their environmental impact. They use environmental claims as a key factor to decide where they want to spend their money. Environmental claims are only useful for consumers when they are true, accurate, in easy-to-understand language and appropriately qualified. False or misleading claims also unfairly disadvantage businesses who are making genuine claims.

Businesses have obligations under the Australian Consumer Law (ACL) (being Schedule 2 of the *Competition and Consumer Act 2010* (Cth)) not to make false or misleading representations or engage in misleading or deceptive conduct. These obligations should be considered whenever you are making environmental claims.

If you choose to make environmental claims, you can use these eight principles to help you comply with your obligations under the ACL, and to ensure that any claims you make create trust in your business and allow consumers to make informed decisions.

Principle 1: Make accurate and truthful claims

All your claims should be true and accurate.

Even claims that are factually correct can sometimes still mislead consumers. You should consider the overall impression created, including through use of visual elements.

Only make claims that represent a genuine environmental impact and do not exaggerate the benefits or level of scientific acceptance of a claim.

Principle 2: Have evidence to back up your claims

It is good practice to ensure you have clear evidence to back up all your claims.

Evidence that is independent and scientific is the most credible.

Making the research, evidence, or data that you are relying on easily accessible to consumers helps consumers to understand and trust your claims.

If you are making a representation about a future matter (e.g. something that you promise, forecast or predict will happen in the future), you must have, and be able to show that you have, reasonable grounds for making that representation. Otherwise the representation will be taken to be misleading under the ACL.

Principle 3: Do not hide or omit important information

Consumers cannot make informed decisions if they are not provided with relevant information that gives the full picture, or if important information is placed where they are unlikely to notice or find it. Consider all the relevant information about your environmental impact and be transparent about it.

Principle 4: Explain any conditions or qualifications on your claims

Theoretical environmental benefits, which are not clearly explained, are likely to mislead consumers. Ask yourself if there are any conditions that need to be met or steps that need to be taken for your claim to be true. If claims are only true in certain circumstances, you should explain this to consumers clearly and prominently.

Principle 5: Avoid broad and unqualified claims

Broad claims can be interpreted widely and more easily mislead consumers than clear, specific claims that are substantiated.

Ensure that you clearly qualify your claims, with prominent disclaimers, if there are any limitations to them.

Principle 6: Use clear and easy-to-understand language

Most consumers do not have specialist scientific or industry knowledge. It is good practice to use clear and easy-to-understand language and to avoid technical terms.

Principle 7: Visual elements should not give the wrong impression

Visual elements (for example green-coloured packaging, or logos representing a recycling process) on packaging and/or in advertising material can significantly influence a consumer's impression of the environmental impact of a product or service. Avoid visual elements that would give the wrong impression about the environmental benefits of your product or service. You need to consider the overall impression that is created, taking into account not just the words used (or information that is left out), but also visual elements, colours and logos.

Principle 8: Be direct and open about your sustainability transition

You should be cautious about making aspirational claims about your future environmental objectives unless you have developed clear and actionable plans detailing how you will achieve those objectives. If you can transition to more sustainable business operations and want to tell consumers about it, be direct and open. Transitioning to a more sustainable business model takes time and is often not linear. For example, if you can't reduce your greenhouse gas emissions in the short term, but are instead offsetting your impact on the environment, make this clear to consumers.

Introduction

Using this guidance

Today's consumers are concerned about the environment and these concerns are reflected in the products or services consumers choose to purchase. Businesses are responding to consumer demand for environmentally sustainable products and services, leading to a significant shift in how products and services are produced, marketed, and delivered to consumers.

Increased consumer demand for environmentally sustainable goods and services leads to increased competition and innovation from businesses. However, consumers can find it difficult to verify whether environmental claims are true, and there are concerns that many of these claims do not accurately reflect the true environmental impact associated with a business, or the products or services it supplies. Where claims misrepresent the environmental impact associated with a business or the goods and services it supplies, this is referred to as 'greenwashing'.

Businesses that are taking genuine steps to adopt environmentally sustainable practices are also put at a competitive disadvantage by businesses that engage in 'greenwashing'. Greenwashing describes environmental claims that are false or misleading. The ACCC considers a business will be engaging in greenwashing where it makes a claim that represents a product, service or the business itself as better for or less harmful to the environment than it really is.

Some businesses intentionally make claims that create misleading impressions to capitalise on consumer preferences for environmentally sustainable products and services without making genuine investments in sustainable practices. However, sometimes businesses mislead consumers inadvertently. This happens for a variety of reasons including poor understanding of supply chains, a lack of due diligence before making claims or poor reporting practices.

Greenwashing can disincentivise competing businesses to continue investing in more environmentally sustainable products and services and undermine consumer confidence in environmental claims.

Environmental claims that are false or misleading:

- limit a consumer's ability to make informed choices
- lead consumers to pay more for the value of an environmental benefit that doesn't exist
- unfairly disadvantage businesses which do make significant investments in genuinely pursuing more sustainable products or services
- undermine consumer trust in environmental claims in general and can create a disincentive for businesses to invest in more sustainable practices.

This guidance aims to help your business comply with its obligations under the ACL and make trustworthy environmental claims. While this guidance focuses specifically on environmental claims, the principles outlined could also apply to other types of ethical, social and governance claims.

The goals of this guidance are to:

- encourage truth and accuracy by businesses who choose to make environmental claims about their product or services
- demonstrate how businesses can make true, clear, evidence-based claims that consumers can understand and trust

- decrease instances of greenwashing
- assist consumers make more informed choices if they want to make purchasing decisions based on environmental claims
- help businesses understand and comply with their obligations under the ACL when making environmental claims
- explain the general approach the ACCC will take in investigating whether environmental claims are likely to contravene the ACL and potential enforcement outcomes.

This guidance outlines the ACCC's view of what businesses need to do when making environmental claims to comply with the ACL and the ACCC's expectations for good practice when making these claims. The ACCC has identified a series of practical principles which we encourage businesses to apply when making environmental claims. If businesses follow these principles, they are less likely to mislead consumers and contravene the law.

While this guidance has been designed to assist businesses comply with the law, it is not legal advice. The ACCC cannot provide a definitive interpretation of the law because that is the role of the courts, having regard to the facts of each particular case.

Industry or technical standards can be useful resources for businesses to understand what information and systems are necessary to support environmental claims. However, compliance with a standard does not necessarily equate to complying with the ACL. To comply with the ACL, businesses need to ensure they do not create a false or misleading impression in the mind of the ordinary and reasonable consumer.

Environmental claims will continue to evolve as markets, available technologies, and our understanding of environmental impacts develop. The ACCC will review and update this guidance as new information becomes available.

Environmental claims are representations about a business' environmental impact

An environmental claim is any representation made by a business in relation to its environmental impact, including claims that give the impression that your business, products or services:

- a. have a neutral or positive impact on the environment
- b. are less harmful for the environment than alternatives
- c. have specific environmental benefits.

Environmental claims can appear on product packaging or labelling, point-of-sale materials, and in a variety of marketing or advertising materials. This includes advertising online and through social media. They may also appear in corporate reporting materials.

Products and services often have a range of environmental impacts at different stages of their lifecycle. For example:

- Sourcing of raw materials, manufacturing and transport and logistics can cause environmental harm before a consumer has bought a good or service. This includes environmental harm associated with resource use (e.g., biodiversity loss), production of waste/ability for recycling and generating emissions.
- Consumption or use of a product or service may release harmful chemicals, greenhouse gas emissions, or microplastics into the environment or consume significant energy.

- When a consumer has finished using a product and discards it, it may be difficult to reuse or recycle it so it will contribute to landfill waste and greenhouse gas emissions when it breaks down or is incinerated.

Environmental claims are made about environmental attributes. The claims can relate to the impact of a business, product or service on the environment in general, or specific environmental benefits. For example, claims about specific environmental benefits can include claims about:

- resource use and waste management
- the types of materials used and how they are sourced
- product durability and repairability
- end-of-life and disposal options
- energy use and emissions
- water usage
- pollution and use of harmful substances
- deforestation, land or aquatic degradation and associated biodiversity impacts.

Some environmental claims are aspirational, for example, where a business sets future goals for improving their environmental performance or reducing their greenhouse gas emissions.

For all of these claims, businesses should consider their obligations under the ACL.

False or misleading environmental claims will contravene the Australian Consumer Law

The ACCC is an independent Commonwealth statutory authority that promotes competition, fair trading and product safety for the benefit of consumers, businesses and the Australian community. The primary responsibilities of the ACCC include enforcing compliance with the *Competition and Consumer Act 2010*, which includes the ACL.

The ACL makes it unlawful for businesses to engage in conduct that is misleading or deceptive or is likely to mislead or deceive. It is also unlawful for a business to make false or misleading claims about specific aspects of goods or services. The law applies even if you did not intend to mislead anyone, or no one has suffered any loss or damage.

Omitting information can amount to a false or misleading representation or misleading or deceptive conduct, depending upon the circumstances and the overall impression created.

Representations about future matters e.g. something that you promise, forecast or predict will happen in the future, should also be carefully considered, as they will be taken to be misleading under the ACL if you don't have reasonable grounds for making the representation.

The ACL applies to all forms of marketing, such as information on packaging, in advertisements, on store signs, social media, websites or told to consumers in writing or verbally, and more generally to representations in connection with the supply or possible supply of goods or services, or to conduct, in trade or commerce.

When deciding if conduct is misleading or deceptive, or if a representation is false or misleading, the most important question to ask is whether the overall impression created would be misleading to the ordinary and reasonable consumer. In simple terms, this means that any business that makes claims in relation to their business activity, goods or services must ensure that the claim is true and accurate, and that it is not likely to give consumers the wrong impression.

Principles for trustworthy environmental claims

Principle 1: Make accurate and truthful claims

Any environmental claims you make should be accurate, true and factually correct. If your claim is not true or is only partially true, you should either change the claim or not make the claim at all.

Example – claims that are likely to be false or misleading

A printing service claims that the paper they use is “made from recycled materials”. In fact, the paper only contains 20% recycled material.

This claim is likely to be misleading and contravene the ACL.

The business could instead make the claim that the paper is “made from 20% recycled material”.

If supplying products provided to you by a third party, you should still ensure any environmental claims you make are accurate and truthful. This may include undertaking reasonable steps to verify supporting information provided to you by your suppliers. What is a “reasonable step” will depend on the circumstances. For example, the ACCC recognises that some small businesses may not have access to the same resources as larger businesses which can impact the scope and extent of due diligence which is appropriate to be undertaken, and this will be taken into account when assessing the steps taken to verify environmental claims.

It is also good practice to regularly review any claims you make to ensure that they are correct and up to date. This includes where something changes about your product or service, such as a new supplier.

Do not overstate the level of scientific acceptance

Environmental claims will often be based on scientific evidence or research. Where the scientific basis for your claim is under dispute or not conclusive, you should not present your claim as being universally accepted. This may mislead consumers into believing that you have a stronger basis for your claim than is really the case.

If you are relying on third-party studies or research to make a claim, it is good practice to consider the strength of the evidence. For example, you might consider:

- the number and quality of studies involved
- the age of the studies
- whether the findings have been replicated, or if they are in dispute
- whether the studies may have been influenced by any biases.

Example – claims that are likely to be false or misleading

A business selling kitchen goods advertises that their bioplastic boxes “biodegrade faster than the leaves in your backyard”. This statement is made based on a study conducted 30 years earlier and under laboratory conditions. Since the study was conducted, no other studies have replicated the findings. There is also debate in the scientific community and literature about the biodegradability of bioplastic in a real-world setting. No additional information qualifying or explaining the claim is provided.

The claim is likely to be misleading and contravene the ACL. It gives consumers the impression that it is well established that the bioplastic will biodegrade in a person’s home composting system when this is not the case. If the business has tested that the boxes will biodegrade under certain conditions (e.g., at a certain temperature, and/or after a specified period of time), they could instead advertise that the boxes biodegrade and specify the circumstances where this will happen.

Do not exaggerate environmental benefit

You should not make claims that exaggerate an environmental benefit or understate an environmental harm.

Example - claims that are likely to be false or misleading

A dry cleaner advertises that it is “an environmentally responsible dry cleaning service” with these words displayed next to an image of a circle with a cross through it over the word “perchloroethylene”.

Perchloroethylene is a type of solvent which is known to be damaging to the environment.

However, other cleaning agents the business uses, whilst potentially not as harmful as perchloroethylene, are still known to have significant detrimental impacts on the environment.

Due to the broad claim made by the business and the lack of information about which cleaning agents the business does in fact use and their environmental impacts, consumers are likely to be misled into thinking the business has adopted practices which are more beneficial to the environment than is the case, contrary to the ACL.

To reduce the risk of making exaggerated claims which mislead consumers, you should:

- Clearly explain the specific environmental benefit of your product or service. For example, explaining upfront whether the benefit applies to your whole product or service, or whether it only applies to part of it.
- Where applicable, quantify the precise environmental benefit being achieved. A claim that your packaging uses “5% recycled plastic” is much less likely to be misleading than a sweeping claim that your packaging is “made using recycled plastic” when recycled material only forms a part of the packaging.
- Avoid statements that your product, service or business has an overall “positive” effect on the environment, as most products, service or businesses will have some negative environmental impact.
- Avoid making claims about your product or service that are based on broad scientific opinion if you are unsure whether there is evidence that this applies to your situation.

Case study – good practice in providing environmental sustainability information

A company selling dry foodstuffs has changed its packaging to address concerns with the environmental impact of single use plastic. The new packaging is designed to be recycled in facilities in a range of locations throughout Australia. On the packaging, the business states “made to be recycled... check what can be recycled near you.”

The packaging provides a QR code that links to a website which explains where the packaging can be recycled and provides information on collection services.

Only make meaningful claims

You should only make environmental claims when there is a genuine environmental benefit associated with your product, service, or business. You risk misleading consumers if you advertise environmental benefits which are irrelevant, insignificant, or simply advertise the observance of existing law (unless this is made clear).

For example, you should not make claims that your product, service, or business has a specific environmental benefit if:

- all similar products or businesses have the same feature
- that feature is a legal requirement (and you don't make this clear but instead represent that your business is doing something special to achieve an environmental benefit).

While these claims may be literally true, they are likely to mislead consumers into believing that what is being advertised is special, when it is a necessary or ordinary feature.

You can of course make claims where you have gone above and beyond the legal requirement, or where legal requirements have resulted in unique innovations. In these cases, it is good practice to be explicit about what additional benefits your business has achieved.

Example – claims that are likely to be false or misleading

A cement manufacturer creates significant greenhouse gas emissions in the production of its products. The cement manufacturer advertises “Choose us – we are Australia’s only cement manufacturer taking steps to protect the environment by reducing our emissions”.

The company is legally required to reduce its greenhouse gas emissions by a certain amount each year, as are many others in the industry. The company is not reducing its emissions by any more than it is legally required to. The company has no credible basis to believe that other manufacturers are not also taking steps to meet their legal obligations.

The claim is likely to give the misleading impression that the company is doing more than meeting its minimum legal obligations and that it is offering greater environmental benefits than others in the industry. It is likely to mislead consumers in contravention of the ACL.

Example – claims that are likely to be false or misleading

An energy retailer sells a new product, which it markets as “clean, renewable gas”. In reality, the product is a blend of 5% renewable biomethane and 95% natural gas, which is a fossil fuel that releases significant greenhouse gas emissions when combusted.

This claim is likely to mislead consumers in contravention of the ACL. Consumers are likely to assume that the entire product is renewable energy. The energy retailer could instead qualify the claim, and clearly explain that only a small percentage of the blended gas product is renewable biomethane.

Make sure comparisons are transparent and fair

You should ensure that any comparisons you make are transparent and fair, and are a true reflection of the impact of the products, services, or businesses being compared. This includes when you are making comparisons between the environmental impact of your own products or services, and those provided by competitors.

Unfair comparisons, or comparisons that aren’t transparent about precisely what is being compared, can mislead consumers into thinking they are making a better choice for the environment than is actually the case.

You should make it clear to consumers what is being compared. Consider whether an ordinary and reasonable consumer may be misled by the comparison if further information isn’t included. You should explain how the comparison has been made and ensure the comparisons are easy for consumers to understand.

Comparisons should also:

- compare products or services which can be substituted for each other. In other words, compare ‘like-for-like’
- use up-to-date information
- compare features that are verifiable and significant
- measure compared features against the same method or standard
- not withhold relevant information.

Example – claims that are likely to be false or misleading

A beverage manufacturer makes a claim that its drink bottles are “made with less plastic” in an advertisement which features a picture of a bottle affixed with its label sitting next to unbranded bottles, without providing any further information. It is not clear what this is being compared to, and how much less plastic is used. In fact, the business is comparing its drink bottles with a previous version of its bottles, as it now uses 20% less plastic.

This claim is likely to be misleading and contravene the ACL.

The business could instead claim, for example, that its “new bottles are made using 20% less plastic than our previous bottles”. If the business chooses to make a claim on the bottle itself, this could state “now made with 20% less plastic”.

In some cases, it may not be possible to calculate a comparison with absolute precision. Provided the comparison provides an accurate impression to consumers, measurements based on averages may be appropriate. For example, where a product is made from a blend of recycled and non-recycled materials, a business may calculate the proportion of recycled content based on mass balance.

Presenting information to consumers in a way that enables them to make like-for-like comparisons is central to ensuring that consumers are not misled.

While there is no one correct way to present comparisons to consumers, it is good practice to provide enough information to allow consumers to draw their own conclusions about the comparisons being made. For example, by:

- making it clear to consumers what is being compared
- explaining how the comparison has been made
- ensuring that comparisons are easy for consumers to understand.

Where it's not possible to provide a clear comparison, claims by businesses should focus solely on the merits of their own product or service.

Representations about the future

Environmental claims often relate to events that will (or will not) happen in the future. For example, businesses often make claims about the future when they publicly set goals to:

- reduce their greenhouse gas emissions
- achieve ‘net-zero’ targets or transition to renewable energy
- reduce their water consumption
- incorporate recycled materials into their products and packaging
- transition to zero or low waste operations.

If you make a claim about something that will happen in the future (for example, a promise, forecast or prediction), you should have reasonable grounds for making the claim. Otherwise the claim will be taken to be misleading under the ACL.

You should also consider the overall impression being created by the claim to ensure what is being conveyed is not misleading.

The ACCC is more likely to take enforcement action in respect of representations about future matters where a business did not have reasonable grounds for making the representation, does not

have an intention or plan to implement initiatives, or knew or was reckless about whether the claim was misleading.

Example – claims that are likely to be false or misleading

A courier business states on its website that it will reduce its emissions by 80% within five years' time.

If the business switches its fleet to electric vehicles it might reduce its emissions. However, the business has undertaken no planning, budgeting or research to determine whether or not its claim is feasible.

In addition:

- the business took some steps to quantify its carbon emissions but has not quantified its baseline emissions for all greenhouse gases in a formal or reliable way (and has not made clear to consumers what emissions are included in its calculations)
- its Board has not considered or approved any decision to switch its fleet to electric vehicles
- there is no plan to build the necessary infrastructure, including charging stations, to facilitate this switch
- it does not have a plan in place for how it will monitor its progress against its target.

The claim is a representation with respect to something that may happen in the future, and the business did not have reasonable grounds for making it, and is not making any progress towards achieving reductions. The claim is likely to be misleading in contravention of the ACL.

Before you set and publicly announce any environmental goals, it is good practice to:

- Carefully consider any claims about efforts to reduce your business' environmental impact, how you will measure your progress, and what this will be measured against.
- Make sure your goals are clear and achievable, that you genuinely intend to meet them, and you have put realistic and verifiable steps in place to make them happen.
- Base your goals on accepted methodologies, and resources and technologies that are effective and are available to you now (or there is a reasonable basis to consider they will be available to you in the near future).
- Provide consumers with regular updates about how you are performing against your goals, including disclosing if you are not on track to achieve them and what steps you are taking to address any setbacks so as to meet your goals. How regular these updates should be will depend on factors such as the time horizon for your goal and any public reporting requirements.
- Regularly revise your goals if you realise that you will not be able to meet them.

Case study – good practice when setting environmental sustainability goals

A personal care manufacturer includes a page on its website about its environmental sustainability goals. The manufacturer has five key goals, and each goal has a list of key performance indicators (KPI) that it plans to achieve to meet it. For each goal and KPI, it is clear:

1. How the KPI will be achieved – for example, removing all plastic from packaging.
2. What performance against the KPI is being compared against – for example, using FY19 as a baseline year for measuring the % of plastic in its packaging.
3. When the KPI will be achieved – for example, by the year 2028.
4. How performance against the KPI will be measured – for example, through a third-party audit.

The manufacturer also clearly outlines its progress against each of its goals and KPIs on an annual basis and is transparent about where it is not on track to meet its goals. It explains what it is doing to get these goals back on track.

Principle 2: Have evidence to back up your claims

It is good practice to be able to substantiate any environmental claim you make – whether the claim is made on your packaging, in your advertising, through your employees, or in other ways – with clear evidence. Where relevant, evidence that is scientific and independent is most credible.

Example – claims that are likely to be false or misleading

A business sells a range of chocolate products and claims that its “cocoa doesn’t contribute to deforestation”. However, the business does not know where its wholesale supplier sources its cocoa from.

The business therefore risks that the claim is not true. The business should ensure that it has evidence and a reasonable basis to assess that none of its cocoa contributes to deforestation before making this claim or otherwise it risks making a claim that is misleading and contravenes the ACL.

Businesses should have a reasonable evidentiary basis for making an environmental claim. This evidence may come from internal data and records, or it may come from a third-party.

When choosing evidence to support your claims, keep the following tips in mind:

- If you are relying on your own internal data, it is good practice to retain all relevant records for your claim. This could include purchase records, internal audits, or testing results.
- Your evidence may come from third parties (such as suppliers). When making environmental claims, it is good practice to not rely solely on claims made by your suppliers or other third parties but to instead take reasonable steps to verify any information you want to rely on. What is a reasonable step will depend on the circumstances.
- If you are relying on scientific studies or similar evidence, it is good practice to use widely accepted scientific studies, or those that have been peer-reviewed and/or subject to independent scrutiny.
- If you have conducted laboratory testing to support your claim, it is good practice to check whether the laboratory results also reflect the conditions that will normally be experienced by consumers using your product.
- If your claims relate to reducing your environmental impact, for example by reducing emissions, or water or materials use, it is good practice to calculate these reductions using accepted methodologies and keep robust records to verify such claims.
- There may be industry schemes or standards which relate to your products or claims. These can assist in ensuring that you have a reasonable basis for your claims or can help guide industry best practice, but compliance with an industry scheme or standard does not automatically mean compliance with your ACL obligations and it’s the overall impression in the mind of the ordinary and reasonable consumer that is key. For example, a claim may create a false or misleading impression in contravention of the ACL if it is based on an industry standard that adopts a technical definition of a term which is different to the meaning an ordinary and reasonable consumer would give to the term, or if it is based on a scheme which is conditional and limited but the claim is likely to be interpreted more broadly. You should always consider the overall impression your claim is likely to create from an ACL perspective.

In determining whether to take enforcement action in respect of environmental claims, the ACCC will consider whether genuine efforts and appropriate steps were taken by the business to verify the accuracy of any information that they relied on. The scope and extent of due diligence undertaken will vary depending on the size of the business. The ACCC recognises that some small businesses may

not have access to the same resources as larger businesses which can impact the scope and extent of due diligence which is appropriate to be undertaken, and this will be taken into account when assessing the steps taken to verify environmental claims. Many environmental claims are difficult for consumers to verify. By making any supporting evidence publicly available, you will help consumers to easily verify and trust your claims. It is good practice to make this information as easy to find and understand as possible. For example:

- Providing any evidence directly where the claim is made, or through accessible click-through links if you are selling online.
- Where there is a lot of information that cannot be included directly on a product, packaging or in an advertisement, using brochures, dedicated websites, or QR codes with more detailed information.
- If information is complex, providing summaries of key information, or presenting this using charts and graphs.
- The amount and type of information provided to support a claim should be proportionate and relevant to the claim made. You are also not required to disclose any information that is commercially sensitive.

Case study – good practice in providing evidence to support your claim

Some businesses are now choosing to provide detailed information about their supply chains. While sharing this information may not be possible for all businesses, this can allow consumers to make more informed decisions about the types of business they want to purchase products and services from.

A shoe manufacturer has chosen to ensure that its factory has robust practices in place in relation to environmental and social sustainability. It sets rigorous standards to be complied with by suppliers and manufacturers of raw materials that are used in the factory. The manufacturer provides information about the steps it has taken to reduce environmental and social impacts throughout its supply chain on its website. It has set out a range of information, including:

- Details of the environmental standards it requires its commercial partners to meet, which include requirements about energy consumption, biodiversity impact and water use.
- Where its suppliers and producers are located at each step of the production process.
- How it procures its raw materials and any audits or reports prepared by suppliers.
- An indication of the likely difference in cost to produce in a factory in a location with less environmentally and socially responsible practices.

Some of this information is presented in easy-to-understand graphs, and maps of where producers are located. The language is clear and easy to understand.

Using third-party certifications as evidence

Businesses do not need to hold a third-party certification in order to make an environmental claim, however businesses may choose to use third-party certifications to provide credibility to their claims. There are many different types of certifications available to businesses. These can include certifications for a specific product or service, for an input to the business, for your entire business, or for a specific claim.

Importantly, if you rely on a third-party certification to make a claim, you should ensure that you are not creating a false or misleading impression about what the certification means or does. Particular care should be taken when relying on a certification scheme for offsets and emissions, remember it is the overall impression on the ordinary and reasonable consumer that is key.

When selecting a third-party certification scheme, it is good practice to take the following steps:

- choose a certification scheme that is independent, transparent, reputable, and robust
- check that the certification is suitable for your needs, and that it adequately reflects the characteristics of your product, service, inputs or business
- offer consumers details of further information on the scheme or direct them to where they can access this information.

If your claims go beyond what you have been certified for, or you use the certification to imply a greater benefit than there really is, you risk misleading consumers.

When using a third-party certification to back up your claims, you should ensure that:

- your product or service does what you claim it does, even where you have complied with the third-party certification
- your claims clearly and accurately reflect what you have been certified for, and the scope of certification (this can be particularly important for certification schemes relating to inputs)
- you have not mischaracterised the nature of the certification scheme
- you ensure continuous and ongoing compliance with the rules of the certification scheme, it's not simply a one-off achievement
- the certification scheme is independent and there is no conflict of interest between your business and the scheme
- any promotion of the fact that a particular product or service you provide meets the requirements of a certification scheme is not disproportionately emphasised in the context of your product or service offering as a whole.

Example – claims that are likely to be false or misleading

A business produces plastic kitchen items that have been certified by a third party as being industrially compostable. Special facilities are required for the products to break down, and they will not break down in home composting conditions.

Despite this, the business advertises its products as being “certified compostable” without any explanation or qualification.

This claim is likely to mislead consumers and contravene the ACL. It goes beyond what the business has been certified for – which is that the product can be composted in certain conditions only.

The business could instead claim that its products are “certified industrially compostable” and ensure that the overall impression created in its advertising does not otherwise mislead consumers that the product can be composted at home.

Good practice would be to provide further information on the scheme and outline any steps the consumer needs to take for the items to be composted.

Principle 3: Do not hide or omit important information

In many cases, giving consumers incomplete information or hiding important information is also misleading. If you provide some information, but leave out important details which might contradict or qualify the environmental claim, you might create an incorrect impression. This may also happen when information is buried in fine print, away from the headline claim.

For example, highlighting the positive aspects of your product, service, or business while omitting information about the negative aspects can give consumers the impression that your business, product, or service has a lower environmental impact overall than it really does.

Example - claims that are likely to be false or misleading

An airline advertises that it is “reducing emissions”.

The airline is operating flights on some of its routes using bio-based sustainable aviation fuel. However, these flights make up less than 1% of the airline’s overall schedule, and the airline is continuing to operate the majority of its flights using jet fuel produced from fossil fuels. The airline is also forecasting growth and expects to increase its capacity. On aggregate, the airline is expecting to increase its total emissions over the next 5 years.

The claim is likely to mislead consumers in contravention of the ACL. The omission of relevant facts is likely to leave consumers with the impression that the airline is reducing its overall emissions, when this is not the case. Consumers are likely to be misled that the airline has a lower environmental impact than it really does.

It is good practice to be transparent about your environmental claims and policies, and the information you are relying on to support them. In doing so, it can be helpful to consider the information that consumers need to form their own conclusions about the environmental impact of your product, service, or business.

For example, any information that is directly relevant to understanding your claim should be available directly on the product or at the point of sale. It may be appropriate to also provide additional supporting information through a website or QR Code, but this should not contradict or qualify the impression created by the claim.

Small print shouldn’t hide the truth

You cannot rely on disclaimers, disclosures or clarifications buried in small print, or otherwise not displayed prominently enough compared to your headline claim, as an excuse for making misleading environmental claims.

Any information that you provide in small print or qualifications should not conflict with the overall message of your claims. You should avoid:

- placing text in obscure locations
- using text that is too small
- flashing disclaimers on screen for only a moment
- using voice overs that are too quick or too quiet.

Example – claims that are likely to be false or misleading

A cosmetics company displays text that says “plastic free” on their pump bottles. On the back of the bottle, small text states that this claim only applies to the external bottle, and does not apply to the cap, pump or internal tube that sits inside the bottle.

The claim is likely to mislead consumers in contravention of the ACL. Consumers are likely to assume the “plastic free” claim applies to the entire bottle and the small print on the back of the bottle does not assist as it directly contradicts the headline claim “plastic free” on the front of the bottle and is not sufficiently prominent or proximate to the headline claim.

The cosmetics company could instead qualify this claim more prominently and clearly by stating that it applies only to the bottle.

When making environmental claims, it is good practice to only use small print to provide supporting information. If you do need to make a disclaimer or qualification, you can reduce the risk of giving an overall impression that is misleading by displaying the qualification in a way that ensures consumers are likely to read it. For example, by clearly displaying it near the headline statement.

Consider the full lifecycle of your product or service

Products and services have different environmental impacts across different stages of their life cycle. For example, there may be different environmental impacts associated with the manufacture of a product, compared with its use or disposal.

It is important to consider the effect of the total life cycle of your product, or overall activities, before making any environmental claims. There are a range of aspects that may be important for you to consider, including:

- the raw materials used (including how they are sourced)
- the component parts
- the manufacturing processes and location
- any waste or by-products
- the packaging
- how the product is used
- the end-of-life options and disposal
- whether the product has an overall negative impact on the environment.

You do not necessarily need to conduct a life cycle assessment or provide information about the full product life cycle in every claim. However, you should consider which impacts are relevant to the claims you want to make and ensure that the overall impression conveyed is not misleading.

For example, a claim about a particular characteristic of your product or service can be true, but still mislead consumers if it suggests that the product is more beneficial to the environment than it is by ignoring negative aspects of its lifecycle. The broader the claim the more likely the need to consider life cycle implications. Further information is set out in Principle 5.

Similarly, if your claim only relates to part of the life cycle, it should be made clear which part. For example, if your claim relates only to the transport of the product, it should not also suggest that it applies to the manufacture of the product.

Example – claims that are likely to be false or misleading

A brewery runs an advertising campaign with the slogan “The best beer yet, and the environment agrees: We’ve offset our emissions.”

In reality, the brewery is only purchasing credits to offset greenhouse gas emissions generated as a result of operations at its head office, which represent a very small proportion of the business’ total emissions. For example, it has not purchased credits to offset emissions generated as a result of the actual brewing process, the delivery of its product or the production of its ingredients. This claim risks creating the false impression that the brewery has offset emissions associated with the entire beer production lifecycle and misleading consumers in contravention of the ACL.

In order to avoid overrepresenting the quantity of emissions it has offset, the business could amend the claim to say they have offset the emissions generated by operations at their head office.

Good practice would be to also direct consumers to information on their website that quantifies the emissions they are offsetting and puts this in context of the total emissions associated with its operations.

Some consumers are increasingly interested in the full life cycle of the products and services they buy, and the overall impact of the businesses they buy from.

For example, these consumers may look for energy efficient products, but they may also be concerned about whether a product can be disposed of in an environmentally responsible way. Alternatively, consumers may want to buy products made from sustainably sourced materials, but they may also want to know about the emissions footprint of a product.

You may decide to provide additional information about other life cycle aspects of your product, service or business to assist consumers in making an informed decision. Some additional information you may wish to provide includes how you manage resources, how and where you source your materials, and product durability.

Good practice – providing relevant information

A clothing company uses the logo “Be conscious: not just about fashion” with the image of a green leaf. It provides a QR code on clothing tags linking to its website for more information. A number of social media influencers also promote the business due to its environmental ethos.

On its website, the company is upfront about both its environmental impact and the environmental detriment of the clothing industry, including in relation to emissions, resource use and waste the industry creates. The company quantifies these impacts, clearly indicating the source of the information on the same pages.

The company operates a trade in system where people can trade in old items from the company that are in good condition to be resold for credits towards other items. The company also offers free repairs on any of their items to extend their usable life. Where items can no longer be repaired or resold, the company collects them for recycling.

Customers of the company understand the environmental impacts associated with their purchasing decisions and are offered solutions to substantially reduce that impact.

Principle 4: Explain any conditions or qualifications on your claims

Some environmental claims may only be true under certain conditions. For example, a biodegradable product may only break down at a certain temperature or after a very long period of time. Other claims may only be realised if certain steps are carried out.

These types of claims can be misleading if the conditions or required steps are not clearly stated or are unlikely to be realised during ordinary consumer use. Some examples of where this may occur include where:

- A claim is true when the product is tested in laboratory conditions, but these conditions are unlikely to occur in normal day-to-day use.
- A claim is accurate in some locations where the product is sold, but not in others.
- The technology or infrastructure needed for the claim to be fulfilled is not readily available.

For example, in some circumstances businesses make claims that products are “recyclable”. Where these claims are based on consumers abiding by strict requirements which do not reflect normal consumer use, for example, by having to take the products to an industrial recycling facility, these claims risk misleading consumers if they do not make the requirements for recycling sufficiently clear.

To reduce the risk of misleading consumers, you should ensure that you provide enough information about what is required for your claims to be true.

Example – claims that are likely to be false or misleading

Waste and recycling infrastructure varies significantly between different geographical regions.

For example, some products that are fully recyclable in Sweden have no appropriate recycling streams in Australia and will be sent to landfill when sold here. A product manufactured in Sweden has the claim “100% recyclable packaging”. The product is also sold in Australia, where recycling facilities for this type of plastic do not exist. The claim is likely to mislead consumers in Australia and contravene the ACL.

In Australia, waste and recycling infrastructure are regulated by local government and councils and are operating in conjunction with the Australian Recycling Label (ARL).

However, there are still differences across Australia on the scope of recycling operations and there can be significant differences between local council areas. What is compostable in Food Organics and Green Organics (FOGO) in one state or council may not be accepted in another. Some compostable claims on products may therefore be true in one location, but not in another. Businesses should therefore be careful if they choose to make any compostable claims that they are accurate for all locations in which the products are sold.

Before making an environmental claim, you should ask yourself if there are any conditions that need to be met or steps that need to be taken for the claim to be true. You should consider:

- how consumers normally use the product or service
- the normal conditions where the product or service is usually sold
- any access to infrastructure, technology and resources that are required for the environmental benefits to be realised.

If certain actions, facilities, or resources are required for the environmental benefit to be realised, you should clearly and prominently explain to consumers what needs to happen to achieve this. If possible, you could consider incorporating this as part of the claim. If this is not possible, you should make it clear in the claim that conditions apply and consider using digital means for providing additional and up-to-date information, such as QR Codes and smart labels.

Example – claims that are likely to be false or misleading

A business produces and sells single-use coffee pods. The business makes a claim that the coffee pods are “recyclable” accompanied by recycling symbols on its packaging and advertising.

However, the coffee pods are not widely accepted for recycling and can only be recycled in a small number of local recycling programs. Where the coffee pods are accepted, further special steps are also required for them to be recycled. These steps were not disclosed to consumers.

This claim is likely to mislead consumers and contravene the ACL. Consumers are likely to understand the term ‘recyclable’ and recycling symbols on products to mean that the product can be recycled in ordinary household recycling collections. Consumers would not expect that any additional special steps are required unless the claim is qualified. There are very few facilities that enable the coffee pods to be recycled, and such facilities do not exist at all outside the business’ local area.

Before making the claim, the business should check whether the coffee pods can be recycled in the areas they will be sold, and any special steps required for them to be recycled, and qualify its claim to reflect these conditions.

It is good practice to clearly explain any limitations on the product’s ability to be recycled and any additional or unusual steps that need to be taken. If it is not practicable for the majority of consumers to recycle the product, the claim should not be made.

Example – claims that are likely to be false or misleading

A service station and coffee retailer advertises that they are “helping the planet” by using “recyclable take-away coffee cups”. This claim is displayed instore and in television and social media advertisements, with a picture of a customer leaving the station with a coffee cup in hand with a green halo around it.

The business provides collection bins for the coffee cups in their stores. The cups must be collected through these special bins to be recycled. They cannot be recycled through publicly available or home recycling collection systems. They will contaminate other recyclable materials if disposed of through these channels. The business does not mention this in store or in their advertising materials.

This claim is likely to mislead consumers and contravene the ACL. The business has not informed consumers that the cups can only be recycled through the in-store collection bins, risking a misleading impression that the cups can be recycled in other ways given how the claim is presented.

Principle 5: Avoid broad and unqualified claims

Broad or unqualified claims risk misleading consumers because they may not clearly explain the environmental impacts of your product, service, or business.

The risk of misleading consumers is reduced when you qualify your claims with specific environmental impacts and have a reasonable basis for making the claim.

Common broad or unqualified claims used by businesses include:

- green, go green or choose green
- environmentally friendly
- eco-friendly
- sustainable.

These terms convey sweeping benefits that can mean different things to different consumers. Without further qualification or clarification, consumers can easily be misled that the product, service or business is better for the environment than is actually the case.

For example, when used to advertise a product, the phrase “environmentally-friendly” could be interpreted to mean that the product is biodegradable, or it might be interpreted to mean that the production process for the product produces zero greenhouse gas emissions and does not contribute to climate change.

Good practice – avoid using overly broad, vague terms

Below are some commonly used broad terms which do not help inform consumers of the environmental benefits of a product, service or business. It is also difficult for a business to substantiate these claims. The ACCC recommends businesses avoid using these terms.

‘Green’ or ‘clean’

These statements are vague and convey little information to the consumer other than the message that your product, service or business is in some way claiming to be less damaging to the environment than others.

‘Environmentally friendly’ or ‘eco friendly’

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

‘Sustainable’

This claim is overly general and risks misleading consumers into thinking that a product, service, or business only uses resources at a rate that will not contribute to environmental harm. Almost all products have an adverse impact on the environment in some way through their use of resources.

Providing only partial information to consumers also risks misleading them. For example, some claims qualify the impact of the product, service or business but are inappropriately absolute, or vague, about what the claim applies to. This includes claims like:

- made from recycled materials
- renewable
- produced with renewable energy
- plastic free
- uses less water.

Without additional explanation of the specific aspect of the product, service, or business that the claim applies to, consumers are likely to assume that these claims apply to the entire product, service, or business, when this may not be the case.

Good practice – terms that should be qualified and explained

Below are some commonly used terms which are unlikely to be meaningful to consumers without more information. The ACCC recommends businesses only use them when they also provide sufficient qualifications and the basis for the claim is reasonable and transparent.

Recyclable

Consumers are likely to understand the term 'recyclable' to mean that the product can be recycled using ordinary local collection or drop off points. Consumers are also likely to assume that appropriate facilities exist for the product to be recycled. If there are very few facilities or collection points, or these do not exist at all, then the use of the term may be misleading.

Ensure that your product can be recycled through a household/local council waste collection or container deposit program before using such claims. Alternatively, if your product is recycled through an alternative recycling or product stewardship scheme, add appropriate qualifications and/or explanations of how the product can be recycled.

Where special instructions are required to recycle a product, it may be appropriate to provide this information to consumers through digital means and to qualify your claim. If further recycling information is provided indirectly (for example, by consumers having to click on a link to access the information), the fact conditions apply should be made clear to consumers in the claim itself.

Recycled content

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 a third party.

Some definitions of recycled content also include pre-consumer material diverted from the waste stream during manufacture. As consumers may not be familiar with these definitions, if the material has been recovered from the waste stream during manufacture and reused, this should be made clear.

Renewable energy

Claims that a business uses renewable energy should clearly explain how any renewable energy use (and any associated emissions reduction) has been calculated, in a way that consumers can readily understand.

If you are generating and using renewable energy and plan to use this to make claims relating to emissions, it is good practice to only make claims about the emissions reduction achieved if any tradeable certificates associated with the electricity generation are retired rather than sold.

This is because sale of certificates enables another business to claim the benefit of the same renewable energy when calculating its own emissions. This risks the overall environmental benefit of renewable energy use (i.e., reduced emissions) being overstated through “double counting”.

‘Free’

The use of the word ‘free’ is powerful and absolute. Consumers are likely to assume that this means 100% free. If your product does in fact contain a proportion of the ingredient, component or characteristic that it claims to be ‘free from’, you should use a different claim that accurately describes the product.

Claims that a product is ‘free from’ a particular ingredient can also give consumers the impression that the ingredient not included in the product is harmful. If this is not the case, the use of these claims may be misleading depending on the circumstances.

It is good practice to qualify these types of claims by:

- expressly referring to a specific part or attribute of a product, service or business
- clearly outlining the specific environmental benefit being achieved
- where applicable, quantifying the extent to which that benefit has been achieved.

Example – claims that are likely to be false or misleading

A manufacturer has started using 25% recycled plastic in the bottles and caps used to package its shampoo. The label on the bottle displays the following claim: “Our new sustainable range of products uses recycled plastic.” This claim is not explained or qualified.

The term “sustainable” appears to refer to the whole product, and may convey to consumers that the product will not contribute to environmental harm, when this is not the case. In addition, the business does not specify how much of the plastic in the product and packaging is recycled, which may lead consumers to believe all the plastic in the product and packaging is recycled.

The claim is likely to mislead consumers in contravention of the ACL.

Instead of the above broad claim, the following label could be used “25% of the plastic in this product’s bottle and cap is made from recycled plastic.”

In the qualified claim, the business has clearly represented:

- the relevant environmental benefit – use of recycled plastic
- what part of the product or packaging the claim refers to – the bottle and cap
- the degree to which the characteristic of “recycled” is true – 25% of the plastic in the bottle and cap is recycled.

Emissions related claims

Businesses should exercise particular caution when making representations to consumers about the greenhouse emissions associated with their products, services or business and their overall impact on climate change, given the complexities involved in quantifying these impacts.

Consumers are unlikely to readily understand what is meant by broad headline claims like “Carbon Neutral”, “Climate Neutral” or “Net-zero”. If you choose to make emissions related claims, it is good practice to ensure that any claims are understood by the ordinary and reasonable consumer and that you:

- undertake a thorough emissions baseline assessment, using established Australian or internationally recognised methodologies
- provide clear information to consumers about what emissions are included and excluded from any assessment
- clearly and transparently communicate the actions you have taken which underpin the claim. For example, being transparent about:
 - emissions reductions activities versus reliance on purchased offsets
 - explain how you have accounted for your emissions, including emissions associated with electricity use
 - provide information about the types of projects that offsets have been generated from, and ensure you:
 - have verified them (including verifying that the emissions abatement attributable to the offset project has not already been claimed by the project owner) and that offsets representing the same emissions benefit have not been issued under multiple different registries

- provide up-to-date information about the registry on which they are listed with details of the offsets relinquished or cancelled each year
 - where practicable, make this information readily accessible to consumers.
- account for all types of greenhouse gas emissions. Singling out particular types of emissions (e.g. carbon dioxide) and excluding others risks creating a misleading overall impression
 - ensure that consumers can understand from the information provided what emissions have been accounted for and avoid using headline claims which create a misleading impression, for example by:
 - disproportionately emphasising a claim in relation to a product, service or segment of your operations if this only represents a small proportion of your overall emissions profile
 - prominently advertising the offering of a “carbon neutral product” but not making clear this is not a default option and instead is dependent upon individual consumers opting in (and potentially paying a premium to do so).

In terms of claims about future goals and ambitions, you should have reasonable grounds to make the claims, for example by having appropriate business plans and investment approvals in place to make the changes necessary to meet the goals.

Environmental claims in highly polluting industries

Emissions intensive businesses, such as those that rely on or sell fossil fuels should be particularly careful not to understate the overall environmental impact of their business when making environmental claims.

Some industries are highly polluting by nature. Businesses in these industries should be extra cautious when making environmental claims. If a business in a highly polluting industry does choose to make an environmental claim, they should take extra care to ensure that their claims are truthful and accurate. This is because the overall environmental detriment of these industries is likely to overshadow any environmental improvements made by a business. Broad or unqualified environmental claims made by businesses in these industries have a higher chance of misleading consumers.

However, businesses in highly polluting industries also have the potential to make changes that result in significant reductions in environmental harm. Businesses in these industries should not feel discouraged from making any environmental claims if they have put genuine and meaningful measures in place to reduce their environmental impact. If you are a business in a highly-polluting industry and you wish to make claims about your environmental progress, be realistic and transparent about the environmental impact.

Principle 6: Use clear and easy to understand language

Claims can be misleading if they are worded in a way that is difficult for ordinary and reasonable consumers to understand. It is good practice to use clear and easy-to-understand language when making environmental claims.

This does not mean that you should oversimplify or use vague or ambiguous terms. You should consider whether the language you use allows consumers to clearly understand the specific benefit that you are trying to convey.

Avoid technical or scientific language

When you make environmental claims, it is good practice to avoid using scientific or technical language – unless it is easily understood by ordinary and reasonable consumers.

It is important to remember that consumers generally do not have specialist knowledge. They will understand words to have their ordinary meaning, not the meaning that they carry when used in a technical or specially defined way. Consumers may be misled if there is a difference between the ordinary meaning and a technical/specially defined meaning.

Example – claims that are likely to be false or misleading

A manufacturer advertises on their packs of washing machine detergent that consumers can “save water and help the planet by reusing greywater in your garden”.

“Greywater” is water that has been used by a household’s laundry and bathroom. Reusing greywater to irrigate gardens is a common way to preserve water resources. However, not all greywater is suitable to be reused to irrigate gardens.

The packaging has a prominent disclaimer “See ingredients list for whether our greywater can help your garden grow.” All the ingredients are clearly listed, including a certain bleaching agent which is suitable for soil and grass, but not for plants.

Consumers are likely to believe from the business’ advertising that they can use greywater containing the detergent in their gardens for both the lawn area and plants. They are unlikely to understand from the contents listing that it is not suitable for use on plants. The claim is likely to be misleading and contravene the ACL.

Sometimes using scientific language will be the clearest way of presenting a claim. It may be appropriate to use scientific language in some situations. Where scientific or technical terms are needed, it is good practice to clearly define the words and provide explanatory material if there is the potential for confusion. Where the scientific term also has a non-technical meaning, it is unlikely that using scientific language will be the clearest way of presenting a claim to consumers.

Use words to convey their common meaning

You should also only use words according to their ordinary, common meaning. If the words used in your claim don't match the way consumers are likely to interpret them, you risk misleading consumers.

If your claim relies on a specific interpretation of common words or phrases, it is good practice to clearly define and explain this to avoid any misunderstanding.

It is also good practice to explain terms with multiple potential meanings.

Example – claims that are likely to be false or misleading

A business labels its picnic cutlery as “reusable”. The business previously sold these same products as single use. They are made from conventional plastic and the plastic begins to degrade once it is washed. Repeated cleaning also causes the products to become unsafe for continued use with food. Accordingly, they can only be reused a small number of times.

While the products may technically be able to be used more than once, consumers are most likely to interpret the word “reusable” to mean that the products can be reused multiple times, for an extended period. This claim is likely to mislead consumers and contravene the ACL.

The business could instead state the number of times the products can safely be reused.

Principle 7: Visual elements should not give the wrong impression

The visual elements of your marketing, products and packaging also convey certain things to consumers. This includes the use of certain colours (e.g., green), images (e.g., of dolphins and trees) and symbols (e.g., the mobius loop for recycling).

Images and visual elements should be used with care. The use of environmental images may be interpreted by consumers to be making a broad claim of an environmental benefit. This risks misleading consumers if it is not true.

Other visual elements can also contribute to an overall misleading impression. For example:

- Images of plants, animals, the earth, or certain endangered animals may suggest environmental benefits.
- Using a symbol that is widely accepted as having a particular meaning, when the product does not meet that meaning.
- Colours such as green and blue can carry environmental connotations. When used together with other environmental imagery, they can contribute to an overall impression that a product, service, or business has an environmental benefit.
- Overall branding and logos can also contribute to an impression about the environmental benefits of a product, service or business, particularly if they incorporate the elements above.

When determining if visual elements suggest an environmental benefit, what is important is the overall impression given to an ordinary and reasonable consumer. Images of plants and certain colours can also be used to denote product composition or flavours, rather than environmental representations. For example, a business selling fruit juice may use the colour green or use images of fruit trees on its products in a way which does not convey an environmental claim.

Symbols

Symbols can come in various forms, from globally recognised symbols to custom designed icons that visually represent the environmental characteristics of your specific product, service, or business.

The use of widely recognised symbols can be misleading if your product, service or business does not meet the criteria for using the symbol, or if they are not properly qualified. When you use widely recognised symbols, it is good practice to explain clearly and prominently next to the symbol exactly what you are using it to mean or represent.

Example



The mobius loop is a globally recognised symbol for recycling. The use of this symbol can represent to consumers that a product is made of recycled materials or that the materials are recyclable, or both. Without further explanation its use may represent to consumers that all of these characteristics apply and that they apply to the whole product or packaging, where this may not be the case.

Trust Marks

It is also common for businesses to design their own symbols to visually represent their product, service, or business' environmental characteristics. These symbols can sometimes look like trust marks. Trust marks are a visual indication that a product, service or business has been certified by a third-party as meeting an environmental standard or scheme.

If the environmental benefit that you are representing through a third party's symbol has not been certified or verified by that third-party, you should not use the symbol, otherwise, you are likely to mislead consumers.

You should also carefully consider the use of any images that may convey the impression they are a symbol of independent certification or verification for that characteristic, when this is not the case.

Example – claims that are likely to be false or misleading

A manufacturer produces toothbrushes made from biobased PE plastic. On its packaging, it uses a green tick enclosed in a circle alongside the words "biodegradable approved". The business has not had its products tested for biodegradability and, in fact, the type of biobased plastic used by the business is not biodegradable.

Consumers are likely to see the use of the customised symbol (being the visual imagery plus the express words) as a representation that the business' product has been certified as biodegradable by a third-party when this is not the case.

The use of the customised symbol is likely to mislead consumers in contravention of the ACL.

Third-party labels and certifications

Having your environmental benefits verified or certified by an independent, robust third-party scheme can build consumer trust in your brand. However, consumers may also be unfamiliar with local or international environmental certification schemes. When using a logo from such a scheme, consider the overall impression created and whether any further information or explanation is required to ensure consumers are not misled.

For example, you should not use a certification logo in a way that implies:

- that you have been certified for an aspect of your product, service, or business which you have not. For example, if only your products have been certified, you should not imply that your entire business has been certified
- that your product has been independently certified if this is not the case. For example, if your certification is self-assessed, or you have a material connection to the certifying body
- that the certification scheme means certain environmental benefits have been certified as having been achieved when it does not.

Businesses that are no longer certified, or fail to meet the criteria for certification, and represent that they are certified risk misleading consumers.

You should be mindful of how you describe certification schemes, and where you place certification logos in your advertising materials, to ensure the overall impression created is not misleading. It is also good practice to offer consumers details of further information on the scheme.

Some certification logos may also convey a misleading impression in themselves. For example, where the logo does not accurately represent what the scheme is designed to certify. Use of these types of certification schemes risk misleading consumers.

Principle 8: Be direct and open about your environmental sustainability transition

The ACCC encourages businesses to take genuine steps to improve their environmental performance and share their progress with consumers. Businesses should also feel confident to advertise the environmental benefits of their products and services, and the steps they are taking to reduce their environmental impact.

Transitioning to a more environmentally sustainable business model can involve a variety of different steps. This includes switching to more environmentally sustainable production methods or suppliers, reducing waste or increasing recycling, and procuring renewable energy. It can also involve setting emissions reduction or mitigation targets.

However, transitioning to a more environmentally sustainable business model takes time and is often not linear. During this transition, your products and operations will inevitably continue to have detrimental environmental impacts.

You can mislead consumers if claims about your business' environmental improvements give the impression that you are further along in your environmental sustainability transition than you actually are. For example, you should not make claims that you have:

- plans to implement certain environmental initiatives if this is not the case
- intentions to implement certain environmental initiatives if these have not been formally and genuinely committed to
- undertaken certain activities or improved your environmental performance if you have not yet done so
- achieved steps in your environmental sustainability transition if these are still in progress.

It is good practice to avoid promoting goals or making claims about your environmental sustainability transition which are vague or unclear. Otherwise, consumers risk being misled about the steps you are taking to improve your environmental performance.

Good practice – making claims about your environmental sustainability transition

A freight company with rail, road and shipping operations generates significant amounts of greenhouse gas emissions. There is no technology that is currently available that would allow the company to reduce its total greenhouse gas emissions to zero. However, the company chooses to start by electrifying its vehicle fleet, which will lead to significant reductions in its emissions.

In its public statements the company explains that it has chosen to electrify its vehicles, and explains that this will help reduce its impact on climate change over time.

In order to avoid creating a misleading impression about the overall environmental impact of the company, it also explains the proportion of its emissions that will be reduced as a result of its investment in electric vehicles, and that there are parts of its business that still have a significant impact on climate change and are very difficult to abate at the present time due to a lack of available technology. Further information about the environmental impact of each area of the company's operations are provided on its website, which is continuously updated with new information.

You can make claims about your environmental sustainability transition if they are a genuine reflection of your environmental goals and performance. When making these types of claims, it is good practice to:

- Understand your motivations for making environmental claims. Is it because you have made genuine progress, or are there other reasons you want to make these claims?
- Be realistic about the changes you can achieve at different stages of your transition. Some changes may rely on technological advancement, while others will rely on government policy changes. It can also take time to research and develop new product offerings.
- Understand what different environmental sustainability terms mean and ensure that you use the correct terminology and consider whether consumers will understand the meaning of the terms in the way you are using them.
- Be clear on the practical steps you are taking to achieve your environmental sustainability goals. For example, if your goal is to reduce your emissions by 50%, you might take steps to increase your use of renewable energy.
- Make it clear which steps in your environmental sustainability transition have been completed, and which are still in progress.
- Provide regular updates on your progress. Be transparent about where you are up to in your environmental sustainability transition and make sure this information is presented clearly to consumers.

The need to be competitive can incentivise and drive environmental change. However in relation to any harm reduction claims, you should ensure genuine progress has been made before making environmental claims. You should also ensure that you have realistically portrayed the environmental harm still associated with your business as you transition to more sustainable operating models, to reduce the risk of misleading consumers.

Case study – good practice in communicating about sustainability transition efforts

A business has voluntarily decided to reduce its emissions footprint and announces an emissions reduction goal. It has developed a clear transition plan which sets out the steps it has already taken to achieve its goal, the steps it is currently taking, and the future steps it intends to take. This plan is advertised on television and various marketing materials, and consumers are directed to a website for more detailed information.

First, the business has taken steps to quantify its greenhouse gas emissions so that it is able to measure progress against its emissions reduction goal. The business:

- Has calculated its own emissions using reputable accounting methodologies.
- Accounted for the emissions associated with its direct operations as well as the emissions produced when consumers purchase and use its products and services. It has done this through an independent life cycle analysis and measuring changes off a nominated baseline.
- When the business makes claims about its emissions reduction plan, it makes it clear to consumers which emissions it has included in its calculations, and clearly identifies any emissions sources not included in its calculations.

The business has also committed to clear steps to achieve its goal. It is in the process of implementing a number of these. In this case, the business is:

- Making operational changes to reduce its gross emissions. This includes increasing its use of renewable energy to 100% of its energy needs.
- Where emissions reductions options are not immediately available, purchasing high integrity offsets to mitigate the emissions footprint of its products, services, and business operations.

When making representations to consumers about this aspect of its emissions reduction plan, the business clearly explains the proportion of its gross emissions it has reduced and separately identifies areas of its business where it has not been able to reduce its emissions, but is purchasing offsets to mitigate environmental impact. Where offsets are used, the business:

- Provides details of the programs it has sourced offsets from.
- Takes reasonable steps to verify the integrity of the offset projects.
- Annually cancels or surrenders the volume of offsets that is consistent with achieving its goal and ensures that the offset cancellations are recorded in the relevant registry.
- Provides regular updates on its progress, including the number of offsets it has purchased and surrendered each year.

The business has investment plans in place for additional steps it will be taking in the future to reduce its emissions. It plans to achieve future emissions reductions by:

- Reducing its reliance on air freight and switching its logistics to ocean freight and rail by 2025 (based on committed supply contracts).
- Trialing options to reduce emissions in its supply chain, including in areas where emissions are currently hard to abate, and reporting back on the success of these trials by 2025.
- Reducing its reliance on virgin materials, through upcycling and recycling initiatives, with a detailed plan to achieve a 75% reduction in virgin materials by 2025.

When making representations to consumers about its future plans, the business sets out and explains the steps it is planning to take, and when it expects them to be achieved and any material barriers to their achievement. It also provides regular updates on its actual progress.

The ACCC's Compliance and Enforcement Approach

The ACCC enforces the ACL in conjunction with State and Territory consumer and fair trading agencies.

In determining whether to take enforcement action for potential breaches of the ACL, the ACCC's [Compliance and Enforcement Policy](#) sets out various factors which are taken into account

These include:

- conduct that is of significant public interest or concern
- conduct that results in substantial consumer or small business detriment
- national conduct by large businesses, 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 our action is likely to have an educative or deterrent effect
- where our action will help clarify aspects of the law, especially newer provisions of the ACL.

As these factors indicate, the ACCC focuses on investigating conduct with the potential to harm the competitive process or result in widespread consumer harm or small business detriment.

In determining any enforcement action to take the ACCC will consider what is a proportionate response to the conduct and the resulting or potential harm.

The ACCC will consider whether genuine efforts and appropriate steps were taken by the business to verify the accuracy of any information that they relied on. The scope and extent of due diligence undertaken will vary depending on the size of the business. The ACCC recognises that some small businesses may not have access to the same resources as larger businesses which can impact the scope and extent of due diligence which is appropriate to be undertaken and this will be taken into account when assessing the steps taken to verify environmental claims.

The ACCC is more likely to take enforcement action in respect of representations about future matters regarding environmental claims where a business did not have reasonable grounds for making the representation, does not have an intention or plan to implement initiatives, or knew or was reckless about whether the claim was untrue or incorrect.

Greenwashing conduct can also contravene laws administered by other regulators, including the Australian Securities and Investment Commission (ASIC). The ACCC and ASIC work closely together on the detection and investigation of misleading environment claims, including corporate sustainability claims and claims in connection with financial products and services.

The ACCC will focus on consumer facing products and services, whereas ASIC is primarily responsible for financial products and financial services. However, misleading environmental claims may sometimes fall within both ASIC's jurisdiction and the ACCC's jurisdiction, in which case the ACCC and ASIC work closely together to address any misconduct.

The ACCC has a range of regulatory powers that allow it to investigate and pursue potential contraventions of the ACL.

Section 155 notices

The ACCC has compulsory information gathering powers under section 155 of the *Competition and Consumer Act 2010* (Cth). It can use these powers to obtain information and documents and/or require a person to attend an examination and give evidence in order to investigate potential contraventions of the ACL.

If you receive a section 155 notice, you are required to comply with it by the due date. Complying with a notice may require you to conduct reasonable searches for the required information or documents, review and produce materials in your possession, power or control (save for legally privileged material), answer all questions fully and honestly, and (if applicable) attend any oral examination and give evidence at the place, date, and time specified in the notice.

There are serious consequences for a refusal or failure to comply with a section 155 notice, including fines or imprisonment. In addition, providing false or misleading information or documents to the ACCC is an offence which attracts serious consequences, including fines or imprisonment. For further information see [ACCC guidelines – use of s155 powers](#).

Substantiation notices

Substantiation notices are a preliminary investigative tool that helps the ACCC determine whether further investigation is warranted. The ACCC may issue a substantiation notice requiring a person to give information and/or produce documents that could be capable of substantiating or supporting an environmental claim.

If you receive a substantiation notice, you are required to comply with it within 21 days. If there are genuine reasons why you will not be able to respond to the notice by the due date, the ACCC may grant an extension.

Individuals are not required to provide information or documents if the information or documents may incriminate them or expose them to a penalty.

The ACCC may issue an infringement notice or seek an order from the court for payment of a penalty if a person does not comply with a substantiation notice or provides false or misleading information in response to a substantiation notice.

Infringement notices

The ACCC may issue an infringement notice where it has reasonable grounds to believe that a person has contravened certain consumer protection provisions in the ACL (including false or misleading representations, misleading conduct as to the nature and characteristics of goods and services, but not for the general prohibition on misleading or deceptive conduct).

The penalty amount for each infringement notice varies, depending on the alleged contravention.

Payment of an infringement notice penalty does not amount to an admission or finding of a contravention of the ACL.

Where a person declines to pay an infringement notice, the ACCC is likely to consider other enforcement options, including taking court proceedings.

For further information on infringement notices including the penalties that apply, see the ACCC's [guidelines on the use of infringement notices](#).

Penalties

The ACCC can take court action against a person for making false or misleading representations and for engaging in misleading or deceptive conduct. It is for the court to determine liability and an appropriate penalty, which will depend on the circumstances of each individual case.

The maximum penalty for each contravention of the relevant penalty provisions of the ACL by a corporation is the greater of:

- \$50 million
- if the Court can determine the benefit obtained that is “reasonably attributable” to the contravention, 3 times the value of that benefit
- if the Court cannot determine the value of the benefit, 30% of the corporation’s adjusted turnover during the relevant period.

Individuals can also be responsible for contravening the ACL. The maximum penalty for each contravention by an individual is \$2.5 million.

Criminal liability for corporations and individuals for offences under the ACL may apply in respect of some claims.

Report greenwashing to the ACCC

ACCC website: www.accc.gov.au

ACCC general enquiry web forms: <https://www.accc.gov.au/about-us/contact-us>

ACCC Infocentre: 1300 302 502

Callers who are deaf or have a hearing or speech impairment: www.relayservice.com.au, 13 3677 for TTY users or 1300 555 727 for Voice Relay

Callers who speak a language other than English, call 131 450 and ask for 1300 302 502

Indigenous Infoline: 1300 303 143

Appendix – Legal Framework

As well as general prohibitions against misleading or deceptive conduct, the ACL includes specific prohibitions against making false or misleading representations about goods or services. These prohibitions are detailed below. Pecuniary penalties may be imposed for contraventions of these sections (namely sections 29, 33 and 34).

Criminal liability for corporations and individuals for offences under the ACL may apply in respect of some claims.

Misleading or deceptive conduct (Section 18)

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

False or misleading representations about goods or services (Section 29)

Section 29 of the ACL states that a person must not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services:

- a. make a false or misleading representation that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use; or
- b. make a false or misleading representation that services are of a particular standard, quality, value or grade; or
- c. make a false or misleading representation that goods are new; or
- d. make a false or misleading representation that a particular person has agreed to acquire goods or services; or
- e. make a false or misleading representation that purports to be a testimonial by any person relating to goods or services; or
- f. make a false or misleading representation concerning:
 - i. a testimonial by any person; or
 - ii. a representation that purports to be such a testimonial;relating to goods or services; or
- g. make a false or misleading representation that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits; or
- h. make a false or misleading representation that the person making the representation has a sponsorship, approval or affiliation; or
- i. make a false or misleading representation with respect to the price of goods or services; or
- j. make a false or misleading representation concerning the availability of facilities for the repair of goods or of spare parts for goods; or
- k. make a false or misleading representation concerning the place of origin of goods; or

- l. make a false or misleading representation concerning the need for any goods or services; or
- m. make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy (including a guarantee under Division 1 of Part 3-2); or
- n. make a false or misleading representation concerning a requirement to pay for a contractual right that:
 - i. is wholly or partly equivalent to any condition, warranty, guarantee, right or remedy (including a guarantee under Division 1 of Part 3-2); and
 - ii. a person has under a law of the Commonwealth, a State or a Territory (other than an unwritten law).

Misleading conduct as to the nature etc. of goods (Section 33)

Section 33 of the ACL states that a person must not, in trade or commerce, engage in conduct that is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity of any goods.

Misleading conduct as to the nature etc. of services (Section 34)

Section 34 of the ACL states that a person must not, in trade or commerce, engage in conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose or the quantity of any services.

