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Australian Competition Regulator Releases Draft Guidance on Greenwashing

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By Duncan Grieve

Special Counsel | White Collar Defense and Investigations



By Sara Bussiere

Special Counsel | Global Litigation

In July 2023, the Australian Competition and Consumer Commission (ACCC) released **draft guidance** for businesses making environmental and sustainability claims (the Draft Greenwashing Guidance). The Draft Greenwashing Guidance establishes best practices under the Australian Consumer Law (ACL) setting out how businesses operating in Australian jurisdictions can avoid greenwashing.

The Draft Greenwashing Guidance comes as a result of the ACCC's **ongoing investigations** of businesses in several sectors, including an “internet sweep” conducted in late 2022 of nearly 250 companies’ websites across the energy, household product, food, cosmetic and other industries, and **we previously have discussed** ACCC’s efforts in this area. **The ACCC’s report** following its internet sweep published in March 2023 indicated that roughly 57% of Australian companies made “concerning”—vague or unclear—environmental or sustainability claims.

The Draft Greenwashing Guidance identifies eight key principles for businesses to follow in order to avoid greenwashing and includes specific prohibitions, best practices and examples. These include:

1. **Accurate and truthful claims:** more than just being true and accurate, businesses should be aware that even factually correct information could be potentially misleading (a significant challenge for companies that **we have previously discussed**);
2. **Evidence:** businesses should attempt to ensure that their claims are verifiable, with independent and scientific evidence being the most credible. Such evidence should be

accessible to consumers. Businesses should have and be able to show, reasonable grounds for making forward-looking statements;

3. **Concealing or omitting important information:** consumers cannot make informed decisions if they are not presented with all material information;
4. **Conditions or qualifications:** other factors that could affect the truthfulness and accuracy of a claim should be explained to the consumer;
5. **Broad and unqualified claims:** broad claims are more likely to mislead consumers than specific claims that are substantiated;
6. **Clear and easily comprehensible language:** given that consumers may not have industry-specific knowledge, the language used should be clear and easy to understand, avoiding the use of technical terms;
7. **Visual elements:** the use of any visual elements (e.g. green-colored packaging) can create the impression to a consumer that a product or service is sustainable, and should therefore be considered carefully; and
8. **Directness and openness about sustainability transition:** aspirational claims should be avoided unless the business has developed clear and actionable plans as to how those ambitions will be achieved.

The consultation seeks feedback on common difficulties businesses face in making environmental claims, as well as common difficulties consumer groups might face in understanding such claims. Survey questions focus on what information is necessary to make an informed purchasing decision, as well as on the utility of QR codes, websites and product labels for providing such information. Other questions focus on the relevance of certified trademarks to help consumers better understand a business' environmental and sustainability credentials. The consultation period ends September 15, 2023. The ACCC expects that the final guidance, once approved, will be updated periodically.

Taking the Temperature: In its [March 2023 announcement](#) reporting the results of the internet sweep, the ACCC made clear that greenwashing is an enforcement priority, stating that there are, already, “several active investigations underway across the packaging, consumer goods, food manufacturing and medical devices sectors” related to allegedly misleading environmental claims, and promised “more targeted assessments into businesses and claims identified through the sweep,” and “enforcement action where it is appropriate.” In particular, ACCC Deputy Chair Catriona Lowe advised: “Businesses using broad claims like ‘environmentally friendly’, ‘green’, or ‘sustainable’ are obliged to back up these claims through reliable scientific reports, transparent supply chain information, reputable third-party certification or other forms of evidence. Where we have concerns, we will be asking businesses to substantiate their claims.” In announcing the guidance in July, the agency declared that it is prioritizing “consumer, product safety, fair-trading and competition concerns in relation to environmental and sustainability claims.” The guidance also serves as a strong indicator of the general approach the ACCC will take in investigating whether sustainability claims run counter to the ACL, as well as to enforcement outcomes.

Greenwashing is a growing concern and is increasingly an enforcement priority in various jurisdictions. In the EU, the European Commission [published the Green Claims Directive](#), a proposal aimed at combating greenwashing and misleading environmental claims. The Green Claims Directive followed the EU's own “sweep” in 2020 during which

it concluded that nearly half of environmental claims examined may be false or deceptive. Pursuant to the Green Claims Directive, if implemented, operators would need to, among other things, ensure that the claim “relies on recognized scientific evidence and state of the art technical knowledge,” considers “all significant aspects and impacts to assess the performance,” demonstrates whether the claim is accurate for the whole product or only parts of it, provides information on whether the product performs better than “common practice,” identifies any negative impacts resulting from positive product achievements, and reports greenhouse gas offsets. The proposals are being reviewed by the EU Council and Parliament and the timeline for implementation is therefore yet to be determined.

Accurate climate reporting across all sectors is a priority of Australia’s current government in other sectors, including, [as we recently discussed](#), in the financial markets, where the country’s primary regulator, the Australian Prudential Regulation Authority, is currently developing its own climate reporting standards. Further, [as we observed here](#), both greenwashing and “greenhushing” (the practice of not reporting or underreporting ESG credentials or initiatives due to uncertainty around emerging reporting frameworks) are part of the Australian Securities and Investments Commission’s (ASIC) ongoing scrutiny of climate-related risk disclosures and potentially misleading statements.