

## ACCC's Draft Guidance for Businesses' Environmental and Sustainability Claims

### Summary

On 14 July 2023, the Australian Competition & Consumer Commission ("**ACCC**") released 'Draft guidance for business' (the "**Draft Guidance**"), focussed on improving the integrity of environmental and sustainability claims made by businesses, ensuring consumer protection from greenwashing. Under Schedule 2 of the Competition and Consumer Act 2010 (Cth), the Australian Consumer Law (the "**ACL**"), businesses have an obligation not to make false or misleading representations or engage in misleading or deceptive conduct.

The Draft Guidance outlines the ACCC's view of what businesses need to do to comply with the ACL and its expectations for good practice when making these claims.

### ACL's Treatment of Environmental Claims

The ACL makes it unlawful for businesses to engage in conduct that is misleading or deceptive. The law applies to businesses who engage in greenwashing both inadvertently and intentionally. The ACL applies to all forms of marketing materials, such as – information on packaging, advertisements, social media, websites or conveyed to consumers in writing or verbally.

The ACCC urges businesses to consider when making an environmental claim 'whether the overall impression created by the product issuer was misleading to the ordinary and reasonable consumer'. In determining whether to take enforcement action in respect of environmental claims, the ACCC will consider whether appropriate steps were taken by the business to verify the accuracy of the information that was relied on. The ACCC will likely take enforcement action in respect of environmental claims where a business did not have reasonable grounds for making representation, does not have an intention to plan or implement initiatives, or knew or was reckless about whether the claim was true or incorrect.

### Principles for Trustworthy Environmental Claims

The eight proposed practical principles in the Draft Guidance recommended for businesses to make reliable and trustworthy environmental claims include:

- Making accurate and truthful claims
- Having evidence to back up your claims
- Not hiding important information
- Explaining any conditions on your claims
- Avoiding broad and unqualified claims
- Using clear and understandable language
- Not giving the wrong impression with visual elements
- Being direct and open about your sustainability transition

### Next Steps

The Draft Guidance sets out what the ACCC considers to be good practice when making environmental and sustainability claims. To access the Draft Guidance please click [here](#).

Businesses must provide clear, accurate and trustworthy information to consumers about any environmental or sustainability claims and be able to provide evidence to back them up. Cleveland & Co can assist you by reviewing your firm's offer documents and related website content to ensure that they are compliant with the ACL's expectations.

If you need any help or further information, please contact Tanja Listar:

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