



Submission

Australian Competition and Consumer Commission - Environmental and sustainability claims: Draft guidance for business

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About the Consumer Policy Research Centre

The Consumer Policy Research Centre (CPRC) is a not-for-profit consumer policy think tank.

Our work is possible thanks to funding from the Victorian Government.

Our role is to investigate the impacts that markets and policies have on Australian consumers and advise on best practice solutions.

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Statement of Recognition

CPRC acknowledges the Traditional Custodians of the lands and waters throughout Australia. We pay our respect to Elders, past, present and emerging, acknowledging their continuing relationship to land and the ongoing living cultures of Aboriginal and Torres Strait Islander Peoples across Australia.

Green claims: The onus is on businesses

Consumers in Australia are bombarded with confusing environmental and sustainability claims on a daily basis. Concerningly, instances of greenwashing are prolific in the Australian market, prompting need for urgent action by businesses and regulators, alongside legislative reform.

Consumers deserve and are entitled to accurate, truthful information on products and services advertised as being sustainable or environmentally beneficial. Businesses who make deceptive, untruthful and unsubstantiated green claims must be held accountable under the Australian Consumer Law (ACL). While CPRC is broadly supportive of the guidance and the ACCC's intention to assist businesses to make evidence-based green claims, we note that this is only one of many measures that must be implemented to effectively stamp out greenwashing.

Indeed, it is in the interests of businesses to provide information about their environmental or sustainability credentials in a way that benefits consumers. When businesses fail to act on promises to achieve larger sustainability goals, it can reduce consumer desire to adopt sustainable actions. Our research shows that many Australians would feel manipulated if they discovered a business had been greenwashing.¹ They also feel it would impact on their ability to exercise their choices and desire to be more sustainable in the future.

CPRC is very concerned that consumers are being deceived by businesses making green claims, including through the use of self-certified, unregulated trustmarks, unsubstantiated 'forward looking' claims and vague and obscure language. **It is unfair to put the onus on the consumer to 'dig' to find information to substantiate a claim being made.** The onus is on businesses.

The guidance must clearly require businesses making green claims provide accurate and complete information to consumers without exception. We suggest there are various areas of the guidance that could be strengthened, including by applying measures initiated through the EU² and the UK's³ unfair trading prohibitions in the area of green advertising claims. We further suggest that requiring businesses to outline the evidence underpinning their claims and acknowledge when a milestone has not been met will be effective in decreasing instances of greenwashing, one of the goals of the guidance as set by the ACCC.

Accompanying legislation and resources and powers for enforcement are essential, as the guidance is only part of the solution. CPRC's preferred approach is for an unfair trading prohibition with a blacklist mechanism, which would mean the most severely unsubstantiated and misleading green claims can be stamped out. In the absence of robust legislation, ACCC enforcement is even more critical.

CPRC commends the ACCC on its initiative to assist businesses to fulfil their obligations under the ACL with respect to environmental and sustainability claims. Ultimately, decreasing instances of greenwashing is up to businesses adhering to the proposed principles outlined in the guidance, and doing the right thing by consumers.

Our submission draws on research conducted by CPRC to respond to the consultation questions put forward by the ACCC. Several of the recommendations we present in our submission have also been raised in our submission to the Senate Inquiry on greenwashing, which we have attached as an addendum for reference. We would welcome the opportunity to work with the ACCC and share further insights from our consumer research projects. For further discussion regarding our research and the contents of this submission, please contact sarah.panckridge@cprc.org.au or chandni.gupta@cprc.org.au.

¹ CPRC, 'The consumer experience of green claims in Australia', November 2022, <https://cprc.org.au/green-claims/>.

² European Commission (2023), Unfair commercial practices directive [Unfair commercial practices directive \(europa.eu\)](https://eur-lex.europa.eu/eli/dir/2023/2854/oj).

³ Which (2022), Consumer Protection from Unfair Trading Regulations 2008 [Consumer Protection from Unfair Trading Regulations 2008 - Which?](https://www.which.co.uk/consumer-rights/unfair-trading-regulations-2008)

Summary of recommendations

Scope and applicability of recommendation	Recommendations for improvement
<p>Amendment to principles in the ACCC guidance</p>	<p>Recommendation 4: Amend Principle 3 ‘Do not hide important information’ to require businesses to provide information on the life cycle of a product, including the durability, repairability, and how it is compostable, if advertised as such. Labelled information about the life cycle of a product must be clearly articulated to ensure information is accurate, relevant, consistent and actionable.</p>
	<p>Recommendation 5: Amend Principle 8 ‘Be direct and open about your sustainability transition’ to outline public reporting requirements regarding future, forward looking claims, including a requirement for businesses to publicly acknowledge when they have not met a milestone they have set.</p>
	<p>Recommendation 6: Remove the word ‘reasonable’ in relation to representations about the future in Principle 1 ‘Make accurate and truthful claims’, to instead outline specific expectations of businesses making forward looking claims (for example, a promise, forecast or prediction), including through reporting requirements we outline in Recommendation 5.</p>
	<p>Recommendation 10: Apply the language outlined in the EU’s proposed Green Claims Directive, to include the terms ‘natural’, ‘biodegradable’, ‘climate neutral’, as well as claims based solely on carbon offsetting schemes, in the list of broad and unqualified claims to avoid as provided for in Principle 5 of the guidance.</p>
<p>Measure to strengthen ACCC guidance</p>	<p>Recommendation 1: Specifically state that businesses should not use self-certified trustmarks in the ACCC guidance.</p>
	<p>Recommendation 2: Provide a shortlist examples of certified trademarks in the guidance, alongside the conditions that must be met for businesses to display a trustmark, certification scheme or label representing green claims.</p>
	<p>Recommendation 3: Regularly update the guidance and add emerging claims that should not be used or require definition, to ensure the guidance remains current, and does not rely on major reviews for amendment. We suggest that major reviews be conducted every four years at a minimum.</p>
	<p>Recommendation 7: Include a provision in the guidance to urge businesses to conduct UX testing on claims to test consumer awareness and understanding of green claims being made.</p>

	<p>Recommendation 8: <i>Develop a green claims checklist that is regularly updated and reviewed for relevance and applicability, that businesses can refer to and utilise as an accompaniment to the guidance.</i></p>
	<p>Recommendation 11: <i>The ACCC make clear its intentions and expected actions as to how it will monitor the market for incidences of greenwashing, and respond to non-compliance, once the guidance has been finalised.</i></p>
<p>Recommendations for legislative reform: ACCC to raise with Federal Government</p>	<p>Recommendation 9: <i>Advocate for legislative reform by way of an unfair trading prohibition with a specific mechanism to blacklist severely unsubstantiated green claims.</i></p>
	<p>Recommendation 12: <i>The ACCC's regulatory powers be expanded to provide for timely, consistent and thorough investigation as to the efficacy and quality of any trustmarks, schemes or systems it approves.</i></p>

Question 1: Which types of environmental or sustainability claims do you think are the most confusing for consumers?

Consumers in Australia are bombarded with confusing environmental and sustainability claims on a daily basis. In particular, the proliferation and misuse of trustmarks, alongside vague and obscure language in green claims, is exceptionally confusing for consumers. CPRC research in 2021⁴ used a ‘day-in-the-life’ scan to document the types and location of green claims over a 24-hour period on a typical weekend. The day-in-the-life scan was designed to be conducted both online and offline and serve as a snapshot of green claims. We found that green claims, many of which are highly confusing, are everywhere. In just 24 hours, we documented 122 green claims across 17 sectors including groceries, personal care products, banking, and superannuation.

Can consumers trust a trustmark?

In Australia there are growing numbers of certification schemes or trustmarks which seek to build consumer trust and confidence by indicating adherence to certain quality, safety, environmental or ethical standards. **CPRC’s research found that 69% of people said they were likely to trust a green claim that had a trustmark with it. While some schemes have robust governance and integrity, there are risks with the proliferation of these schemes.** We acknowledge that the ACCC is well aware of the high rate of different certification schemes operating in the market, as evidenced by its internet sweep of greenwashing earlier this year which identified a variety of different certification schemes for the same type of product.⁵ The ACCC notes in its report that it is difficult for consumers to understand what every certification scheme or trustmark means, or to assess how robust the scheme is.

The ACCC also notes that some businesses have created their own certification scheme for their own products, risking that such schemes become meaningless, and no longer help consumers distinguish products with strong environmental or social performance. Examples include the Body Shop’s Community Fair Trade,⁶ or Patagonia’s Our Footprint Program.⁷ **Ultimately, trustmarks are making the market even more challenging and confusing for consumers attempting to make sustainable choices, to navigate.**

CPRC is very concerned that consumers are being deceived by images that resemble legitimate trustmarks and certification schemes. CPRC’s day-in-the-life scan uncovered examples of trustmarks or images displayed on products that looked like certification schemes, despite no evidence of the business participating in any external program to verify what they’re doing. **Our research⁸ found that there is a mistaken perception among consumers that someone is checking green claims, as 45% of Australians think either government, industry associations or Ad Standards check green claims before they are used.**

Both the EU⁹ and the UK¹⁰ have unfair trading prohibitions and are currently proposing to strengthen their rules by including ‘blacklists’ of unfair practices in the area of green advertising claims. The EU Green Claims Directive on Substantiation and Communication of Explicit Environmental Claims¹¹ prohibits displaying a sustainability label which is not based on a certification scheme or not established by public authorities. In our view, blacklisting the use of uncertified schemes in Australia is commonsense, fair practice, and is less confusing for consumers trying to do the right thing by making sustainable purchases. We recognise that

⁴ CPRC, above n 1.

⁵ ACCC, ‘Greenwashing by businesses in Australia – findings of ACCC’s internet sweep’, March 2023, [Greenwashing by businesses in Australia \(acc.gov.au\)](https://www.accc.gov.au).

⁶ See: [Fair Trade in Beauty | Community Fair Trade | The Body Shop®](https://www.bodyshop.com/our-footprint/).

⁷ See: <https://www.patagonia.com/our-footprint/>.

⁸ CPRC, above n 1.

⁹ European Commission, above n 2.

¹⁰ Which, above n 3.

¹¹ European Commission (2023) Green claims [Green claims \(europa.eu\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023PC0166); European Commission (2023), Proposal for a Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims (Green Claims Directive) eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023PC0166.

blacklisting or banning specific practices in regulation or legislation will take time. In the meantime, the ACCC could make its guidance even clearer, specifically stating that businesses should not use self-certified trustmarks.

A reduction of legitimate trustmarks and certification schemes able to be advertised by businesses would enable and empower consumers to more easily compare green options when making purchasing decisions. This would ultimately be less confusing for consumers. Further still, it would be useful for the guidance to list a specific, small number of certified trademarks suitable to be utilised across industries and make this expectation clear to businesses.

Recommendation 1: Specifically state that businesses should not use self-certified trustmarks in the ACCC guidance.

Recommendation 2: Provide a shortlist examples of certified trademarks in the guidance, alongside the conditions that must be met for businesses to display a trustmark, certification scheme or label representing green claims.

Vague and obscure language in green claims must be stopped

Use of non-specific language in green claims across the Australian market is prolific. Of the 122 green claims we identified in our sweep¹², many involved obscure, vague and confusing language to substantiate green claims, which is exceptionally misleading for consumers. Examples include:

- “Our freezers are greener” with no contextual information to understand what the claim was comparing freezers against.
- “Banking you can feel good about” with numerous images of happy wildlife and green technology like windfarms but no context about what the bank was actually doing to make a meaningful contribution to any environmental cause.
- A “GoZero” Soda Maker with no information about what “GoZero” meant (i.e., zero plastic? Zero emissions?)

Just last month Australia’s gas lobby, the Australian Petroleum Production and Exploration Association (APPEA), were found to have misled consumers in an advertisement in which they claimed that gas is ‘cleaner’.¹³

Terms and phrases including but not limited to ‘compostable’, ‘biodegradable’, ‘sustainable’, ‘natural’ and ‘offsets carbon omissions’ are just some further examples of commonplace language used by businesses making green claims. Such terms are confusing and are rarely accompanied by the necessary complete and factual information consumers require and are entitled to when making a purchasing decision.

We acknowledge that the guidance suggests businesses avoid using overly broad, vague terminology (as outlined in Principle 5 ‘Avoid broad and unqualified claims’, while also providing examples of a claim being exaggerated owing to vague and obscure language in Principle 1 ‘Make accurate and truthful claims’ (use of the word ‘recycled’ in the absence of any statement as to what percent of the product is actually recycled). **The guidance should contain further examples of how businesses can provide information that is clear and adequately detailed for a consumer to make an informed choice.** Further, we suggest the guidance should include an easy to access list of common terms businesses should avoid without substantiating their claims and providing further information.

An important consideration with respect to language that the ACCC must carefully consider, is the impact of changing language over time on the regulation of green claims. By way of example, the term ‘ocean bound

¹² CPRC, above n 1.

¹³ Ad Standards Community Panel (2023), Case Report, [0119-23.pdf \(adstandards.com.au\)](#).

plastic’, refers to an understanding that regardless of where plastic originates from, it ends up residing in the ocean.¹⁴ Ocean bound plastic has only recently emerged as a widely used claim and requires definition, and we can be certain that more terms will continue to evolve over time. In adhering to the EU¹⁵ approach of defining general environmental claims and banning them, we urge the ACCC to develop an evolving list of terms that the ACCC manages and adds to over time.

Recommendation 3: Regularly update the guidance and add emerging claims that should not be used or require definition, to ensure the guidance remains current, and does not rely on major reviews for amendment. We suggest that major reviews be conducted every four years at a minimum.

¹⁴ Green matters (2021) What is Ocean-Bound Plastic and What Can We Do About It? [What Is Ocean-Bound Plastic? \(greenmatters.com\)](https://www.greenmatters.com/what-is-ocean-bound-plastic/).

¹⁵ European Parliament (2023) Parliament backs new rules for sustainable, durable products and no greenwashing [Parliament backs new rules for sustainable, durable products and no greenwashing | News | European Parliament \(europa.eu\)](https://www.europa.eu/press-room/en/infographic-parliament-backs-new-rules-for-sustainable-durable-products-and-no-greenwashing).

Question 2: What type of environmental or sustainability information do you think needs to be provided to consumers to allow them to make informed purchasing decisions?

In our 'day in the life scan'¹⁶, only 39 of 122 green claims had any supporting evidence or verification to provide confidence that the claim was accurate or meaningful. It is the responsibility of businesses to ensure consumers are provided with accurate, accessible and truthful information relating to the product or service they are purchasing. **The guidance must clearly require businesses making green claims provide accurate and complete information to consumers, without exception.**

Businesses must provide specific information on green claims

In our view, Principle 1 of the guidance 'Make accurate and truthful claims', would be strengthened by being more specific as to what information businesses must relay to consumers for claims to be genuinely accurate and truthful. **Consumers require specific information to inform them of the durability, repairability and lifecycle of a product, as well as what they can do with the product at the end of its life.** For example, if the packaging claims the product is compostable, consumers need to know how they can compost a product at home and how long this process will take. Principle 3 'Do not hide important information' states that businesses do not necessarily need to conduct a life cycle assessment or provide information about the full product lifecycle in every claim, including relating to a products' durability. Instead, the guidance indicates that businesses should consider which impacts are relevant. For most consumer purchases, durability is extremely relevant. This aspect of the guidance is vague and does not encourage businesses to provide information to consumers that may well influence their purchasing decisions. Principle 3 should be strengthened, and call out a need for businesses to supply such information.

Further, Principles 1 'Make accurate and truthful claims' and 2 'Have evidence to back up your claims' of the guidance state that businesses supplying products provided by a third-party should undertake reasonable steps to verify supporting information, as provided by suppliers to ensure the green claims they are making are truthful. **We strongly suggest the ACCC be more specific as to what is meant by 'reasonable', as the draft language is vague, open to interpretation, and does not outline clear expectations of businesses.** Further specific examples would strengthen the guidance.

Businesses must be accountable and report on future claims

Additionally, CPRC contends that businesses must provide tangible information to consumers as to how future claims are actualised. **Principle 8 'Be direct and open about your sustainability transition', must go further and require businesses to specifically state what actions they are taking to achieve what they are claiming to achieve through public reporting.** ACCC should also consider with Treasury, the development of regulation that specifies mandatory reporting requirements for future claims.

Principle 1 'Make accurate and truthful claims' also suggests that businesses making a claim about something that would happen in the future 'should have reasonable grounds for making the claim.' This language is non-specific and does not hold businesses accountable. While we appreciate that the guidance contains some helpful case studies, including relating to good practice when setting sustainability goals, we would like to see further reporting requirements made essential. **Requiring that businesses outline the evidence underpinning their claims and acknowledge when a milestone has not been met will be effective in decreasing instances of greenwashing.**

¹⁶ CPRC, above n 1.

Recommendation 4: Amend Principle 3 'Do not hide important information' to require businesses to provide information on the life cycle of a product, including the durability, repairability, and how it is compostable, if advertised as such. Labelled information about the life cycle of a product must be clearly articulated to ensure information is accurate, relevant, consistent and actionable.

Recommendation 5: Amend Principle 8 'Be direct and open about your sustainability transition' to outline public reporting requirements regarding future, forward looking claims, including a requirement for businesses to publicly acknowledge when they have not met a milestone they have set.

Recommendation 6: Remove the word 'reasonable' in relation to representations about the future in Principle 1 'Make accurate and truthful claims', to instead outline specific expectations of businesses making forward looking claims (for example, a promise, forecast or prediction), including through reporting requirements we outline in Recommendation 5.

Question 3: What do you think is the most useful way for businesses to provide information about their environmental or sustainability credentials to consumers?

- a) For example, do you think information should be provided on product labels, websites, or through QR Codes?
- b) Do you think certified trademarks and other certification schemes help consumers better understand a business' environmental and sustainability credentials?

In our view, consultation question 3 is framed from a business perspective. **Our concern is with the usefulness of information provided by businesses for the consumer.** As noted in consultation question 2, it is paramount that businesses making green claims provide consumers with accurate and specific information. The most useful way for consumers to receive this information is not a one size fits all, but is dependent on the particular claim being made and the most useful way information can be communicated from the consumers' perspective. **It is unfair to put the onus on the consumer to 'dig' to find information to substantiate a claim being made. The onus is on businesses.**

To ensure businesses provide information about their environmental or sustainability credentials that is fit for purpose for consumers, **the guidelines should encourage businesses to conduct UX testing on claims to test consumer awareness and understanding of the claims being made, and the best ways to communicate this information.** Businesses put extensive effort into UX testing of design and marketing of products and services, and in our view, the same effort should be applied to the efficacy of environmental claims for consumer decision-making. Including this provision in the guidance would go one step further in prioritising the needs of consumers than is currently proposed.

As we have already identified, reducing the number of certified trademarks able to be shown on products, as well as blacklisting self-certified trademarks, would more easily provide consumers with the information they require. We also refer to recommendation 5, which advocates for public reporting disclosures by businesses when making future green claims, noting that easily accessible reports could be another effective way for businesses to show evidence to back up their claims.

Recommendation 7: *Include a provision in the guidance to urge businesses to conduct UX testing on claims to test consumer awareness and understanding of green claims being made.*

Question 4: Do you think that the principles in this draft guidance will assist businesses in making more trustworthy environmental and sustainability claims?

CPRC commends the ACCC on its intention to assist businesses to make trustworthy, accurate, evidence-based environmental and sustainability claims to fulfil their obligations under the ACL. Decreasing instances of greenwashing is up to businesses adhering to the proposed principles outlined in the guidance. The guidelines would benefit from specific, clear examples of the benchmarks businesses must meet, alongside a checklist that businesses who choose to make green claims can refer to.

Consumers deserve and are entitled to accurate and truthful information on products and services advertised as being sustainable or environmentally beneficial. **Businesses who make deceptive, untruthful and unsubstantiated green claims must be held accountable under the ACL. To strengthen the guidance, accompanying legislation and resources and powers for enforcement are essential.** Ultimately, the guidance is only part of the solution. CPRC's preferred solution is for an unfair trading prohibition with a blacklist mechanism, which would mean the most severely unsubstantiated and misleading green claims could be stamped out.

Recommendation 8: *Develop a green claims checklist that is regularly updated and reviewed for relevance and applicability, that businesses can refer to and utilise as an accompaniment to the guidance.*

Recommendation 9: *Advocate for legislative reform by way of an unfair trading prohibition with a specific mechanism to blacklist severely unsubstantiated green claims.*

Question 5: Is there anything missing from this guidance that you think would help businesses when making environmental and sustainability claims or consumers when assessing claims?

There are three key omissions from the draft principles that could be integrated into the guidance to ensure businesses are doing the right thing by consumers:

1. Integration of proposed EU legislation

The current wording explaining Principle 5 ‘Avoid broad and unqualified claims’ could be strengthened by applying the same language outlined in the EU’s¹⁷ proposed legislation relating to banning misleading ads and generic environmental claims. In addition to the terms outlined in the draft guidance, this would mean including the terms ‘natural’, ‘biodegradable’, ‘climate neutral’ as well as claims based solely on carbon offsetting schemes.

2. The role of the ACCC following consultation on the draft guidance

The ACCC should clearly outline what its role will consist of following the release of the final guidance. It is our expectation and the expectation of consumers, that the ACCC be transparent about how they will monitor the market for greenwashing and navigate non-compliance. **ACCC enforcement is especially critical in the absence of robust legislation including an unfair trading prohibition, that penalises businesses doing the wrong thing under the law.** We would also like to see guidance updated on comparator websites, to inform consumers and allow them to make comparisons regarding any environmental, social or ethical concerns they may have.

3. Extension of the ACCC’s regulatory powers

With respect to regulatory powers, ACCC’s existing power to approve some trustmarks or systems should be extended, to enable the ACCC to look at the quality of such schemes. By way of example, paint waste stewardship scheme Paintback¹⁸ which seeks to recycle old paint into reusable paint, has come under criticism for a lack of transparency as to how much money is raised from consumers and how this money has been spent. For context, Paintback applies a 15 cent plus GST tax on the sale of every litre of architectural and design paint sold in Australia¹⁹, which was approved by the ACCC. There is no publicly available reporting about how the outcome of this tax on consumers is delivering. In future, it would be ideal if the ACCC could place requirements on schemes or trustmarks it approves to ensure that they deliver on the intent of their activities.

¹⁷ European Parliament, above n 14.

¹⁸ See: [Paintback](#).

¹⁹ Wendy Frew (2023) [Painting by numbers: is product stewardship scheme Paintback delivering on its promises? The Fifth Estate](#) [Painting by numbers: is product stewardship scheme Paintback delivering on its promises? Materials | The Fifth Estate](#).

Recommendation 10: Apply the language outlined in the EU's proposed Green Claims Directive, to include the terms 'natural', 'biodegradable', 'climate neutral', as well as claims based solely on carbon offsetting schemes, in the list of broad and unqualified claims to avoid as provided for in Principle 5 of the guidance.

Recommendation 11: The ACCC make clear its intentions and expected actions as to how it will monitor the market for incidences of greenwashing, and respond to non-compliance, once the guidance has been finalised.

Recommendation 12: The ACCC's regulatory powers be expanded to provide for timely, consistent and thorough investigation as to the efficacy and quality of any trustmarks, schemes or systems it approves.