



Submission to the

**ACCC environmental and sustainability claims draft
guidance for business**

on behalf of

Australian Association of National Advertisers

September 2023

Introduction

Australian Association of National Advertisers (AANA) welcomes this opportunity to provide feedback on the ACCC's draft guidance on environmental claims (Guidance). As the peak advertising industry and self-regulatory body representing advertisers, agencies and media platforms in Australia, we are committed to promoting responsible and ethical advertising practices across the industry.

The advertising industry has an important role to play in not only ending greenwashing practices, but also leading the shift towards a sustainable future.

Alongside the ACCC's Guidance, AANA is conducting a review of our Environmental Claims Code. The review aims to strengthen the code to effectively address the issue of greenwashing and ensure that environmental claims made in advertising are accurate, transparent and substantiated. Feedback to the review so far has called for the revised Code to align with the Australian Consumer Law (ACL) and associated guidance from the ACCC. For this reason, we are keenly following the development of the ACCC's guidance on environmental claims with a view to ensuring that our Code is consistent and complementary to the extent possible.

General comments on the draft guidance

AANA understands that some businesses may want clear 'black and white' guidance on what they can and can't do when it comes to environmental and sustainability claims. However, the general nature of the ACL provisions make this type of explicit guidance difficult to provide. There is a role for the AANA to take the general guidance provided by the ACCC and develop more explicit rules via our Code and Practice Notes that align with that guidance. AANA welcomes further discussion with the ACCC on how we can provide industry with more explicit guidance.

Our feedback on the ACCC's draft guidance has the following key themes:

- **Guidance for service industries** - The examples provided in the draft guidance focus on manufacturing and FMCG industries however consumer concern is also focused on environmental claims being made by the banking and investment sectors, particularly around investment in renewable and fossil fuel industries. It would be helpful to have guidance and examples for those sectors in the ACCC guidance to signal the ACCC's expectations of such claims.
- **Uncertainty and Inconsistency** - The principles outlined in the Guidance are clear in their overarching nature. However, an element of uncertainty emerges due to certain inconsistencies that are present within the draft case studies. These inconsistencies have the potential to introduce confusion and impact business confidence when making environmental claims. One notable inconsistency pertains to the treatment of broad statements. Although broad statements are generally discouraged, there are instances where they are employed as part of examples of good practice.
- **Inconsistent terminology and meanings** – Many of the examples are helpful. However, some contain confusing or inconsistent terminology or adopt meanings that are different to accepted standards or existing guidance from Government or industry. For example, the meaning of 'recycled' included in the Guidance is different to proposed guidance from the Department of

Climate Change, Environment, Energy & Water¹ and APCO². Many environmental claims involve terms that have been widely adopted and accepted either locally or internationally and adopting consistent terminology is important for business confidence and consumer understanding.

- **Disclosure of confidential and sensitive information** - A crucial concern arises in relation to examples in the Guidance that suggest disclosure of sensitive commercial information is required to support an environmental claim. Businesses should not be required to disclose competitively sensitive information, for example proprietary product information and supply chain details. Doing so could result in potential loss of competitive advantage and raise competition law concerns for businesses. Further consideration should be given to these examples to address these concerns.
- **Further Guidance on Substantiation Required** - More direction on substantiation requirements would be welcome. The amount of information required to support a claim should be proportionate, easily understandable and relevant. Extensive detail should not be required for most claims and is likely to be confusing for consumers.

Answers to specific questions

1. What are you most unsure about when making environmental or sustainability claims?

When it comes to communicating environmental and sustainability initiatives and achievements, there is confusion and more guidance required in the following areas:

- **Statements on packaging or social media** – although the ACCC’s guidance calls for additional information to be provided on packaging, many labels are small and there are some concerns as to the effectiveness of “small print” on packaging to provide further claim support. In these instances, the Guidance should support use of digital means for providing additional information to support environmental claims. Similarly with social media posts where space is limited, further guidance or examples of good practice would be welcome.
- **Statements made about packaging** – greater guidance would be welcome in the case where 100% claims are made but a minor proportion of the content is from another source. For example, if the only plastic in a bottle is recycled plastic, but there is an additive/binding material used in the manufacturing process, can a business say “100% recycled bottle”?
- **Made From v. Made With** - Does the ACCC distinguish between “made from” and “made with” claims? Are they considered equivalent or is “made from” held to a higher standard?

¹ DCCEE 2023, *A national framework for recycled content traceability: Discussion paper*, Department of Climate Change, Energy, the Environment and Water, Canberra, July. CC BY 4.0.

² [Recycled Content Guide \(packagingcovenant.org.au\)](https://www.packagingcovenant.org.au). At page 5: ‘It is now universally agreed that recycled content is both pre-consumer and post-consumer packaging that is sorted and reprocessed and made into packaging again. This new definition is driving change in all stages of the packaging system in Australia and internationally, including improvements in design and collection, as well as acceptability and traceability of recycled content within the supply chain’

2. Do you feel confident that you know how to express an environmental or sustainability claim clearly and accurately?

Standards, calculators and certifications for sustainability activities are evolving both here and overseas.

We note the European Commission's efforts to introduce standards for measuring environmental footprint of products and companies and their most recent proposal to set standards for substantiating environmental claims and establish a verification mechanism to verify claims.

We also note the International Sustainability Standards Board's (ISSB) global accounting standards which will provide a global baseline framework for sustainability and climate-related disclosures, consolidating existing voluntary reporting standards. Such standards of measurement and disclosure are important to provide whole-of-economy consistent measurements that are robust, capable of being audited and provide business, investors and consumers with a standard model with which to compare environmental and sustainability efforts and impact. Disclosure also provides a potential means of fact-checking environmental claims made in advertising.

While we do not express a view on the specific rules and measures being proposed by the European Commission or ISSB, there is a need in Australia for an independent and robust verification method against which environmental claims can be tested and verified and for such standards to be embraced by the ACCC.

3. How do you decide which claims to make and what evidence you have to support those claims?

For global or multi-national companies, claims are usually based on global and local scientific subject matter experts, as well as consumer insights of both global and local trends and preferences. Overseas regulatory requirements around sustainability influence local activities and disclosure of global companies as companies often develop whole-of-company policies and undertake sustainability initiatives at a global level to meet these requirements.

4. What influences your decision on whether you make an environmental or sustainability claim?

Consultation with our members has revealed that consumer expectations are a major influence in deciding whether or not to make an environmental or sustainability claim. However, despite knowing that consumers expect companies to be taking steps towards a sustainable future, many companies are hesitant to communicate the steps they are taking in some areas due to questions about the measures and standards that can be used to substantiate and verify their actions and impact.

5. Are there environmental or sustainability claims in your industry that are concerning?

When it comes to common environmental claims being made in the Australian market, there is concern regarding:

- There are many third-party certification and ecolabels in Australia with little or no information or detail available about the efficacy and standards for the label or certification.
- The terms 'carbon neutral' and 'carbon footprint' have varying methods for calculation. Again, there is a need for standardised measurement around these terms.

6. Do you think this draft guidance will improve business confidence when making environmental or sustainability claims?

Ideally businesses would like more certainty when it comes to what they can and cannot do in relation to environmental claims. The current draft guidance stops short of giving this level of certainty, however it does provide clear areas of concern and general themes which will provide helpful guidance for business in terms of the high-risk areas and behaviour that should be avoided without a high degree of substantiation and/or disclosure.

Further guidance for service industries would be welcome as the current document focuses on goods rather than services. In particular, guidance would be welcome around claims being made by airline, banking and finance sectors around investment in renewable energy when investment is continuing in fossil fuel energy. Further guidance on good practice for such industries would be very valuable.

7. Is there anything else you would like to have more guidance about?

The current guidance covers environmental claims however many companies undertake initiatives and make claims regarding both environmental and societal sustainability. The terms ‘fair trade’ and ‘slow fashion’ are just two examples of the types of societal sustainability claims being made. Further guidance on such claims would be very helpful to industry.

Claims can appear on product packaging or labelling, point-of-sale materials, and in a variety of marketing or advertising materials. It would be helpful to have a few visual examples of good practice using the above settings.

This guidance is also a good opportunity to reference the Australasian Recycling Label (ARL) as a clear way of indicating recyclability of consumer packaging and encouraging uptake. The ARL is supported by the Packaging Recyclability Evaluation Portal (PREP)³, which is a verification tool to support recycling claims made by businesses on their consumer packaging. Standardised and clear recycling information on consumer packaging supports consumer education.

³ The Packaging Recyclability Evaluation Portal (PREP) is an online tool that assesses packaging recyclability in the Australian and New Zealand kerbside or approved drop-off recycling systems. See [PREP - Home](#) and [Australasian Recycling Label \(arl.org.au\)](#).

Specific feedback on guidance examples

“Harm to the environment” example – page 12

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 cosmetics manufacturer makes a claim on its packaging “this product does not harm the environment”. The bottle is made from recycled material but the cap and external packaging are not, nor are the contents in the bottle.

“No harm” exaggerates the benefits and is likely to give a misleading impression about the impact of the business’s product in contravention of the ACL.

The business could instead claim “this product reduces harm to the environment” and disclose which parts of the product are made from recycled material to avoid misleading consumers.

Comment: The suggested alternative claim proposed in this example appears to contradict other guidance regarding broad claims.

The suggested alternative is “this product reduces harm to the environment”, combined with disclosure about which parts of the product are made from recycled material. The example involves packaging (a bottle made from recycled material). For clarity and consistency with other guidance, AANA suggests that it would be preferable if the suggested alternative wording referred to “bottle” and not the “product” as a whole. Also, the term “reduces” is a comparison claim. The comparator is not included and it would assist if the example was clearer on this point. Overall, a claim that a product “reduces harm to the environment” if used without further information may be too broad and not sufficiently quantified and appears to contradict guidance provided on page 18.

Case study – good practice in providing sustainability information – page 12

Case study – good practice in providing sustainability information

A clothing manufacturer sells its products in physical stores and online through its website.

When consumers purchase in store, the business provides environmental information about each product on its swing tags. This includes information about the types of materials used, the exact proportion used in each garment, and the environmental impacts of each material. It also explains its dyeing and materials sourcing process and includes a QR code which links consumers to further information.

On its website, this same information is provided on each product page. Consumers are also linked to more detailed information about the materials used. All the claims made are backed up with further evidence or are clearly linked to third-party certification schemes.

These practices are likely to significantly reduce the risk that the business is making exaggerated claims. It has clearly explained the impacts of its products and has quantified the precise benefit being achieved.

Comment: This example has a limited application.

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This “good practice” case study will be of limited assistance to many businesses due to the extensive information included on the product label in the example. Many products have small labels and it is not possible to include extensive information on the label itself given there is already extensive mandatory information required on food and beverages labels. Also, packaging can take years to change however recycling rules and initiatives are continually evolving so inclusion of information or evidence via a website or QR codes can be a more appropriate method to communicate accurate and up-to-date information at any point over time. It would be helpful to provide a “good practice” example for a product with either a small label or with packaging that has a longer-lead time and outline other options for the provision of additional information including though qualifiers and off label.

The references to “exact” and “precise” also limit the value of this example as these are absolute terms. Many benefits will be based on evidence and measurements which are averages or “at least” numbers, which cannot be quantified with precision.

Example – “Only make meaningful claims” – page 13

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.

Instead, the company could state this it is “meeting its obligations under Australia’s environmental regulations” and explain to consumers how much their emissions have reduced in line with the regulations.

Comment: This example would be more helpful if the “only” claim was removed.

In this example, the advertiser does not have reasonable grounds for the “only cement manufacturer” claim. This example would be more helpful if:

- The “only” claim was removed;
- ACCC provided guidance on whether it believes the statement “we are taking steps to protect the environment by reducing our emissions” is likely to be misleading on its own, if the advertiser is doing no more than meeting its minimum legal obligations.

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

More businesses are now providing detailed information about their supply chains, and where their suppliers are operating. 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 a factory that has robust practices in place in relation to sustainability, including information about suppliers and manufacturers of raw materials as well as energy generation. The manufacturer provides this information about its supply chain on its website. It has set out a range of information, including:

- Where its suppliers and producers are located at each step of the production process.
- How it procures its raw materials, including how much it pays to source these and how this compares to the market price.
- How much it costs to pay factories to produce each pair of shoes.
- A quote for how much it would cost the business to produce in a factory in a location with less environmentally 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.

Comment: This example is unusual because it involves a business disclosing information that is confidential and commercially sensitive for most businesses.

Supplier and producer costs, quotes and procurement details are commercially sensitive information for most businesses and would not be disclosed in this way to support an environmental claim. It would be more helpful to use a different case study.

Example – Explain your conditions of qualifications on your claim – page 22

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, who either operate the service or contract a private company to operate the service. This results in large 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

Comment: These examples are unclear and contain some contradictions

The recycling example refers to a product that is sold in Sweden and Australia. Many products are labelled for sale in multiple markets. Recycling information may (and sometimes must) be included for each market. The example would be more helpful if:

- The example stated whether Australian-specific recycling information was also included on the label;
- guidance on an appropriate claims was included, for multi-market products (eg clear, market-specific recycling information on the label for consumers, or a link to a local website for consumers to find out more about how to recycle the packaging); and
- ACCC referred to the Australasian Recycling Logo (ARL), given its wide and growing use on consumer packaging.

The compostable /FOGO example is unclear and appears to contradict the examples on pages 18 and 23:

- Most brand owners won't know all locations in which their products are sold. The reference to “all locations” in this example is not realistic or helpful to businesses. It is also inconsistent with the example on page 23 which refers to “majority of consumers”.
- Acceptance of compostable products in FOGO or industrial composting systems is subject to change with coverage expanding at a rate that goes beyond the manufacturers ability to update packaging. Applicability of appropriate information sources should be outlined including QR codes and websites.
- The compostable claim example on page 18 is helpful and clear. This FOGO example appears to be inconsistent with the example on page 18.

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 in an ordinary local recycling facility. If there are very few facilities, or such facilities do not exist at all, then the use of the term may be misleading. Ensure that your product can actually be recycled through a household/local council waste collection program before using such claims or otherwise add appropriate qualifications and/or explanations of how the product can be recycled.

Comment: This example is focussed on consumer packaging however many other products are recyclable and there is likely to be a growing number of product stewardship schemes.

Rather than referring to 'ordinary local recycling facility', more relevant is access to a collection or drop-off point for the purposes of recycling and whether or not appropriate recycling facilities exist. It would improve business confidence when making environmental claims if the Guidance:

- refers to the Australasian Recycling Logo (ARL) for consumer packaging, given its wide and growing use.
- supports digital means for provision of recycling information (and other environmental claims and substantiation). This allows businesses to provide current information relevant to the consumer. This is especially important for some claims on product labels and packaging, which have long lead times and where there are environmental and financial impacts if frequent changes are required. Relevant guidance has been provided by the ACCC on digital means for recycling soft plastic packaging⁴ and average Australian content on food labels⁵, for claims directing consumers to find out more information through a QR code, website, telephone number or 'check locally' logo. Inclusion of similar guidance would be useful to business.
- Recognises that usually only packaging can be recycled in kerbside and that policies on kerbside collection are subject to change and outside the control of advertisers.
- Recognises that there are many recycling schemes in place for products, including brand-owner, third party and industry product stewardship schemes. The Guidance has a limited focus on consumer packaging and kerbside recycling and broader guidance would be helpful. The Guidance should not discourage investment in recycling schemes and businesses need to be able to provide information to consumers about recycling through new and existing recycling and product stewardship schemes, with appropriate qualifications.

⁴ The new 'check locally' Australasian Recycling logo for soft plastic recycling (ACCC letter to APCO dated 6 July 2023)

⁵ Average Australian content claims on food labels under the Country of Origin Food Labelling Information Standard 2016 - [Country of origin food labelling.pdf \(acc.gov.au\)](#).

Good Practice Guidance – terms that should be qualified and explained – page 25

Recycled

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. If the material has simply been recovered from the waste stream during manufacture and reused, this should be made clear.

Comment: This guidance appears to be inconsistent with other guidance and definitions for recycled content.

Recycled content may be used in products or in packaging. For packaging, APCO's Recycled Content Guide⁶ makes it clear that recycled content includes both pre-consumer material diverted from the waste-stream during manufacture (excluding rework) and post-consumer material. The same approach has also been adopted by the Department of Climate Change, Energy, the Environment and Water in its recent discussion paper on a national framework for recycled content⁷.

Conclusion

AANA greatly values ACCC's efforts to provide revised guidance on environmental and sustainability claims given the general nature and constraints of the ACL.

Thank you for considering our submission. We welcome the opportunity to provide further input or clarification as required. Please contact Megan McEwin at megan@aana.com.au if you require any further information regarding our submission.

⁶ [Recycled Content Guide \(packagingcovenant.org.au\)](https://www.packagingcovenant.org.au). At page 5: 'It is now universally agreed that recycled content is both pre-consumer and post-consumer packaging that is sorted and reprocessed and made into packaging again. This new definition is driving change in all stages of the packaging system in Australia and internationally, including improvements in design and collection, as well as acceptability and traceability of recycled content within the supply chain'

⁷ DCCEEW 2023, *A national framework for recycled content traceability: Discussion paper*, Department of Climate Change, Energy, the Environment and Water, Canberra, July. CC BY 4.0.