



# Environmental claims in advertising

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# Topic overview

- The interaction between competition and consumer law is well established.

*A market that is competitive can deliver a range of key outcomes and benefits for consumers – price, innovation, quality and customer services.*

- Creating competitive markets including environmental and sustainability claims is essential to responding to the climate change imperative.
- How can competition, fair trading and consumer law help us respond?

# ACCC's 2024-25 Compliance and Enforcement Priorities

## Priorities



Consumer, product safety, fair trading and competition concerns in relation to **environmental claims and sustainability**.



Competition, consumer, fair trading and pricing concerns in the **supermarket sector**, with a focus on **food and groceries**.



Promoting competition in **essential services** with a focus on **telecommunications, electricity, gas and**



Consumer, product safety, fair trading and competition concerns in relation to environmental claims and sustainability.



**Unfair contract terms** in consumer and small business contracts.



Improving industry compliance with **consumer guarantees**, with a focus on consumer electronics, and also targeting misconduct by retailers in connection with delivery timeframes.



**Consumer product safety** issues for **young children**, with a focus on the safety of nursery products including furniture, infant self-feeding and infant sleep products.



# ACCC's integrated approaches to compliance

- An integrated approach to compliance is where you use multiple compliance tools and strategies to solve a problem or achieve change in a market
- This includes both proactive and reactive compliance tools
- The ACCC often uses four flexible and integrated strategies:
  - encouraging compliance with the law through education
  - enforcement of the law, through litigation and other enforcement outcomes
  - undertaking market studies or releasing reports on compliance and enforcement issues
  - working with other agencies to implement these strategies

**We don't need to pick just one tool  
Sometimes we will need to use a mix of tools at the same time.**

# ACCC enforcement outcomes to date

- Speckles Optics – administrative resolution  
\* Biodegradable or compostable claims regarding eye patches
- MOO Yoghurt – court enforceable undertaking

[ACCC Media Release MOO Premium Foods regarding 'ocean plastic' claims](#)

- Clorox – institution of court proceedings – ongoing

[ACCC Media Release regarding GLAD bags '50% ocean plastic' claims](#)



Do enforcement cases always change  
the compliance landscape?

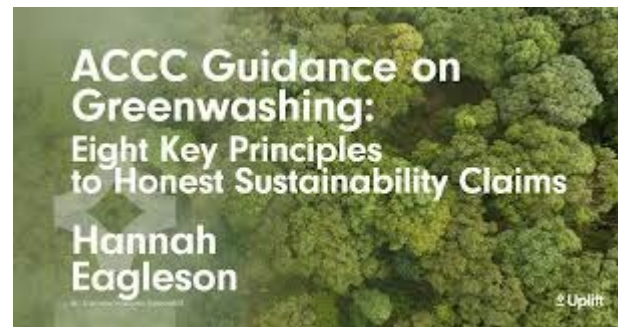
# Impact of sweep, consultation and guidance



## Environmental and sustainability claims

Draft guidance for business

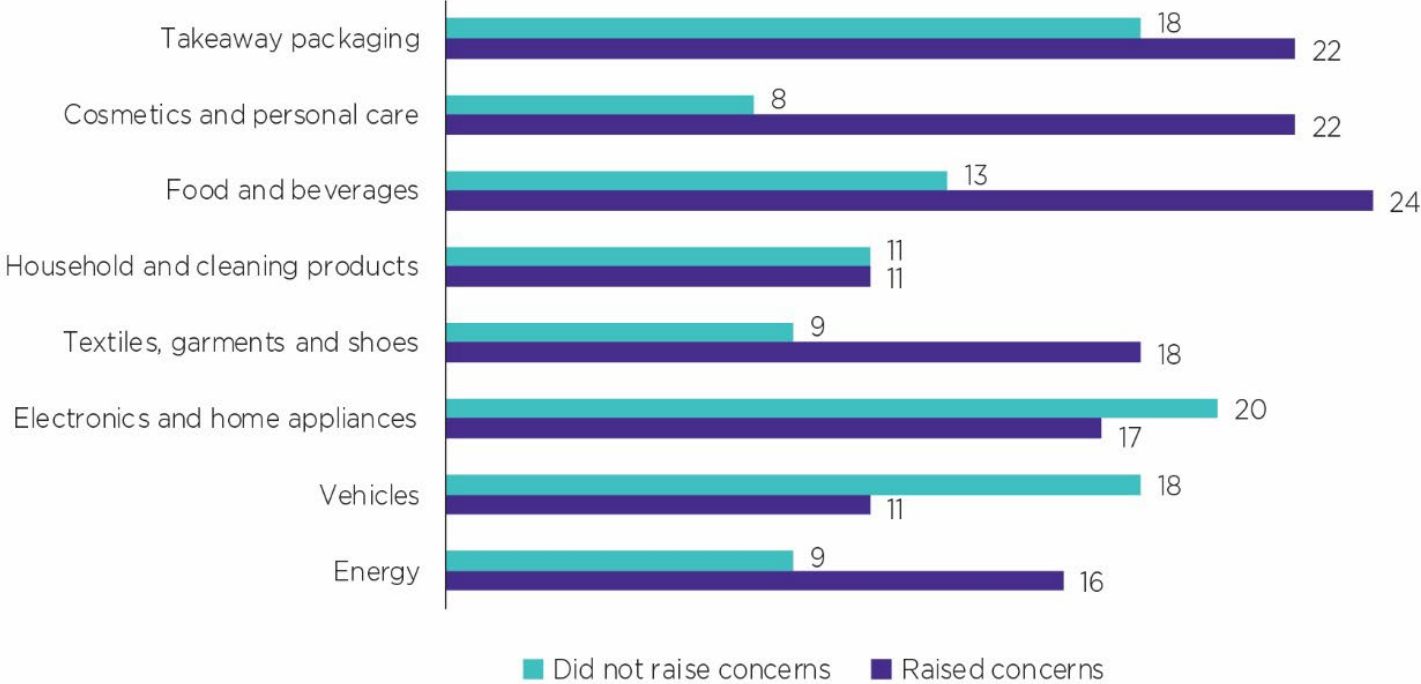
July 2023



# ACCC internet sweep

## High level numbers – concerning sectors

**NUMBER OF BUSINESSES MAKING CONCERNING CLAIMS BY SECTOR**





# Impact of ACCC's greenwashing internet sweep

- Media and broader interest in the topic was extremely high
- Since announcing the sweep – we saw an increase in businesses looking for guidance from the ACCC and external advisors
- We had already seen changes – the concerns identified involving claims by some business were no longer in advertising or marketing material
- Consumers are increasingly better informed – consumers want changes to production and manufacturing processes to help them 'do the right thing'

[ACCC greenwashing internet sweep report](#)

# Making environmental claims: A guide for business



- **Principle 1: Make accurate and truthful claims**
- **Principle 2: Have evidence to back up your claims**
- **Principle 3: Don't hide or omit important information**
- **Principle 4: Explain any conditions or qualifications on your claims**
- **Principle 5: Avoid broad and unqualified claims**
- **Principle 6: Use clear and easy-to-understand language**
- **Principle 7: Visual elements should not give the wrong impression**
- **Principle 8: Be direct and open about your sustainability transition**

[ACCC Media Release Making environmental claims: A guide for business](#)

# Sustainability Collaborations

## – effects on competition & draft guidance

There are a range of initiatives that businesses have adopted to respond to sustainability concerns

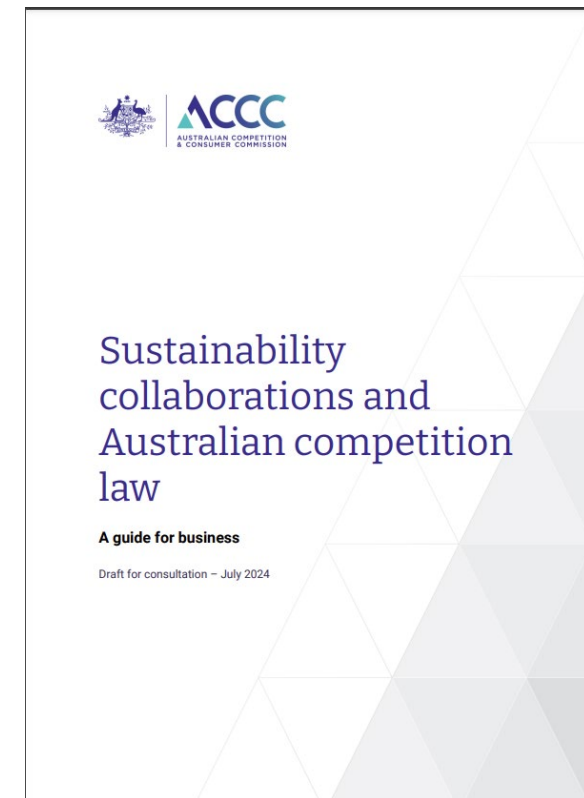
Some initiatives require collaboration & cooperation by competitors

Under Australian law we have a mechanism that enables the ACCC to authorize conduct or proposed conduct IF the public benefit outweighs the anti-competitive detriment

ACCC can authorise (or grant an immunity) that will allow the conduct to proceed

There has been an increase in businesses looking to collaborate on sustainability issues and the ACCC has issued draft guidance

(This is not a new authorisation process; it has been in force since the ACCC first commenced 50 years ago)



[ACCC Media Release Consulting on guide to sustainability collaborations](#)

# Legal challenges for regulators



Courts taking a narrow interpretation of environmental claims



Over reliance on scientific evidence to prove the falsity of many claims – consumer data



The lack of a common definition or industry standard for claims (e.g. biodegradable claims)



Consumer behaviour (what is the impact of these claims on a consumer's purchasing decision?)



Intersection between consumer law and environmental law/environmental policy



# Interaction between consumer and competition law with environmental laws

1. Requests for further information on how to make claims on emissions and offsets. Stakeholders also highlighted that this is an area of regulatory overlap, rapidly evolving policy and unsettled science. Terms such as “net zero” and “carbon neutral” are ambiguous and stakeholders want clarification on the acceptable use of these terms.
2. A number of businesses along the supply chain require some form of certification or accreditation for ESG issues. Better information on what schemes are trustworthy and robust can assist businesses and consumers.
3. Managing risk with environmental claims. Many businesses are advised *not* to make any environmental claims at all, even where the business could make a clear and legitimate environmental claim about its products or services.
4. Due to the complexity of recycling infrastructure and markets in Australia, stakeholders noted that a consumer’s understanding of the word “recyclable” is different to how it is used by industry.

# Future objectives



More environmental and sustainability claims



Using the full range of tools available to consumer & competition authority



Smart case selection by consumer & competition authority



Business/industry partnerships



Behavioural evidence