

SUBMISSION

ACCC GUIDANCE ON GREENWASHING

SEPTEMBER 2023

The Australian Retailers Association (ARA) appreciates the opportunity to make a submission to the Australian Competition and Consumer Commission (ACCC) in relation to the draft guidance for business when making environmental and sustainability claims (the Guidance).

The ARA is Australia's oldest, largest and most diverse retail body, representing a \$420 billion sector that employs 1.4 million Australians. As Australia's peak retail body, the ARA informs, advocates, educates, protects and unifies our independent, national and international retail members.

Our members operate 120,000 shopfronts and on-line stores across the country, across all retail categories - from food to fashion, hairdressing to hardware, and everything in between. The ARA is proud to represent the rich diversity of Australian retail, from our largest national and international retailers to our small and medium members, who make up more than 95% of our membership.

This submission has been informed by consultation with the ARA's Sustainability Advisory Committee.

ARA COMMENTARY ON GUIDELINES

Retailers have a strong commitment to embracing sustainable business practices, as evidenced by their support of Australia's transition to net-zero emissions, the shift away from plastics to sustainable alternatives and the drive to incorporate sustainable and ethical sourcing considerations into products.

While these areas represent significant risks and opportunities to our members, the rise of greenwashing has become an increasing area of concern for the retail sector.

Retailers play an important role in educating consumers and helping them make more sustainable choices. However, the way in which this information is provided can be confusing for consumers and so we recognise the need to improve transparency and consumer trust in sustainability claims.

On that basis, the ARA is supportive of the development of the ACCC Guidance as it will provide much needed clarity and reduce ambiguity when making environmental and sustainability claims

However, there some aspects of the Guidance where further clarity is required. For example, it is unclear who the ACCC would seek to target, pursue and penalise if misleading conduct was found – the retailer, the brand owner or the manufacturer?

The ARA proposes that where a retail business conducts reasonable due diligence on a claim made by a brand owner or manufacturer - that the ACCC later finds to be misleading - then the retailer should not be held liable.

We are concerned that if the ACCC were to pursue retailers who have relied in good faith in representations made by their suppliers, this could result in retailers trading less with suppliers who may have less established processes in place. Alignment with the Therapeutic Goods Administration (TGA) regarding liable third-parties would be appropriate in this circumstance.

The ARA appreciates the examples and case studies provided throughout the Guidance as they provide valuable context for businesses in seeking to understand the boundaries in which they operate.

Our members have highlighted that as the boundaries of what is acceptable in relation to greenwashing continue to be defined, additional case studies and examples would help to ensure expectations align.

The ACCC should also consider outlining its base expectations (for case studies and evidence requirements) as well as good practice, best practice and the ideal future state in terms of sustainability and environmental claims. These examples and case studies will progress action on greenwashing.

In terms of the evidence required to support claims, consideration should be given to resource capabilities of different retailers and their supply chain partners. A one-size-fits-all approach could hinder innovation, where suppliers do not have the resources to support evidence claims.

It is imperative the Guidance does not stifle innovation and encourages retailers and producers to provide more sustainable options to consumers. Therefore, we recommend that a conservative baseline for evidence requirements is added to the Guidance, to ensure cost and administrative resource requirements do not outweigh the benefit of the claim.

As Australia's largest peak body for the retail industry, the ARA is well placed to work with our members and the ACCC to ensure the Guidance informs and supports retailers on how to avoid the risk of greenwashing. In that respect, the ARA makes the following comments around the draft guidance.

PRINCIPLE ONE **MAKE ACCURATE AND TRUTHFUL CLAIMS**

Retailers already have an obligation to make claims that are true and factually correct. The Guidance should be more specific in terms of what is considered a 'reasonable step' to verify sustainability and environmental claims with supporting information.

Example – claims that are likely to be false or misleading

In this example, a printing service claims that the paper they use is “made from recycled materials” but the paper only contains 20% recycled material. It is suggested that the business change the claim reflect that the paper is “made from 20% recycled material” to avoid non-compliance.

While this example highlights best practice regarding truthful claims, further guidance is needed around alternate language to use when making claims regarding products made with recycled content.

Due to the complexity of supply chains and the potential reluctance for supply chain participants to provide transaction certificates or additional verification documentation, there are ongoing challenges in providing accurate information of the percentage of “made with” a certain element.

Challenges also arise relating to the costs of third-party certification, audits and the administrative resources required to collect documents and assure claims.

In anticipation of this issue, the ACCC should consider the inclusion of alternate language to provide further comfort to retailers that their statement is not misleading.

Regarding third-party certification, there are several schemes that do not capture the percentage of recycled content in a product. Further clarification is required as to whether recycled content certification or calculation methods, such as mass balance volumes, are acceptable and not considered misleading – as has been outlined in the [Recycled Content Traceability Framework](#).

Do not exaggerate environmental benefits

The ARA is seeking further information in relation to an upfront explanation and whether a benefit applies to a whole product or service, or only applies to part of it.

The Guidance does not specify what is meant by the phrase “upfront” when referencing a whole product or service. Ensuring all required and relevant information is provided to consumers on the product remains an ongoing challenge for retailers, due to different regulations in different jurisdictions, for example on the phase-out of single-use plastics.

Revised guidance should specify where the disclaimer needs to appear on the product, as it is unreasonable to suggest such disclaimers should appear in large text alongside the claim.

Considering the efforts that retailers are employing to incorporate greater recycled content in their offering, it would be disproportionate for a business to not have the opportunity to include a reference to this content, for fear of a supplier providing an incorrect percentage.

Further guidance around alternate, appropriate language to use for those products that contain between two thresholds of recycled content would be ideal.

Only make meaningful claims

To continue with the single-use plastics example, the ARA challenges the suggestion that if an environmental impact is a legal requirement - for example, the implementation of a single-use plastic ban - that a business is not able to acknowledge any positive impacts which result from this change.

These bans have led to an increase in research and development of new materials, which has created a race to the top with retailers keen to be able to make claims that they have achieved certain levels of recyclability or circularity in their packaging range.

Whilst these changes have in some cases been made to comply with legislation, they have been funded solely by the retailers and their chosen suppliers. The scale of this undertaking should not be disregarded, and the ARA suggests that environmental impacts achieved in response to legislative or regulatory change should be able to be acknowledged.

If this proposal does not align with the ACCC guiding principles, further guidance would be needed to understand the level of detail required from retailers when specifying that a change was also required for compliance with a regulation.

As an example, if a business states “we have phased out single-use plastic bags from our stores across Australia” on their website but some of these bans occur in states that have banned single-use plastic bags, how should a business specify that some (but not all) of these phase-outs were in response to legislation.

Further clarification is also required around when businesses are not allowed to make claims about legal requirements. For example, claims made ahead of a ban that has not yet been implemented or legislated.

For these reasons, we recommend that claims made about changes in response to, or anticipation of, legislation should not be regarded as instances of greenwashing.

Regarding comparisons

The ARA supports the principle of ensuring that any comparisons made are just and fair.

However, further guidance is required around the extent of information needed to be given to consumers when looking at comparisons. As was explored in P1, there are ongoing challenges in providing precise figures as to the recycled content in certain products.

Similarly, the road to achieving a reduction in plastic or an increase in recycled content is technical and it is unreasonable to suggest a retailer should navigate this language on their own.

The ACCC should consider providing information around technical language or assist in providing proposed language to use when engaging with consumers.

Regarding representations about the future

Further guidance is needed about what constitutes an accepted methodology and whether this refers to certification schemes or globally recognised standards, or whether internal reporting and benchmarking is sufficient to comply with this statement.

With reference to the case study ‘good practice when setting sustainability goals’ the ARA makes the following comments.

- If the personal care manufacturer has tracked progress against goals and KPIs via its own Excel spreadsheet, or using a methodology commonly used within the business – is this considered sufficient; or
- is this business required to formalise or audit their findings with an external benchmark or scheme?

The ARA also suggests the ACCC consider providing timelines that would be reflective of a regular revision of the goals or achievements outlined.

PRINCIPLE TWO

HAVE EVIDENCE TO BACK UP YOUR CLAIMS

As outlined, it is currently unclear who the Guidance is targeting or seeking to penalise. Will it be those businesses that sell a product to the consumer - who have been received assurances from a supplier - or will it be the supplier, whether that be the brand owner or manufacturer. Guidance is also needed about the depth of evidence required to back up claims made.

Regarding verification

Whilst retailers employ best efforts when seeking verification from suppliers before making claims, it is not practical to seek out independent data and verification for every claim to ensure credible evidence. Not only is this a massive cost to the retailer, but there are challenges in supplier compliance due to the small scale of Australia in the global market.

The Guidance should consider providing a list of reputable independent sources for data validation, such as government websites, academic sources, industry bodies or non-governmental organisations (NGOs) to help businesses use data in appropriate context. As an example, there are many reputable sources that outline that LED lights save energy, therefore a retailer should not be required to verify or conduct an independent study of LED products, to claim that they result in energy reduction.

In circumstances where transaction certificates are obtained, the Guidance does not make reference to the level of detail required. For example, whether a Teir 2 transaction certificate would be sufficient, or whether a certificate from a Teir 1 supplier (product level transaction certificate) would be required.

Additionally, further guidance is needed as it relates to businesses partnering with or selling third party brands. As an example, where Company A is making a claim, and Company B is a partner or sponsor of Company A so B's logo is also on the label, where does responsibility for the claim sit?

The use of different communication platforms should also be considered in the Guidance, particularly in relation to how environmental claims will be regulated on these platforms as the audience and reach of these platforms is different, and received at a different point in the consumer journey.

For example, which claims should be further outlined on products and packaging, stores or on a website or online marketplace. Further guidance should be provided on whether the same claims regulation regime would apply to all platforms, or whether there will be specific regulations for specific platforms.

Biodegradable products are referenced throughout the Guidance, particularly in relation to Principle 4 as it "may only break down at a certain temperate or after a very long period of time." However, no definition of what constitutes biodegradable is provided by the ACCC, nor a reference to a Standard that defines it. Therefore it remains unclear what evidence would be required in this instance to be able to claim a biodegradable product, or whether any such claim is no longer acceptable.

In summary, the ARA poses the following questions relating to verification:

- Where does certification end – how many tiers within the supply chain does a business need to go to certify to ensure it has the credentials claimed to comply with Guidance?
- At what level can a retailer take what a manufacturer says is accurate without receiving and verifying documentation – who will the ACCC seek to penalise if the information relied upon is inaccurate i.e. the manufacturer or the retailer?
- Is there a difference between generic and certified claims e.g. Global Recycling Standard certified recycled polyester vs recycled polyester – how will these be differentiated?
- Does a certification need to apply specifically to Australia, or is an overseas certification adequate?
- Where there is no available test for a claim, for example biodegradable, can this claim be made?

PRINCIPLE THREE

DO NOT HIDE IMPORTANT INFORMATION

Whilst retailers do not seek to hide relevant information, further clarification is required in situations where a retailer or advertiser is making a claim on platforms where there is minimum space for detail, for example in use cases that include social media platforms, radio advertising or outdoor banners.

The ARA suggests the ACCC provide further examples on how retailers should deal with these situations.

As an example, if a business claims they have achieved an emissions reduction on an outdoor banner, is it acceptable for the business to provide a brief summary of the reduction in the fine print, and then send the consumer to their website to find out more about how these emissions were achieved, or does the ACCC suggest in-depth detail be provided alongside the advertisement.

Consider the full lifecycle

Life cycle impacts remain an ongoing challenge for businesses to trace and communicate to consumers as standard practice.

The following statement, and the accompanying example around the manufacture of electric vehicles, is problematic.

You do not need to conduct a life cycle assessment or provide information about the full product life cycle in every claim. However, you should consider which impacts are relevant to the claims you want to make and ensure that the overall impression conveyed is not misleading.

This statement does not provide business with comfort around what types of impacts they need to refer to when making a claim as the suggestion of relevance is subjective. This may lead to a hesitancy of businesses in making any claims, for the fear that they may not have appropriately referenced an element of the life cycle.

Some examples for consideration:

- A brand is making a recycled content claim, speaking to the recycled nature of the product (polyester) reducing waste to landfill. Does the brand also need to reference the environmental concerns with microplastics, finite resource usage, limitations in textile to textile recycling, and taking plastic outside of an otherwise potentially circular system?
- A brand is making an organic cotton claim, claiming benefits such as soil health and lower water usage in comparison to conventional cotton. Does the brand also need to speak to concerns such as the overall water usage intensity of cotton production, as well as the potential human rights issues in the supply chain? And where would any information around benefits and concerns need to be made available to customers?

The ACCC should consider providing additional examples that will assist in understanding what a reasonable claim encompassing lifecycle impacts would consist of.

PRINCIPLE FOUR

EXPLAIN ANY CONDITIONS OR QUALIFICATIONS ON YOUR CLAIMS

The ARA proposes the ACCC consider providing common understandings of key sustainability terms to ensure consistent usage amongst brands, and to ensure conditions are met.

While the Guidance explains what constitutes good practice in explaining conditions or qualifications on claims, no information is provided around where this additional information should be located, and or where the explanation should be where the product or packaging is too small to explain the claim.

As the example used in the Guidance highlights, the difference in recycling infrastructure across Australia is a challenge retailers face when designing packaging that is reflective of this infrastructure.

To remedy this, retailers are seeking to implement the Australasian Recycling Label (ARL) and the “Check Locally” label on packaging. Under the Guidance, is this considered an appropriate explanation of conditions, or is the retailer responsible for providing additional or adequate information to supplement the claim?

Retailers order their packaging with up to, and sometimes beyond, an 18-month timeframe. To use the case of RedCycle as an example, retailers are still selling stock with the RedCycle logo due to this time frame. Retailers are now hesitant to place another logo on their product for any future schemes, should that scheme also fail.

In particular, the ARA poses the following questions:

- Will the retailer be able to continue to use the logo until stock runs out?

- Will the retailer be liable for not providing further conditions on claims if those from the ARL no longer explain these conditions?

It is also worth noting the added complexity for businesses of adjusting packaging to accommodate changing conditions, which not only results in financial disadvantage to the retailer, but also unnecessary wastage of packaging to the detriment of overall environmental outcomes.

As such, the ARA requests further guidance regarding any circumstance that arises where the logo no longer portrays valid information.

PRINCIPLE FIVE

AVOID BROAD OR UNQUALIFIED CLAIMS

The ARA notes that as retailers have expanded their sustainability offerings and engaged in meaningful work to ensure better environmental outcomes in their operations, the use of overly broad and vague terms is less common.

There are a number of existing Australian standards regarding environmental and sustainability claims that have been developed by standards bodies in consultation with industry which the ACCC should consider recognising in the Guidance.

As an example, the Australian Standard AS 14021, provides international alignment for a number of commonly used environmental claims such as recycled and recyclable. Alignment with such standards would allow for a consistent approach with internationally recognised standards that have been in place for a number of years, and on which many certification schemes are based.

A lack of alignment with reputable, industry-accepted standards where applicable, risks penalising businesses who are seeking to adhere to best practice by implementing internationally recognised standards.

Additionally, overseas jurisdictions are developing 'Greens Claims Guides' such as the ICC Framework for Environmental Marketing Communication, which is a recognised framework that could be used as a point of reference for the development of the ACCC Guide.

Regarding lifecycle of claims, the ARA proposes the ACCC provide further guidance surrounding a claim lifecycle, i.e. how long a claim is valid for, and how often a claim should be re-evaluated and communicated to avoid misleading the consumer.

With reference to emissions related claims, the ACCC suggests that renewable energy claims should clearly explain how the renewable energy has been calculated. Further guidance and examples around how this can be done without the use of technical jargon would be appreciated.

PRINCIPLE SIX

USE CLEAR AND EASY TO UNDERSTAND LANGUAGE

As awareness around sustainability and climate change continues to grow, the average consumer understanding of words and phrases is constantly changing. The ARA is seeking further information on how the ACCC will define what a reasonable consumer will understand as it relates to sustainability, and what will the base level be for an awareness on things such as recycling processes and compostability.

As explored in P2, 'biodegradable' and 'compostable' remain ongoing challenges for retailers, as there is currently no test or certification for biodegradable products, nor has the ACCC provided one in the Guidance.

Additionally, consumer expectations and understanding around the definition of these words to mean is not always in line with reality – as explored in the examples in P4. Further support is needed to understand whether these claims can still be made, or whether additional guidance can be expected in future.

Additionally, the ARA is seeking further clarity on P6 regarding the use of the word 'reusable,' alongside the certification of evidence in reference to the case study.

If a retailer seeks to sell a reusable product, what is the definition of reusability and what certification is required to make the claim. That is, is it sufficient for a business to conduct internal tests to make the reusability claim, or is a business required to reference test reports that confirm the product is reusable.

PRINCIPLE SEVEN

VISUAL ELEMENTS SHOULD NOT GIVE THE WRONG IMPRESSION

Whilst retailers are cognisant of the issues associated with visual elements giving the wrong impression, greater guidance is needed around third-party labels and certifications to assist retailers in providing correct advice to consumers.

As outlined in the ARA's submission to the Senate Inquiry into Greenwashing, [Eco Label Index](#) estimates there are over 57 certification labels in Australia, as well as various international schemes and purchasing guides. Without a system of accreditation for certification schemes, it will continue to be challenging for retailers to understand which schemes will deliver the most benefit to the business and to the conscious consumer. It is also difficult for business to conduct the appropriate due diligence required to ensure the scheme is legitimate.

The ARA would also like to acknowledge the high benchmark and cost of joining some certification schemes for both the retailer, and in some cases the farmer or producer involved in certification. The cost of participation can potentially act as a barrier to smaller companies, which may prevent them from joining and benefiting from or building sustainable credentials that a larger company may be more easily able to achieve through this scheme.

Additionally, this cost can then be passed onto the consumer, pricing out consumers and rendering sustainable alternatives as an exclusive or high-end option which inhibits progress toward a sustainable economy.

While we expect only the more credible schemes will enjoy market longevity, further guidance is needed to support continuous improvement without solely relying on third-party certifications, and to communicate actions taken credibly to consumers to deliver value back to the market, and those producers committed to improving their practices. As the peak industry body, the ARA is well placed to work with the ACCC to identify best practice schemes, or to provide support in identifying key characteristics to look for when joining a certification scheme.

PRINCIPLE EIGHT

BE DIRECT AND OPEN ABOUT YOUR SUSTAINABILITY TRANSITION

As retailers continue to develop, communicate and implement emissions reductions plans, it is imperative that they are supported in making claims to ensure they are able to resource and innovate projects.

The ARA suggests the ACCC consider establishing base expectations, and or a list of methodologies that would be supported. We are also seeking guidance on the ACCCs view of targets made on the basis of defensible forecasts and calculations.

Carbon offset verification

The ARA understands the ACCC is considering further guidance for carbon claims specifically. The ARA welcomes this decision, as one concern of many businesses is the verification businesses are expected to take in ensuring accuracy of offsets where they are generated offshore.

With respect to further guidance for carbon claims, the ARA suggests the ACCC has regard to existing industry guidance including:

1. Locally, the Offsets Integrity Standards that form the basis for creating offsets within Australia under the Emissions Reduction Fund.
2. Internationally recognised approaches , such as:
 - The Oxford Offsetting Principles, which define a spectrum between avoided emissions at the low end, to carbon removal with long lived carbon storage at the upper end; and
 - The Assessment Framework contained within the Core Carbon Principles published by The Integrity Council for the Voluntary Carbon Market (ICVCM).

Carbon neutrality claims

The ARA is seeking further guidance on whether the ACCC will wait for a new International Organisation for Standardisation (ISO) standard for carbon neutral and net zero to determine the definition that the ACCC will accept.

Further clarification is also needed with respect to the ACCC's view on carbon neutrality claims, including the use of carbon offsets to underlie these claims, particularly in light of some international jurisdictions proposing a harder line on carbon neutrality claims that are based solely on carbon offset schemes.

The ARA suggests the ACCC provide additional examples on how a company should provide further examples around the how a business can acknowledge carbon offsets without claiming carbon neutrality.

Targets that are not met

The ARA is seeking further guidance on the ACCC's view on evidence based targets made, that are unable to be met. In particular, the ARA would like to understand if the ACCC will be open to working with retailers to understand why targets were not met, or if retailers be criticised for making a claim they are unable to meet – even if it is reasonable and evidence based claim.

Thank you again for the opportunity to provide a submission. We look forward to further engagement as the Guidance continues to evolve.

Any queries in relation to this submission can be directed to our policy team at policy@retail.org.au.