Law Council
OF AUSTRALIA

Environmental and Sustainability Guidance

Australian Competition and Consumer Commission

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- New South Wales Bar Association
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- Northern Territory Bar Association
- Law Society Northern Territory
- Bar Association of Queensland
- Queensland Law Society
- South Australian Bar Association
- Law Society of South Australia
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- Law Society of Tasmania
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The Law Council's website is www.lawcouncil.au.

Acknowledgements

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Executive Summary

1. The Law Council of Australia appreciates the opportunity to provide a submission to the Australian Competition and Consumer Commission (**ACCC**) on the draft guidance for business in relation to environmental and sustainability claims (the **Draft Guidance**).[1]

2. The Law Council welcomes the provision of guidance regarding environmental and sustainability claims. It notes that a primary goal of the Draft Guidance is to 'decrease instances of 'greenwashing', which is the practice of making false or misleading environmental or sustainability claims'.[2] Among other things, the Draft Guidance aims to 'help businesses understand and comply with their obligations' under the Australian Consumer Law (**ACL**).

3. The Law Council has advocated for the continued development of clear and consistent guidance materials to support businesses to comply with their existing legal obligations, including under consumer law, when making environmental and sustainability claims.[3]

4. In its recent submission to the Senate Environment and Communications References Committee's broad-ranging inquiry into greenwashing, the Law Council posited that the missing piece in the regulation of environmental and sustainability claims at present is uniformity of language, meaning, and purpose across activities and actors.[4]

5. The Law Council's submission emphasised the importance of guidance in the approach taken by regulators—and capacity-building, more generally, towards compliance, cooperation, and self-regulation, favouring what is commonly termed 'responsive regulation'.[5] Specifically, the Law Council recommended that particular attention ought to be given to improving the guidance that is available to business about:

   (a) the parameters for acceptable use of terms such as 'sustainable', 'green', 'ethical', 'ethically sourced', 'carbon neutral', and so on;

   (b) the certification and accreditation of products, including through developing a centralised uniform nomenclature of accreditations, symbols, logos, and trust marks;

   (c) the expectations of regulators about the process for verification or substantiation of environmental and sustainability claims, particularly principles-based claims and forward-looking claims (as well as scrutiny of the use of offsets in making 'net zero' claims); and

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[1] Australian Competition and Consumer Commission, *Environmental and sustainability claims—Draft guidance for business* (July 2023) <https://www.accc.gov.au/about-us/publications/environmental-and-sustainability-claims-draft-guidance-for-business> ('**ACCC, Draft Guidance**').
[2] See ACCC, Draft Guidance, 3.
[3] Law Council of Australia, Submission No 119 to the Senate Standing Committee on Environment and Communications References Committee, *Inquiry into Greenwashing* (18 August 2023) <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Greenwashing/Submissions> ('**Law Council, Inquiry into Greenwashing Submission**') 6.
[4] Ibid, 6, 41.
[5] Ibid, 40-41.

(d) the scope of the term ‘sustainability’ in ‘sustainability claims’, as including sustainable development factors, such as economic, social and governance factors, along with environmental factors.[6]

6. Broadly, the Law Council’s view is that clearer and more consistent classification of terms and standards—and guidance that is as specific as possible about the expectations of regulators—would enable better overall regulation in what is a rapidly evolving space.[7]

7. The Law Council maintains these recommendations in its current consideration of the ACCC’s Draft Guidance, and, within this context, recognises the importance of the ACCC’s current work.

8. The Law Council considers the ACCC’s Draft Guidance to be generally helpful and practical. However, it has identified certain areas where it believes business would benefit from additional information or clarification, and proposes some additional case studies at **Annexure A** for the ACCC’s consideration. The Law Council also takes this opportunity to make suggestions for supplementing the general information in the Draft Guidance with a comprehensive nomenclature of terms and standards.

[6] Ibid, 6, 41-42.
[7] Ibid, 41.

Recommendations to Clarify the Draft Guidance

Sustainability Claims

9. In the Law Council's opinion, the most significant shortcoming of the guidance is the lack of information about sustainability claims. The ACCC's Draft Guidance purports, in its title and opening pages, to cover both environmental and sustainability claims. The body of the document, however, is confined to 'information for businesses about making environmental claims', with no mentions of 'sustainability claims' from page 6 of the guidance onwards.[8]

10. The Law Council restates its general recommendation that regulators should not focus only on environmental claims, but should provide guidance on 'sustainability' in a broad sense—that is, the maintenance of healthy environmental, social, economic and governance systems.[9] For example, a product should not be considered 'sustainable' if the supply chain and operations leading to its production involved modern slavery practices.

11. In its abovementioned submission to the Senate Committee inquiry into greenwashing, the Law Council suggested that: 'regulators should begin to formulate and publish guidance on their expectations for businesses when making social responsibility or human rights claims', such as claims made against the Sustainable Development Goals (**SDGs**).[10]

12. The SDGs are linked to other concepts and practices that purport to broaden the responsibilities of business beyond purely environmental considerations—including 'Environmental, Social and Governance (**ESG**) factors', 'corporate social responsibility', 'corporate sustainable practice', 'corporate sustainability reporting, strategy and implementation', and 'sustainable development investing'. The proliferation in terminology reflects the increasing relevance of broad sustainability concepts and practices on business, investor, and consumer behaviour, and the multitude of ways in which greenwashing may manifest: beyond 'eco-washing' to 'SDG-washing' and 'ESG-washing', for example.[11]

13. The Law Council expects that much of the overarching advice within the Draft Guidance—or, more specifically, within the 'Principles for trustworthy environmental claims'—would also appropriately apply to sustainability claims.

14. As one comparison, the ACCC's Draft Guidance is already similar in messaging to the Guidelines for Providing Product Sustainability Information developed by the United Nations Environment Programme in 2017.[12] Both documents discuss, for example:

    (a) principles of transparency, clarity, and relevance, among others;

    (b) reliance on generally accepted methodology and peer reviewed study;

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[8] ACCC, Draft Guidance, 6.
[9] Law Council, Inquiry into Greenwashing Submission, 45.
[10] Ibid.
[11] United Nations Environment Programme, *Guidelines for Providing Product Sustainability Information: Global guidance on making effective environmental, social and economic claims, to empower and enable consumer choice* (2017) <webpage> ('**UN Sustainability Guidelines**') 50: 'Even though "green" relates to environmental claims, the expression is sometimes also used in the context of social and ethical product information'.
[12] UN Sustainability Guidelines.

(c) parameters for use of third-party certifications; and

(d) a claim constituting a meaningful claim only where there is a genuine and measurable benefit that exceeds what is already required by law.

15. However, the UN Sustainability Guidelines also contain information and advice specific to sustainability, and in this respect may provide useful direction to the ACCC in amending its Draft Guidance to better account for sustainability claims.

16. This includes both trustworthy and misleading examples of terms, labels and trust marks used to signify sustainability claims that go beyond environmental credentials, such as:

(a) the 'Fairtrade' mark;

(b) the 'Global Organic Textile Standard' and 'Fair Trade Tourism' certifications; and

(c) terms denoting products as being 'responsibly produced' or 'an ethically correct choice'.

17. It also provides advice to businesses specifically on sustainability claims, arising from 'sustainable' being broader than 'environmental' by definition. The UN Sustainability Guidelines note, for example:

> *The limits of the sustainability claim must be clearly stated and must not be misleading or ambiguous. A single-issue criteria must not be used to claim that the entire product is 'sustainable' when one issue may make it otherwise. For instance, a recycled, resource- or energy-efficient product cannot be claimed as overall 'sustainable' if workers in the value chain are not guaranteed fair wages or conditions; thus, precise language that is clear on the limits of the claim must be used.*[13]

18. Similarly, the United Nations Global Compact provides guidance on business engagement with SDGs generally, including the process of 'principled prioritisation' through which a company can identify which SDG targets to focus on, relevant to their products and operations. For example, this material emphasises that companies should:

> *Avoid 'cherry-picking' and 'SDG-washing'. 'Cherry-picking' refers to selecting goals and targets based on what is easiest for companies rather than what accounts for the high priorities … it is essential that companies also identify and act on the full range of priority SDG targets that intersect with their operations and value chains.*[14]

19. The Law Council recommends that the ACCC amend the Draft Guidance to draw out the distinction between environmental claims, in the limited sense, and sustainability claims, in the broader sense, and any specific differences in regulator expectations of businesses (as well as in compliance and enforcement approaches) pertaining to this distinction.

[13] UN Sustainability Guidelines, 28.
[14] United Nations Global Compact, *Business Reporting on the SDGs* (Guidance, August 2018) <https://unglobalcompact.org/library/5628> 7.

Broad Terms such as 'Green' and 'Sustainable'

20. The Law Council has previously recommended that regulators provide guidance setting out the parameters for acceptable use by business of terms like 'green', 'renewable' and 'sustainable'.[15]

21. It welcomes Principle 5 of the Draft Guidance to the extent that it fulfills this recommendation.

22. The Law Council recommends, however, that the ACCC clarify the reasoning behind its distinction between terms that should be avoided (on page 24 of the Draft Guidance) and terms that should be qualified and explained (on page 25)—including further detail of terms that fall on either side of this distinction, as they might arise in practice.

23. In this respect, the Law Council considers that an approach where business is advised to avoid using such terms *at all*, goes beyond what is necessary under law and, in a practical sense, may be unhelpful for both business and consumers.

24. The Law Council strongly agrees with the ACCC's suggestion that broad claims such as 'green', 'renewable' or 'sustainable' can be misleading when used without qualification or context. However, the Law Council considers that, where appropriate explanation *is* provided alongside these claims, consumers are less likely to be misled in practice. It does not accept that such terms are always misleading or should necessarily be avoided. For example, the Law Council suggests that it would not be misleading to promote a cleaning product as a 'greener choice' if the advertisement explained why the product has a better environmental footprint than competing products.

25. The Law Council suggests amending the Draft Guidance to instead recommend that terms such as 'green' and 'sustainable' be avoided unless they are used with appropriate context or qualification.

26. The Law Council further suggests that another option might be for the ACCC to develop a comprehensive nomenclature or glossary of terms and standards, which option is discussed below.

Provision of Important Information

27. The Competition and Consumer Law Committee of the Law Council's Business Law Section notes that environmental claims are often complex, particularly those relating to emissions reduction or renewable energy procurement, and suggests that consumers are not well served by lengthy qualifications, excessive detail, and overly technical language.

28. The Committee agrees that environmental claims should not omit important details that might contradict or qualify the headline claim. However, the Committee considers that a cascading approach will often be appropriate for complex environmental claims, whereby the headline claim captures the core elements of the claim (e.g., 'reduce scope 1 and 2 emissions in our operations by 30 per cent by 2024'), clarifying information is provided in a footnote (e.g., the method for calculating the reduced emissions, ideally against an agreed standard or best practice), and the audience is then directed to a website or other document for

[15] Law Council of Australia, Inquiry into Greenwashing Submission, 6.

additional information (e.g., 'head to our website for a summary of our transition plan and an update on our progress').

29. The Law Council notes the advice under Principle 3 of the Draft Guidance that disclaimers or qualifications are best prominently displayed near the headline statement, with only supporting information in small print.[16]

30. It further notes that the case study on page 12 of the Draft Guidance illustrates a cascading approach to information generally, where business provides information to consumers in multiple formats, from product swing tags, to additional information via a QR code, to more detailed information across the product pages on its website.

31. However, the Law Council recommends that the Draft Guidance clarify explicitly whether a cascading approach to qualifying information, as in the Committee's example above, is also supported by the ACCC.

Emissions Related Claims and Future Claims

32. The Law Council welcomes the good practice examples for making emissions-related claims that are outlined at pages 26 and 27 of the Draft Guidance, including the advice that business undertake baseline assessments, undertake verification or substantiation processes, and clearly identify the use of offsets. It also welcomes the specific advice and examples about future claims outlined at pages 14 and 15 of the Draft Guidance. This information goes some way to meeting the Law Council's prior recommendations that regulators develop guidance paying particular attention to:

    (a) the parameters of acceptable use of common terms such as 'carbon neutral';

    (b) clearer standards for the use of offsets, particularly as a tool for achieving business aims such as 'net zero'; and

    (c) the process for verification or substantiation of claims, particularly forward-looking claims.

33. However, consistent with its prior recommendations, the Law Council suggests that the ACCC provide greater detail on this topic, including about what constitutes an acceptable verification process.

34. Guidance in relation to scope 3 and scope 4 emissions may also be needed for businesses, to ensure that representations in respect of products and services are consistent with methods of production and manufacture or business operations.

35. Page 15 of the Draft Guidance refers to basing environmental goals on 'accepted methodologies, and resources and technologies'. To the extent that this relates to methodologies for assessing carbon or other environmental impacts, it may assist business if the ACCC were to provide examples of accredited methodologies that are based on the best available science and international standards, such as those endorsed by the Task Force on Climate-related Financial Disclosures and the International Sustainability Standards Board.

36. Consideration should also be given to timelines for providing evidence to support forward-looking claims. Specific guidance should be provided on how

[16] ACCC, Draft Guidance, 19-20.

environmental and sustainability claims relating to future benefits—that is, planting trees, offsetting, or net zero emissions over the life of a product—ought to be substantiated over time. For example, if a claim is made that a product will be offset within a 10-year period, evidence or verification of the offset should be required every year or two years to ensure the business is on track to achieve the final promised offset.

Emissions Intensive Industries

37. The Draft Guidance suggests that businesses in 'highly polluting industries' should 'be extra cautious when making environmental claims' because 'the overall environmental detriment of these industries is likely to overshadow any environmental improvements made by a business'.[17]

38. This phrasing may discourage businesses in these industries from implementing and promoting ambitious environmental and sustainability programs altogether. It also reflects a more general issue of an increasing reluctance across business to make environmental and sustainability claims given the perceived legal risks involved (a phenomenon known as 'green hushing'):

> *One concerning issue that the ACCC has heard during the consultation process is that some businesses are hesitant to talk about positive changes that have been incorporated into manufacturing/production processes or business operations. We understand that this is due to perceived legal risks, and scepticism from the broader public.*[18]

39. The Law Council's view is that environmental- and sustainability-based competition among businesses should be encouraged, with Australia's transition to a net zero economy relying to a large degree on climate action from emissions intensive industries. There is a risk that the above phrasing will discourage emissions intensive businesses from undertaking and promoting their environmental initiatives, or else be misunderstood as suggesting that an environmental claim by an emissions intensive business is *necessarily* misleading unless the business also discloses all adverse environmental impacts.

40. The Competition and Consumer Law Committee of the Law Council's Business Law Section advises that this does not reflect the law on misleading conduct, under which an omission is only misleading if it leads to an impression being conveyed to the target audience, which is not true and accurate having regard to the omitted information.

41. It suggests the Draft Guidance be amended to read:

> *When making environmental claims, businesses in highly polluting industries should ensure that they identify the particular environmental improvements being made, and consider those claims carefully, relative to the ongoing environmental impacts in other parts of their business.*

42. Lack of business transparency is a key impediment to the community's ability to assess products and make purchasing decisions. The Law Council strongly supports a system that encourages business to proactively adopt high standards of

[17] ACCC, Draft Guidance, 27.
[18] Australian Competition and Consumer Commission, *Law Council Annual Competition and Consumer Law Workshop Speech* (1 September 2023, Transcript) <https://www.accc.gov.au/about-us/media/speeches/law-council-annual-competition-and-consumer-law-workshop-speech>.

transparency, and considers that this should be purposefully fostered, not discouraged.[19]

'Green Hushing'

43. The Law Council notes suggestions in the media that a business could engage in misleading conduct by choosing not to promote or make claims about its environmental impact (so called 'green hushing'). The ACL does not impose any positive obligation on business to make environmental or other claims. Instead, where businesses choose to make claims in their advertising or other public-facing materials, they must ensure that the overall impression conveyed is truthful and accurate. Parliament may choose to impose additional disclosure obligations on business in relation to environmental or climate impact, but this is not a requirement of the ACL.[20]

44. The Draft Guidance expressly states that its principles only apply to the extent a person has *chosen* to make an environmental claim.[21] The Draft Guidance also states that, if a claim is not true or is only particularly true, the relevant business should either change the claim or not make the claim at all.[22] The Law Council is supportive of this guidance, but submits that, given there appear to be some misconceptions about 'green hushing', the Draft Guidance could go further and expressly state that it is not misleading to choose not to make an environmental claim or publish environmental targets.

Additional Case Studies

45. The Law Council expects the examples and case studies within the Draft Guidance to be most helpful to business. Additional case studies would add further value to the Draft Guidance.

46. The Competition and Consumer Law Committee of the Law Council's Business Law Section suggests that the Draft Guidance include case studies that better reflect the commercial realities and intricacies of business where compliance answers are less obvious.

47. The Committee has drafted two case studies for the ACCC's consideration, provided at Annexure A to this Submission.

Additional Amendments

48. Page 8 of the Draft Guidance has a reference to 'circularity initiatives'. The Law Council assumes that this is a reference to the 'circular economy', 'circularity concept' or other initiatives for reducing material use by design and reducing waste by re-use. It recommends that the term 'circularity initiatives' be defined in the Draft Guidance.

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[19] See also Law Council of Australia, Inquiry into Greenwashing Submission, 39-45.
[20] See, e.g., Law Council of Australia, Submission to Treasury, *Climate-Related Financial Disclosure: Second Consultation* (2 August 2023) <https://www.lawcouncil.au/resources/submissions/climate-related-financial-disclosure-second-consultation>.
[21] ACCC, Draft Guidance, 5.
[22] Ibid, 11.

Recommendations to Supplement the Draft Guidance

Comprehensive and Authoritative Standard-Setting

49. The Law Council considers that a comprehensive nomenclature remains a necessary supplement to the ACCC's Draft Guidance and other general guidance materials. This was emphasised in the Law Council's submission to the inquiry into greenwashing.[23] In that submission, the Law Council suggested that uniformity of language, meaning and purpose was broadly missing from the regulatory framework for environmental and sustainability claims. It suggested that the Australian Government and its industry partners consider the development of a centralised and uniform nomenclature such as a taxonomy or other classification system for common terms and standards, including accreditations, symbols, logos and trust marks.

50. The ACCC might consider, as an interim measure, whether its Draft Guidance could include a glossary of definitions and criteria for common terms used by business when making environmental and sustainability claims, based on the best available science as well as independent and global benchmarks and standards. Should the Draft Guidance not be the appropriate location or format for this level of detail, the Law Council encourages consideration of the development of a separate format for this purpose. One example is an online database, such as the glossary of standard climate-related definitions developed through legal peer review by the Chancery Lane Project.[24] This glossary was developed for the specific purpose of standardising key contracting terms, but it provides a useful example of possible directions in the present regulatory space. Similarly, United Nations bodies, agencies and other mechanisms often arrange addendums to accompany more general guidance, as a means of maintaining plain language, simplicity and accessibility while developing the level of detail required for meaningful regulation and change.[25]

51. Consideration might also be given to business being able to seek ACCC authorisation of the accuracy of environmental and sustainability representations, akin to a tax ruling,[26] or similar to the ACCC's existing process for assessing Certification Trade Mark (**CTM**) applications.[27] This could also allow for labelling pre-approval for products.

52. The ability for business to rely on proactive authorisations or registrations could increase both business and consumer confidence, and guide business strategy in relation to environmental and sustainability claims. This is, of course, dependent on the ACCC having the functions and powers under statute, as well as the practical resources, to undertake such a role.

53. The Law Council notes that the structure of the ACCC, which makes decisions through meetings of the Commission, with decision-making streamlined through

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[23] Law Council of Australia, Inquiry into Greenwashing Submission, 6, 41.
[24] The Chancery Lane Project, *Glossary entries: standard climate-related definition to help you draft climate-aligned contracts* (online) <https://glossary.chancerylaneproject.org/>.
[25] See, e.g., United Nations Global Compact, *Business Reporting on the SDGs* (Guidance, August 2018) <https://unglobalcompact.org/library/5628> 5-6.
[26] Australian Taxation Office, *Private rulings* <https://www.ato.gov.au/general/ato-advice-and-guidance/ato-advice-products-(rulings)/private-rulings/>. See also Australian Taxation Office, Taxation Ruling, TR 2006/10 Public Rulings.
[27] Australian Competition and Consumer Commission, *Certification Trade Marks – The Role of the ACCC* (2011) <https://www.accc.gov.au/system/files/Certification%20Trade%20Marks_0.pdf>.

seven sub-committees, strong governance processes, and subject to administrative law review, may prima facie support such a role and function.[28]

54. Any legal standards or rules against which the ACCC would assess a particular claim or label, would also need to be sufficiently robust, however, in order to make such a process meaningful for consumer choice. The Law Council notes that this is not always the case under existing schemes.

55. For example, the Law Council has previously raised concerns about existing certification schemes,[29] including CTM registration under the *Trade Marks Act 1995* (Cth).[30] These include concerns that a large number of registered CTMs exist containing the term 'sustainable'.[31] As the ACCC has itself noted, 'CTMs are becoming increasingly common' and businesses do not always clearly describe the nature, relevance or application of a certification, which 'raises concerns that CTMs may be becoming meaningless, and no longer help consumers to distinguish between different products'.[32]

56. These concerns cannot only be addressed through regulator action, but also require amendments to the legislative framework. Pursuant to section 175 of the *Trade Marks Act 1995* (Cth), the ACCC, in deciding to register a CTM, must assess whether a certifier's rules for certification are satisfactory according to criteria prescribed in the Trade Mark Regulations.[33] The prescribed criteria are framed around principles of competition, unconscionable conduct and consumer protection generally, rather than specific good practice requirements for making or assuring environmental and sustainability claims.

57. To the extent that effective regulation depends on legislative amendments, this is a matter for Parliament. However, the Law Council notes that the ACCC has a sub-committee that 'makes decisions about policy recommendations, law reform proposals and the exercise of relevant statutory powers and functions'.[34] That sub-committee might be appropriately placed to consider in further detail the above proposals to improve uniform standard setting for environmental and sustainability claims.

Additional Comments

58. The Law Council understands that improving the accuracy of the environmental and sustainability claims made by businesses is expected to have the flow-on effect of assisting consumers to make more informed purchasing decisions. However, the Draft Guidance itself is not directed at a consumer audience. The Law Council

[28] Australian Competition and Consumer Commission, *ACCC Commission and decision making* (web page) <https://www.accc.gov.au/about-us/accc-role-and-structure/accc-commission-and-decision-making>.
[29] Law Council, Inquiry into Greenwashing Submission, 29.
[30] *Trade Marks Act 1995* (Cth) s 175.
[31] IP Australia, *Australian Trade Mark Search* (Webpage, 2023) <https://search.ipaustralia.gov.au/trademarks/search/quick>.
[32] Australian Competition and Consumer Commission, *Greenwashing by businesses in Australia: Findings of the ACCC's internet sweep of environmental claims* (March 2023) <https://www.accc.gov.au/about-us/publications/greenwashing-by-businesses-in-australia-findings-of-acccs-internet-sweep> 7.
[33] *Trade Marks Act 1995* (Cth) s 175. In order to issue a certificate of registration, the ACCC must satisfy itself that the attributes of the proposed certifier render it competent for assessment of certification and that the rules for certification are satisfactory according to prescribed criteria and would not be detrimental to the public. The criteria are set out in reg 16.6 of the *Trade Mark Regulations 1995* (Cth).
[34] Australian Competition and Consumer Commission, *ACCC Commission and decision making* (web page) <https://www.accc.gov.au/about-us/accc-role-and-structure/accc-commission-and-decision-making>.

recommends that the ACCC develop separate materials targeted specifically at the education of consumers.[35]

59. The Law Council encourages the continual and frequent update of guidance, as the regulatory space around environmental and sustainability claims continues to evolve with respect to consumer expectations on the one hand, and business capacity on the other.

60. As noted in the Law Council's greenwashing submission, guidance alone is not a panacea. Regulatory approaches must be multi-layered and responsive to context, with capacity building, through new guidance materials, complementary to enforcement action occurring under existing legal frameworks. The Law Council supports the ACCC's increased focus on environmental and sustainability claims, including, where appropriate, its enforcement actions with respect to greenwashing. These actions are an integral part of the pyramidic concept of responsive regulation, and will continue to be necessary to provide an element of general deterrence in this area.

[35] One of six stated goals in the Draft Guidance is to 'assist consumers to make more informed choices if they want to make purchasing decisions based on environmental or sustainability claims': ACCC, Draft Guidance, 3.

Annexure A

61. The following case studies have been drafted by the Competition and Consumer Law Committee of the Law Council's Business Law Section.

Case Study 1: Sourcing renewable energy through Power Purchase Agreements

A business wishes to source 60 per cent renewable electricity by 2025.

The business is based in metropolitan Sydney and being directly connected to a renewable power source isn't feasible. Instead, the business enters into a Power Purchase Agreement (PPA) with a renewable energy company. Under the PPA, the company pays the renewable generator a fixed price per MWh of electricity and the renewable generator pays the company the spot price received from AEMO together with large scale generation certificates so that the business can offset the mixed-source energy they acquire from the National Electricity Market (a mix of renewable and non-renewable sources) with the certificates.

With its PPA in place, the business publishes its target to 'source 60 per cent renewable electricity by 2025 through power purchase agreements and large-scale generation certificates which match our consumption' as part of broader sustainability information included on its website. The business also has staff update their email signatures to include the words, 'On the way to using 60 per cent renewable electricity by 2025'.

The Committee considers that the business in this case study has complied with the ACL because it has identified how it will achieve its renewable electricity target and this is through power purchase agreements and large-scale generation certificates which match its consumption from the National Electricity Market.

Case Study 2: Investing in Hydrogen

A business is investing in hydrogen produced from a steam methane reforming process, relying on the use of natural gas. Carbon dioxide emissions created during the steam reforming process will be captured and stored.

Another business is investing in hydrogen produced from water using electricity obtained from the grid to split water by electrolysis. It will offset the electricity used in the process by the purchase of large-scale generation certificates.

Each of the businesses promotes its hydrogen project as a 'clean energy source', with the second business also describing the hydrogen produced as both 'green' and 'renewable' hydrogen.

The Committee considers that the businesses in this case study have complied with the ACL.