

15 September 2023

Enforcement Coordination
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

By email: EnforcementCoordination@acc.gov.au

Dear Sirs,

Environmental and sustainability claims: Draft guidance for business (Guidance)

Governance Institute of Australia

Who we are

Governance Institute of Australia (Governance Institute) is a national professional association, advocating for our network of 43,000 governance and risk management professionals from the listed, unlisted, public, not-for-profit and charity sectors.

As the only Australian provider of chartered governance accreditation, we offer a range of short courses, certificates and postgraduate study. Our mission is to drive better governance in all organisations, which will in turn create a stronger, better society.

Our members have primary responsibility for developing and implementing governance frameworks in public listed, unlisted and private companies, as well as not-for-profit organisations and the public sector. They have a thorough working knowledge of the operations of the markets and the needs of investors. We regularly contribute to the formation of public policy through our interactions with Treasury, the Attorney General's Department, ASIC, APRA, ACCC, ASX, ACNC and the ATO.

Our members consider that the eight Principles in the Guidance and the supporting commentary are generally clear and likely to be useful for business.

They have the following general comments:

- It would be useful if the Guidance were to illustrate the Regulator's expectations around statements about future targets and the 'reasonableness' of assumptions in relation to modelling, benchmarking and targets. It would also be useful to have guidance about what is 'reasonable' in relation to the due diligence sitting below particular benchmarks. One area that is potentially problematic is a situation where a business has made a statement about a particular matter but for reasons outside its control circumstances change. The case study approach used throughout the Guidance might be a helpful way to illustrate some of the matters.
- It should also be clear that it is not the ACCC's role to be prescriptive about what businesses disclose.
- The Guidance does not refer to the trend of 'green hushing' - namely avoiding publicising communications about sustainability or environmental activity to avoid scrutiny, defend against the risk of greenwashing accusations or to hide insufficient progress. While there may be legitimate

reasons for not disclosing this information, this could have negative consequences for transparency. This could be incorporated near the material on greenwashing on page 10.

- The Introduction to the Guidance (page 10) and other parts of the Guidance refer to laws in relation to greenwashing administered by the Australian Securities and Investments Commission (ASIC). We suggest incorporation of a reference to ASIC's material about greenwashing including [Regulatory Guide 65 Section 1013DA Disclosure Guidelines](#) and Information Sheet 271 [How to avoid greenwashing when offering or promoting sustainability-related products](#). There should also be a reference to the fact that the ACCC and ASIC may take different approaches to these issues.
- It will be important to ensure there is no conflict between ACCC and ASIC guidance, particularly given that in a business ACCC and ASIC guidance will have different 'audiences'. ACCC guidance is more likely to be considered by the marketing, customer facing and communications functions, whereas ASIC guidance is more likely to be front of mind for the compliance, legal and risk functions. For this reason it is important they are consistent.
- Offsets – while there is a reference to offsets in the Case Study on pages 32 – 33 of the Guidance it would be useful to mention them earlier in the document. This material could be moved earlier in the document and could be incorporated following the material about environmental claims on page 8.
- Principle 7 – Visual elements – our members consider that it will be important to approach this area in a practical way rather than taking a prohibitive approach.
- Provision of information to consumers – our members consider it would be useful to include more detail about the level of information the Regulator considers it is appropriate to provide on labels as opposed to links to websites or through QR Codes, noting that it will be easier for businesses to ensure material on websites or accessible through QR Codes is up to date.
- Forward looking information – one area for improvement in the Guidance is the Regulator's expectations about how businesses provide forward looking information to consumers.

Please contact me or Catherine Maxwell, GM Policy and Research if you have any questions in connection with this submission.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Megan Motto', written in a cursive style.

Megan Motto

CEO