

Greenwashing investigations

As consumers and investors become increasingly aware of corporate **Environmental, Social and Governance (ESG)** factors when making decisions, organisations' **claims regarding their ESG credentials are becoming increasingly powerful**. As the demand for ESG products and investments has increased, so too has the prevalence of ESG related claims. Overstating or misrepresenting such claims – a practice known as **"greenwashing"** – is now in the sights of Australian regulators, namely the **Australian Competition and Consumer Commission (ACCC)** and the **Australian Securities and Investment Commission (ASIC)** who have identified 'greenwashing' as a key focus for future enforcement action, including actions for breach of directors duties. **The key sectors of particular concern for regulators include manufacturing, energy and resources, superannuation funds and managed investment funds.**



WHO ARE THE REGULATORS TARGETING?

In March and June 2022, the ACCC and ASIC released enforcement strategies for 2022/23, identifying greenwashing as a key focus. The regulators will focus on businesses that are falsely promoting their environmental credentials or the carbon neutrality of their processes to capitalise on the increased demand for sustainable products, services and investments.

Organisations engaging in environmental marketing campaigns need to ensure the claims follow the principles set out in the ACCC's Green marketing and the Australian Consumer Law Principles. Organisations should also review information released by ASIC on how to assess if their values and goals align with a sustainability-related or ESG product when considering investments and purchases.



WHAT TYPES OF CLAIMS ARE BEING MADE?

The main areas of focus for regulators are claims being made about Emission Reduction Targets; Carbon Neutrality; Green investments; Product labels; and Corporate branding.



WHAT POLICIES SHOULD BE REVIEWED?

Organisations need to ensure they have a compliant and comprehensive suite of ESG policies. These policies should act as a set of standards by which an organisation operates and act as a tool for investors and consumers to use to inform their purchases and investments. These policies should act as a set of standards by which an organisation operates and as a tool for investors and consumers to inform their purchases and investments.

The policies should cover an organisation's: commitment to environmental sustainability; commitment to social factors such as how it manages relationships with employees, suppliers, customers, and the communities where it operates; commitment to good corporate governance such as how it deals with its leadership, executive pay, audits, internal controls, and shareholder rights.



WHO WILL THIS IMPACT?

Greenwashing and misleading ESG claims are a concern for consumers, investors and companies globally. As the scrutiny of regulators intensifies, companies and their management need to be acutely aware of the accuracy of their ESG claims. Serious reputational, regulatory, class action and litigation risks are now attached to greenwashing practices and any other misleading ESG-related claim.



WHAT SHOULD YOU BE DOING?

Directors and officers need to ensure that any statements, disclosures or promotions use clear and accurate labels; define the sustainability terminology they use; and clearly explain how sustainability considerations are factored into their investment strategy, in accordance with ASIC's INFO 271.



Ben Allen
Partner, Australian head of Dentons Global Compliance and Investigations practice
D +61 2 9035 7257
ben.allen@dentons.com