

N E X T

DRIVING ESG ACCOUNTABILITY

**REGULAR
REASSESSMENT
IS CRUCIAL**



Tidal Marks 1 by Marilyn Wallace-Mitchell

HOWEVER BEAUTIFUL THE ESG STRATEGY, EVERY ORGANISATION SHOULD BE REGULARLY REVIEWING ITS RESULTS AND COMMITMENTS.

In the rapidly changing environmental, social and governance (ESG) landscape, regularly reassessing commitments and practices is critical. Regular review is vital for ensuring commitments remain aligned with the company's activities and future trajectory and companies maintain their credibility and reputation in the market.

In this article we explore recent updates in the ESG landscape, including the phasing out of certain environmental claims, continued regulator scrutiny, fast approaching interim climate target deadlines and disclosure requirements, which may trigger a need to reassess ESG commitments and practices.

AUTHORS



TIM
BEDNALL

PARTNER
M&A
SYDNEY



EMMA
NEWNHAM

SENIOR ASSOCIATE
M&A
MELBOURNE



LINDA
LE

SOLICITOR
M&A
MELBOURNE

‘CARBON NEUTRAL’ AND SIMILAR CLAIMS

On 20 October 2023, the Federal Government announced proposed updates to the Climate Active certification program, including phasing out the term ‘carbon neutral’ to provide more clarity on what certification under the Climate Active program means. Input is currently being sought on what term should be used instead, as we have [written about in more detail](#).

This move away from the term ‘carbon neutral’ reflects a global trend to require more clarity and specificity in sustainability reporting and marketing. Last year, the European Parliament voted to ban terms such as ‘climate neutral’ by 2026 where they cannot be backed by detailed evidence.¹ Other ‘generic environmental claims’ that could be banned under these new rules include phrases such as ‘green’, ‘nature’s friend’, ‘energy efficient’ and ‘biodegradable’ unless the products can demonstrate ‘excellent environmental performance’.²

The Australian Securities and Investments Commission (ASIC) and the Australian Competition and Consumer Commission (ACCC) are also both similarly focused on this language, having both provided recent guidance in this area.³

In these circumstances, companies should be looking closely at any claims they make relating to carbon neutral, climate neutral, net zero or similar status and considering whether any changes are required as a result of how they may be understood and viewed by consumers, regulators and other stakeholders.

GREENWASHING ENFORCEMENT ACTION

AASIC has announced that it would retain its enforcement priority relating to greenwashing for 2024, as well as its enduring priorities relating to governance and directors’ duties failures.⁴

ASIC has previously taken a number of actions for greenwashing, with most cases based on alleged misleading and deceptive conduct in relation to ESG matters.

Notably, ASIC has also signalled that future cases may move beyond misleading and deceptive conduct to licence obligations, directors’ and officers’ duties and a range of other obligations.⁵

Ongoing areas of interest for ASIC include:

- (a) net zero targets made without a reasonable basis;
- (b) use of environmental claims such as ‘carbon neutral’ (as discussed above), ‘clean’ or ‘green’ that are not founded on reasonable grounds; and
- (c) the scope and application of investment exclusions and screens.⁶

The ACCC likewise also has ‘consumer, product safety, fair trading and competition concerns in relation to environmental claims and sustainability’ as an enforcement and compliance priority for 2024.⁷

In our [2023 Directions Report](#), we were interested to understand whether companies have reassessed or ‘walked back’ public ESG-related commitments or disclosures given the hardened regulatory focus on greenwashing. We found that only 12% of respondents had done so. Given ASIC and the ACCC have confirmed their ongoing focus in this area, we expect to see many more companies regularly reassessing their commitments and disclosures going forwards.

¹ See [EU to ban ‘climate neutral’ claims by 2026 \(ft.com\)](#)

² See [further EU to ban greenwashing and improve consumer information on product durability | News | European Parliament \(europa.eu\)](#)

³ See [23-121MR Update on ASIC’s recent greenwashing actions | ASIC and Making environmental claims: A guide for business | ACCC](#)

⁴ See [ASIC enforcement priorities | ASIC](#)

⁵ See [Red light for greenwashing | ASIC](#)

⁶ See [Red light for greenwashing | ASIC](#)

⁷ See [Compliance and enforcement policy and priorities | ACCC](#)

CONCLUSION

In summary, it is simply not enough to make bold promises for a greener future. Community and regulatory expectations are evolving. For companies and organisations to hold themselves out as responsible, it is essential to stay up-to-date on regulatory and other global developments, actively check in on and reassess commitments as required, ensure commitments are supported by reasonable grounds and take action to meet commitments by integrating sustainable practices into their companies.

KEY TAKEAWAYS

Carefully consider whether changes should be made to carbon neutral, climate neutral, net zero or similar claims

Stay up to date with ASIC and the ACCC's guidance and enforcement action on greenwashing and ensure it is factored into your business

Closely track progress against commitments as interim target deadlines draw near

Keep a close watch on what is happening with mandatory climate reporting and nature reporting and plan your approach early given the rapid pace of change in this area



JOIN THE CONVERSATION



SUBSCRIBE TO OUR WECHAT COMMUNITY.
SEARCH: KWM_CHINA

Disclaimer

This publication provides information on and material containing matters of interest produced by King & Wood Mallesons. The material in this publication is provided only for your information and does not constitute legal or other advice on any specific matter. Readers should seek specific legal advice from KWM legal professionals before acting on the information contained in this publication.

Asia Pacific | North America

King & Wood Mallesons refers to the network of firms which are members of the King & Wood Mallesons network. See kwm.com for more information.

www.kwm.com

© 2024 King & Wood Mallesons