

ACCC enforcement priorities for 2024-2025: impacts for food businesses

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On 3 March 2024, the Australian Competition and Consumer Commission (ACCC) published its enforcement priorities for 2023-24. Several of these priorities are highly relevant to food businesses and include issues such as fair trading in the supermarket sector and 'greenwashing'. This article explores these issues with case examples and explains how businesses can reduce their ACCC risk.

1. Background

The ACCC is responsible for enforcing the *Competition and Consumer Act 2010* and *Australian Consumer Law* (which is contained in Schedule 2 of the *Competition and Consumer Act*). These instruments set out competition and consumer-protection requirements that apply to Australian businesses, which include a prohibition on misleading or deceptive conduct. Breach of the *Australian Consumer Law* or *Competition and Consumer Act* can result in significant penalties including fines exceeding AUD\$50m and significant brand damage.

2. 2024-2025 priorities

Each year, the ACCC announces its enforcement priorities, outlining the types of conduct that is likely to attract greater scrutiny.

The ACCC announced its 2024-2025 enforcement priorities will be focused on the following:

- Consumer and fair trading issues in relation to environmental claims and sustainability
- Competition and consumer issues arising from the pricing and selling of essential services, with a focus on energy and telecommunications.
- Competition and consumer issues such as fair trading and pricing concerns in the supermarket sector, with a focus on food and groceries
- Promoting competition in essential services such as telecommunications, electricity, gas and financial services
- Misleading and deceptive conduct in relation to essential services with a focus on telecommunications
- Competition and consumer issues in the aviation industry

- Competition and consumer issues relating to digital platforms, with a focus on misleading and deceptive advertising through influencer marketing, online reviews and price comparison websites
- Unfair contract terms in consumer and small business contracts
- Increasing industry compliance with consumer guarantees and targeting misconduct by retailers in relation to delivery timeframes.
- Consumer product safety issues for young children, with a focus on the safety of nursery products including infant self-feeding and infant sleep products.

Several of these enforcement priorities are highly relevant for food businesses in Australia, which the remainder of the article focuses on.

3. Environmental claims and sustainability

Misleading claims about the environment and sustainability is the top enforcement priority for the ACCC. This was also an ACCC priority in 2022-23, and reflects that the ACCC is actively scrutinising this area.

Following an ACCC internet sweep for 'greenwashing' conducted in **March 2023**, it found that 57% of the businesses websites reviewed had 'concerning claims about their environmental credentials'.

In **December 2023**, the ACCC released another guidance document 'Making Environmental Claims'. The document outlines eight principles that businesses should follow when making environmental claims:

- Make accurate and truthful claims
- Have evidence to back up your claims
- Do not hide or omit important information
- Explain any conditions or qualifications on your claims
- Avoid broad and unqualified claims
- Use clear and easy to understand language
- Visual elements should not give the wrong impression
- Be direct and open about your environmental sustainability transition

FoodLegal works with many businesses in assessing their marketing claims and advising on practical ways to minimise risk. Much of this experience involves claims about sustainability, such as carbon reduction and the use of 'green' inputs and packaging materials.

The focus on environmental and sustainable claims is also relevant to changes from **1 July 2024** that will impact product packaging and recycling decisions. From this date, the Australian government intends to impose a levy on recyclable waste that is exported for offshore processing.

4. 'Unfair contracts', pricing concerns and imposing penalties for the supermarket industry sector

Three key enduring priorities of the ACCC are anticompetitive conduct, cartel conduct and small business protections. Fair trading and pricing concerns in the supermarket sector relate to all three.

Part IV of the *Competition and Consumer Act* prohibits a variety of anticompetitive conduct. Usually, for the ACCC to make out a breach of one of the anticompetitive conduct provisions, the conduct must have the 'purpose, effect or likely effect' of 'substantially lessening competition'. Therefore, large retailers or any

other businesses along the supply chain that has significant market power should be careful when exercising such power to ensure it does not substantially undermine competition. The 2023 December edition of FoodLegal Bulletin explores this in greater detail in the article, [‘Anti-competitive conduct that food and beverage businesses must not engage in’](#).

Businesses operating within the supply chain that have greater bargaining power should also ensure that any contracts they enter into do not contain unfair contract terms. On **9 November 2023**, the maximum penalty for a corporation that breaches the unfair contract provisions was increased to the greater of:

- \$50 million;
- Three times the value of the ‘reasonably attributable’ benefit obtained by the act or omission; or
- If the court cannot determine the benefit, 30% of adjusted turnover during the period of the breach.

For individuals the maximum penalty amount is \$2.5 million. The October 2023 FoodLegal Bulletin article, [‘How can businesses avoid penalties under the new Unfair contract terms ACL Law?’](#) explains the new unfair contract terms regime in detail.

The ACCC is likely to impose greater scrutiny of unfair contract terms in small business contracts in the supermarket sector.

5. Misleading and deceptive digital advertising

Misleading and deceptive conduct is prohibited under section 18 of the *Australian Consumer Law*. In 2024-2025, the ACCC is specifically focused on misleading advertising through influencer marketing, online review, in-app purchases and price comparison websites.

The ACCC has recently been taking action in relation to misleading representations made online:

- On **15 March 2024**, the Australian Federal Court ordered AUD\$1m in penalties against Bloomex for misleading and deceptive conduct in the digital space, following action brought by the ACCC. The Court found that Bloomex, an online florist, had published misleading online star ratings, price representations and customer reviews. This included displaying a star rating that had remained static for eight years (rather than being updated to reflect new reviews) and displaying customer reviews for products that were not sold or prepared within Australia.
- On **4 March 2024**, the ACCC initiated proceedings against Mosaic Brands Ltd for failing to deliver products within their advertised timeframes. Mosaic Brands owns online clothing sites such as Noni B and Rivers. The company allegedly advertised on its various branded websites that items would generally be delivered between 2 – 17 business days from purchase. The ACCC alleges that during the relevant period, 26% of items were dispatched from warehouses between 20 – 40 days after purchase.

Although these cases did not involve a food business, they each demonstrate the importance of being able to substantiate claims made online. When reviewing marketing materials, businesses must look beyond the product label and ensure that they have processes in place to establish claims made on their website or social media.

Consumers are likely to form impressions and expectations based on information online, and may be misled if this information turns out to be untrue. This is the case even where the claim relates to an ancillary service such as delivery timeframes.

If you have any questions on the contents of this article, please feel free to [contact us](#).

This is general information rather than legal advice and is current as of 8 Apr 2024. We therefore recommend you seek legal advice for your particular circumstances if you want to rely on advice or information to be a basis for any commercial decision-making by you or your business.