

Article Information

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The Price of Greenwashing: 12.9M reasons to get environmental claims right

ASIC's recent success in the Federal Court against Vanguard Investments Australia Ltd for making misleading environmental, social and governance (ESG) claims is demonstrative of the ongoing crackdown on greenwashing by regulatory bodies. This case reinforces to businesses the importance of ensuring that their environmental claims are accurate, and able to be substantiated.

The Federal Court has imposed a \$12.9 million penalty on Vanguard Investments Australia Ltd for making misleading environmental, social and governance (ESG) claims.^[1] The claims related to exclusionary screens that Vanguard represented had been applied to investments in the Vanguard Ethically Conscious Global Aggregate Bond Index Fund, when that was not always the case.

The case highlights the importance to businesses making environmental claims of the steps they should be taking to avoid the practise of greenwashing.

Greenwashing is the practise of making false or misleading environmental claims, and it is a key enforcement priority for both the Australian Competition and Consumer Commission (ACCC) and the Australian Securities and Investments Commission (ASIC).

Eight Principles For Trustworthy Environmental Claims

The ACCC has issued specific guidelines for businesses about making environmental claims.^[2] The guidelines include eight principles for trustworthy environmental claims:

- Principle 1: Make accurate and truthful claims
- Principle 2: Have evidence to back up your claims
- Principle 3: Do not hide or omit important information
- Principle 4: Explain any conditions or qualifications on your claims
- Principle 5: Avoid broad and unqualified terms
- Principle 6: Use clear and easy-to-understand language
- Principle 7: Visual elements should not give the wrong impression
- Principle 8: Be direct and open about your sustainability transition

The Vanguard decision involved an admission by Vanguard that they had engaged in conduct that was liable to mislead the public and that they had made misleading representations regarding the ESG exclusionary screens. Vanguard had ultimately promised its investors and potential investors that their product would be screened to exclude bond issuers with significant business activities in certain industries, including fossil fuels, when approximately 74% of the securities in the Fund by market value were not researched or screened against applicable ESG criteria.

This case followed the landmark Mercer decision in February 2023, in which the Federal Court concluded that Mercer had made misleading statements to investors and potential investors regarding ESG claims for sustainable superannuation products, ordering a \$11.34 million penalty.^[3] The misleading statements were made on the Mercer website on which Mercer marketed seven 'Sustainable Plus' investment options as being suitable for members who are 'are deeply committed to sustainability' because they excluded investments in companies involved in the production and sale of alcohol, the extraction or sale of carbon intensive fossil fuels and gambling. The representations were misleading as six of

the seven 'Sustainable Plus' investment options had in fact invested in the excluded industries. This decision remains as a strong example of the greenwashing action that ASIC may take particularly within the financial services industry.

Conclusion

It is clear that ASIC will continue to monitor the market for companies making sustainable investment claims, particularly those related to ESG screens. Greenwashing was again announced as an enforcement and compliance priority for the ACCC for 2024-25. It is to be expected that, following these proceedings, the ACCC are likely to crackdown on companies making such claims. It is particularly important that businesses ensure their environmental claims are truthful, and can be substantiated if necessary.

[\[1\] *ASIC v Vanguard Investments Australia Ltd \(No 2\)* \[2024\] FCA 1086](#)

[\[2\] See *Making environmental claims: A guide for business*:
<https://www.accc.gov.au/about-us/publications/making-environmental-claims-a-guide-for-business>](#)

[\[3\] *ASIC v Mercer Superannuation \(Australia\) Limited* \[2024\] FCA 850](#)