

**April – May 2025****Key Contacts****Ayman Guirguis**

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[Jenna.Yim@klgates.com](mailto:Jenna.Yim@klgates.com)**What's Inside This Issue?**

This edition of the K&L Gates Competition & Consumer Law Round-Up provides a summary of recent and significant updates from the Australian Competition and Consumer Commission (ACCC), as well as other noteworthy developments in the competition and consumer law space. If you wish to have any more detail about the issues outlined in this newsletter or discuss them further, please reach out to any member of the K&L Gates Competition and Consumer Law team (listed in the left column).

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## Key Developments in Environmental / Greenwashing Guidance and Enforcement

### EnergyAustralia Settles Greenwashing Action Brought by Advocacy Group

A settlement has been reached in greenwashing proceedings brought against EnergyAustralia by the environmental advocacy group Parents for Climate (PFC).

The action, commenced in the Federal Court in 2023, related to EnergyAustralia's claims that its 'Go Neutral' energy product was carbon neutral and that purchasing it would have a positive environmental impact, as EnergyAustralia had 'offset' the emissions generated by the product through purchasing carbon credits.

In the proceedings, PFC alleged that these claims were misleading and contravened the Australian Consumer Law (ACL), as:

- The 'Go Neutral' energy product was predominantly sourced from fossil fuels;
- 'Offsetting' does not remedy the environmental damage caused by burning fossil fuels; and
- The usage of the energy product still contributed to climate change.

In EnergyAustralia's public statement, which was agreed to by the parties, the energy company acknowledged that "carbon offsetting is not the most effective way to assist customers to reduce their emissions" and apologised to customers who "felt that the way it marketed its Go Neutral products was unclear".

EnergyAustralia made the decision to withdraw the 'Go Neutral' product from market in July 2024.

David Hertzberg, Principal Lawyer at Equity Generation Lawyers (PFC's representatives) stated that PFC "hopes that today's clear statement from EnergyAustralia sets a new standard for corporate conduct around the use of offsets and climate claims", and that "companies need to seriously consider whether the environmental claims they make stack up - particularly, as this case shows, when claiming that their polluting products are 'carbon neutral'".

The action against EnergyAustralia represents the first case brought against a company in Australia for the use of 'carbon neutral' marketing claims.

EnergyAustralia's public statement can be found [here](#), and PFC's media release can be found [here](#).

**Key takeaways:** In its [guidance](#) on making environmental claims, the ACCC indicates that businesses should be cautious when making claims regarding emissions or climate change impacts, having regard to the complexities associated with such claims. In light of the case against EnergyAustralia and that guidance, businesses should be particularly careful in making broad or unqualified claims such as 'carbon neutral' in their marketing—and again should ensure that any such claims are accurate and can be substantiated.

### AU\$8.25 Million Penalty Ordered Against Clorox for Misleading Greenwashing Claims

In proceedings brought by the ACCC, the Federal Court has ordered that Clorox Australia Pty Ltd (Clorox) pay an AU\$8.25 million pecuniary penalty for making misleading 'ocean plastic' claims on the packaging of its kitchen tidy and garbage bags, in breach of the ACL.

The ACCC commenced proceedings against Clorox, the manufacturer of GLAD garbage bags, in April 2024. The Commission alleged (and Clorox admitted) that between June 2021 and July 2023, Clorox made a number of representations in relation to these products, including:

- "50% ocean plastic recycled bags";
- "Made using 50% Ocean Plastic<sup>SM</sup>"; and
- "GLAD to be GREEN" (noting that the words "to be GREEN" appeared on a green background).

These representations were held to be misleading, as the bags were in fact partially made up of a recycled plastic that had been collected inland up to 50 kilometres from the ocean—and not from the ocean itself.

While the product packaging also displayed a disclaimer in small text, which read “*Made using 50% ocean bound plastic that is collected from communities with no formal waste management system within 50 km of the shore line*”, this qualification was not sufficient to remedy the misleading nature of the representations made.

In delivering its judgment, the Court referenced the societal harm caused when businesses engage in conduct that “*undermines consumers’ confidence in environmental claims*”, and stated that “*false or misleading environmental claims cause competitive disadvantage to businesses making genuine environmental claims and undermine the efforts of businesses to pursue environmental goals accurately and fairly*”.

ACCC Chair Gina Cass-Gottlieb noted that claims in respect of environmental benefits may affect consumers’ purchasing behaviour and stated that when such claims are false or misleading, it represents a “*serious breach of trust, as well as the Australian Consumer Law*”.

The full judgment can be found [here](#), and the ACCC’s media release can be found [here](#).

**Key takeaways:** This case is reflective of the ACCC’s recent focus on targeting this type of conduct, with consumer concerns in relation to environmental claims and sustainability being one of the ACCC’s 2025–26 priorities. The case also demonstrates that the inclusion of a disclaimer or qualification may not be sufficient to ‘cure’ misleading representations. Businesses should therefore ensure that they closely review any environmental claims to ensure they are accurate and able to be substantiated.

## Enforcement

### Oil and Gas Company Qteq Found to Have Engaged in Cartel Conduct

On 17 April 2025, the Federal Court found Qteq Pty Ltd (Qteq) and its executive chairman and former chief operating officer Simon Ashton, to have engaged in cartel conduct. This is a long-awaited decision for the ACCC, which commenced civil proceedings back in December 2022.

Qteq is a supplier of mining equipment and technology services to the upstream oil and gas industry, including supplying gauge works to coal seam gas (CSG) operators.

The conduct occurred under circumstances where Qteq was an incumbent supplier of gauge services to a CSG well operator business, QGC Pty Ltd (QGC). QGC released tenders relating to the provision of gauge works, the transition of installation and servicing works to the rig contractor, and the provision of diverter valves, rods, and cavity pumps.

The Federal Court held that on five separate occasions, Qteq and Mr Ashton attempted to induce its competitors or likely competitors in the CSG industry to engage in cartel conduct in relation to the above QGC tenders. In particular, Qteq attempted to persuade Pro-Test Pty Ltd (Pro-Test), its closest competitor for the tenders, to either not compete for the supply of gauge works to QGC or to structure its bid such that it only won a small proportion of the tender.

The Federal Court found that Qteq and Mr Ashton had attempted to arrange for the following:

- That Pro-Test would not compete with Qteq for the supply of gauge works to QGC, and in return, Qteq would not compete for the supply of goods and services to one of Pro-Test’s customers;
- That Pro-Test would bid to only win around 15% of the work to be performed under the contract and not to seek to win the contract outright, and in return, Qteq would not compete for the supply of goods to one of Pro-Test’s customers;
- That Pro-Test would not supply gauge works and in return, Qteq would not supply completion of wells after drilling and drill stem testing;

- That Eastern Well Service No 2 Pty Ltd and its related companies (Eastern Well) would not, other than in concert with Qteq, supply gauge installation services to QGC or any other CSG operators; and
- That Eastern Well would restrict or limit the supply of gauge installation services to QGC and not supply to any other persons.

In response to this judgment, the ACCC Chair Gina Cass-Gottlieb has commented that “*Cartels are the most fundamental attack on competition in our economy, and taking actions against them is a high priority for the ACCC*”.

A further hearing date will be set for the Federal Court to consider submissions about penalties and other orders. The full judgment can be found [here](#). The ACCC’s media release can be found [here](#).

**Key takeaways:** The ACCC’s successful enforcement action demonstrates its strong commitment to upholding its enduring priority to deal with cartel conduct. Companies should ensure that staff, especially senior management, are aware of their obligations to not attempt to or attempt to induce arrangements that fall afoul of cartel laws.

## Federal Court Orders Captain Cook College to Pay AU\$30.4 Million in Penalties for Unconscionable Conduct and Misleading Representations

The Federal Court has ordered penalties totalling AU\$30.4 million for the systemic unconscionable conduct engaged in by Captain Cook College, and misleading representations made by the college.

The ACCC commenced proceedings against Captain Cook College in 2018. In 2021, the Federal Court found that the vocational college had:

- Engaged in unconscionable conduct, by removing consumer safeguards from its enrolment and withdrawal processes in order to improve its financial performance (with the removed safeguards including contacting new students regarding their financial commitment, and automatically withdrawing students who were not actively engaged with the course); and
- Made false or misleading representations to students in respect of its online courses.

The removal of the consumer safeguards led to around 5,500 students incurring significant VET FEE-HELP debts, despite the fact that the majority of the affected students never completed any component of their online course.

The Federal Court has recently ordered the payment of substantial penalties for Captain Cook’s conduct. The college has been ordered to pay AU\$20 million for unconscionable conduct, and AU\$750,000 for false or misleading representations. Further, the Court ordered penalties of AU\$10 million on Captain Cook’s parent company (Site Group International Limited (Site)), and of AU\$400,000 on Site’s former Chief Operating Officer (COO) (in addition to disqualifying that COO from managing corporations for three years).

ACCC Chair Gina Cass-Gottlieb stated “*We are pleased with this outcome which sends a message to all businesses, including those seeking to obtain government funding, that they must comply with the laws which protect consumers. The judgment also shows the ACCC’s determination to pursue individuals in appropriate cases*”.

The penalty decision follows two unsuccessful appeals by the defendants, which were heard in the Federal Court and the High Court.

Read the ACCC’s media release [here](#), and the full judgment [here](#).

**Key takeaways:** The ACCC is active in the educational colleges sector, having previously initiated action against multiple other colleges—notably, one such action led to the imposition of record penalties of AU\$438 million against Phoenix Institute of Australia Pty Ltd. Businesses in this sector, and the individuals working in them, must therefore be very careful to ensure that their systems are not likely to raise any concerns under the ACL and that they maintain robust compliance programs to lessen the risk of contravening conduct occurring.

## ACCC Commences Proceedings Against Retailer City Beach for Noncompliant Button Battery Products

In April 2025, the ACCC commenced proceedings in the Federal Court against Fewstone Pty Ltd, trading as City Beach (City Beach), in relation to its alleged noncompliance with mandatory button battery standards.

The ACCC is alleging that between June 2022 and October 2024, surf and skate retailer City Beach breached the ACL by:

- Offering 70 product lines for sale; and
- Selling around 57,000 individual products,

which contained button batteries that were not compliant with Australia’s mandatory product safety and information standards— in particular, the mandatory button battery standards.

City Beach received warnings from New South Wales Fair Trading and the Queensland Office of Fair Trading in relation to its supply of potentially noncompliant products in 2022 and 2023. The ACCC has reported that it identified City Beach’s alleged contraventions through its partnership with such state-based consumer agencies.

ACCC Deputy Chair Catriona Lowe commented that “*the standards have been in existence since 2020, in effect since 2022 and have been the subject of escalating compliance and enforcement work by ACL regulators, including the ACCC*”, and that “*there is simply no excuse for non-compliance and we will not hesitate to take strong enforcement action against businesses that do not comply with these important and potentially life-saving standards*”.

City Beach is in the process of carrying out a voluntary recall.

Read the ACCC’s media release [here](#), and its concise statement [here](#).

**Key takeaways:** This is the first action brought in the Federal Court by the ACCC in relation to alleged noncompliance with the mandatory button battery standards, and it reflects the ACCC’s current enforcement priority to ensure consumer product safety for young children (with a particular focus on button battery standards). Companies selling such products, or any other products that are subject to mandatory safety and information standards, should carefully review the applicable standards to ensure the compliance of their products.

## Mergers and Acquisitions

### ACCC Raises Concerns With Rural Merchandiser Elders’ Proposed Acquisition of Delta

The ACCC has published a Statement of Issues (Statement of Issues) setting out its preliminary competition concerns in respect of the proposed acquisition of Delta Agribusiness (Delta) by Elders Limited (Elders).

Both parties to the proposed acquisition are suppliers of a range of agriculture-related products and services, relevantly including rural merchandise (such as agricultural chemicals, seed, fertilisers, animal health/nutrition products, fencing and troughs) and agronomy services.

The companies supply rural merchandise through their retail stores, as well as to wholesale customers in Western Australia. Elders operate 246 retail stores throughout Australia, and Delta operates 64 retail stores which are predominantly located in regional New South Wales, Victoria, South Australia, and Western Australia.

The Statement of Issues outlines the ACCC’s concerns that the proposed acquisition might substantially lessen competition in:

- The retail supply of rural merchandise and associated agronomy services (both in certain local markets in New South Wales, Victoria, South Australia, and Western Australia, as well as at a wider regional, state, or national level); and

- The wholesale supply of rural merchandise in Western Australia.

The ACCC also referred to the possibilities that the acquisition could result in higher prices or reduced quality in rural merchandise and agronomy services or reduce wholesale supply options and provide the merged entity with the ability to foreclose rivals in downstream retail markets in Western Australia.

The preliminary view of the ACCC is that the proposed acquisition is likely to substantially lessen competition in the retail supply of rural merchandise in certain local markets in Victoria, Western Australia, and South Australia.

ACCC Deputy Chair Mick Keogh commented that “*competition in the supply of rural merchandise is critical to Australian farmers and our global competitiveness in agricultural products*”.

The ACCC is currently seeking submissions on the Statement of Issues.

Read the ACCC’s media release [here](#) and the Statement of Issues [here](#).

## Qube’s Acquisition of MIRRAT Not Opposed by ACCC

The ACCC has announced that it will not oppose the acquisition of Melbourne International RoRo & Auto Terminal Pty Ltd (MIRRAT) by Qube Holdings Limited (Qube), following the provision of a court-enforceable undertaking aimed at addressing competition concerns.

Qube provides various services across import-export supply chains (including automotive stevedoring and pre-delivery inspection services), and through its subsidiary Australian Amalgamated Terminals Pty Ltd (AAT) operates automotive cargo terminals in Queensland and New South Wales, and a general cargo terminal in Victoria.

MIRRAT is the current operator of the automotive/roll-on roll-off terminal at the Webb Dock West facility in the Port of Melbourne—following the proposed acquisition, Qube is to control automotive/roll-on roll-off trade at that port.

The competitive analysis/investigation undertaken by the ACCC centred around:

- The likely effects of the proposed acquisition on competition in downstream services at the Port of Melbourne (e.g., whether Qube would be given the ability to discriminate against downstream competitors at Webb Dock West); and
- The likely competitive effects associated with Qube’s control of three automotive terminals on Australia’s east coast (e.g., whether Qube would be given the ability to discriminate against competitors at three major terminals).

The undertaking accepted by the ACCC prohibits Qube, AAT and MIRRAT from discriminating against downstream competitors at Webb Dock West. It also prohibits AAT and MIRRAT from discriminating between terminal users in its own favour, and requires that AAT and MIRRAT establish dispute resolution mechanisms, comply with access/berthing allocation rules, ring fence certain confidential information, and report on compliance with the undertaking.

ACCC Chair Gina Cass-Gottlieb stated that “*long-term behavioural remedies come with particular risks and uncertainty. The ACCC is not generally supportive of such undertakings. This is why we have carefully assessed these risks when deciding whether to accept the undertaking in this matter. In the unique circumstances of this transaction, where there is already a similar undertaking in other ports, and where MIRRAT itself is already subject to an undertaking due to its existing vertical integration with shipping, after careful consideration we decided to accept the undertaking*”.

Read the ACCC’s media release [here](#).

## Notifications and Authorisations

### ACCC Proposes to Grant Authorisation to Australian Payment Network to Facilitate Wind Down of Cheque Industry

The ACCC has released a draft determination in which it has proposed to authorise conduct by Australian Payment Network Limited (AusPayNet), and members of the Australian Paper Clearing System (APCS), in respect of the transition away from Australia's cheques system.

AusPayNet, the industry association/self-regulatory body for the Australian payments industry, implements and maintains relevant rules within this industry (e.g., regulations and standards). The APCS framework, which AusPayNet administers, manages the exchange and settlement of cheques and other paper-based payments.

AusPayNet lodged an authorisation application with the ACCC in November 2024 (on behalf of itself and APCS members), under which it sought to obtain authorisation until 30 December 2030 for itself and APCS' participating members to:

- Enter into agreements (both between one another, as well as between the applying parties and third parties such as the Reserve Bank of Australia and other market participants); and
- Discuss and share information,

as required to facilitate the Australian Government's plan to wind down the Australian cheques system (noting that the Australian Government's proposal to wind down the cheques system was announced in 2023, and in November 2024 a transition plan was published by Treasury).

In its draft determination, the ACCC concluded that the proposed conduct would be likely to result in public benefit that would outweigh any public detriment caused, noting that:

- If the proposed conduct did not occur, the winding down of the cheques system would still be carried out, however this would occur in a "*more fragmented and disruptive fashion that may negatively impact Government, businesses and consumers*";
- The proposed conduct would be likely to result in public benefits—including benefits to individuals and businesses, and a reduction in governmental burden; and
- The proposed conduct is unlikely to result in public detriment (e.g., competitive impacts on the market for payment options).

The ACCC has sought submissions on the draft determination and is yet to make its final decision.

Read the ACCC's media release [here](#) and its draft determination [here](#).

## Noteworthy Developments

### Mandatory Information Standard for Toppling Furniture Brought Into Effect

Following a recommendation from the ACCC, on 4 May 2025, a mandatory information standard for toppling furniture came into effect (the Information Standard).

The Information Standard defines 'toppling furniture' to include clothes storage units, bookcases, hall tables, display cabinets, sideboards and buffets with a height of 686 mm or more, or entertainment units of any height (noting that the furniture is split into three 'categories', each of which is subject to differing requirements).

Under the Information Standard, suppliers of toppling furniture are required to:

- Display online or in-store warnings;
- Affix permanent warning labels; and

- Include warnings in the instructions supplied with the furniture, in respect of the risk of tip overs and the importance of anchoring.

The ACCC has noted that toppling furniture has caused a number of deaths in Australia since 2000, and that it is estimated that over 900 Australians per year suffer injuries necessitating medical help from such furniture.

Supplying a product that is noncompliant with the Information Standards is a contravention of the ACL and may be subject to significant penalties.

ACCC Deputy Chair Catriona Lowe stated that “*suppliers must meet these requirements, and the ACCC will be working with state-based consumer agencies to monitor compliance and take enforcement action if appropriate*”, and that “*suppliers face serious penalties for non-compliance, with penalties up to \$50 million for businesses and \$2.5 million for individuals*”.

Read the ACCC’s media release [here](#), the Information Standard [here](#), and the ACCC’s supplier guide [here](#).

## K&L GATES

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