

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

8 June 2023

Dear Officer,

RE: Inquiry into Greenwashing

The Australian National University Law Reform and Social Justice Research Hub ('ANU LRSJ Research Hub') welcomes the opportunity to provide this submission to the Senate Standing Committees on Environment and Communications, responding to terms of reference (b), (c), (d) and (e) of the inquiry.

The ANU LRSJ Research Hub falls within the ANU College of Law's Law Reform and Social Justice program, which supports the integration of law reform and principles of social justice into teaching, research and study across the College. Members of the group are students of the ANU College of Law, who are engaged with a range of projects with the aim of exploring the law's complex role in society, and the part that lawyers play in using and improving law to promote both social justice and social stability.

Summary of Recommendations:

1. Recognise the role of third parties and gatekeepers in setting standards, supervising and modifying corporate greenwashing behaviours
2. Allocate greater federal attention to the impact of greenwashing on young people in Australia

3. Support research into climate grief and anxiety, particularly as a driver for sustainable consumer behavioural change and subsequent susceptibility to greenwashing
4. Investigate the implementation of a national curriculum regarding news and media literacy, in relation to climate and environmental policy, and the contribution of regulatory bodies towards consumer education
5. Gear current social media reform on misinformation and disinformation, such as from ACMA, to support greenwashing interventions
6. Consider sponsoring and publicising the ADM+S Centre's Australian Ad Observatory and other online monitoring and detection initiatives
7. Introduce consistent advertising and labelling standards for sustainability-related claims, using international regulatory frameworks as a model

We would welcome the opportunity to appear as witnesses for the hearing, at the committee's request.

On behalf of the ANU LRSJ Research Hub,

Authors: William Carey, Hannah Vardy

Editors: Jae Brieffies

ANU Law Reform and Social Justice Research Hub

5 Fellows Road, Acton, 2601

Introduction

This submission addresses terms of reference (b), (c), (d) and (e) in particular, examining the impact of misleading sustainability claims on young people as well as outlining regulatory and legislative options - beyond typical corporate legislation - which may protect this consumer group and combat greenwashing in general. Section 1 outlines the relevance of soft regulation, as opposed to typical coercive law-making, in modifying corporate behaviour. This touches on terms of reference (c) and frames remaining submissions on indirect means of tackling greenwashing. Section 2 discusses the particular vulnerability of young people to greenwashing and highlights several approaches to help consumers distinguish between acceptable and deceptive sustainability claims; it draws on terms of reference (b) and (c) in relation to greenwashing impacts and domestic examples for regulation, denoting the relevance of climate anxiety and media literacy for young consumers. Section 3 highlights the enabling influence of social media regarding greenwashing practices, suggesting the utility of linking current communications reforms on 'misinformation' with efforts to monitor and investigate greenwashing as facilitated by such platforms. This touches on term of reference (e) in relation to legislative options as well as (b) through the consideration of social media greenwashing impacts. Section 4 reinforces the potential for the government to use international regulatory frameworks to improve the specificity of current policies, as put forward by the other sections in this submission, relating back to terms (c) and (d). All in all, the submission highlights that corporate discipline will not come just from legal institutions, but across a continuum of regulatory apparatus.

1. Soft regulation, third parties and corporate behavioural change

It is a truism that corporate behaviour is regulated by means beyond legislation. Taking an anti-interventionist approach to the market, Australian legislators have written a system of corporate law with minimal coercive measures built on enforcing only 'traditional' duties from the corporation to itself and its shareholders.¹ This relatively 'hands-off' support for profit-maximising pursuits, such as through ASIC's preference for

¹ Dimity Kingsford Smith, 'Governing the Corporation: The Role of 'Soft Regulation' (2012) 35(1) *UNSW Law Journal* 378, 391.

non-binding procedure over judicial involvement, relies on the self-regulation of companies through forces of 'soft' law.²

Meaningful greenwashing regulation hinges on the recognition and proper use of this soft regulation. Legislation should be as strong as possible, but it will ultimately have to cohere with the existing quality of corporations and consumer law in Australia. Soft regulation is not bound by the same constraints; it can nurture desired climate impacts with greater flexibility and cost-effectiveness.

These soft law bodies execute three central functions: standard-setting, information-gathering (supervision), and behaviour modification (enforcement).³ UNSW Professor Dimity Kingsford Smith highlights the potential for behavioural change through 'investor action, auditors and gatekeepers, consumers, suppliers and governance indexes' as non-legislative forces for corporate good.⁴

Gate-keepers can indirectly influence corporate legal actions. Companies may be held accountable by third parties with material legal influence on a corporation's actions. These parties may withhold or condition their assistance on certain standards being complied with by the company. Such proxy mechanisms may include sign-offs from lawyers, audits and other often legislatively-required provisions from professionals.⁵

In the greenwashing context, gatekeepers might include the communication channels which host sustainability claims (like social media platforms) as well as their respective regulatory bodies (for advertising standards, communications and media etc). Likewise, the consumer's role in soft regulation can be emboldened through relevant support and education schemes. Overall, as highlighted by this submission, combining direct and indirect legal approaches to greenwashing can foster meaningful change across and within interrelated stakeholder groups.

Recommendation 1: Recognise the role of third parties and gatekeepers in setting standards, supervising and modifying corporate greenwashing behaviours.

² Greg Golding and Laura Steinke, 'Directors in the Regulatory Enforcement Pyramid – Recent Developments' (Seminar Paper, University of New South Wales, 20 March 2012).

³ Kingsford Smith (n 1) 381.

⁴ Ibid 397 citing Reinier H Kraakman, 'Gatekeepers: The Anatomy of a Third-Party Enforcement Strategy' (1986) 2(1) *Journal of Law, Economics and Organization* 53.

⁵ Ibid 398.

2. The Impact of Greenwashing on Young People

Young people are particularly vulnerable to the impacts of greenwashing due to their heightened concerns surrounding climate change and sustainability issues.

a) Young people, greenwashing and climate anxiety

Climate anxiety is defined as 'negative cognitive, emotional, and behavioural responses associated with concerns about climate change'.⁶ The research findings in psychology and sociology literature over the past five years indicate that levels of climate anxiety are rising globally, particularly among young people. In 2021, Hickman et. al. conducted a survey of 10,000 young people from 10 countries, including Australia, about their feelings towards climate change and government action on it. They found that, for 45% of respondents, their 'feelings about climate change negatively affected their daily life and functioning', while 83% of respondents believe that 'people have failed to take care of the planet'.⁷ These figures are substantially higher than those seen across the general population.⁸ This indicates that young people are especially vulnerable to greenwashing, out of a desire to take strong action on climate and sustainability issues through their purchasing decisions.

Furthermore, a 2022 study conducted by Lu et al found that young people's green purchasing decisions in the fast fashion industry, specifically the likelihood that they will purchase a particular product because of their environmental views, were negatively affected by their perception of greenwashing across the industry.⁹ Despite young consumers actively wanting to purchase more sustainably, greenwashing within an industry can reduce the likelihood of them doing so due to a general distrust of all greenwashing claims.

As denoted above in Section 1, consumers can play an important role in shaping corporations' responsible behaviour, provided regulation is apt to support them. Drawing on the research findings above, any potential regulation of greenwashing and

⁶ Schwartz et al, 'Climate change anxiety and mental health: Environmental activism as buffer' (2022) *Current Psychology* 1.

⁷ Caroline Hickman et al, 'Climate anxiety in children and young people and their beliefs about government responses to climate change: a global survey' (2021) 5(12) *The Lancet Planetary Health* 863, 863.

⁸ Ibid.

⁹ X Lu et. al, 'How Does Young Consumers' Greenwashing Perception Impact Their Green Purchase Intention in the Fast Fashion Industry? An Analysis from the Perspective of Perceived Risk Theory' (2022) 14 *Sustainability* 13473.

supplementary measures to support education and literacy surrounding the topic must be informed by young people's views and concerns.¹⁰ Mechanisms such as the Youth Advisory Groups and similar consultations are examples of such engagement. Further research should also be supported on the specific links between climate anxiety and susceptibility to greenwashing in young people, to add to information gaps in this area. Impacts on this consumer group are further relevant to the below Section 3 which looks into greenwashing on social media - a channel which strongly caters to young people.

Recommendation 2: Allocate greater federal attention to the impact of greenwashing on young people in Australia.

Recommendation 3: Support research into climate grief and anxiety, particularly as a driver for sustainable consumer behavioural change and subsequent susceptibility to greenwashing.

b) Consumer Education Approaches to Combating Greenwashing

Improving news and media literacy can help enhance consumers' abilities to detect greenwashing. Better-informed consumers can then pressure advertisers to avoid greenwashing and provide sustainability claims that are specific, genuine, and verifiable.¹¹ As per Article 19 of the Universal Declaration of Human Rights, 'everyone has the right to freedom of opinion and expression'.¹² This includes the 'necessary media literacy skills among news consumers to critically analyse and synthesise the information they receive to use it in their daily lives'.¹³ Therefore, providing appropriate education to the public about the media they consume, including in the context of sustainability claims, can help fulfil Australia's international human rights obligations. Implementing a bottom-up approach to media literacy not only discourages

¹⁰ See also: 'Communicating on Climate Change', *United Nations* (Web Page, 2023) <<https://www.un.org/en/climatechange/communicating-climate-change>>.

¹¹ Juliana Fernandes, Sigal Segev and Joy K. Leopold, 'When Consumers Learn to Spot Deception in Advertising: Testing a Literacy Intervention to Combat Greenwashing' (2020) 39(7) *International Journal of Advertising* 1115, 1116.

¹² 'Freedom of Expression - a Human Right', *United Nations* (Web Page) <<https://www.un.org/en/observances/press-freedom-day/background>>.

¹³ Ibid.

greenwashing, but also empowers consumers to support companies that are genuinely striving to become more sustainable.¹⁴ Such an approach can also contribute to reducing the significant levels of consumer distrust towards most sustainability claims, regardless of their intention or accuracy.¹⁵

There are a number of feasible models for these education and information campaigns. The first is to include a greater emphasis on media literacy and the detection of misinformation and disinformation, particularly surrounding sustainability issues, in the national curriculum. Although subjects such as English teach students how to critically analyse news and social media, these could include a greater emphasis on sustainability-related claims and identifying disinformation on social media, as addressed below in Section 3.¹⁶

Another approach involves regulatory bodies, such as the Australian Competition and Consumer Commission (ACCC), taking an active role in educating consumers on detecting greenwashing claims. This would mirror the guidance they offer to companies on avoiding greenwashing.¹⁷ Educating consumers in this way would help provide symmetric information between companies and consumers, thereby promoting a more efficient and equitable market.

Fernandes et al (2020) explored several interventions to educate consumers on the detection of greenwashing, which included information about the 'language and techniques used in green advertising'¹⁸ such as vague and ambiguous ads and unclear comparative claims.¹⁹ Consumers that were given this information were better able to distinguish between acceptable and deceptive green claims.²⁰ This indicates that

¹⁴ Lu (n 9) 13475.

¹⁵ Dennis Kolcava, 'Greenwashing and public demand for government regulation' (2023) 43(1) *Journal of Public Policy* 179, 179.

¹⁶ See Australian Media Literacy Alliance, *New Australian Curriculum Released* (18 July 2022) <<https://medialiteracy.org.au/new-australian-curriculum-released/>>.

¹⁷ See 'How to avoid greenwashing when offering or promoting sustainability-related products', *Australian Securities & Investment Commission* (Web Page, 3 March 2023) <<https://asic.gov.au/regulatory-resources/financial-services/how-to-avoid-greenwashing-when-offering-or-promoting-sustainability-related-products.>>.

¹⁸ Fernandes, Segev and Leopold (n 11) 1118.

¹⁹ Ibid.

²⁰ Ibid 1142. See also Nicholas Eng et al, "'I had no idea that greenwashing was even a thing": identifying the cognitive mechanisms of exemplars in greenwashing literacy interventions' (2021) 27(11) *Environmental Education Research* 1599.

educating consumers is a viable way to improve their ability to identify greenwashing, while also restoring trust in brands that are genuinely striving towards sustainability.

In summary, informing consumers about greenwashing claims and deceptive advertising, both in schools and through bodies such as the ACCC, can incentivise companies to make legitimate efforts towards sustainability, which would reduce the prevalence of greenwashing. This embodies the need for various regulatory apparatus, as discussed in Section 1, beyond coercive requirements on corporations.

Recommendation 4: Investigate the implementation of a national curriculum regarding news and media literacy, in relation to climate and environmental policy, and the contribution of regulatory bodies towards consumer education.

3. Social media platform regulation and monitoring

Social media has become a legitimisation tool for corporate sustainability communication and reporting.²¹ Widespread internet dissemination of information enables engagement with a broader range of stakeholders, with mixed effects. On one hand, more 'transactional' communication can enable 'rapid and open dialogue [between corporations and consumers] on prominent issues' such as sustainability; on the other hand, a 'transmissional' model still remains, making limited use of the interactive nature of social media.²²

An apparently 'dialogic' dynamic between consumers and corporations can thus encourage trust and faith in green claims; however, it can also be misused by firms to manipulate consumers into taking on more sustainable obligations, meaning that online debates remain 'in terms of individual consumer responsibility rather than corporate responsibility'.²³ This is especially dangerous to young consumers, who are susceptible to these claims given increasing climate anxieties and associated desires to make 'sustainable' choices. Those with insufficient media literacy skills (as discussed in

²¹ Sumit Lodhia, Amanpreet Kaur and Gerard Stone, 'The use of social media as a legitimisation tool for sustainability reporting' (2020) 28(4) *Meditari Accountancy Research* 613.

²² Ibid.

²³ Julie Uldam and Anne Vestergaard, 'Legitimacy and Cosmopolitanism: Online Public Debates on (Corporate) Responsibility' (2022) 176 *Journal of Business Ethics* 227, 227.

Section 2) may be vulnerable to social media greenwashing particularly, as the already informal content on these platforms can be harder to distinguish as either fact or misrepresentation.

a) Social media misinformation, climate denial and greenwashing

The centralised and easily-spotted nature of climate denial information differs greatly from greenwashing, making the latter more difficult to track and protect against. This comparison is a useful case study for the use of greater, greenwashing-gearred investigative powers for social media platforms.

During the 2021 COP 26 climate summit, activists called on American, English and European governments to legislate against Facebook's failures to address climate misinformation on their platform.²⁴ Such falsities were driven by a small number of pages: 78% of advertising spending on climate denial in the previous year was from only 7 pages, all of which Facebook had declined to remove.²⁵ In comparison, between 1 June and 31 July 2022, a Harvard investigation into greenwashing scrutinised 2,325 posts from 375 accounts on five social media platforms (Twitter, Instagram, Facebook, TikTok and Youtube). They also investigated the online presence of the 12 largest car brands, 5 largest airlines and 5 largest fossil fuel companies (based on cumulative highest GHG emissions).²⁶ The results of this research described social media as a 'new frontier of climate deception and delay' beyond traditional physical and broadcast-based advertising methods.²⁷

Following the Inquiry into Greenwashing announcement, corporate affairs firm Wilkinson Butler published an outline for firms typifying sustainable claims as either

²⁴ Kari Paul, 'Climate misinformation on Facebook 'increasing substantially', study says', *The Guardian* (online, 5 November 2021) <<https://www.theguardian.com/technology/2021/nov/04/climate-misinformation-on-facebook-increasing-substantially-study-says>>.

²⁵ Ibid.

²⁶ Supran et al, 'Three shades of green(washing): Content analysis of social media discourse by European oil, car, and airline companies', *Greenpeace* (pdf, 20 September 2022) <https://es.greenpeace.org/es/wp-content/uploads/sites/3/2022/09/ThreeShadesofGreenWashing_compr.pdf>.

²⁷ Greenpeace International, 'Harvard investigation reveals social media as the new frontier of climate deception and delay', *Greenpeace* (Web Page, 21 September 2022) <<https://www.greenpeace.org/international/press-release/55714/harvard-investigation-reveals-social-media-as-the-new-frontier-of-climate-deception-and-delay/>>.

product-specific, company-wide or those using logos and symbols.²⁸ Such categorisation is common but it ignores the consumer-specific claims being made on social media platforms, targeting individuals through increasingly advanced data profile capabilities.²⁹ Given this dispersed and diverse nature of greenwashing, a more sweeping and comprehensive approach must be taken to ensure adequate supervision and enforcement of such claims.

The recent ACCC review recognised the online predominance of greenwashing: the body conducted an online sweep of company websites, Facebook pages and third-party review sites.³⁰ This investigation typifies an appropriate angle taken to greenwashing regulation, with the next sweep narrowing its focus to social media influencing and misleading sponsorship disclosures. Even if steering in the right direction, such regulatory action can be supplemented and emboldened by greater investigative powers for regulators of social media platforms

b) Social media platforms and ACMA misinformation reforms

Australian Communications and Media Authority (ACMA) reform concerning social media platforms and misinformation must play a larger role in this regulatory scheme. Greenwashing and otherwise misleading climate communications have received no mention in any publications discussing this reform so far.

At the outset, it should be reinforced that ACMA does not have a role in determining the truth of claims; however, its investigative powers can still contribute more to the soft-law regime against greenwashing. There would still be more meaningful disclosure if companies were required to inform ACMA on approaches to greenwashing, lest they be subject to specific information-gathering powers.

Digital platforms are responsible for the content they host and promote to users - for monitoring content and asking the right questions of providers. ACMA's regulation of

²⁸ Jenny Ringland, 'There is a Senate Inquiry into greenwashing; Here's what it means', *Wilkinson Butler* (Web Page, 2023)
<<https://www.wilkinsonbutler.com/insights/there-is-a-senate-inquiry-into-greenwashing-heres-what-it-means>>.

²⁹ Interview with Professor Christina Parker (Damien Carrick, ABC Radio Law Review, 7 March 2023)
<<https://www.abc.net.au/radionational/programs/lawreport/duggan-extradition/102011760>>.

³⁰ Australian Competition & Consumer Commission, 'ACCC internet sweeps target 'greenwashing', fake online reviews' (Web Page, 4 October 2022)
<<https://www.accc.gov.au/media-release/accc-internet-sweeps-target-greenwashing-fake-online-reviews>>

climate denial disinformation demonstrates the operation of this liability and reflects the body's existing climate information work and its potential to expand to cover greenwashing.

Earlier this year, the ACMA found Foxtel had breached industry codes of practice for failing to 'clearly distinguish... factual material from commentary and analysis in relation to climate-related coverage' in relation to material on its Outsiders program, for which ACMA considered 80 allegations across 10 episodes.³¹ Foxtel submitted it had limited control over the broadcasts, which were distributed by third-party providers under agreements requiring all content to comply with Australian laws and regulations. However, ACMA chair, Nerida O'Loughlin, ultimately reinforced that broadcasters like Foxtel 'cannot outsource their compliance responsibilities to a third party' and must be accountable for the climate information hosted on their platforms.³² O'Loughlin emphasised that the Australian community expects that 'commentary' is clearly distinguished from accurate factual material, especially for subject matters such as national health and climate change.³³ An approach to monitoring and disciplining social media platforms for greenwashing content could enforce the same principles as outlined by ACMA's findings against Foxtel.

In January 2023, the Australian Government set out to consult industry and the public for an exposure draft of misinformation legislation.³⁴ This purports to empower ACMA in:

- A. Imposing compulsory codes of conduct against disinformation on digital platforms (should industry self-regulation measures prove insufficient); and
- B. Gathering information to assess how platforms (including social media companies) respond to misinformation and disinformation.³⁵

³¹ 'Broadcasters breach rules in COVID and climate coverage', *Australian Communications and Media Authority*, (Web Page, 26 April 2023) <<https://www.acma.gov.au/articles/2023-04/broadcasters-breach-rules-covid-and-climate-coverage>>.

³² Ibid.

³³ Ibid.

³⁴ Michelle Rowland, 'New ACMA powers to combat harmful online misinformation and disinformation', *Minister for Infrastructure*, (online, 20 January 2023) <<https://minister.infrastructure.gov.au/rowland/media-release/new-acma-powers-combat-harmful-online-misinformation-and-disinformation>>.

³⁵ Paul Karp, 'Australia's media regulator to get new powers to crack down on online misinformation', *The Guardian* (online, 20 January 2023) <<https://www.theguardian.com/media/2023/jan/20/australias-media-regulator-to-be-get-new-powers-to-crack-down-online-misinformation>>.

Codes of conduct may not be directly legally binding, but they still embody standards to which companies purport to hold themselves. In December 2022, the Digital Industry Group (members of which include Facebook, Google, Twitter, Adobe and Redbubble) voluntarily ‘toughened up’ their code of conduct: this involved redefining ‘harm’ in communication as a ‘serious and credible’ threat, removing any requirement for ‘imminence’ of such threat.³⁶ This definition is all but primed for greenwashing, which threatens climate harms that are not necessarily immediate but jeopardise consumers’ future health and prosperity nonetheless. In imposing compulsory codes elsewhere, the ACMA could use their new powers to develop similar if not more specific definitions of ‘harm’ which accommodate the type of threat looming from greenwashing practices.

The second prong of this reform, enabling greater information-gathering, could likely have a more substantive impact in the realm of greenwashing soft law. As outlined earlier, the nature of online greenwashing requires broader powers, but it also requires more comprehensive monitoring capabilities, such as those relating to data collection and analysis. This point is developed below for Recommendation 6. In short, however, the existence of a power to more deeply enquire into platforms’ greenwashing monitoring schemes could induce greater action on their part while giving watchdogs and consumer protection bodies more context to guide their online ‘sweeps’ and detection of problematic sustainability claims.

The ACMA has expressed a desire to expand its code-based powers to target misinformation and disinformation on messaging services (especially large-scale group platforms like WhatsApp).³⁷ ACMA also continues to push for powers to compel companies to hand over information relating to strategies implemented to combat such harmful communication. There should be no reason for the two areas not to be linked, especially where the development of such misinformation reform has coincided with increasing discourse surrounding greenwashing in Australia.

Recommendation 5: Gear current social media reform on misinformation and disinformation, such as from ACMA, to support greenwashing interventions.

³⁶ Ibid.

³⁷ Ibid.

The ARC Centre of Excellence for Automated Decision-Making and Society (ADM+S) is a government-funded body (through the Australian Research Council). The Centre runs a project entitled the 'Australian Ad Observatory', which seeks to enable greater investigation into social media greenwashing. The project relies on engaging 'citizen scientists' to allow access to their Facebook ad data, allowing researchers to 'see how Facebook advertising is targeted to individual users – a practice that is normally hidden from public view and regulatory scrutiny'.³⁸

In its approach to greenwashing, the government should consider giving this project greater funding and support. Moreover, young consumers could be targeted to opt into the Ad Observatory and other similar projects. Greater publicity, and faith that ad data is being harvested securely, could give this useful project much more information to work with. Information obtained and processed by the Ad Observatory could be used in tandem with greater ACMA information-gathering powers, guiding the regulatory body's investigations on how platforms are responding to greenwashing.

In addition to opt-in data collection projects like the Ad Observatory, the government should look to invest in and integrate automatic detection methods for future surveillance efforts. Earlier this year, Oppong-Tawiah and Webster published an article outlining their development of automatic greenwashing detection methods.³⁹ Their detection tool would allow platforms to automatically score and tag firms' green tweets, forming a database for subsequent fact-checking. These automated tools could ultimately be calibrated to assess for possible online greenwashing by *any* firm - large public companies or small-medium enterprises alike could be adequately monitored for and disciplined against misleading sustainability claims. These tools could also help firms gain a clearer understanding of how to improve their sustainability claims to meet the guidelines and frameworks of the automated tool, hence improving their transparency and specificity.

Discussing the tool's implications for policy and practice, the authors noted such a detection mechanism would be useful for 'investors, consultants, auditors, activists, media' and more in looking for potential acts or episodes of greenwashing.⁴⁰

³⁸ Kathy Nickels, 'Research investigates 'greenwashing' advertising on social media', ARC Centre of Excellence for Automated Decision-Making and Society (Web Page, 8 March 2023) <<https://www.admscentre.org.au/research-investigates-greenwashing-advertising-on-social-media/>>.

³⁹ Divinus Oppong-Tawiah and Jane Webster, 'Corporate Sustainability Communication as 'Fake News': Firms' Greenwashing on Twitter' (2023) 15 *Sustainability* 6683.

⁴⁰ Ibid 6703.

Accessibility for such non-specialist stakeholders may be another empowering result of investment in these tools, fostering media literacy and capabilities to independently assess for greenwashing, in addition to the potential pathways discussed in Section 2.

Recommendation 6: Consider sponsoring and promoting the ADM+S Centre's Australian Ad Observatory and other online monitoring and detection initiatives.

4. Domestic and international reference points for regulation

Currently, Australian legislative regulation of greenwashing is guided by the *Corporations Act 2001* (Corporations Act) and the *Australian Securities and Investments Commission Act 2001* (ASIC Act).⁴¹ As per advice to companies published by the ASIC, these Acts prohibit a person from making statements or disseminating information that is false or misleading, or engaging in dishonest, misleading or deceptive conduct in relation to a financial product or financial service.⁴² This includes making representations about future matters that are not supported with reasonable grounds. For example, a statement from a company about achieving a certain carbon emissions target by a particular date may be misleading if they are found to not have reasonable grounds for making the representation. Furthermore, a Product Disclosure Statement for a financial product must include 'the extent to which labour standards or environmental, social or ethical considerations are taken into account in selecting, retaining or realising an investment'.⁴³ These regulatory mechanisms are supported by financial reporting standards such as the Global Reporting Initiative⁴⁴ and the Task Force on Climate-Related Disclosures,⁴⁵ which assist companies in accurately measuring and improving their sustainability performance.

Regulators in the United Kingdom have taken a similar approach to Australia in addressing greenwashing. The ACCC equivalent in the UK, the Competition and Markets Authority (CMA), published a Green Claims Code in 2022, which provides six

⁴¹ *Corporations Act 2001* (Cth); *Australian Securities and Investments Commission Act 2001* (Cth).

⁴² Australian Securities & Investment Commission (n 17).

⁴³ Ibid.

⁴⁴ See 'Standards', *Global Reporting Initiative* (Web Page, 2023) <<https://www.globalreporting.org/>>.

⁴⁵ See 'Recommendations', *Task Force on Climate-Related Financial Disclosures* (Web Page, 2023) <<https://www.fsb-tcfd.org/recommendations/>>.

principles to assist companies in avoiding greenwashing, flowing from consumer protection and corporate law.⁴⁶

Regulators in France have addressed greenwashing in a more targeted way. The Climate and Resilience Law, passed in 2021, specifically prohibits misleading claims in relation to 'the environment and nature'.⁴⁷ Furthermore, recent reforms to France's environmental law also prohibit claims about the carbon neutrality of a product, unless it can be verified by an annual report about how the full life cycle emissions of a product are avoided, reduced, or, at a last resort, offset.⁴⁸

In the Australian context, an internet sweep conducted by the ACCC found that 57% of businesses reviewed made 'concerning claims about their environmental credentials',⁴⁹ despite existing regulations and standards designed to prevent such practices. Given this, Australian regulators could introduce consistent labelling and advertising standards that improve the specificity, accuracy and transparency of sustainability claims, modelled on French laws about unverifiable carbon neutrality claims. These measures could help set specific requirements for sustainability-related claims, enhancing their clarity and ensuring their credibility can be verified. Introducing these standards would support the education and information-gathering efforts outlined throughout this submission.

Recommendation 7: Introduce consistent advertising and labelling standards for sustainability-related claims, using international regulatory frameworks as a model

⁴⁶ Hawkins et al, 'Greenwashing: Exploring the Risks of Misleading Environmental Marketing in China, Canada, France, Singapore and the UK', *Gowling WLG* (Web Page, 20 September 2022) <<https://gowlingwlg.com/en/insights-resources/articles/2022/the-regulation-of-greenwashing/>>.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ 'ACCC 'greenwashing' internet sweep unearths widespread concerning claims', *Australian Competition & Consumer Commission* (Web Page, 2 March 2023) <<https://www.accc.gov.au/media-release/accc-greenwashing-internet-sweep-unearths-widespread-concerning-claims>>.