

21 June 2023

Committee Secretary

Senate Standing Committees on Environment and Communications

PO Box 6100

Parliament House

Canberra ACT 2600

Dear Committee Secretary,

UNSW LAW SOCIETY SUBMISSION REGARDING GREENWASHING

The University of New South Wales Law Society Inc. welcomes the opportunity to provide a submission to the Senate Standing Committees on Environment and Communications.

The UNSW Law Society Inc. is the representative body for all students in the UNSW Faculty of Law.

Nationally, we are one of the most respected student-run law organisations, attracting sponsorship from prominent national and international firms. Our primary objective is to develop UNSW Law students academically, professionally and personally.

The enclosed submission reflects the opinions of the contributors, with the UNSW Law Society proud to facilitate these submissions. UNSW Law Society Inc. is not affiliated with any political party.

We thank you for considering our submission. Please do not hesitate to contact us should you require any further assistance.

Yours faithfully,

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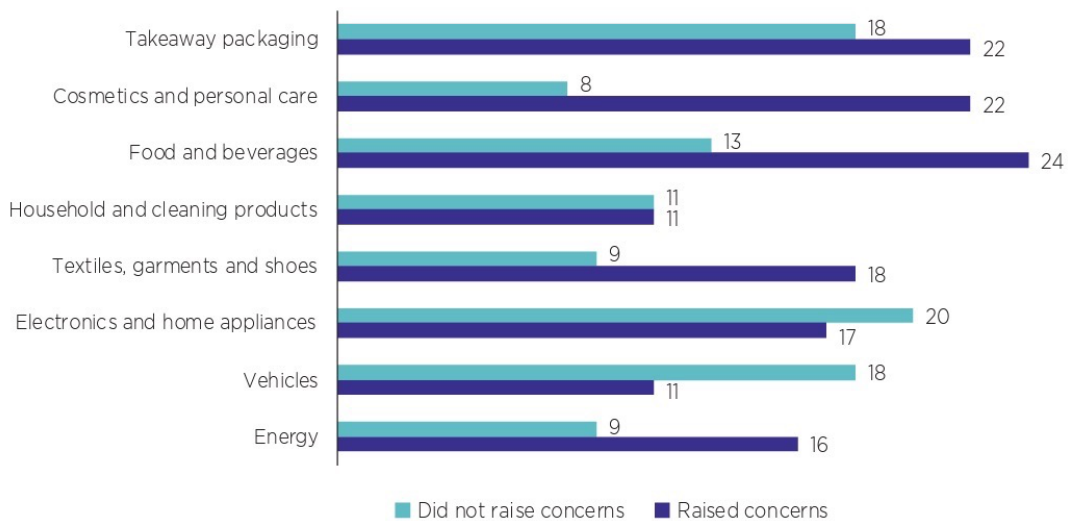
I INTRODUCTION

Greenwashing describes the practice of making false, inaccurate and misleading claims on environmental sustainability aimed at targeting environmentally conscious consumers and deceiving them into purchasing the product of a certain company. This harmful practice has been found across all sectors and areas that consumers can be expected to encounter in daily life, including automobiles, energy, cosmetics, food and drink packaging, clothing and footwear.

II TYPES OF GREENWASHING CLAIMS MADE BY COMPANIES

The Australian Competition and Consumer Commission (‘ACCC’) recently conducted a survey of Australian businesses claims about sustainability, with a snapshot below of the number of businesses making concerning claims by sector.¹

NUMBER OF BUSINESSES MAKING CONCERNING CLAIMS BY SECTOR



57% of the 247 businesses reviewed by the ACCC had made concerning environmental claims, with the greatest proportion of claims in food and beverages, cosmetics and personal care, and takeaway packaging as seen in this graph.²

The types of claims found by the ACCC in their sweep of greenwashing claims by companies were as follows:

¹ Australia Competition and Consumer Commission, ‘Greenwashing by businesses in Australia’ (2023).

² Davies Collison Cave, ‘Greenwashing – ACCC releases initial findings from online review of Australian businesses’, *Lexology* (online, 6 March 2023).

- **Product-specific claims:** Seen on packaging, websites, and marketing materials.
- **Company-wide claims:** Seen on websites, corporate social responsibility statements and annual reports.
- **Claims using logos and symbols:** Seen on product packaging, websites or advertisements.³

The automobile industry was a sector significantly targeted by the ACCC investigation, with 11 out of 29 car companies under watch for greenwashing.⁴ For example, Toyota could face over \$50 million in fines from its target to reach net-zero emissions by 2050 as the company finds itself without any concrete plans for its achievement and little to no valid emission-reduction targets.⁵

In the food and drink packaging industry, the most common greenwashing claim used by companies involve references to recyclable or biodegradable packaging. Coca-Cola is a prominent example of this, spending millions of dollars in a campaign claiming that bottles are 25% marine plastic. While this claim is not strictly false, it purposefully omits and hides the fact that Coca-Cola is the world's biggest plastic polluter. However, it is worthwhile to note that the report mentioned in the article where these facts were sourced from had not been named.⁶

The cosmetics industry has also had many controversies over greenwashing. One such occasion is when Bondi Sands advertised its sunscreens as “reef friendly” while the products included harmful ingredients, including avobenzone, homosalate, octisalate and octocrylene (although they are free from other harmful ingredients like oxybenzone and octinoxate).⁷ With the rise of fast fashion, the clothing and footwear industry tends to receive significant media attention for unethical and environmentally unsustainable practices. Examples of greenwashing include Nike's launch of a sustainability collection which it claims to be made of vintage, recycled and sustainable materials, or “materials with less impact.”⁸ However, the products are still made from materials harmful to the environment and “predominantly virgin synthetic materials” such as plastic-based materials that are

³ Australia Competition and Consumer Commission, ‘Greenwashing by businesses in Australia’ (2023) 3.

⁴ Mike Costello, *Car brands included in ACCC 'greenwashing' investigation* (Web Page, 16 March 2023) <<https://www.carexpert.com.au/car-news/car-brands-included-in-acc-greenwashing-investigation>>.

⁵ Lisa Cox, ‘Toyota accused of greenwashing in Greenpeace complaint filed to ACCC’, *The Guardian* (online at 3 March 2023), <<https://www.theguardian.com/business/2023/mar/03/toyota-accused-of-greenwashing-in-greenpeace-complaint-filed-to-acc>>.

⁶ Sandra Laville, ‘Coca-Cola among brands greenwashing over packaging, report says’ (online at 30 June 2022), <<https://www.theguardian.com/environment/2022/jun/30/coca-cola-among-brands-greenwashing-over-packaging-report-says>>.

⁷ Cameron Houston, ‘Bondi Sands faces US class action over alleged ‘greenwashed’ sunscreen’ (online at May 21, 2022), <<https://www.smh.com.au/national/bondi-sands-faces-us-class-action-over-alleged-greenwashed-sunscreen-20220520-p5an5u.html>>.

⁸ Nike, *Sustainability* (Web Page), <<https://www.nike.com/sustainability>>.

not biodegradable even if recycled (note that these claims arise according to the recent lawsuit).⁹ It is alleged that only about 10% of the almost 2,500 items in this collection are actually made with any recycled materials.¹⁰

Pursuing more sustainable products carries with it significant production or research costs, therefore the presence of greenwashing can unfairly disadvantage businesses making genuine claims. In turn, this undermines competition and discourages long term investment in sustainability, making it crucial that the government address this issue.¹¹

KEY ISSUES IDENTIFIED

One of the most significant issues identified was a high proportion of vague and unqualified claims, with a failure to provide enough information to make informed purchasing decisions.¹² Claims regarding packaging that is biodegradable, compostable or recyclable without further explanation were common. Claims of use of ‘sustainable materials’ in products without further information, such as seen in Nike’s aforementioned sustainability collection, were also common.

A lack of substantiating information on claims was another key concern, where insufficient information was provided by companies to verify claims. Where businesses did provide sufficient information to substantiate claims, this was generally done through accessible click-through links, and clear presentation of evidence.

The use of absolute claims creates strong impressions on consumers, which in some cases, are misleading or false.¹³ For example, L’Oréal claimed its Elvive shampoo pack was “100% recycled plastic bottle” whereas the bottle’s cap was not made from recycled materials.¹⁴

Use of comparisons which were not useful for consumers and could prevent them making accurate assessments of the merits of one product over another were also observed, and could be potentially misleading.¹⁵

Exaggeration of benefits or omission of relevant information were also common in claims made by businesses, with a failure to consider the entire lifecycle of the product, as were aspirational claims. The automobile industry is another large sector targeted by the ACCC investigation, with 11 out of 29

⁹ Daphne Howland, *Nike faces lawsuit over greenwashing claims* (2023),

<<https://www.retaildive.com/news/nike-faces-lawsuit-greenwashing-claims/650282/>>.

¹⁰ Thomas Husson, *Nike Faces Lawsuit Over Greenwashing Claims. It Won't Be The Last.* (2023),

<<https://www.forrester.com/blogs/nike-faces-lawsuit-over-greenwashing-claims-it-wont-be-the-last/>>.

¹¹ Ibid.

¹² Ibid.

¹³ Australia Competition and Consumer Commission, ‘Greenwashing by businesses in Australia’ (2023) 6.

¹⁴ Provenance, *5 times beauty brands were accused of greenwashing and the lessons we can learn* (2023)

<<https://www.provenance.org/news-insights/5-times-beauty-brands-were-accused-of-greenwashing-and-the-lessons-we-can-learn>>.

¹⁵ Australia Competition and Consumer Commission, ‘Greenwashing by businesses in Australia’ (2023) 6.

car companies under watch for greenwashing.¹⁶ For example, Toyota could face over \$50 million in fines from its target to reach net-zero emissions by 2050 as the company finds itself without any concrete plans for its achievement and little to no valid emission-reduction targets.¹⁷

III IMPACT OF GREENWASHING CLAIMS ON CONSUMERS

The class of people who may be affected by misleading advertising is wide, and includes in particular consumers.¹⁸ As such, the Australian Consumer Law ('ACL') sets out provisions against misleading and deceptive conduct, and thus indirectly protecting against greenwashing - section 18 of the *Competition and Consumer Act* provides that 'a person must not, in trade or commerce, engage in conduct that is misleading or deceptive or likely to mislead or deceive.'¹⁹

However, despite the requirements set out by the ACL, greenwashing has become an increasing issue in the consumer market following a greater demand for sustainability and environmental responsibility.²⁰

On 4 October 2022, the ACCC launched two internet sweeps for the purpose of finding misleading environmental and sustainability claims.²¹ This is important because consumers in particular are directly impacted by such misleading claims, and according to ACCC Deputy Chair Delia Rickard, 'misleading claims about products or services undermine consumer trust and confidence in the market.'²²

The new age has seen a renewed priority for the environment. For this reason, consumers now often rely heavily on environmental and sustainability claims, including reviews and testimonials, to inform purchase decisions.²³ Consumers generally take claims at face value and trust that the claims are

¹⁶ Mike Costello, *Car brands included in ACCC 'greenwashing' investigation* (2023), <<https://www.carexpert.com.au/car-news/car-brands-included-in-acc-greenwashing-investigation>>.

¹⁷ Lisa Cox, *Toyota accused of greenwashing in Greenpeace complaint filed to ACCC* (2023), <<https://www.theguardian.com/business/2023/mar/03/toyota-accused-of-greenwashing-in-greenpeace-complaint-filed-to-acc>>.

¹⁸ Australian Competition and Consumer Commission, 'ACCC internet sweeps target 'greenwashing', fake online reviews', (Media Release, 4 October 2022).

¹⁹ *Competition and Consumer Act 2010* (Cth) s 18.

²⁰ 'What is Greenwashing? Why Should Large Enterprises Care?', *Terrascope* (online, 10 March 2023) <<https://www.terrascope.com/blog/what-is-greenwashing-why-should-large-enterprises-care#:~:text=Greenwashing%20refers%20to%20the%20practice,without%20adequate%20evidence%2Dbacked%20data.>>>.

²¹ Australian Competition and Consumer Commission, 'ACCC internet sweeps target 'greenwashing', fake online reviews', (Media Release, 4 October 2022).

²² *Ibid.*

²³ *Ibid.*

truthful and accurate, hence why there is a prominent vulnerability to being misled by greenwashing.²⁴ There is little avenue for the verification of the accuracy of environmental claims, especially due to the fact that consumers have little information on the circumstances behind the claim.²⁵

Furthermore, according to Newell, Goldsmith, and Banzhaf's article on the effect of misleading environmental claims, '[w]here consumers perceive intent to deceive they may react with negative attitudes and purchase reactions.'²⁶ Albeit, this is also likely to have an effect upon businesses as well as consumers.

For example, if the trend in greenwashing continues increasing, there may be a likely chance that consumers' appetite for environmentally sustainable products will lessen.²⁷ This relates back to the issue of consumer trust – where consumers have been made accustomed to false claims, the trust in goods that claim to be green will diminish, and thus an expectation of fake claims will likely arise. Consumers may return negative purchase reactions and be less inclined to trust businesses which advertise green products, whether those advertisements are true or deceptive, therefore negatively impacting companies regardless of whether they have engaged in greenwashing. Moreover, such negative reactions may contribute towards the decline of the state of our environment, in particular due to a lack of support for products which claim to be green or sustainable.

IV DOMESTIC AND INTERNATIONAL EXAMPLES OF REGULATING GREENWASHING CLAIMS

Domestic and international greenwashing regulations have taken on four distinct forms. These forms are:

- a) Enforcing punishments such as fines, loss of licencing, and imposition of civil liability on greenwashing companies;
- b) Introducing market-based incentives, usually tax subsidies, for companies that engage in 'green innovation,' an alternative to greenwashing which introduces positive externalities to the market;
- c) Third-party certification initiatives to reduce the impact of greenwashing on consumers; and

²⁴ Noble et al, 'ACCC warns over greenwashing and sustainability claims', *MinterEllison* (online, 27 September 2022)

<<https://www.minterellison.com/articles/accc-warns-over-greenwashing-and-sustainability-claims>>.

²⁵ Ibid.

²⁶ Stephen Newell, Ronald Goldsmith, and Edgar Banzhaf, 'The Effect of Misleading Environmental Claims on Consumer Perceptions of Advertisements' (1998) 6(2, Spring) *Journal of Marketing Theory and Practice* 48, 58

²⁷ Abigail Gampher, 'ANALYSIS: Green Product Claims Face Growing Consumer Scrutiny', *Bloomberg Law* (online, 13 March 2023) <

<https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-green-product-claims-face-growing-consumer-scrutiny>>.

- d) Cease and desist orders against companies which are found to have engaged in greenwashing advertising practices.

In today's market, the latter two forms of greenwashing regulation are significantly more common than the former two. However, game theory analysis of the decision-making process companies undergo when they may decide to implement a greenwashing strategy has demonstrated that the former two forms of regulation are much more likely to actively disincentivise greenwashing.²⁸

Domestically, the Australian Consumer Law regulates greenwashing and provides a vehicle for the ACCC to commence legal action against companies which engage in 'misleading and deceptive conduct.'²⁹ Despite the clear existence of a statutory vehicle in Australia which is capable of enforcing greenwashing standards via litigation, regulatory bodies have only recently made a concerted effort to crack down on greenwashing claims.³⁰ Some examples of recent Australian crackdowns on greenwashing claims include the Australian Centre for Corporate Responsibility's (ACCR) action against Santos Ltd, and the Australian Securities and Investment Commission's (ASIC) action against Mercer Superannuation, both invoking s 1041H *Corporations Act 2001*³¹ to bring proceedings for misleading and deceptive conduct.³² The use of existing 'misleading and deceptive conduct' law in Australia has been moderately successful in reducing greenwashing claims, however, Australia would benefit from more stringent regulation of greenwashing claims to proactively address the issue. Without proactive regulation, the overarching problem of insufficient 'green innovation' fails to be addressed.

In the United States, there are multiple vehicles of greenwashing regulation which operate to varying degrees of efficacy. The foremost vehicle of greenwashing regulation in the US are the 'Green Guides' released by the Federal Trade Commission (FTC).³³ These guides provide information to companies about what environmental claims they should and should not make, and how claims should be substantiated to avoid deceiving consumers. However, the FTC Green Guides are not legally-binding and are merely a guideline, thus, there is no real incentive from a market perspective for companies to adhere to the guidelines. Legal action can only be brought against greenwashing

²⁸ Ziyuan Sun and Weiwei Zhang, 'Do Government Regulations Prevent Greenwashing? An Evolutionary Game Analysis of Heterogeneous Enterprises' (2019) 231 *Journal of Cleaner Production* 1489 ("Sun and Zhang").

²⁹ *Competition and Consumer Act 2010* (Cth) s 18.

³⁰ Anna Patty, 'Radio Silence Replaces Greenwashing Claims', *The Sydney Morning Herald* (online, 3 April 2023) 2.

<https://www.smh.com.au/business/consumer-affairs/radio-silence-replaces-greenwashing-claims-20230320-p5ct18.html> ('SMH Article').

³¹ *Corporations Act 2001* (Cth) s 1041H.

³² *SMH Article* (n 24) 2.

³³ Nick Feinstein, 'Learning from Past Mistakes: Future Regulation to Prevent Greenwashing' (2013) 40(1) *Boston College Environmental Affairs Law Review*.

companies if the relevant claim is grievous enough to violate Section 5 of the *FTC Act* which prohibits unfair and deceptive acts in commerce.³⁴ The use of this Act³⁵ as a vehicle to take action against greenwashing has had mixed success. Positively, the U.S. District Court found that a trademark such as “Greenlist™” is unfair and deceptive when a company registers such a trademark to apply it to its own products, as it would be plausible for a ‘reasonable consumer’ to interpret that label as originating from a third party.³⁶ In contrast, the California Court of Appeal found that the use of a green water drop logo on the products of a bottled water company with ‘environmentally inferior’ practices to most water bottling companies does not “convey to a reasonable consumer... that the product is endorsed for environmental superiority.”³⁷ Additionally, s 43(a) of *The Lanham Act* allows a company to bring a civil liability claim against a competitor for advertising which “misrepresents the nature, characteristics, [or] qualities...of goods, services, or commercial activities.”³⁸ Although *The Lanham Act*³⁹ can be used as a legislative tool against greenwashing, an action can generally only be brought by a competing company, leaving consumers with little protection and legal leverage. Furthermore, the overarching purpose of the act is to address competition and trademark law, not to address greenwashing. Finally, a common greenwashing regulation used in the U.S. is third-party endorsements such as the Environmental Protection Agency’s ‘ENERGYSTAR’ program, which certifies the energy efficiency in electronic products, similar to Australia’s ‘Energy Rating’ scheme. Although such regulations provide accurate information to consumers about the environmental impact of a product, they fail to disincentivise companies to reject greenwashing strategies altogether.

The EU Directive on Green Claims, presented in March 2023, outlined the need for all environmental statements to be substantiated by science-based methodology.⁴⁰ The Directive also earmarked potential legislation which would impose penalties for misleading and deceptive greenwashing claims that aim to dissuade companies from engaging in greenwashing practices. Significant penalties for false claims are likely to be the most effective form of deterrence against the adoption of greenwashing, substantiated by game theory analysis of market-based regulation strategies. The EU 2020/1828 Directive on class actions also provided scope for consumer organisations to launch action against companies which engage in greenwashing.⁴¹ This legislative model adequately addresses the

³⁴ *Federal Trade Commission Act of 1914*, 15 USC § 45.

³⁵ *Ibid.*

³⁶ *Koh v S.C. Johnson & Son Inc*, No. C-09-00927 RMW (N.D. Cal. Jan 5, 2010).

³⁷ *Hill v Roll International Corp.*, 127 Cal. Rptr. 3d 109, 111 (Cal. Ct. App. 2011).

³⁸ *Lanham (Trademark) Act of 1946*, 15 USC § 1051 (‘*Lanham Act*’) s 43(a).

³⁹ *Lanham (Trademark) Act of 1946*, 15 USC § 1051 (‘*Lanham Act*’).

⁴⁰ *Proposal for a Directive of the European Parliament and of the Council on Substantiation and Communication of Explicit Environmental Claims (Green Claims Directive)* [2023] COM/2023/166.

⁴¹ *Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on Representative Actions for the Protection of the Collective Interests of Consumers and Replacing Directive 2009/22/EC* [2020] OJ L 409/1.

shortcomings of the U.S. *Lanham Act*,⁴² which generally restricts claims to only be made by competing companies.

Evidently, current regulation of greenwashing practices is substantially based on existing competition law and government initiatives to encourage ethical environmental practices. As a result of the lack of legislation specific to greenwashing, actions against greenwashing companies often occurs retrospectively and there is little incentive for companies to prospectively engage in ‘green innovation’ practices. To improve greenwashing regulation, governments must enforce market-based disincentives to greenwashing and instead incentivise ‘green innovation.’⁴³ Although the use of competition law domestically and internationally has been moderately successful in punishing greenwashing, more targeted and specific regulation is necessary.

V ADVERTISING STANDARDS IN RELATION TO GREENWASHING CLAIMS

Advertising standards related to environmental and sustainability claims are crucial to ensure that businesses adopt sustainable and ethical practices in promoting their products. In turn, advertising standards can increase consumer awareness of the essentiality of their environmental impact and footprint when purchasing goods and services. The Australian Association of National Advertisers (AANA) outline the following principles for environmental claims; ‘truthful and factual, relevant to the product or service and its actual environmental impacts, and substantiated and verifiable.’⁴⁴ This is supplemented by the environmental claims set out in the Australian Competition & Consumer Commission (ACCC), including using language easily understood by laypeople and being specific in explaining the part that is environmentally beneficial, and its benefit.⁴⁵

However, it is clear while these principles work in theory, in practice the unethical conduct of greenwashing is a growing issue in Australia. Consumers are at risk of purchasing products or services that they believe are environmentally friendly, but in reality, are not. Thus, there must be an increasing social awareness of greenwashing to inform consumers of this risk they take when purchasing products or services to ensure they are not deceived or misled by businesses. The ACCC watchdog found that 57% of 247 companies were making claims that were likely to be inaccurate, particularly in the cosmetic, food and beverage and clothes and fashion industries.⁴⁶ These mass

⁴² *Lanham Act* (n 18).

⁴³ *Sun and Zhang* (n 8).

⁴⁴ Australian Association of National Advertiser, ‘Environmental Claims in Advertising & Marketing Code’ (September 2009).

⁴⁵ Australian Competition and Consumer Commission, ‘Green Marketing and the Australian Consumer Law’ (2011).

⁴⁶ Arvind Jayaram and Jonathan Pearlman, ‘Australia to curb ‘greenwashing’ as inquiry exposes marketing tactics that mislead consumers,’ *The Strait Times* (online, 8 March 2023)

<<https://www.straitstimes.com/asia/australianz/australia-to- curb-greenwashing-as-inquiry-exposes-tactics-that->

companies used common vague greenwashing phrases including “green” and “eco-friendly,” despite the products not being scientifically proven as environmentally friendly.⁴⁷ Therefore, there is a need for increasing and strict accountability of action for companies breaching the code of conduct of advertising standards and law relating to environmental and sustainability claims.

Increasing court action leads to higher accountability against businesses who participate in greenwashing, breaching advertising standards for environmental and sustainability claims. Through more cases of greenwashing, there will be increased awareness of the consequences of falling short of these advertising standards, which may lead to a substantive financial loss for companies. Thus, as the consumer demand for environmentally friendly products increases, companies too are encouraged to provide the supply, in an ethical way to avoid severe consequences of misleading advertising. The ACL is the most valuable piece of legislation to give consumers remedies in relation to ambiguous and deceitful advertising, particularly in greenwashing. The ACL protects consumers from misleading and deceptive conduct,⁴⁸ as well as false and misleading representations⁴⁹ that many firms would fall liable under if a case was brought against them. ASIC also prohibits misleading, dishonest or deceptive conduct relating to a financial product or service, as well as standards of disclosure for sustainable environmental claims for products.⁵⁰ The amalgamation of the principle of advertising standards, ensuring broader society has greater awareness of greenwashing claims, and increasing statutory protection specific to greenwashing, is a direction towards decreasing the harm of greenwashing concerning advertising on environmental and sustainability claims.

VI LEGISLATIVE OPTIONS TO PROTECT CONSUMERS FROM GREENWASHING CLAIMS IN AUSTRALIA

A desire for a positive reputation against their competitors, lack of transparency required by the government, weak regulations and standards and lack of effective measurements of sustainability are key reasons why companies choose to greenwash.⁵¹ By responding to why companies choose to greenwash, the Australian government can better understand how they effectively ‘stamp down’ on greenwashing in Australia. To effectively address greenwashing, we propose the establishment of an

[mislead-consumers#:~:text=SYDNEY%20%E2%80%93%20Businesses%20and%20brands%20in.they%20have%20been%20independently%20endorsed>.](#)

⁴⁷ Ibid.

⁴⁸ *Competition and Consumer Act 2010* (Cth) s 18.

⁴⁹ *Competition and Consumer Act 2010* (Cth) s 29.

⁵⁰ Jary et al., ‘Greenwashing unsustainable following ASIC and ACCC enforcement action: How your business can stay off the regulators’ radar,’ *Holding Redlich* (online, 8 March 2023) <<https://www.holdingredlich.com/greenwashing-unsustainable-following-asic-and-acc-enforcement-action-how-your-business-can-stay-off-the-regulators-radar>>.

⁵¹ Delmas, Magali A and Vanessa Cuerel Burbano, ‘The Drivers of Greenwashing’ (2011) 54(1) *California management review* 64.

independent watchdog, the development of clear sustainability metrics and guidelines, and the implementation of comprehensive labelling schemes.

Many academics and think tanks highlight the need for an independent watchdog to affirm the sustainability claims of big companies through conducting investigations and mandate transparency. Further, for this independent watchdog to function, the government needs to assist the watchdog and companies by providing clear and detailed measures of sustainability, minimum guidelines companies must follow and finally, transparency and accountability in corporate reporting.

A. Transparency

Currently, the onus has been placed on citizens, consumers, voters, journalists and academics to identify greenwashing by businesses and the government. Due to a lack of transparent reporting regulations, consumers take these claims at face value or find it difficult to fact-check these claims. Currently, the reporting requirements of corporations are limited to areas such as emissions, discharges or waste management. The Australian government should enact laws that mandate stricter transparent regular reporting of corporate practices, particularly regarding sustainability claims. Companies should be required to provide comprehensive and standardised information about their sustainability efforts, allowing consumers, watchdogs, and other stakeholders to assess the credibility of these claims. Clear and strict reporting regulations will empower consumers to make informed decisions and hold companies accountable for their sustainability practices.

B. Clear, detailed guidelines and metrics in measuring sustainable practices

To assist both companies and the watchdog in evaluating their sustainability claims, the Australian government must provide detailed and clear measures of sustainability.⁵² Current guidelines on greenhouse gas emissions and voluntary offsets are not enough. These guidelines must be developed in conjunction with scientists, ensuring their scientific rigour and relevance to sustainability goals. With set guidelines and metrics, sustainability claims can be validated without or with minimal controversy. Furthermore, the government may require companies to adhere to clear minimum guidelines, ensuring a measurable baseline level of sustainability practices. Overall, transparent reporting regulations, sustainability guidelines and metrics must be periodically reviewed and updated to reflect evolving scientific knowledge and best practices.

⁵² Markham, David, Anshuman Khare and Terry Beckman, 'GREENWASHING: A PROPOSAL TO RESTRICT ITS SPREAD' (2014) 16(4) *Journal of environmental assessment policy and management* 1450030.

C. Independent Watchdog

Next, the importance of a robust national independent watchdog cannot be understated as a better way to enforce sustainability laws and minimise incentives to greenwash. Unlike the current state Environmental Protection Agencies, the watchdog should govern centrally overall environmental impacts, and be under federal legislation, streamlining environmental standards of every state. With legislation setting statutory targets and standards, the national watchdog should be able to be empowered to enforce and monitor them.

Furthermore, Corporate Climate Responsibility Monitor 2022 stresses that the independence of the watchdog is required to allow populations to trust (governmental) institutions to provide transparent information. This should be expressly mandated in legislation as it has been in Western Australia and Northern Territory, including strict divisions from other branches of government agencies. This is especially a time when people have become sceptical of the state and corporations, due to state-sponsored greenwashing.⁵³ Finally, increased decision-making powers should be given to the watchdog, which will be made up of both policy professionals and scientists, with ultimate decision power vested in the federal watchdog rather than ministers or other government bodies due to their expertise and independence.

D. Comprehensive labels and ratings

Finally, to empower consumers and promote competition among companies, comprehensive labelling schemes should be developed. This, along with transparent reporting, will allow companies to benchmark themselves and help consumers assess a company's sustainability efforts.⁵⁴ By creating a positive competitive market, companies will be incentivised to prioritise meaningful sustainability practices rather than resorting to greenwashing tactics.

In conclusion, addressing greenwashing requires a multifaceted approach. The establishment of an independent watchdog, supported by clear sustainability metrics, guidelines, and transparent reporting regulations, will ensure greater accountability and trust in corporate sustainability practices. Additionally, comprehensive labelling schemes will enable consumers to make informed choices and

⁵³ The Australian Institute, 'We Referred the Federal Govt to the ACCC Over Greenwashing' (Youtube, 14th February 2023, No Time) <https://www.youtube.com/watch?v=nEpyVyI_fuI>.

⁵⁴ Parguel, Béatrice, Florence Benoit-Moreau and Fabrice Larceneux, 'How Sustainability Ratings Might Deter 'Greenwashing': A Closer Look at Ethical Corporate Communication' (2011) 102(1) Journal of business ethics 15.

encourage businesses to genuinely adopt sustainable practices. By implementing these measures, Australia can effectively combat greenwashing and foster a more sustainable and transparent business landscape.

VII CONCLUSION

With greater support within the community to transition to a net-zero economy, consumers increasingly look for environmentally friendly products. Data shows that a growing proportion of the claims made by businesses may be false or misleading,⁵⁵ making it crucial that the government takes further action to create stronger incentives against greenwashing. We believe the establishment of an independent watchdog, development of clear sustainability metrics and guidelines, and the implementation of comprehensive labelling schemes would be most effective in fostering a more transparent advertising environment and encourage the government to consider these options.

⁵⁵ Australia Competition and Consumer Commission, 'Greenwashing by businesses in Australia' (2023).