Executive Summary

A. Greenwashing is generally understood as a corporate practice that misleads consumers about the environmental benefit or quality of their product or service. Greenwashing can at an individual and collective level result in harm to the environment and climate.

B. Young people are often the target audience for greenwashed products and are often overlooked when considering greenwashing.

C. The Monash Law School’s Climate Justice Clinic (CJC)\(^1\), which engages law students in climate justice work, is uniquely placed to provide a valuable perspective on the impacts of greenwashing, including on young people and future generations. Our submission also considers greenwashing within a broader climate change and climate justice context.

D. The CJC submits that the Senate Standing Committees on Environment and Communications should take the following actions:

   (a) The ACCC’s Green Marketing guidelines be codified into legislation and provide for significant financial penalties to be imposed on companies that breach the guidelines.

   (b) Companies that make green claims be required to substantiate their claims.

\(^1\) [https://www.monash.edu/law/home/cle/clinics/The-Climate-Justice-Clinic](https://www.monash.edu/law/home/cle/clinics/The-Climate-Justice-Clinic)
(c) Parties who have a legitimate interest – including both consumers and competitors – have a direct cause of action to combat greenwashing.

(d) The ACCC be funded to conduct ongoing and wider greenwashing “sweeps”.

E. This submission was prepared by previous students of the CJC.\(^2\) We request an opportunity to be heard in respect of our submission.

---

**The Climate Justice Clinic (CJC)**

1. The CJC is the first of its kind in Australia, providing legal advice and research support to several leading national organisations involved in the ‘climate justice’ movement. It aims to improve and shape Australia’s law, policy and action on climate change.

2. According to the International Bar Association, ‘climate justice’ is a concept that recognises how climate change disproportionately affects people who have less ability to prevent, adapt or otherwise respond to increasingly extreme weather events, rising sea levels and resource shortages.

3. A climate-justice agenda recognises the inequity and development imbalances which exists and are evident within climate change impact and environmental degradation. Climate justice incorporates human rights impacts within climate change response to create more equitable solutions to climate change.\(^3\)

4. Australia is one of the most at-risk developed countries to climate change impacts.\(^4\) The CJC recognises that climate issues such as greenwashing are not only environmental but also social and financial. As such, we are dedicated to finding solutions that address the root causes of climate-related issues.

---

\(^2\) Kit Garner-Williams, Patrick Hatzipavlis, Monique Scalzo, Priscilla Zhong with assistance from Emma Jackson.

\(^3\) International Bar Association, ‘Achieving Justice and Human Rights in an Era of Climate Disruption’ (Report, July 2014) available at [www.ibanet.org//MediaHandler?id=0f8cee12-ee56-4450-bf33-cf9ab196ec04](http://www.ibanet.org//MediaHandler?id=0f8cee12-ee56-4450-bf33-cf9ab196ec04)

\(^4\) Department of Climate Change, Energy, the Environment and Water, ‘Annual Climate Change Statement 2022 The first Annual Climate Change Statement to Parliament as required by the Climate Change Act 2022’ (2022) Australian Government, 15.
A youth perspective

5. Market demand for ‘green’ products is, in part, being driven by younger consumers seeking out more climate-friendly products and services. Young people are therefore uniquely positioned to provide input into the government’s response to the growing problem of greenwashing.

6. Whilst young consumers seek out more ‘green’ goods, they are also faced with the increasing cost of living and housing affordability, creating opportunities for companies seeking to capitalise on youth interest in ‘green’ goods.

7. Young consumers have strong ethical motives and high moral values that favour environmental protection. Several studies show significant interactions between personal values and being mindful of responsible consumption, sustainable fashion, socially conscious consumption, and fair-trade consumption. This is consistent with young people constituting more than a quarter of all plaintiffs in rights-based strategic climate litigation.

8. Young people are also providing sophisticated, sustained and impactful leadership within the climate movement. For example, the Law Students for Climate Accountability (LSCA) a US student-led movement pushing the legal profession to phase out fossil fuel representation. Each year, the LSCA produces an annual Climate Change Scorecard

---

5. The United Nations defines ‘youth’ as those persons between the ages of 15 and 24 years.
6. 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, 1599-1617, 1611.
grading the moral worthiness of major US law firms, based on the extent of their fossil fuel work.

9. Whilst young people are aware, informed and receptive to environmental communications, higher levels of scepticism are also observed in young people, potentially reflecting an increasingly negative effect on consumer confidence in young people.

10. This market distrust exacerbates and compounds existing climate change pressures on young people. ‘Climate anxiety’, or ‘eco-anxiety’, is a form of psychological distress related to the climate crisis. People suffering from climate anxiety experience an overwhelming sense of fear, sadness, and existential dread in the face of a warming planet. In a recent study exploring young people’s mental health in a climate-impacted Australia, 89% of participants chose ‘eco-anxiety’ as a likely mental health impact of climate change. While climate anxiety can stimulate adaptive responses, it also has the potential to cause functional impairment and passive avoidance.

11. It is clear that young people are not only key drivers in market change, but they are often a target market for increasing greenwashing practices.

**Summary of Greenwashing and the Australian Consumer Law (‘ACL’)**

12. Whilst there are many legal mechanisms for monitoring and enforcing greenwashing, we focus the remainder of our submission on ‘misleading and deceptive’ conduct under the ACL.

13. In an effort to educate businesses about their obligations under the ACL, the ACCC released their Green Marketing guidelines in 2011. These guidelines provide a helpful starting point to prevent greenwashing, as they:

---


19 Susan Clayton, ‘Climate anxiety: psychological responses to climate change’ (2020) 74 *Journal of Anxiety Disorders*, 3

a. outline general principles that businesses should follow to avoid misleading or deceiving consumers (therefore, assertions should be honest, truthful, specific, and worded in a way that an average member of the public can understand); and

b. they prescribe the penalties and remedies which can be imposed for a breach.

14. The ACCC has successfully prosecuted a number of companies across a variety of industries for greenwashing. Some key examples from different industries are set out below.

**Automotive Industry**

15. In the automotive industry, there have been several instances of companies claiming, amongst other things, that vehicle emissions could be “offset” through the planting of trees,21 the purchase of unregulated carbon credits,22 or the purchase of renewable energy certificates.23 In each case, the ACCC found these claims were misleading or deceptive.

16. In 2019, Volkswagen was found to have breached the ACL by falsely claiming that its motor vehicles met Australian emissions standards.24 On 171 separate occasions between January 2011 and October 2015, and with respect to 57,082 vehicles, the company impliedly represented to the Minister for Infrastructure and Regional Development that its vehicles complied with Australian Design Rule 79 and was subsequently granted approval to import the vehicles into Australia. However, it was later revealed that without the presence of ‘Two-Mode Software’ in the affected vehicles, they would not have passed the emissions testing. As a result, Volkswagen was ordered to pay the Commonwealth of Australia a pecuniary penalty of $125,000,000 – the largest of its kind in Australian history.

17. Goodyear Tyre has also been called out by the ACCC for making misleading claims that its car tyres were “environmentally friendly” because the production process supposedly emitted less carbon dioxide, increased the life of the tire, and improved fuel economy.25

---

18. In emerging areas, the Environmental Defenders Office, on behalf of Greenpeace Australia, has asked the ACCC to investigate whether environmental claims made by Toyota are misleading or deceptive. Greenpeace believes that Toyota has been understating its electric and green cars’ emissions and overstating its commitment to clean transport. It is alleged that Toyota’s advertising gives the false impression that the company is leading the transition to clean cars when Toyota is allegedly acting globally to block the take-up of electric vehicles.

19. Greenwashing is a current and demonstrable problem in the automotive industry, as one example. Consumers are rightly concerned about vehicle emissions, which have created a demand for more green alternatives.

20. Importantly, these regulatory actions have largely been the result of consumer advocacy and media investigation, reflecting the important role consumers and third parties have in assisting the regulator to monitor greenwashing under the ACL.

Food Industry

21. Food labelling is another area of greenwashing concern. For example, labelling of products as “Certified Organic” or “Free Range” when they are not, as well as misleading claims that meat products came from poultry that was “Grain-fed”, “Open range”, or “Free to roam”. These cases indicate that consumers are looking for ethical food products, which has made them a target for greenwashing in the food industry.

Fashion

22. Fashion brands have been criticised for exaggerating the sustainability of synthetic fibres, promoting PET plastics as being more recyclable than they are, and providing misleading ‘eco-labelling’ or certification. Research indicates that up to 59% of green claims made by fashion brands are misleading or unsubstantiated.

---

23. Anecdotally this is an increasing area of youth impact and concern, with brands seeking to introduce new, untested, or unsubstantiated materials or products to provide ‘green’ products. Those products often overstate their environmental benefit or overlook other social harms (ie human rights impacts in manufacturing) that may result. The fashion industry is also highly visible with consumers regularly purchasing new fashion items, creating substantial opportunities to educate both consumers and businesses about green products and climate justice more broadly.

24. We consider fashion to be an area of chronic greenwashing which warrant specific labelling guidance and targeted sweeps by regulators.

**Superannuation**

25. Superannuation and investment funds have also been vulnerable to greenwashing practices. For example, superannuation funds claim to have ‘green’ investment strategies which exclude fossil fuel-related investments while at the same time investing in oil, coal, beer and wine and gambling companies.\(^{31}\)

26. We consider superannuation funds are an area of increasing greenwashing practices which warrants further regulatory guidance and targeted sweeps by regulators.

**Other areas**

27. The ACCC has also issued enforceable undertakings to remedy false claims that:

   a. batteries used in consumer products or available for sale were recyclable when no battery recycling facilities existed in Australia at the time,\(^{32}\)

   b. a refrigerant gas used in portable air conditioners was “environmentally friendly” when it, in fact, had the potential to increase global warming,\(^{33}\)

   c. baby bath wash, shampoo and moisturiser products were “Pure, natural, and organic” when in fact they contained synthetic chemical preservatives.\(^{34}\)

---


\(^{32}\) ACCC Enforceable Undertakings against Hagemeyer B. V. (1994); Arlec Holdings (1994); Makita (Australia) Pty Ltd (1994); IBM Australia Ltd (1994); Panasonic Australia (1994); Hitachi Sales Australia (1994); Adeal (1994); Eveready Australia (1994).

\(^{33}\) ACCC Enforceable Undertakings against Hagemeyer Brands (2006); De Longhi Australia (2008).

\(^{34}\) Dreamz Pty Ltd, trading as GAIA Skin Naturals (GAIA) & ACCC.
28. These examples of successful ACCC and ACL greenwashing action show the breadth and scope of this issue. It also shows this problem is not going away or naturally correcting itself within the market.

29. Businesses often quickly replace or repackage products or names which have been determined to be greenwashing and repackage, avoiding further claims without meaningfully changing or mere symbolic change in their practices.35

30. Greenwashing warrants clearer legislative requirements and improved regulators powers to avoid businesses from developing new marketing tactics to evade accountability. Clear legislative requirements, in our view, will incentivise more responsible business practices over time.

31. One possible method for change is introducing clearer standards for certain terms in Australia to build consumer confidence in Australian products in Australia and globally. Incentivising genuine and meaningful improvements in business climate justice practices should be an objective of the Senate’s investigation.

**The problem with greenwashing**

32. Greenwashing is not a new problem and has become pervasive. A 2009 survey conducted by TerraChoice found that 98% of products and services surveyed in Australia that made environmentally friendly claims were found to have been greenwashed in some way.36


34. According to the Ecolabel Index – an independent global directory that collects and monitors ecolabels and environmental certification schemes – there are currently 456 different ecolabels in 199 countries, and 25 industry sectors,37 all of which claim to

---

35 After Greenwashing Symbolic Corporate Environmentalism and Society, Publisher: Cambridge University Press, Print publication year: 2014, page 3
36 Mathew Murphy, ‘Consumers face a wave of greenwash’, *The Sydney Morning Herald* (30 June 2009).
37 Ecolab, ‘Ecolabel Index’ (Web page, 2023) [www.ecolabelindex.com](http://www.ecolabelindex.com)
provide consumers with useful information about the environmental performance of certain products and services.

35. The prevalence of various terms and certification standards, combined with a lack of regulation over the use of these terms and standards without sufficient evidence or support, creates substantial confusion and distrust in the market generally and specifically those terms and standards. For example, according to the Australia Institute, while 85% of Australians have heard of the term ‘carbon neutral’ only 33% know what it means. Reflecting a need not only to regulate greenwashing practices but also educate and communicate standards associated with key green terms.

36. The consumer demand for environmentally friendly alternatives creates opportunities and the lack of regulation leaves space for companies to make statements about their products without substance or proof. This usually takes the form of “marketing hype to give a firm a green tinge” based on supposed environmental credentials that are “unsubstantiated or irrelevant.” Often these forms of greenwashing are dismissed or discounted as nothing more than innocent over-eager marketing.

37. However, there are also more deliberate forms of greenwashing that occur through “selective disclosure of positive information about a company’s environmental or social performance, without full disclosure of negative information on these dimensions, so as to create an overly positive corporate image.” Greenwashing can even occur ‘vicariously’, where a company conveys an image of sustainability yet maintains business operations which are fundamentally not environmentally friendly i.e. the use of a supplier who is not environmentally friendly.

---

38. Despite apparent widespread corporate environmentalism, the gap between firms’ symbolic activities and the reality of environmental decline may ultimately contribute to the instability of current economic and social systems.\textsuperscript{43}

39. Overall, there is a lack of consumer trust in environmental claims. In 2020, the European Commission revealed that the general public expressed scepticism towards product-related environmental statements.\textsuperscript{44} However, when it came to claims made about the business directly, trust levels were slightly higher.\textsuperscript{45} This may reflect consumers’ desire to be making better environmental choices. In contrast, a majority of industry stakeholders who observed deceptive claims expressed a reduced trust in environmental statements and logos controlled by companies or private entities.\textsuperscript{46}

**Recent sweeps by the ACCC**

40. In March 2022, the ACCC announced that its focus on environmental claims and sustainability would not be limited to consumer goods.\textsuperscript{47} Chairman Rod Sims stated:

“We will also be looking at claims made in the manufacturing and energy sectors; we are hearing about some businesses seeking to gain an advantage by making misleading claims about the carbon neutrality of their production processes.”

41. In October 2022, the ACCC launched two internet sweeps to identify misleading environmental and sustainability marketing claims and fake or misleading online business reviews.\textsuperscript{48}

42. By March 2023, it was announced that 57% of the 247 businesses reviewed during the sweep had made concerning claims about their environmental credentials.\textsuperscript{49}

---


\textsuperscript{45} Ibid.


cosmetic, clothing and footwear, and food and drink sectors were found to have the highest proportion of concerning claims among the industries targeted in the operation.

43. The ACCC intends to follow up this sweep with compliance, education, and potential enforcement activities. ACCC Deputy Chair Catriona Lowe stated that:\(^{50}\)

“We will engage directly with businesses and industry associations to improve compliance with the Australian Consumer Law. Importantly, we encourage businesses to come forward if they become aware they have made false or misleading marketing claims. Businesses who cooperate and advise of any issues with their operations will be considered more favourably than those who wait for the ACCC to unearth these problems.”

44. Despite these sweeps, in our view, a number of misleading businesses or substantial emitters or businesses causing environmental harm are doing so in large part because they are not as consumer-facing, this is a current gap in greenwashing regulation. Businesses that are outwardly facing and trying to improve are more likely a target than a business that may remain silent or refuse to improve their environmental practice.

45. Providing members of the community with greater ability to bring or prosecute allegations of greenwashing may also increase improved corporate environmental practices.

46. We consider that both the ACCC and members of the community should be equipped to identify and take action in respect of greenwashing.

**Recommendation 1:** Provide the ACCC with funding to continue its greenwashing sweeps on a regular basis. These proactive sweeps have been highly effective in detecting and dealing with greenwashing.

**Recommendation 2:** Provide parties who have a legitimate interest – including both consumers and competitors – through amendment or better resourcing of existing consumer legislation.

---

**International examples**

\(^{50}\) Ibid.
47. The manner in which foreign jurisdictions have responded to greenwashing is useful for Australia in strengthening its regulatory framework.

48. In the United States, the Federal Trade Commission (‘FTC’) has issued a set of Green Guides designed to help marketers avoid making environmental claims that mislead consumers. The Guides contain general principles requiring that ‘green’ disclosures be clear, prominent, and understandable; specify the scope of the claim; and avoid overstating any environmental attribute or benefit. The Guides also contain specific rules that cover areas such as carbon offsets, green certifications, and recyclability.\footnote{Federal Trade Commission, ‘Green Guides’ (Web Page, 2023) www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguides.pdf}

49. However, in their present form, the FTC’s Green Guides are simply de-facto rules and therefore unenforceable.\footnote{Robin Rotman, Chloe Gossett and Hope Goldman, ‘Greenwashing No More: The Case for Stronger Regulation of Environmental Marketing’ (2020) 72(3) Administrative Law Review 417, 429.} Instead, the FTC (much like the ACCC) must still show that a violation is unfair or deceptive under s 5 of the \textit{Federal Trade Commission Act}. As such, it has been suggested that the Green Guides should be codified to enhance enforcement, improve consumer protections, and allow the FTC to allocate resources more efficiently.\footnote{Ibid, 442.}


51. In March 2023, the European Commission introduced its Green Claims Directive which proposes to expand the definition of misleading practices to include generic and unsubstantiated environmental claims, unsupported claims for future environmental performance, and environmental features already mandated by existing laws.\footnote{European Commission, ‘Proposal for a Directive on Green Claims’ (Web Page, 2023) https://environment.ec.europa.eu/publications/proposal-directive-green-claims_en} This will
require traders to independently verify that any ‘explicit environmental claim’ is accurate and based on recognised scientific evidence and identifies whether the claims relates to the whole or only part of the product, and considers the product’s entire life cycle.\textsuperscript{57} Suggested penalties would include fines that deprive offenders of any economic benefit of the misleading claim and/or a fine of up to 4% of the trader’s annual turnover.\textsuperscript{58}

52. France has recently proposed new Climate and Resilience Laws that include an ‘anti-greenwashing’ provision to combat misleading environmental claims by companies.\textsuperscript{59} Similar to the EU Directives, these regulations would aim to enhance consumer trust and discourage greenwashing by requiring transparent and substantiated information on environmental performance.

53. In February 2023, the United Kingdom Committee of Advertising Practice published an update to its guidance to include specific advice on making carbon neutral and net zero claims in UK advertising.\textsuperscript{60} The guidance advises against unqualified carbon neutral or net zero claims and recommends providing explanations.\textsuperscript{61} Carbon offsetting must meet evidence standards and include scheme details.\textsuperscript{62} Further, specifications of scope and qualifications regarding ‘zero emissions’ for electric vehicles must be clarified.\textsuperscript{63}

54. It follows, that both binding legislative guidelines and a positive obligation to substantiate green claims represent good international practice, which should be followed in Australia.

**Recommendation 3:** Codify the ACCC’s Green Marketing guidelines into legislation and provide for penalties to be imposed on companies that breach the guidelines. These guidelines should clearly define ‘greenwashing’ as well as other terms commonly used in green credentialism.

**Recommendation 4:** Require companies that make green claims to substantiate their claims.

\textsuperscript{57} Ibid 18-19.
\textsuperscript{58} Ibid 56.
\textsuperscript{59} Official Journal of the French Republic, ‘LAW n° 2021-1104 of August 22, 2021 on the fight against climate change and strengthening resilience to its effects’ (Web Page, 2021) www.legifrance.gouv.fr/loda/article_lc/LEGARTI000043957692
\textsuperscript{61} Ibid 5-6.
\textsuperscript{62} Ibid 6.
\textsuperscript{63} Ibid 8-10.