

SUBMISSION

Submission to the Senate Standing Committee on Environment and
Communications

Submission to the Greenwashing inquiry

8 June 2023

The Australian Academy of Technological Sciences and Engineering (ATSE) is a Learned Academy of independent, non-political experts helping Australians understand and use technology to solve complex problems. Bringing together Australia's leading thinkers in applied science, technology and engineering, ATSE provides impartial, practical and evidence-based advice on how to achieve sustainable solutions and advance prosperity.

As the nation pursues economic decarbonisation and Australians increasingly seek environmentally conscious consumption and investment choices, it is critical to have regulatory frameworks to guard against greenwashing. Consumers and investors who make decisions based on dubious claims about environmental sustainability are not only misled about their purchase, but also have diverted expenditure away from genuine opportunities for social good. Regulatory bodies are increasingly vigilant in scrutinising false environmental claims with the tools they have, but there is scope to strengthen these. The Australian Government can abate greenwashing claims by creating a legal definition of environmental sustainability and shared frameworks for greenhouse gas accounting.

ATSE makes the following recommendations for the Senate Standing Committee on Environment and Communications' inquiry into Greenwashing:

Recommendation 1: Legislate a definition of environmental sustainability to apply to consumer goods, energy products, financial products, and construction projects that interfaces with existing national and international sectoral frameworks and standards.

Recommendation 2: Implement the recommendations from the Guarantee of Origin and Australian Carbon Credit Units consultation to ensure both schemes are not vulnerable to greenwashing.

Recommendation 3: Create a national framework for greenhouse gas accounting in infrastructure.

Defining environmental sustainability

Environmental sustainability is not legally defined: it is essentially a marketing term, similar to “organic”, “natural” and “ethical”, all of which can be broadly applied but provide minimal information about the product or process they describe. Unverified environmental claims are an issue not just for retail consumer products but also for financial instruments, which often exist in the context of broader environmental, social and governance (ESG) credentials. As “sustainable” products have increased appeal to consumers and often attract premium pricing, the substantiation of environmental claims is a consumer rights issue.

Some regulations exist around the use of “sustainable” terminology for consumer and financial products. The Australian Competition & Consumer Commission (ACCC) requires businesses to substantiate these claims where concerns are expressed. For sustainability-related financial products, the Australian Securities and Investments Commission (ASIC) requires some information about environmental or ethical considerations in the Product Disclosure Statement (PDS). The Clean Energy Regulator has also communicated its cooperation with the ACCC and ASIC in investigating greenwashing claims (CER 2023).

The requirements outlined by the ACCC and ASIC have not been sufficiently stringent or specific to prevent businesses from falsely claiming environmentally sustainable credentials. Both bodies have increased efforts to scrutinise greenwashing in recent years (examples include ASIC's litigation of Mercer Superannuation and fining of energy company Tlou Energy (ASIC 2022; ASIC 2023)).

The lack of a strict legal definition allows misleading environmental claims to proliferate. A specific definition of sustainability, enshrined in legislation, would empower further regulation of greenwashing claims.

There are multiple possible definitions of sustainability within a business or trading context. Sustainability can be used to suggest environmental sustainability, or it may have more general meanings such as stable, socially responsible or fairtrade business models. Sustainability can also be thought of in terms of excluding social and/or environmental harms or actively creating social and/or environmental good.

Even defined exclusively as environmental, sustainability can pertain to different aspects. For consumer products, “sustainable” claims could be made for materials and processes that have low carbon emissions (either directly or through offsetting with carbon credits), no adverse impacts on biodiversity, are biodegradable, are recyclable, minimise wastewater creation, and/or don't use pesticides or other chemicals harmful to the environment. Products which are sustainable in one of these dimensions may have other adverse environmental effects. There is a need for a clear definition and framework to capture the different types of sustainability in consumer products.

This framework can then be the basis for driving policy. A successful example is the European Union's Ecodesign Directive, implemented in 2009. The Directive requires manufacturers to reduce the energy consumption of energy-related products (such as air conditioning, heating, and lightbulbs) at the design stage. This removes low-efficiency products from the market, creating energy cost savings for consumers and reducing carbon emissions. The scheme is being extended upon with the proposal for a new [Ecodesign](#)

[for Sustainable Products Regulation](#), which will allow for requirements on different sustainability aspects including energy and resource efficiency, ability to repair and upgrade products, recycled content, and carbon and environmental footprints (European Commission 2022).

A legal definition of sustainability in Australia should go beyond consumer goods and be inclusive of other products that are prone to greenwashing claims, including energy products, investments, and construction projects. This can interface with existing sectoral frameworks, such as environmental, social and governance (ESG) principles for business and financial products, the [Climate Bonds Standard and Certification Scheme](#) for bond investments that contribute to addressing climate change, and Environmentally Sustainable Design principles that mitigate environmental impacts of buildings.

A legal definition of environmental sustainability is a minimum first step to reduce greenwashing. This would pave the way for accreditation systems, either regulated by the Australian Government or created by the market, and policy levers for carbon emissions reductions as exemplified by the EU's Ecodesign Directive.

Recommendation 1: Legislate a definition of environmental sustainability to apply to consumer goods, energy products, financial products, and construction projects that interfaces with existing national and international sectoral frameworks and standards.

Creating trusted carbon emissions frameworks

In addition to existing regulatory powers through the ACCC and ASIC, the Guarantee of Origin scheme (to be implemented from 2024) will provide an accounting framework for greenhouse gas emissions for hydrogen and renewable electricity, providing transparent information for households, businesses, and investors. ATSE's [submission](#) to the Guarantee of Origin consultation recommended transparency and a technology-neutral design, as well as a review after its first year of operation (ATSE 2023a). If designed well, this scheme will circumvent potential greenwashing in hydrogen and renewable electricity products.

There is a risk that greenwashing can occur through poorly designed carbon credit schemes, as well as biodiversity credit schemes such as that advanced by the Nature Repair Market Bill 2023. As highlighted in ATSE's [submission](#) to the Independent Review of Australian Carbon Credit Units (ACCUs), governance and integrity issues must be addressed (ATSE 2022). ACCUs issued under the scheme do not necessarily represent genuine and additional abatement of carbon emissions. If implemented, the planned reforms to this scheme will help prevent the greenwashing of ACCUs.

Eliminating greenwashing of carbon emissions across different sectors requires consistency and transparency in how emissions are measured, with well-designed frameworks that empower consumer choices and inform government policy.

ATSE recommends that, in addition to strengthening the Guarantee of Origin and ACCU schemes, the Australian Government also creates a nationally consistent greenhouse gas accounting framework for infrastructure, consolidating work being undertaken on a state level. There is no one standardised method for whole-of-life greenhouse gas accounting framework for public and private infrastructure projects. Such a framework must include emissions from all stages of infrastructure projects, including land use changes, planning and design, materials (including imported materials), on-site and off-site construction activities, operational activities, and end of useful life (ATSE 2023b). A framework can also link to a total national carbon budget, allowing minimum requirements to be determined accordingly. A standardised greenhouse gas accounting framework would enable better informed policy decisions, including for energy in which embodied emissions must be factored in to fairly compare the emissions from different energy sources.

Recommendation 2: Implement the recommendations from the Guarantee of Origin and Australian Carbon Credit Units consultation to ensure both schemes are not vulnerable to greenwashing.

Recommendation 3: Create a national framework for greenhouse gas accounting in infrastructure.

ATSE thanks the Senate Standing Committee on Environment and Communications for the opportunity to respond to the inquiry into Greenwashing. For further information, please contact academypolicyteam@atse.org.au.

References

- ASIC (Australian Securities and Investments Commission) (2022) [*ASIC acts against greenwashing by energy company*](#), ASIC, accessed 18 May 2023.
- ASIC (Australian Securities and Investments Commission) (2023) [*ASIC launches first Court proceedings alleging greenwashing*](#), ASIC, accessed 18 May 2023.
- ATSE (Australian Academy of Technological Sciences and Engineering) (2022) [*ATSE submission to the Independent Review of Australian Carbon Credit Units*](#), ATSE, accessed 18 May 2023.
- ATSE (Australian Academy of Technological Sciences and Engineering) (2023a) [*ATSE submission to the Guarantee of Origin consultation*](#), ATSE, accessed 18 May 2023.
- ATSE (Australian Academy of Technological Sciences and Engineering) (2023b) [*ATSE submission on Decarbonising Infrastructure Delivery*](#), ATSE, accessed 2 June 2023.
- CER (Clean Energy Regulator) (2023). [*Greenwashing is a government compliance priority*](#), CER, accessed 25 May 2023.
- European Commission (2022) [*Ecodesign for sustainable products*](#), European Commission, accessed 2 June 2023.