



AUSTRALIA

SUBMISSION

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SENATE INQUIRY INTO GREENWASHING

WWF-Australia is part of the WWF International Network, the world's largest independent conservation organisation. WWF's global mission is to stop the degradation of the planet's natural environment and to build a future in which humans live in harmony with nature. WWF works in more than 100 countries and has around five million supporters worldwide. WWF-Australia is one of Australia's largest and most trusted environment organisations. We work with more than two million financial and non-financial supporters to save species and protect the places we love.

GENERAL COMMENTS

WWF-Australia welcomes this important and timely inquiry. We have substantial and longstanding concerns regarding greenwashing across a range of environmental issues, including (but not limited to) plastics, food production and packaging. This submission focuses on:

- sustainability claims about bioplastics; 'ocean-bound' plastic and chemical recycling,
- sustainability and responsibility claims in relation to seafood production and marketing, and
- The potential impact of greenwashing on conscientious consumers and companies.

Greenwashing is not a legal term and appears in neither the Australian *Competition and Consumer Act 2010* (Australian Consumer Law/ACL) nor the Australian Competition and Consumer Commission's (ACCC) guidance on green marketing.

Our analysis draws on the definition set out by Client Earth: 'where a company uses advertising and public messaging to

KEY MESSAGES

- Evidence shows greenwashing in Australia is widespread across a range of industry sectors/products.
- This submission examines greenwashing in the production and marketing of plastics and seafood.
- Impacts are clear and growing in relation to consumer confusion and costs, and in creating an unequal playing field for companies that are not greenwashing.

RECOMMENDATIONS

- ACCC should maintain and escalate enforcement action on greenwashing.
- Government should support, regulate, and incentivise credible, high-quality certifications.
- Fines for contravention of the ACL should be reviewed to ensure they are a genuine deterrent.
- Public information campaigns should include greenwashing messaging.
- The European Commission's proposed Green Claims Directive should be considered as a potential model for Australia.

appear more climate friendly and environmentally sustainable than it really is'.¹ Greenwashing is generally understood to cover a range of marketing practices and claims, that are 'inaccurate, exaggerated, [and/or] lack context and/or substantiation in a manner that is liable mislead the reader'.²

Findings of screening research carried out by the EU Commission and national authorities in 2021 revealed that across a range of sectors including clothes, cosmetics and food, more than a third of environmental claims included vague and general statements with no substantiation, and in more than forty percent of cases, claims were regarded as exaggerated, false or deceptive.³ Similar screening conducted by the ACCC in 2022 identified that more than half of the businesses reviewed had made 'concerning claims about environmental credentials', with food and drink identified as one sector found to have a high proportion of concerning claims.⁴

Our analysis further draws on the ACCC's green marketing guidance note, which states that: 'businesses have an obligation not to engage in any conduct that is likely to mislead or deceive consumers. Importantly, the conduct only needs to be **likely to mislead or deceive**; it does not matter whether the business intended to mislead or whether anyone was misled – if conduct was likely to mislead or deceive, the ACL is contravened'.⁵

This submission focuses on several sectors, materials, products and technologies about which claims likely to mislead or deceive consumers are currently being made. WWF-Australia has previously shared research findings outlined in this submission with the ACCC, given their relevance to the ACCC's current work on greenwashing.

SUSTAINABILITY CLAIMS ABOUT BIOPLASTICS

WWF-Australia recently commissioned the Institute for Sustainable Futures at the University of Technology Sydney to research the sustainability of bioplastics in Australia. In addition to examining applications and end-of-life management, our research aimed to quantify the incidence of greenwashing in relation to bioplastics.

The research assessed more than 160 individual claims about 26 bioplastic products from 14 companies, and **found more than half were misleading or potentially misleading (29%) or could not be verified (24%)**. These included misleading or confusing statements on product disposal; use of vague language such as 'green', 'earth friendly' and 'sustainable'; and unverifiable claims about feedstocks and carbon footprint.

Our review of sustainability claims found that:

- Most claims that were potentially misleading related to use of vague terminology or statements that may mislead consumers on correct end-of-life disposal of the product.
- Half of the companies made statements that may mislead or confuse consumers on how to dispose of products at end-of-life, and few provided clear information on how to dispose of the products.
- Some companies claim their products are not a plastic or will not contribute to the plastic waste problem by using terms such as 'plastic-free', which is potentially misleading to consumers as these products are still plastic and may have similar impacts to conventional plastics if not managed appropriately.
- More than half of the companies used vague terminology about the environmental benefits of the product such as 'green', 'eco-friendly', 'environmentally friendly', 'earth friendly', 'earth loving', 'sustainable' and 'safe' which may mislead consumers into thinking that the product causes no environmental harm.

¹ Client Earth: <https://www.clientearth.org/what-we-do/priorities/greenwashing/>, accessed 5 June 2023.

² Ibid.

³ European Commission, 28 January 2021, 'Screening of websites for 'greenwashing': half of green claims lack evidence: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_269, accessed 5 June 2023.

⁴ ACCC, 2023. Greenwashing by businesses in Australia: Findings of ACCC's internet sweep: <https://www.accc.gov.au/about-us/publications/greenwashing-by-businesses-in-australia-findings-of-acccs-internet-sweep>, accessed 5 June 2023.

⁵ ACCC (2011). Green marketing and the Australian Consumer Law. Available online: <https://www.accc.gov.au/system/files/Green%20marketing%20and%20the%20ACL.pdf>

- Not all products that claim to be compostable are certified to the Australian Standards, which is a requirement for them to be suitable for composting in commercial or home compost systems in Australia.

Some companies are marketing single-use bioplastic products as being part of the circular economy, and the feedstock (used to make plastic products) as renewable. This is potentially misleading, in cases where:

- single-use plastic products of not at all necessary, in which case a circular economy approach would eliminate them), and/or
- where feedstocks are not responsibly sourced and transparently reported. If feedstocks are not responsibly sourced, they are not a circular solution. If the consumer can't easily verify feedstock source, this kind of marketing is potentially misleading.

OCEAN-BOUND PLASTICS

WWF-Australia is concerned about the concept and marketing of 'ocean-bound plastic' in consumer brands, across a range of product lines. The definition of ocean bound plastic – described by some as plastic waste collected within 50 km of a shoreline, where no formal/effective waste management system exists – is contested. The collection and trade of plastic marketed as ocean bound plastic is opaque and vulnerable to corruption/exploitation.⁶

While there is little publicly available evidence regarding people's perceptions and preferences for different sources of recycled plastic, for example a preference for 'recycled ocean bound plastic' over 'recycled plastic', the increasing trend towards marketing the former is likely based on extensive consumer research. This is problematic for several reasons: most people don't know what ocean bound plastic means and even if they do, there is evidence of many companies using the term being unable to substantiate the claims they are making.

Most – if not all – plastic marketed as such would be much more accurately described as post-consumer recycled plastic. We note that the Environmental Defenders' Office and the Tangaroa Blue Foundation recently made a submission to the ACCC on this matter. WWF-Australia supports the arguments and findings contained in that submission, and action subsequently taken by the ACCC on this matter.

CHEMICAL RECYCLING

Chemical (or advanced) recycling is being rolled out in numerous countries with the backing of many governments, plastic producers and brand owners. Chemical recycling is in its infancy in Australia, and new facilities are receiving substantial government subsidies. Australian media and industry publications, as well as proponents, describe chemical recycling as '[a circular solution to help solve Australia's soft plastics recycling challenge](#)'.

But while chemical recycling may be theoretically suited to some very specific applications, there is insufficient evidence to quantify potential benefits, despite its widespread use for more than five years in the USA. There is a general lack of transparency and robust evidence that can be used to verify claims of environmental performance.⁷ Forthcoming research from WWF-Australia and the Australian Marine Conservation Society suggests chemical recycling is just as emissions-intensive as incineration, and more than mechanical recycling.

Based on available evidence, there are significant concerns that chemical recycling is energy-intensive, pose risks to human health, and/or will not be able to practically recycle plastic beyond what mechanical recycling already achieves.⁸ Client Earth describes chemical recycling as a 'topic to watch for future greenwashing allegations'.⁹

⁶ House of Representatives House Standing Committee on Climate Change, Energy, Environment and Water, Inquiry into plastic pollution in Australia's oceans and waterways. Public hearing, Friday, 31 March 2023.

⁷ WWF, 2022. WWF position paper: Chemical recycling implementation principles. Available at:

https://files.worldwildlife.org/wwfcomprod/files/Publication/file/54fnztys8g_Chemical_Recycling_Implementation_Principles_2022_.pdf

⁸ WWF position paper on chemical recycling implementation principles, January 2022. Available at:

https://files.worldwildlife.org/wwfcomprod/files/Publication/file/54fnztys8g_Chemical_Recycling_Implementation_Principles_2022_.pdf

⁹ Client Earth, op. cit.

SUSTAINABILITY CLAIMS ABOUT SEAFOOD

As with bioplastics, many businesses engaged in the production and marketing of seafood rely on various third-party certification schemes or 'voluntary sustainability standards' (VSS) to validate environmental claims. The ACCC's recent greenwashing report¹⁰ identified multiple certification schemes, and associated certification trademarks (CTMs), linked to seafood products which raised concerns and were potentially misleading and/or confusing.

While roughly two-thirds of Australian consumers demonstrate some knowledge of seafood sustainability,¹¹ most lack detailed knowledge of environmental and social impacts of seafood production and look to be guided on the 'sustainability' of their food purchases. Consumers increasingly rely on eco-labels and other on-pack claims when making seafood purchasing decisions and evidence indicates eco-labels have a measurable and positive influence on consumer choice of sustainable food.¹²

Recent analysis shows that two well-known seafood VSSs, the Marine Stewardship Council (MSC) and the Aquaculture Stewardship Council (ASC), have primarily been used by industry to demonstrate its sustainability credentials.¹³ Sustainability is just one of many drivers of consumer food choices, however, unlike other drivers of consumers purchasing decisions (i.e., taste, price, safety and convenience), sustainability relies on the verdict of third party certification agencies, whose judgment helps simplify consumer purchasing decisions. While consumers do respond positively to food sustainability information (something owners of eco-labels understand) this does present challenges, such as:¹⁴

- The credibility of labels and need for consumers to be able to trust the veracity of environmental and social claims,
- The proliferation of labels that often provide asymmetric and varying information for consumer to comprehend, and
- Distilling complex information into a simple binary (yes/no) decision to buy or not buy.

Independent research commissioned by the MSC demonstrates some key elements among eco-label-aware seafood consumers, including:¹⁵

- Nearly one-third indicate their purchasing decisions are guided by eco-labels and on-pack claims,
- 83% of consumers say the MSC label helps identify sustainable seafood quickly and easily in retail outlets,
- 80% have a high level of trust in the MSC, and almost 70% have a high level of trust in the MSC eco-label; 'the blue tick',¹⁶ and
- Certification bodies such as the MSC are more trusted than government and large companies in terms of addressing sustainability issues.

The data suggests that consumers look to 'trusted' eco-labels to provide assurances and to offset their mistrust in and scepticism of business' claims about sustainability and ethics.¹⁷ This is mirrored by a growing expectation that

¹⁰ Op. Cit.

¹¹ Lawley, M., Craig, J., Dean, D., and Birch, D. (2019). The role of seafood sustainability knowledge in seafood purchase decisions. *British Food Journal* Vol. 121 No. 10, pp. 2337-2350.

¹² Bishop, J., Thomas, J., Ahmed, S., Boylan, S., and Andonopoulos, V. 2022. Communicating Food Sustainability to Consumers: Towards more effective labelling. One Planet Network and WWF.

¹³ Haas, B., Phillipov, M., and Gale, F. (2020) Media representations of seafood certification in Australia: Mobilising sustainability standards to attack or defend the value of an industry. *Marine Policy* Volume 120.

¹⁴ Ibid.

¹⁵ Globescan (2022). MSC Consumer Insights Survey Australia; 2022. Report prepared by Globescan for the MSC, May, 2022.

¹⁶ While trust in eco-labels other than MSC is not available, the presumption is that it is at least greater than 50%

¹⁷ Darnall, N., Ji, H., & Vázquez-Brust, D. A. (2018). Third-Party Certification, Sponsorship, and Consumers' Ecolabel Use. *Journal of Business Ethics*, 150(4), 953–969

business needs to support sustainability claims with evidence. Likewise, institutional trust in the standard holder is crucial, as this influences trust in a label affiliated with that institution, and subsequently the reliance on eco-labels in the consumer decision-making process.¹⁸

This nexus between consumers' trust in eco-labels and credibility of third-party standards goes to the heart of the ACCC's concerns that entities may be using 'certifications in a misleading or confusing way' in relation to their business or product. In this context it is critical to recognise that certifications and eco-labelling are whole-of-supply-chain issues affecting producers, processors, and marketers of seafood products. Products carried in-store that display eco-labels ultimately rely on the upstream claims by producers of sustainable or responsibly produced commodities,¹⁹ which in turn depend on the veracity of third-party certification schemes. WWF-Australia harbours growing concerns that **certification is increasingly being viewed as a tool to secure market access/market share or a 'social license'**, as opposed to recognition for environmental performance.²⁰

Notwithstanding this, most certification schemes do include processes that allow stakeholders to contest the deservedness of fisheries or farms being awarded certification and displaying an eco-label on their product(s) through an 'objections' process, although the effectiveness of these objection procedures has been questioned. WWF's own experiences with the MSC objections process over more than a decade has confirmed an inherent bias in dealing with scientific concerns impartially. Notably, two recent successful objections have corroborated concerns that awarding of a certification could be misleading consumers as to the sustainability credentials of a fishery (see Appendix A).

The intent of this submission is not to disparage the value of third-party certification but to acknowledge its limitations and the need for ongoing multi-stakeholder oversight. WWF acknowledges the positive contribution of certification instruments in operationalising the concept of sustainability and reducing environmental impacts, however, concerns persist over governance and assurance processes that have the capacity to diminish the efficacy of certification and weaken consumers trust in the respective eco-labels. Historically, NGOs such as WWF have taken on the 'watchdog' role in challenging 'contentious' certifications in the interests of conservation and consumers' confidence in eco-labels, albeit with limited success due to inherent biases. With a likely increase in the number of sub-standard fisheries and farms seeking eco-label recognition, the burden on NGOs to 'police' certifications is increasing, placing an additional strain on NGOs' capacity and resources.

Overall, WWF-Australia is of the view that governments, as regulators have a responsibility to strengthen the credibility of private seafood standards, support multi-stakeholder participation in certification schemes assurance processors, and to 'firewall' consumers against the potential for greenwash (see recommendations).

IMPACT OF GREENWASHING

Most Australians want to make sustainable choices when purchasing goods, and support stronger regulation when it comes to products they consume. It has been acknowledged that greenwashing capitalises on consumers' [environmentally conscious buying habits](#) and is particularly relevant to industries such as seafood.

Recent research undertaken by Ipsos found that:

- 82% of Australians want to buy products that use as little plastic packaging as possible,
- 86% of Australians think manufacturers and retailers should be made responsible for reducing, reusing and recycling plastic packaging, and

¹⁸ Gorton, M., Tocco, B., Yeh, C.-H. and Hartmann, M. (2021) 'What determines consumers' use of eco-labels? Taking a close look at label trust', *Ecological Economics*, 189 (1)

¹⁹ In the context of VSS terminology, wild-caught seafood is labelled "sustainable" as it refers to fish stocks being harvested at a rate that can be sustained into the future, similarly with bycatch and habitats (i.e., "maximum sustainable yield"). In contrast, farmed seafood is labelled "responsible" to acknowledge it being produced to **minimise** environmental impacts and **protect** worker rights and local communities.

²⁰ Hadjimichael, M., and Hegland, T.J. (2015) Really sustainable? Inherent risks of eco-labelling in fisheries. *Fisheries Research* 174 (2016) 129–135.

- 77% of Australians think single-use plastics should be banned as soon as possible.

Likewise, research undertaken by Globescan²¹ of Australian seafood consumers on behalf of the MSC found:

- 80% of consumers think supermarket brand claims about sustainability and the environment need to be clearly labelled and verified by an independent organisation,
- 72% of consumers want to be able to buy seafood in supermarkets that has independent verification of sustainability claims, up from previous years, and
- 50% of consumers have taken or would take action to purchase seafood with less plastic packaging.

This data demonstrates clear intent to make purchasing decisions based on environmental concerns when it comes to plastics and seafood. Of relevance to this inquiry, the research has found consistently high levels of support among Australians for stronger regulation to reduce plastic consumption and make brand owners and retailers responsible for a) reducing and managing plastic waste – both within Australia, and at the global level via the UN plastic pollution treaty currently being negotiated and b) increasing pressure on businesses to support sustainability claims with evidence.

Unfortunately, people's commitment to sustainability is frequently undermined by greenwashing, both when it comes to products comprising or contained in plastic or around which sustainability claims are being made. Products labelled as plastic free, part of a circular economy using renewable resources, or planet friendly – when they are demonstrably none of these things – influence consumers' choices, with the likely outcome that people unknowingly purchase potentially harmful products, and pay a premium based on good intentions.

Likewise, research showing high levels of trust in certification bodies generally, more so than government and large companies, and the positive influence of eco-labels on consumer seafood choices is disconcerting. While these findings identify the opportunity to impact positively on consumers purchasing decisions, they underscore the embedded challenges in respect of the potential for greenwashing on certified products that fail to meet expected standards of performance.

These issues can have a knock-on effect for companies with a genuinely regenerative/circular business model, and companies that adopt responsible labelling practices and companies with a genuine commitment to sustainably or responsibly sourced products that are verifiable and traceable.

RECOMMENDATIONS

Regulators have a potentially powerful role to play in holding companies to account over greenwashing, including through raising the profile of the problem and taking regulatory action, including issuing fines.

Seafood certification schemes have made valuable contributions to improving industry practices, reducing environmental impacts and sensitising consumer behaviour.²² However, the risk of greenwash will persist for so long as supply chain actors look beyond sustainability claims and toward securing market access, social acceptability (i.e., social license) and market share.²³

As noted earlier, the intent of this submission is not to disparage the value of third-party certification but to highlight the need for ongoing multi-stakeholder oversight. Regardless of any ongoing capacity constraints in civil society organisations to monitor certifications and environmental claims, WWF Australia strongly believes that government regulators have a clear responsibility to minimise the incidence of greenwashing through policing certifications and reinforcing the credibility and impact of private standards.

²¹ Globescan (2022). MSC Consumer Insights Survey Australia; 2022. Report prepared by Globescan for the MSC, May, 2022

²² Barclay, K. & Miller, A. (2018). The Sustainable Seafood Movement Is a Governance Concert, with the Audience Playing a Key Role. *Sustainability*. 10; Tlusty, Michael & Thorsen, Øistein. (2016). Claiming seafood is 'sustainable' risks limiting improvements. *Fish and Fisheries*. 18 (2).

²³ van Putten, I., Longo, C., Arton, A., Watson, M., Anderson, C.M., et al. (2020): Shifting focus: The impacts of sustainable seafood certification. *PLOS ONE* 15(6)

Our recommendations focus primarily on ‘higher order’ regulatory measures, but include a public facing component:

1. **ACCC should maintain and escalate enforcement action on greenwashing.** The ACCC’s current focus on greenwashing is already demonstrating results, with at least one company having removed its FAQ page of its website following the lodgement of EDO/Tangaroa Blue’s complaint regarding ocean plastic marketing.
2. **Government should support, regulate, and incentivise credible, high-quality food certifications.** The Australian Government could have a role to play in supporting multiple stakeholders to uphold eco-labels’ standards of credibility and disclosure, encouraging continuous improvement, and upholding the principle of multi-stakeholder governance of food sustainability standards. Support could take the form of access to funding by civil society to be used to scrutinise individual certifications or convening of a multi-stakeholder taskforce to investigate greenwashing concerns.
3. **Applicable fines for contravention of the ACL should be reviewed** to ensure they are proportionate and capable of acting as a deterrent. EU consumer protection legislation requires Member States to set of at least 4% of annual turnover for breaches involving widespread infringements (in more than one Member State). A benchmark of 10% of global turnover has been discussed in the UK.²⁴
4. **Public information campaigns should include greenwashing messaging.** The Australian Government’s recent investment in a National Waste Education Campaign is timely and welcome; this and other relevant campaigns should integrate messaging to help consumers identify and act on greenwashing.
5. **New directives to tackle greenwashing.** The European Commission has proposed a new Green Claims Directive to tackle greenwashing.²⁵ This is an important step towards increasing transparency and trust in relation to environmental claims. This approach could be considered as a potential model for similar regulation tailored to the Australian context.

CONTACT

WWF-Australia appreciates the opportunity to contribute to this important inquiry and would welcome the opportunity to discuss these options further.

APPENDIX

- A. Third-party certification and consumer expectations of seafood sustainability

²⁴ Ibid.

²⁵ Green claims: New criteria to stop companies from making misleading claims about environmental merits of their products and services: https://environment.ec.europa.eu/topics/circular-economy/green-claims_en, accessed 5 June 2023.

APPENDIX A

THIRD-PARTY CERTIFICATION AND CONSUMER EXPECTATIONS OF SEAFOOD SUSTAINABILITY

The Marine Stewardship Council (MSC) fisheries standard is used to assess if a fishery is well managed and sustainable. Fish from fisheries certified by the MSC are able to be sold displaying the MSC's eco-label. The *determination* of whether a fishery meets the MSC Standard is made by independent, accredited auditors who assess the fishery against the standard.

Recommendations by assessors to certify a fishery can be challenged through an objections process overseen by an Independent Adjudicator (IA), which, if successful can overturn that *determination*. In two recent successful objections, the IA identified consumer expectations as being behind the decision to uphold the objection.

1. Bigeye Tuna caught in the Western and Central Pacific

In making the determination to uphold the objection, the IA agreed with the objectors that the necessary Harvest Control Rules required to ensure bigeye stocks were maintained at 'sustainable' levels were not in place and as such sustainability of the fishery could not be assured. In doing so the IA made specific mention of consumers making purchasing decisions noting that...

"...an informed consumer would have a feel for the core principle of the MSC Standard that: "A fishery must be conducted in a manner that does not lead to over-fishing or depletion of the exploited populations..."

and that ipso facto, and "informed" consumer....

"...cannot be satisfied that part of the MSC Standard is (being) met for this unit of assessment ...".

2. Australia Orange Roughy caught in the Eastern Zone (Tasmania)

In making the determination to uphold the objection, the IA agreed with the objectors that Orange Roughy should have had its status as a listed Endangered, Threatened and Protected (ETP) recognized and should not have been assessed and scored as a target species. In doing so the IA acknowledged the issue of consumers expectations and confidence in the standard, explicitly that:

"...Consumers with some degree of knowledge about sustainability would expect, quite reasonably, that a species certified as "sustainable" would not be recognised in national ETP legislation..." as these would be "...understood by the relevant consumers as mutually exclusive terms".

and that:

"...An assessment supporting certification of a species as "sustainable" for the purpose of marketing to consumers, when the species is recognised in national ETP legislation, has serious potential to be misleading....".

Sources: [Objections to the proposed certification of the Australia Orange Roughy – Eastern Zone Fishery Remand decision](#), 5th January 2021; and PNA Western and Central Pacific Skipjack And Yellowfin Unassociated Non-FAD Set Tuna Purse Seine Fishery Scope Extension: Bigeye Tuna And Catches In All Set Types (FAD And Non-FAD Sets), 12th July 2022.