

SUBMISSION GREENWASHING INQUIRY

JUNE 2023

INTRODUCTION

The Australian Retailers Association (ARA) welcomes the opportunity to provide comments to the Standing Committees on the Environment and Communications, in relation to the greenwashing inquiry.

The ARA is Australia's oldest, largest and most diverse retail body, representing a \$400 billion sector that employs 1.3 million Australians. As Australia's peak retail body, representing more than 120,000 retail shop fronts, the ARA informs, advocates, educates, protects and unifies independent, national and international retail members.

We represent the full spectrum of Australian retail, from our largest national and international retailers to our small and medium sized members, who make up 95% of our membership. Our members operate across all categories - from food to fashion, hairdressing to hardware, and everything in between.

The ARA and its members have a strong commitment to sustainability as evidenced by our [climate action plan](#) and commitment to assisting retailers to achieve [net zero](#) in their emissions, as well as our commitment to the sensible phase-out of single-use [plastics](#), product stewardship schemes and a just transition to the circular economy.

Aside from the actions that our members are taking to embrace sustainable business practices, the rise of greenwashing has become an increasing area of focus for the retail sector.

Our members recognise the need to improve transparency and consumer trust in sustainability claims, but our position is that the current framework is sufficient to address greenwashing and that further regulation will only serve to increase costs and complexity, without reducing greenwashing claims.

Without a standard definition of greenwashing - one that is explicit to the diverse audience it caters to; it will remain challenging to eliminate. The current ambiguity makes it difficult for businesses to anticipate the boundaries when making a claim. 'Greenwashing' also seems to be a label used to capture conduct that is already unlawful under existing laws – for example, the false, misleading or deceptive conduct prohibitions in Chapters 2 and 3 of the Australian Consumer Law.

The ARA submits that existing consumer protection and competition laws are fit for purpose and should be relied upon in the first instance, supported as necessary and appropriate by education and awareness building, so that retailers have guidance on what behaviours are acceptable or unacceptable, shedding light on currently 'grey' areas.

As Australia's largest peak body for the retail industry, the ARA is well placed to work with our members and regulators, such as the ACCC, to ensure retailers are better informed about how to avoid the risk of greenwashing, and how they can be encouraged to support innovation and investment in more sustainable products and retail offerings.

We note the terms of reference for this inquiry and have made some comments below that reflect consultation with our members.

Terms of Reference:

1. the environmental and sustainability claims made by companies in industries including energy, vehicles, household products and appliances, food and drink packaging, cosmetics, clothing and footwear;
2. the impact of misleading environmental and sustainability claims on consumers;
3. domestic and international examples of regulating companies' environmental and sustainability claims;
4. advertising standards in relation to environmental and sustainability claims;
5. legislative options to protect consumers from green washing in Australia; and
6. any other related matters

COMMENTS AND RECOMMENDATIONS

Both retailers and consumers are keen to see more sustainable and lower environmental impact products that are sourced through ethical supply chains and consider end-of-life impacts. In a recent survey to ARA members, over 55% of those surveyed believed greenwashing was of highest importance to the sector, and to their businesses. In this context, any specific measures to address greenwashing should not inhibit the ability or appetite of those businesses that are genuinely pursuing the development of more sustainable products and processes from engaging with their customers.

Retailers play an important role in educating the consumer in making more sustainable choices, serving as a link between manufacturers or suppliers and consumers. Even when these changes are required by legislation, retailers advertising the change to consumers catalyses sustainable choices, as when consumers demand more sustainable products, retailers will work with suppliers to bring those to market.

We therefore strongly encourage the Committee to adopt a balanced and measured approach that is based on building awareness and providing guidance on best practices, alongside reasonable monitoring of compliance with consumer protection laws.

We also encourage the Committee to consider and review overseas approaches to sustainability and greenwashing issues. For example, an issue that some members are facing is the extent to which Australian-based retailers rely on standards or representations about goods or inputs to goods supplied by foreign manufacturers. Credentialing or certification is a related area where a review of international approaches may be of significant benefit to many of our members.

It is with this perspective that we make the following comments around what guidelines on greenwashing could look like.

Regulatory framework

While the ARA does not believe that further regulatory intervention is required, we make the following observations.

- Regulations need to encourage retailers and producers to provide more sustainable options to consumers, while ensuring adequate protections from any misleading advertising or sales practices. As a minimum requirement, regulations should not be so onerous as to discourage the promotion and sale of products with genuine sustainability credentials as consumers play an important role in driving demand for lower impact products.
- We believe that the penalties built into the current framework for false and misleading claims are also adequate in acting as a deterrent and penalising greenwashing claims. We would support stronger enforcement of these existing penalties rather than develop a new legislative or regulatory response, provided that regulators adopt an approach that prioritises education before enforcement.
- While the scope of this inquiry should include retailers, other players along the supply chain need to be considered, with focus on those entities that have greater control over the production or marketing of a particular product. Specifically, in the case of the retail sector, manufacturers, wholesalers and brand owners also have responsibilities in terms of sourcing, marketing and advertising products. The ways these responsibilities are shared can vary considerably depending on the contractual arrangements and product types.
- More broadly, there is much innovation and technological development in sustainability, creating a constantly shifting concept of 'what is good for the environment' or what constitutes current best practice. This is not a bad problem to have, as it reflects the improvements being made across many industries, but it does pose a challenge for retailers in terms of the risk of greenwashing. We believe this requires a policy response that is focussed on education and awareness building, supported by a framework of guidelines and/or codes, rather than a legislative approach that could stifle further innovation at this critical time.

The ARA welcomes signals from the ACCC that it will provide general and targeted guidance for specific sectors, including direct engagement with business and industry. These developments should be acknowledged as key factors in providing both clarity and a level playing field.

The approach used in the introduction of the Timber Due Diligence requirements, as an example, could be a useful model to draw on as it includes feasible transition times, education and training, and feedback from regulators about individual company's compliance programs and controls.

The ARA would support development of an industry Code of Conduct for environmental and sustainability claims that would support the application of this guidance, in favour of more regulation or new legislation.

Advertising

- The ARA recognises that greenwashing causes considerable harm in terms of public trust in sustainable products even though the impact of misleading environmental and sustainability claims may not always constitute a significant financial harm to an individual consumer. It is therefore critical that greenwashing in advertising is curtailed to maintain consumer trust in sustainable products and the efforts of product developers, manufacturers and retailers to deliver a more sustainable, circular retail economy.
- Additionally, greenwashing can be a competitive disadvantage to those businesses genuinely seeking to pursue the development of more sustainable products and processes, who are inhibited by those making misleading or fraudulent claims. Not only is this a competitive disadvantage, but it can slow the overall progress towards a more sustainable economy.
- The ARA is keen to understand what changes might be considered in relation to advertising standards due to this inquiry. The existing Australian Association of National Advertisers (AANA) Environmental Claims Code includes a section on environmental and sustainability claims, providing specific guidance to advertisers. This Code should be enhanced to better align with current sustainability practices and benchmarking systems to better mitigate deceptive claims, which would allow consumers to make more informed decisions.
- While we believe the current regulation is adequate to address proven instances of greenwashing, the ARA does recommend an education campaign be developed and deployed to give guidance to industry about greenwashing and the limits around acceptable advertising claims. An approach that the ARA would support is to develop case study examples around common issues, for example best practice standards around credentialing or certification of products. We strongly believe greenwashing can be achieved through education and guidelines or industry codes of practice, rather than black letter law or regulation.
- The ARA notes that there are some challenges posed by a lack of national consistency around relevant technical standards. For example, recycling standards vary across each state and a lack of national consistency around recycling standards creates challenges for retailers in designing appropriate packaging and labels for products. While this can cause confusion for the consumer, it is unreasonable to suggest that a retailer operating in multiple jurisdictions is the cause of this confusion. National alignment on recycling and consistent recycling infrastructure would likely alleviate the potential to mislead the consumer in this instance.

Third party certification schemes

- As acknowledged in the ACCC's report, there are challenges regarding environmental and sustainability claims when looking at the third-party certification schemes operating within in this space. The ARA is seeking to understand whether it will be the certification schemes themselves, or the retailers selling the product with the certification label who will be the focus of any proposed regulatory changes, or both.

- According to [Eco Label Index](#) there are over 57 certification labels in Australia alone, as well as various international schemes and purchasing guides. Without a system of accreditation of certification schemes, it is challenging for retailers to understand which schemes will deliver the most benefit to both the company, and to the conscious consumer. It is also difficult for business to conduct the appropriate due diligence required to ensure the scheme is legitimate. Clearer guidelines on these schemes, including labelling would ensure there is transparency for consumers to make an informed decision, or understand where they can find the detail on the scheme, should they wish.
- As a result of the high number of schemes, retailers tend to conduct their due diligence based on those that have a proven track record in the market, for example the Forest Stewardship Council and Better Cotton Initiative. While we expect only the more credible schemes will enjoy market longevity, the ARA is open to working with Government or the ACCC to identify best practice schemes, or to provide support in identifying key characteristics to look for when joining a certification scheme.
- Finally, the ARA notes the high benchmark and cost of joining some certification schemes for both the retailer, and in some cases the farmer or producer involved in certification. The cost of participation can potentially act as a barrier to smaller companies, which may prevent them from joining and benefiting from or building sustainable credentials that a larger company may be more easily able to achieve through this scheme. Additionally, this cost can then be passed onto the consumer, pricing out consumers and rendering sustainable alternatives as an exclusive or high-end option which inhibits progress toward a sustainable economy.
- Ultimately, guidance is needed to support continuous improvement without solely relying on third-party certifications, and to communicate actions taken credibly to consumers to deliver value back to the market, and those producers committed to improving their practices.

An approach that the ARA would support is to develop case study examples around common issues, for example best practice standards around credentialing or certification of products. We strongly believe greenwashing can be achieved through education and guidelines or industry codes of practice, rather than black letter law or regulation.

CONCLUSION

Greenwashing is a significant concern for our members, creating compliance and reputational risk for those retailers with an authentic commitment to offering sustainable products, without offering sufficient deterrent to bad actors who seek to misrepresent sustainability claims.

We support any effort to address the issue of greenwashing for the benefit of retailers and consumers but suggest that supplementing current regulation with an education campaign and industry code of conduct of an adequate response.

Thank you again for the opportunity to provide a submission to the Inquiry. For any queries in relation to this submission please contact policy@retail.org.au