



Environmental Defenders Office

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Dear Mel

Issues with sustainable finance taxonomies – case study of Woolworths Group Limited’s green bond

1. We are aware that the Australian Securities and Investments Commission (**ASIC**) was allocated funding earlier this year for investigating and undertaking enforcement action in sustainable finance markets, including in respect of the Sustainable Finance Taxonomy (**Taxonomy**) currently being developed by Treasury as part of its sustainable finance strategy.¹ As you would be aware, the development of the Taxonomy to date has been led by the Australian Sustainable Finance Institute, a financial services industry body, in partnership with Treasury.² We are concerned that this means those developing the rules for inclusion are also those with an interest in marketing financial products as sustainable.
2. The EDO is concerned about the potential for the Taxonomy to label products as “green” or “sustainable” in a way that may misdirect much needed investment in renewable products and industries. We set out below an example occurring in the green bonds market, Woolworths Group Limited’s (**Woolworths**) green bond issued in 2019 (the **Bond**), to illustrate these concerns.³ We note Climate Energy Finance has recently written an article highlighting similar issues with the Bond.⁴

¹ ASIC, ‘ESG: Major change is underway, and we need to be ready’ (Speech by ASIC Chair Joe Longo, 13 June 2023) <https://asic.gov.au/about-asic/news-centre/speeches/esg-major-change-is-underway-and-we-need-to-be-ready/>.

² Australian Sustainable Finance Institute, ‘About ASFI’ <https://www.asfi.org.au/about-asfi>.

³ We note the EDO is not alone in raising these concerns. For example, the Certified Practising Accountant magazine, In the Black, used the Bond as an example of this very issue: InTheBlack, ‘How green are green bonds?’ (1 September 2019) <https://intheblack.cpaaustralia.com.au/business-and-finance/how-green-are-green-bonds>.

⁴ Climate Energy Finance, ‘Green Bonds for Low Carbon Buildings – do they contribute to real emissions reduction? A case study on the Woolworths Green Bond’ (7 December 2023) https://climateenergyfinance.org/wp-content/uploads/2023/12/CEF_WOW-Green-Bond-Case-Study2.pdf.

3. These concerns extend to the role of third parties that endorse and/or restate claims relating to the Bond and which, taken together, may evidence market integrity issues.
4. We consider it is critical that green bonds are used for sustainable purposes, proceeds are genuinely applied for such purposes, and that green bonds adhere to the principle of additionality which asks whether they have enabled an activity that would not have happened without them. We note that we have previously raised these issues in our submission to Treasury on the Sustainable Finance Strategy Consultation Paper.⁵

Issues relating to the Bond

5. Green bonds are marketed as supporting projects and assets that improve environmental outcomes. "Use of proceeds" green bonds earmark bond proceeds for specific projects and assets, while providing recourse to the balance sheet of the issuer. Most green bond issuance is to wholesale rather than retail customers, and therefore does not require a prospectus, although there are several retail products developing in the area.
6. In April 2019, Woolworths issued \$400 million of "use of proceeds" green bonds, certified by the Climate Bonds Initiative (**CBI**) to conform with the Climate Bonds Standard.⁶
7. The EDO is concerned that information about the Woolworths Green Bond provided to wholesale investors, and potentially by those wholesale investors to retail investors, may be misleading or deceptive or likely to mislead or deceive. The general provisions of s 1041H of the *Corporations Act 2001* (Cth) (**Corporations Act**) and s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) apply (as no prospectus was issued).
8. For the reasons set out below, we believe that by making the following representations, Woolworths and/or CBI may have engaged in conduct that is misleading or deceptive or likely to mislead or deceive, in breach of s1041H of the Corporations Act and/or s 12DA of the ASIC Act:
 - a. representations by Woolworths that the Bond constitutes a climate mitigating action and/or delivers positive environmental outcomes (**Woolworths Positive Environmental Outcomes Representation**); and
 - b. representations by CBI that its green bond certification scheme, applicable to the Bond, only certifies debt instruments, assets and/ or entities with climate integrity, either through their contribution to climate mitigation, and/or to adaptation and resilience to climate change (**CBI Climate Integrity Certification Representation**),(together, the **Representations**).

⁵ EDO, *Submission to Treasury on the Sustainable Finance Strategy Consultation Paper* (1 December 2023) <https://www.edo.org.au/wp-content/uploads/2023/12/231201-Treasury-Sustainable-Finance-Strategy-Consultation-Paper-EDO-submission.pdf>.

⁶ See, eg, Woolworths, *2022 Green Bond: Impact and use of proceeds report* (October 2022) <https://www.woolworthsgroup.com.au/content/dam/wwg/investors/debt-investors/221031%20Green%20Bond%20-%20impact%20and%20use%20of%20proceeds%20report.pdf>; Climate Bonds Initiative, 'Woolworths Group' <https://www.climatebonds.net/certification/woolworths> (accessed 4 December 2023).

9. We consider that issues also arise in respect of Woolworths' involvement in the development of CBI's standards applicable to the Bond, and the verification processes associated with the Bond.

Potentially misleading or deceptive conduct

Woolworths Positive Environmental Outcomes Representation

10. In our view, the following statements made by Woolworths give rise to the representation that the Bond constitutes a climate mitigating action and/or delivers positive environmental outcomes (Woolworths Positive Environmental Outcomes Representation).

11. Woolworths' Green Bond Framework, which governs the Bond, states:⁷

*The amount equal to the net proceeds of the Green Bonds issued under the Framework will be allocated to financing of **planned projects, assets or expenditure that deliver positive environmental outcomes, and** which meet the eligibility criteria to qualify as Eligible Assets. The net proceeds may also be used to refinance corporate debt that is identified as supporting existing Eligible Assets.*

(emphasis added)

12. Woolworth's description of its Bond in its impact and use of proceeds reports similarly states:⁸

The Group's Green Bonds are issued under a framework that is aligned to the Green Bond Principles published by the International Capital Markets Association and will:

- *support the financing of projects, assets or expenditure that will **deliver positive environmental outcomes**, for example solar installations, or waste reduction initiatives;*
- *encourage other companies, by our example, to invest in projects and assets that will **deliver positive environmental outcomes**; and*
- *contribute to the development of the green bond market as we are the first issuer of green bonds under the CBI low-carbon buildings criteria for supermarkets globally.*

(emphasis added)

⁷ Woolworths, *Green Bond Framework* (April 2019)

[https://www.woolworthsgroup.com.au/content/dam/wwg/investors/debt-investors/190401%20Green%20Bond%20Framework%20\(final\).pdf](https://www.woolworthsgroup.com.au/content/dam/wwg/investors/debt-investors/190401%20Green%20Bond%20Framework%20(final).pdf) p 1.

⁸ See, eg, Woolworths, *2022 Green Bond: Impact and use of proceeds report* (October 2022)

<https://www.woolworthsgroup.com.au/content/dam/wwg/investors/debt-investors/221031%20Green%20Bond%20-%20impact%20and%20use%20of%20proceeds%20report.pdf> p

1; Woolworths, *2021 Green Bond: Impact and use of proceeds report* (October 2021)

[https://www.woolworthsgroup.com.au/content/dam/wwg/investors/debt-investors/211029%20Green%20Bond%20-%20impact%20and%20use%20of%20proceeds%20report%20\(2021\).pdf](https://www.woolworthsgroup.com.au/content/dam/wwg/investors/debt-investors/211029%20Green%20Bond%20-%20impact%20and%20use%20of%20proceeds%20report%20(2021).pdf) p 2;

Woolworths, *2020 Green Bond: Impact and use of proceeds report* (September 2020)

[https://www.woolworthsgroup.com.au/content/dam/wwg/investors/debt-investors/200914%20WOW%20Green%20Bond%20Impact%20and%20UOP%20report%202020%20\(final\).pdf](https://www.woolworthsgroup.com.au/content/dam/wwg/investors/debt-investors/200914%20WOW%20Green%20Bond%20Impact%20and%20UOP%20report%202020%20(final).pdf), p 3.

13. Woolworths' 2022 Annual Impact and Use of Proceeds report on the Bond also states:⁹

Eligible Assets are principally comprised of a portfolio of Woolworths stores that satisfy the CBI's Low Carbon Building Criteria.

[...]

*This portfolio of eligible stores, in aggregate, **avoided 10,974 tCO₂e emissions** on an annual basis, when compared to the average Woolworths store.*

[...]

*As at 26 June 2022, approximately 92% of Woolworths Group's total portfolio of Woolworths stores that qualify as Eligible Assets were allocated to the Green Bonds, and thus **the direct proportional impact of the Green Bonds is 10,111 tCO₂e emissions being avoided on an annual basis.***

*This energy saving is **equivalent to taking 4,146 cars off the road** each year in Australia.*

(emphasis added)

14. Woolworths' presentation of this information, including headlines and graphics, creates the overriding impression that the Bond reduced emissions at 32 stores that Woolworths links to the Bond. This includes the following panel text that accompanies the main body text quoted above:

Total project impact

- *32 Low Carbon Supermarkets*
- ***10,111 tCO₂e emissions avoided** attributable to the Green Bonds*
- ***Equivalent to 4,146 cars off the road each year** in Australia*

(emphasis added)

15. In our view, the Woolworths Positive Environmental Outcomes Representation, which arises from these statements, may be misleading or deceptive or likely to mislead or deceive because the vast majority of the Bond proceeds were allocated to financing Woolworths' existing leases, which did not achieve additional climate mitigation and/or deliver additional positive environmental outcomes.

16. In Woolworths' 2022 Annual Impact and Use of Proceeds report, footnotes accompanying the statements extracted at paragraphs 11 and 12 above disclose that these figures are not observed reductions in emissions associated with the 32 stores included as 'Eligible Assets' for the Bond, but merely the difference in average emissions of those 32 stores in comparison to the average of Woolworths' other (approximately 1000) stores (*excluding* the stores included as "Eligible Assets", exacerbating the difference in emissions).¹⁰ This figure, therefore, is not based

⁹ Woolworths, 2022 Green Bond: Impact and use of proceeds report (October 2022)

<https://www.woolworthsgroup.com.au/content/dam/wwg/investors/debt-investors/221031%20Green%20Bond%20-%20impact%20and%20use%20of%20proceeds%20report.pdf>.

¹⁰ Woolworths, 2022 Green Bond: Impact and use of proceeds report (October 2022)

<https://www.woolworthsgroup.com.au/content/dam/wwg/investors/debt-investors/221031%20Green%20Bond%20-%20impact%20and%20use%20of%20proceeds%20report.pdf> p 3

on comparison of before and after the bond investment in upgrades for the stores. It is based on Woolworths selecting their most efficient stores and comparing them with their average stores.

17. Moreover, of the 32 stores which are allocated as “Eligible Assets” for the purposes of the Bond, 31 are leased (not owned) by Woolworths. For leased stores, the value of leasehold improvements and value of the lease asset are included for the purpose for allocating the use of proceeds from the Bonds.¹¹ As at June 2022, 86% of the A\$400 million proceeds from the Bond were allocated to Woolworths’ low carbon buildings (of which the vast majority are leases), whereas only 3% was allocated to solar energy, 9% to LED upgrades and 2% to Heating Ventilation Air Conditioning (**HVAC**) optimisation.¹²
18. The majority of stores included as “Eligible Assets” for the Bond are leased in major shopping centres such as Leichhardt Marketplace, Burwood Plaza and Rouse Hill NSW.¹³ They are not purpose built and Woolworths owned stores but within existing shopping complexes and there is no information to link efficiencies to the upgrades associated with the Bond. The Bond proceeds appear to be allocated towards the value of the lease, with only a small proportion going to upgrades.
19. We believe that it may be misleading or deceptive or likely to mislead or deceive to characterise all of the Bond proceeds as being used for climate mitigating action and/or delivering positive environmental outcomes in circumstances where the majority of the Bond proceeds are allocated to financing certain of Woolworths’ leases, which did not achieve any additional suppression or discontinuation of emissions. Specifically:
 - a. dividing a portfolio of stores into a higher-emissions and a lower-emissions group for reporting purposes does not affect emissions;
 - b. equating the difference to “taking 4,146 cars off the road” suggests the existence of emissions-generating activities that were subsequently discontinued to reduce emissions;
 - c. the mere arithmetic difference in emissions between groups of stores is as accurately characterised as “excess” emissions of the other stores; and
 - d. without a credible contribution to any action that suppressed or discontinued emissions, there is no basis for attributing (allegedly) avoided emissions to Woolworths’ Bond.

(footnote 3). A small proportion of Woolworths’ Green Bond proceeds are used to refinance prior expenditures on climate mitigating acts such as installing solar panels, improving HVAC systems, and upgrading lighting. However, these are separately accounted for in Woolworths’ Bond use of proceeds reports, and there is no indication that these upgrades took place at the 32 selected stores.

¹¹ See, eg, Woolworths, *2022 Green Bond: Impact and use of proceeds report* (October 2022) <https://www.woolworthsgroup.com.au/content/dam/wwg/investors/debt-investors/221031%20Green%20Bond%20-%20impact%20and%20use%20of%20proceeds%20report.pdf> p 6.

¹² Ibid.

¹³ Woolworths, *2020 Green Bond: Impact and use of proceeds report* (September 2020) [https://www.woolworthsgroup.com.au/content/dam/wwg/investors/debt-investors/200914%20WOW%20Green%20Bond%20Impact%20and%20UOP%20report%202020%20\(final\).pdf](https://www.woolworthsgroup.com.au/content/dam/wwg/investors/debt-investors/200914%20WOW%20Green%20Bond%20Impact%20and%20UOP%20report%202020%20(final).pdf), p 9.

20. To the extent disclosures are included in the fine print of Woolworths' annual reporting about the Bonds, this is insufficient to dispel the overall misleading impression created by Woolworths various prominent and repeated statements giving rise to the Woolworths Positive Environmental Outcomes Representation.
21. We also note that Woolworths's intention to link the bulk of the Bond proceeds to 32 (existing) stores was documented prior to Woolworths' publication of its Green Bond Framework.¹⁴ Woolworths' Green Bond Framework nonetheless omits financing leases from its list of examples of projects which may meet the eligibility criteria, as extracted below:¹⁵

Examples of projects which Woolworths Group has recently delivered or is in the process of delivering which may meet this eligibility criteria are:

- *Introduction of the Energy Management Centre to monitor and manage energy consumption across all supermarket stores. This will provide real-time visibility of our energy usage and allow us to optimise our energy consumption through data and analytics;*
- *Installing solar panels on the roofs of stores and distribution centres, including introducing solar panels on top of car park shade sails to help cut energy usage and reduce the store environmental footprint;*
- *Retrofitting stores with energy efficient LED lighting;*
- *Upgrade stores with hybrid or HFC-free refrigeration systems;*
- *Trialling a solar and TESLA battery system at the Erskine Park Liquor Distribution Centre;*
- *Installation of soft plastic recycling bins in all supermarket stores for both the store and customers;*
- *Reduction of plastic on fruit and vegetables. Woolworths Group will continue to invest in long-term solutions which reduce packaging but also protect quality and extend shelf life of fruit and vegetables to reduce food wastage;*
- *Establishment of the Woolworths Organic Growth Fund, in partnership with Heritage Bank, to support Australian farmers investing in Australian organic farming projects; and*
- *Partnering with the World Wide Fund for Nature (WWF) Australia to improve sustainable sourcing of Woolworths Group's Own Brand seafood products.*

CBI Climate Integrity Certification Representation

22. CBI, the body which certified the Bond, is an investor-focused not-for-profit international organisation which promotes the development of and investment in a "Green and Climate

¹⁴ EY, *Independent Reasonable Assurance Report to the Executive and Management of Woolworths Group Limited* (1 April 2019) [https://www.woolworthsgroup.com.au/content/dam/wwg/investors/debt-investors/190402%20EY%20Assurance%20\(opinion%20+%20Annex%20A\).pdf](https://www.woolworthsgroup.com.au/content/dam/wwg/investors/debt-investors/190402%20EY%20Assurance%20(opinion%20+%20Annex%20A).pdf) Annex A.

¹⁵ ; Woolworths, *Green Bond Framework* (April 2019) [https://www.woolworthsgroup.com.au/content/dam/wwg/investors/debt-investors/190401%20Green%20Bond%20Framework%20\(final\).pdf](https://www.woolworthsgroup.com.au/content/dam/wwg/investors/debt-investors/190401%20Green%20Bond%20Framework%20(final).pdf) p 2.

Bonds Market”.¹⁶ CBI’s Climate Bonds Standard and Certification Scheme is a labelling scheme for bonds, underpinned by the Climate Bonds Taxonomy.

23. Statements made by CBI which, in our view, give rise to the CBI Climate Integrity Certification Representation, include the following.
- a. CBI’s certification “Clearly demonstrates to the market that the Certified instruments meet the highest standards for climate integrity.”¹⁷
 - b. “The Certification label is an endorsement of the green credentials of the assets/entities and debt instruments, and the ambition and credibility of corporate transition plans.”¹⁸
 - c. “A key part of the Standard is a suite of sector-specific eligibility Criteria. Each Sector Criteria sets climate change benchmarks for that sector that are used to screen assets and capital projects so that only those that have climate integrity, either through their contribution to climate mitigation, and/or to adaptation and resilience to climate change, will be certified.”¹⁹
24. While the CBI is not an Australian organisation, as the relevant conduct is being undertaken in the Australian jurisdiction and in respect of an Australian financial product, we consider s 1041H of the Corporations Act applies.
25. We believe that the CBI Climate Integrity Certification Representation may be misleading or deceptive or likely to mislead or deceive because, contrary to the CBI Climate Integrity Certification Representation:
- a. CBI permits certification of green bonds where proceeds are used to finance leases,²⁰ such as the Woolworths Bond, which does not necessarily create additional climate mitigation and/or deliver positive environmental outcomes, as outlined above; and
 - b. CBI permits certification of bonds whose proceeds finance ownership of buildings, as detailed below.
26. In respect of the use of green bond proceeds to finance building ownership, contrary to the CBI Climate Integrity Certification Representation:
- a. building ownership (unlike building development or management) has a limited affect on physical emissions;
 - b. CBI certification ignores whether superior emissions performance is due to climate mitigation or to unrelated factors, such as a store’s location in a climate-controlled

¹⁶ CBI, ‘About Us’ <https://www.climatebonds.net/about> (accessed 5 December 2023).

¹⁷ CBI, *The Climate Bonds expanded Standard and Certification Scheme* (June 2023) https://www.climatebonds.net/files/page/files/climate_bonds_expanded_standard_and_certification_scheme_brochure_1.pdf.

¹⁸ Ibid.

¹⁹ CBI, ‘Sector Criteria’ <https://www.climatebonds.net/standard/sector-criteria> (accessed 5 December 2023).

²⁰ CBI, *Climate Bonds Standard version 4.0* (April 2023) https://www.climatebonds.net/files/files/CBI_Standard_V4.pdf p 10.

shopping centre. As noted above, many of the 32 stores included in Woolworths' Bond are stores Woolworths leases within shopping centres; and

- c. the financed value of a building is principally comprised of land value and the value of general (not climate-related) improvements (e.g. construction costs).
27. CBI does not require issuers to meet an independent, objective or external emissions standard, such as Green Star ratings. In Woolworths' case, CBI's criteria was satisfied by the fact that the 32 stores operated with lower average emissions than Woolworths' other (approximately 1000) stores.
28. CBI also makes certain statements specifically relating to the Woolworths Bond that, in our view, create the incorrect impression that all of the Bond proceeds will contribute to climate mitigation, including the following.
- a. CBI's announcement of the Bond's issuance on 14 April 2019 which states that Bond proceeds "will fund initiatives such as installing solar panels, supermarket retrofits, refrigeration upgrades with hybrid and HFC free systems and a host of other measures."²¹ CBI does not make clear that over 80% of the Bond proceeds will fund low carbon buildings (of which the vast majority are leases), which in our view creates the potentially misleading or deceptive impression that investor purchases of the Bond will contribute primarily, if not exclusively, to climate mitigation expenditure.
 - b. CBI's fact sheet about the Bond, dated 26 April 2019, states that 83% of proceeds would be used to finance and refinance investments made to "construct free standing supermarket buildings across Australia."²² There is no account for how the Bond proceeds are linked to any construction of free standing buildings and our understanding is that many of Woolworths' supermarkets are allocated Bond funds are neither free standing, nor constructed by the Bond issuer.

Concerns about the development of standards and verification processes associated with the Bond

29. We are also concerned about potential conflicts of interest arising in respect of Woolworths' involvement in developing standards applicable to the Bond, and the standard and rigour of third party verifications associated with the Bond and relied on by investors.

²¹ CBI, 'Low Carbon Buildings: Woolworths AUD400m Supermarket Based Certified Green Bond: First to adopt LCB Criteria in Retail Sector' (14 April 2019) <https://www.climatebonds.net/2019/04/low-carbon-buildings-woolworths-aud400m-supermarket-based-certified-green-bond-first-adopt>.

²² CBI, 'Green Bond Fact Sheet: Woolworths Group Limited' (26 April 2019) <https://www.climatebonds.net/files/files/2019-04%20AU%20Woolworths.pdf> p 2.

30. CBI's Climate Bonds Standard version 2.1, released in January 2017, applied at the time of the Bond issuance.²³ This version of the standard did not explicitly include leases as "Eligible Assets", however this was included in subsequent versions of the standard.²⁴
31. Part B of the version of the standard applicable to the Bond sets out a two-step process to determine the eligibility of specific projects and physical assets that, for the purposes of the standard, will be regarded as contributing to the delivery of a low carbon and climate resilient economy.
- a. Clause 9 provides that nominated projects and assets must fall into one or more of the investment areas contained in the latest version of the Climate Bonds Taxonomy. The Climate Bonds Taxonomy applicable at the time of issuance of the Bond relevantly provided that commercial buildings with an emissions footprint in the top 15% of emissions performance in the local market, or a substantial reduction in gCO₂m² because of upgrade or retrofit, were certifiable under the standard.²⁵
 - b. Clause 10 requires that nominated projects and assets meet the specific eligibility criteria provided in the latest version of the relevant Sector-Specific Criteria document(s) which, for the purposes of the Bond, is the Low Carbon Buildings (Commercial) criteria.
32. Prior to the issuance of the Bond, Woolworths was involved in a six-month collaborative process with CBI to develop standards for supermarket premises.²⁶ Woolworths' Bond was the first climate bond certified by CBI that related to supermarket buildings.²⁷ Woolworths was, therefore, involved in developing standards which were subsequently used in furtherance of its own financial interests, including pre-existing commitments such as leases.
33. Moreover, the standards developed with Woolworths depart in certain respects from the approach otherwise adopted by CBI. For example:

²³ CBI, *Climate Bonds Standard version 2.1* (January 2017)

[https://www.climatebonds.net/files/files/Climate%20Bonds%20Standard%20v2_1%20-%20January_2017\(1\).pdf](https://www.climatebonds.net/files/files/Climate%20Bonds%20Standard%20v2_1%20-%20January_2017(1).pdf).

²⁴ CBI's Climate Bonds Standard version 3, released in December 2019, included leasing structures within the definition of Eligible Projects and Assets: CBI, *Climate Bonds Standard v.3* (December 2019)

<https://www.climatebonds.net/files/files/climate-bonds-standard-v3-20191210.pdf> at D3.3.5.3. See also CBI, *Climate Bonds Standard version 4.0* (April 2023)

https://www.climatebonds.net/files/files/CBI_Standard_V4.pdf p 10.

²⁵ CBI, *Climate Bonds Taxonomy* (September 2018) <https://www.climatebonds.net/files/files/CBI-Taxonomy-Sep18.pdf> p 11.

²⁶ KangaNews, 'Woolworths delivers next evolution of Australian green-bond issuance' (15 April 2019)

<https://www.kanganews.com/news/9903-woolworths-delivers-next-evolution-of-australian-green-bond-issuance>.

²⁷ CBI, 'Green Bond Fact Sheet: Woolworths Group Limited' (26 April 2019)

<https://www.climatebonds.net/files/files/2019-04%20AU%20Woolworths.pdf>; CBI, 'Market Blog #24' (26 April 2019) <https://www.climatebonds.net/2019/04/market-blog-24-26419-april-gb-issuance-usd84bn-date-driven-corporates-italy-takes-top-spot>.

- a. CBI’s background paper on the Low Carbon Buildings Criteria, dated July 2020, documents reasons that owners – but not tenants – are eligible to certify “low carbon buildings”.²⁸

2.5 PRINCIPLE: Focus on landlord, not tenant

[...]the Buildings Criteria focus on the emissions associated with energy use within the control of the landlord [...].The reasons for this are that:

- a. Light, power, and miscellaneous end-use energy demand within tenant spaces is outside the financial or management control of the building owner.
- b. Commercial buildings may experience a change in occupiers during the term of the bond.
- c. **Driving down end-use energy demand at the tenant level also benefits from a direct return on investment for a tenant.**
- d. **These investments and energy reduction strategies are outside the control of the landlord who ultimately issues the bond.”**

(emphasis added)

- b. CBI’s “landlord principle” is also reflected in CBI rules that exclude tenants’ energy use from being used to meet the “Low Carbon Building” emissions performance requirement:²⁹

“B. Boundaries for assessing carbon performance

Guidance

*The measured carbon performance of a building should align with the boundaries of ownership and control that exist in the property sector. **Only items within the building owner’s control should be included in the assessment of carbon performance.** Energy utilised for central services provided to serve tenant process loads should not be included in the assessment.*

Accordingly, buildings should have separate metering to allow for the partition of building owner and tenant energy consumption.

Explanation

The measured carbon performance of a building should not include energy end uses, e.g. lighting, that are not within the control of the building owner.”

(emphasis added)

²⁸ CBI, *Aligning Buildings with the Paris Climate Agreement: Insights and Developments from the Green Bond Market* (July 2020)

<https://www.climatebonds.net/files/files/standards/Buildings/Low%20Carbon%20Buildings%20Criteria%20Background%20Paper.pdf> p 20.

²⁹ CBI, *Commercial Property Climate Bonds: Certification methodology version 1*

<https://www.climatebonds.net/files/files/Commercial%20Property%20Criteria.pdf> p 5.

34. Before certifying a Green “Use of Proceeds” Bond, CBI requires attestation, from one of its authorised third party “verifiers” confirming that the issuer’s intended use of Bond proceeds complies with the relevant CBI criteria.³⁰
35. Ernst and Young Australia (**EY**) was the company that certified in “reasonable assurance” statements that Woolworths’ Bond met the relevant CBI and International Capital Markets Association standards, and Woolworths’ own Green Bond Framework. EY provided the following verification statement for the Bond issuance:³¹

Assurance Conclusion

*Based on our reasonable assurance procedures as described in this statement of 1 April 2019, in our opinion Woolworths Group Limited’s bond issuance process in relation to its 2019 Green Bond, inclusive of its Green Bond Framework and nominated projects and assets, meets the project identification, project minimum Criteria, management of proceeds, and reporting requirements of **the International Capital Market Association’s (ICMA) Green Bond Principles (GBP)** and the **Climate Bond Initiative’s (CBI) Climate Bond Standard (CBS) -inclusive of sectoral criteria**, in all material respects.*

(emphasis added)

36. The Green Bond Principles require higher levels of assurance than the CBI. It states “all designated eligible Green Projects should “provide clear environmental benefits, which should be assessed and where feasible quantified by the issuer.”³² It also recommends that the issuer make clear if refinancing is involved. Eligible green projects are available for green buildings that meet regional, national or internationally recognised standards or certifications for environmental performance. EY does not address these issues in its verification.
37. EY provides similar assurances in Woolworths’ annual “Impact and Use of Proceeds” reports.³³ This is based on EY’s assessment of Woolworth’s intended use of proceeds for leased supermarkets, which EY documents in Appendix A to its assurance statement. This information is not contained in the Woolworths specific examples and CBI’s initial outline on claims for tenants' costs.

³⁰ CBI, *Climate Bonds Standard version 2.1* (January 2017)

[https://www.climatebonds.net/files/files/Climate%20Bonds%20Standard%20v2_1%20-%20January_2017\(1\).pdf](https://www.climatebonds.net/files/files/Climate%20Bonds%20Standard%20v2_1%20-%20January_2017(1).pdf) pp 6-7.

³¹ EY, *Independent Reasonable Assurance Report to the Executive and Management of Woolworths Group Limited* (1 April 2019) [https://www.woolworthsgroup.com.au/content/dam/wwg/investors/debt-investors/190402%20EY%20Assurance%20\(opinion%20+%20Annex%20A\).pdf](https://www.woolworthsgroup.com.au/content/dam/wwg/investors/debt-investors/190402%20EY%20Assurance%20(opinion%20+%20Annex%20A).pdf) Annex A.

³² ICMA, *Green Bond Principles: Voluntary Process Guidelines for Issuing Green Bonds* (June 2018) <https://www.icmagroup.org/assets/documents/Regulatory/Green-Bonds/Green-Bonds-Principles-June-2018-270520.pdf>.

³³ Woolworths, *2022 Green Bond: Impact and use of proceeds report* (October 2022) <https://www.woolworthsgroup.com.au/content/dam/wwg/investors/debt-investors/221031%20Green%20Bond%20-%20impact%20and%20use%20of%20proceeds%20report.pdf> pp 8-9; EY, ‘Independent Reasonable Assurance Report to the Executive and Management of Woolworths Group Limited’ (29 October 2021) <https://www.woolworthsgroup.com.au/content/dam/wwg/investors/debt-investors/211029%20EY%20Green%20Bond%202021%20Assurance%20Report.pdf>; Woolworths, *2020 Green Bond: Impact and use of proceeds report* (September 2020) [https://www.woolworthsgroup.com.au/content/dam/wwg/investors/debt-investors/200914%20WOW%20Green%20Bond%20Impact%20and%20UOP%20report%202020%20\(final\).pdf](https://www.woolworthsgroup.com.au/content/dam/wwg/investors/debt-investors/200914%20WOW%20Green%20Bond%20Impact%20and%20UOP%20report%202020%20(final).pdf), pp 10-11.

38. We are concerned that EY's assurance has been provided and reiterated without any comment on the matters raised here, hindering the ability for investors and potential investors to understand what the Bond involves and what has been certified and verified, including in respect of:
- Woolworths' involvement in developing CBI's standards applicable to the Bond; and
 - the inconsistencies between Woolworths' Green Bond Framework and its intended use of Bond proceeds, as outlined at paragraphs 10 to 21 above.

Impact of the Conduct

39. Some of the investors in the Bond included Future Super, Australian Unity's bond through Altius Asset Management³⁴, Clean Energy Finance Corporation (CEFC),³⁵ Australian Ethical³⁶ and Pental Sustainable Australian Fixed Interest Fund.³⁷ Some of these firms have reproduced Woolworths' statements of concern, and may have therefore unwittingly amplified the misleading representations about the Bond, with potential harm to retail investors.
40. For example, the Government-backed CEFC, in announced its investment in the Bond on 29 April 2019, stating its proceeds would be used to fund planned clean energy technologies, with no mention of leases:³⁸

The \$400 million green bond will help fund the Woolworths 2020 sustainability strategy, through the installation of LED lighting, energy efficient refrigeration, solar panels and other clean energy technologies.

[...] It creates a simple and highly transparent way for the private sector to invest in clean energy technologies.

41. CEFC has recognised that:³⁹

Many investors do not have the capability to assess the environmental or emissions related merits of specific investments. Climate bonds offer the benefit of independent certification of this aspect of the transaction.

This reinforces the importance of ensuring that there is not misleading information in the Bond set up or assurance reporting as it carries significant weight.

³⁴ Altius Asset Management, 'Portfolio Holdings as at 30 August 2023: Green Bond Fund' <https://www.altiusam.com/-/media/RebrandWealth/Documents/Funds/Altius/Green-Bond-Fund/Portfolio-holdings-GBF.pdf>.

³⁵ CEFC, 'Woolworths leads with global first' (April 2022) <https://www.cefc.com.au/where-we-invest/case-studies/woolworths-leads-with-global-first/>.

³⁶ Firstlinks, 'Green bonds: greenwash or the real deal?' (5 June 2019) <https://www.firstlinks.com.au/green-bonds-greenwash-real-deal>.

³⁷ Pental, 'Pental Sustainable Australian Fixed Interest Fund' <https://www.pentalgroup.com/income-and-fixed-interest/pental-sustainable-australian-fixed-interest-fund/> (accessed 8 December 2023).

³⁸ CEFC, 'CEFC invests \$30 million in world first Woolworths green bond' (29 April 2019) <https://www.cefc.com.au/media/media-release/cefc-invests-30-million-in-world-first-woolworths-green-bond/>.

³⁹ CEFC, 'The CEFC and Climate Bonds' (8 May 2019) <https://www.cefc.com.au/media/in-the-news/the-cefc-and-climate-bonds/>.

42. While there is currently no premium for green bonds, at issuance the Bond was over-subscribed because there is significant demand for these products.⁴⁰ It was reported that the scale of demand for the bond could be sufficient to put mid-curve domestic issuance on a pricing par with bank loans.⁴¹
43. Bond purchasers are reported to be dominated (98%) by “green investors” deliberately selected by Woolworths.⁴² This suggests that environmental claims associated with the Bond, characterising it as “green”, may have influenced many investors to purchase the Bond.
44. EDO is therefore concerned that some investors may have been misled by the information, and the potentially misleading impact may have also been passed on to retail investors by wholesale investors.
45. The harm associated with the representations are that CBI certification may instil unwarranted investor confidence in the Bond’s positive contribution to climate mitigation. We are concerned that, where such representations are false, funds will be unfairly diverted from genuine climate mitigating projects and expenditures.
46. Please don’t hesitate to contact me should you require any further information about this letter on 0406 288 599 or by email at kirsty.ruddock@edo.org.au.

Yours sincerely,

Environmental Defenders Office



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Reference number: 484816684

⁴⁰ See, eg, CBI, ‘Low Carbon Buildings: Woolworths AUD400m Supermarket Based Certified Green Bond: First to adopt LCB Criteria in Retail Sector’ (14 April 2019) <https://www.climatebonds.net/2019/04/low-carbon-buildings-woolworths-aud400m-supermarket-based-certified-green-bond-first-adopt>.

⁴¹ KangaNews, ‘Woolworths delivers next evolution of Australian green-bond issuance’ (15 April 2019) <https://www.kanganews.com/news/9903-woolworths-delivers-next-evolution-of-australian-green-bond-issuance>.

⁴² See, eg, KangaNews, ‘Woolworths delivers next evolution of Australian green-bond issuance’ (15 April 2019) <https://www.kanganews.com/news/9903-woolworths-delivers-next-evolution-of-australian-green-bond-issuance>; CBI, ‘Green Bond Fact Sheet: Woolworths Group Limited’ (26 April 2019) <https://www.climatebonds.net/files/files/2019-04%20AU%20Woolworths.pdf>.