



Environmental  
Defenders Office

**Supplementary submission to the Senate Standing  
Committee on Environment and Communications on  
Greenwashing**

**2 February 2024**

## About EDO

Environmental Defenders Office (**EDO**) is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

**Successful environmental outcomes using the law.** With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

**Broad environmental expertise.** EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

**Independent and accessible services.** As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

EDO is a legal centre dedicated to protecting the environment.

Submitted by email to [ec.sen@aph.gov.au](mailto:ec.sen@aph.gov.au).

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## EXECUTIVE SUMMARY

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We refer to the Senate Standing Committee on Environment and Communications' inquiry into greenwashing, and to the Environmental Defenders Office's initial submission to that inquiry dated 9 June 2023 (**initial submission**).

EDO appreciates the invitation for supplementary submissions. This supplementary submission sets out several recent developments and examples from EDO's work since the date of our initial submission which reiterate the need for:

- (a) additional interventions to offer greater protection from greenwashing; and
- (b) more robust and transparent enforcement for greenwashing misconduct.

## SUPPLEMENTARY SUBMISSION

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### Recent developments

#### *EDO's greenwashing work*

Our initial submission summarised EDO's work relevant to greenwashing. Since that initial submission, EDO has assisted clients to lodge several additional greenwashing complaints with the Australian Securities and Investments Commission (**ASIC**), the Australian Competition and Consumer Commission (**ACCC**) and the Australian Advertising Standards Authority (**Ad Standards**).

As at the date of this supplementary submission, EDO has assisted clients in lodging over 15 complaints to ASIC, 12 complaints to the ACCC and 18 complaints to Ad Standards.

In addition to the misleading or deceptive conduct proceedings in *Australasian Centre for Corporate Responsibility v Santos Ltd* (NSD858/2021), EDO is also representing Greenpeace Australia Pacific Limited (**Greenpeace**) in proceedings commenced in December 2023 in the Federal Court alleging that Woodside Energy Group Ltd (**Woodside**) engaged in misleading or deceptive conduct, or conduct that is likely to mislead or deceive, by making certain statements about its plans to reduce its greenhouse gas emissions in response to climate change.<sup>1</sup>

Our recent work has continued to raise issues within the areas of concern identified by EDO in our initial submission, including:

- (a) net zero claims and targets without a reasonable basis;
  - (i) As noted above, EDO is representing Greenpeace in misleading or deceptive conduct proceedings against Woodside in the Federal Court, which relate to

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<sup>1</sup> *Greenpeace Australia Pacific Limited v Woodside Energy Group Ltd* (NSD1520/2023).

certain statements including about Woodside’s net zero aspiration and greenhouse gas emissions reduction targets.<sup>2</sup>

(b) claims disregarding the whole of life cycle of products or services;

- (i) In September 2023, EDO submitted a complaint to Ad Standards on behalf of Climate Tasmania concerning statements made by Gas Energy Australia about the environmental impact of its liquified petroleum gas.<sup>3</sup> The complaint alleged that those statements omitted relevant negative aspects of the products including whole of life cycle emissions.

(c) vague claims such as “sustainable” or “ethical” which are not warranted; and

- (i) In October 2023, EDO submitted a complaint to Ad Standards on behalf of the Australian Religious Response to Climate Change, which requested Ad Standards investigate whether certain statements made by Adani Australia Pty Ltd, trading as Bravus Australia, were in breach of the Environmental Claims Code.<sup>4</sup> The statements of concern were made on Bravus’ website and included broad and undefined claims such as “we operate responsibly” and “Our Australian businesses produce and deliver energy solutions for a sustainable future”.
- (ii) In a letter to ASIC dated 15 December 2023, EDO raised concerns regarding the development of a sustainable finance taxonomy, with reference to a case study of Woolworths Group Limited’s green bond, including the potential for inappropriately labelling products “green” or “sustainable” in a way that may misdirect investment in renewable products and industries.<sup>5</sup>

(d) unclear uses of environmental and sustainability labels and trade marks;

- (i) In December 2023, EDO submitted a complaint to ACCC on behalf of Living Oceans Society, Neighbours of Fish Farming, Eko and Bob Brown Foundation. The complaint raised concerns about the labelling of salmon products as “responsibly sourced”, “responsibly farmed” and “best aquaculture practice”, including in the form of trust marks, where the products may include salmon farmed in Macquarie Harbour, which has been shown to have

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<sup>2</sup> *Greenpeace Australia Pacific Limited v Woodside Energy Group Ltd* (NSD1520/2023).

<sup>3</sup> ‘Complaint about Gas Energy Australia on behalf of Climate Tasmania’ (13 September 2023) <https://www.edo.org.au/wp-content/uploads/2023/09/Climate-Tasmania-Ad-Standards.pdf>.

<sup>4</sup> ‘Complaint about Adani website advertising’ (27 October 2023) <https://www.edo.org.au/wp-content/uploads/2023/11/Ad-Standards-complaint-ARRCC-re-Bravus.pdf>.

<sup>5</sup> ‘Issues with sustainable finance taxonomies – case study of Woolworths Group Limited’s green bond’ (15 December 2023) <https://www.edo.org.au/wp-content/uploads/2023/12/Letter-to-ASIC-re-sustainable-finance-taxonomies.pdf>.

devastating impacts on the endangered Maugean skate and the surrounding environment.<sup>6</sup>

### *Developments in domestic regulation*

Since the date of our initial submission, there have been several important developments to Australia's domestic regulation of greenwashing, including:

- (a) *ACCC environmental claims guidance*: In December 2023, the ACCC released guidance for businesses making environmental claims, which includes eight principles for trustworthy environmental claims.<sup>7</sup> EDO made a submission on the draft guidance in September 2023.<sup>8</sup> The ACCC has also indicated that it will release further guidance for businesses and consumers on emission and offset claims, as well as the use of trust marks, in early 2024.<sup>9</sup>
- (b) *Australian Association of National Advertisers' (AANA) draft Environmental Claims Code*: In January 2024, AANA released an exposure draft of its updated Environmental Claims Code for public comment.<sup>10</sup> Submissions on the exposure draft are open until 22 March 2023. EDO intends to make a submission, following its previous submission to AANA's review of the code in February 2023.<sup>11</sup>
- (c) *Mandatory climate related financial disclosures*: In January 2024, Treasury released exposure draft legislation for the introduction of mandatory climate-related disclosure requirements for large businesses and financial institutions.<sup>12</sup> Treasury is seeking views on the draft legislation until 9 February 2024. EDO intends to make a submission on the exposure draft.

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<sup>6</sup> 'Potentially false, misleading or deceptive representations relating to salmon products' (1 December 2023) [https://www.edo.org.au/wp-content/uploads/2023/12/ACCC\\_complaint\\_re\\_representations\\_relating\\_to\\_salmon\\_products.pdf](https://www.edo.org.au/wp-content/uploads/2023/12/ACCC_complaint_re_representations_relating_to_salmon_products.pdf).

<sup>7</sup> ACCC, *Making environmental claims* (December 2023) <https://www.accc.gov.au/system/files/greenwashing-guidelines.pdf>.

<sup>8</sup> EDO, *Submission to the ACCC on draft guidance for business on environmental and sustainability claims* (13 September 2023) <https://www.edo.org.au/wp-content/uploads/2023/10/20230913-Environmental-Defenders-Office-submission-to-ACCC.pdf>.

<sup>9</sup> ACCC, 'ACCC releases eight principles to guide businesses' environmental claims' (12 December 2024) <https://www.accc.gov.au/media-release/accc-releases-eight-principles-to-guide-businesses%E2%80%99-environmental-claims>.

<sup>10</sup> AANA, *Environmental Claims Code: Exposure Draft for public comment* (January 2024) <https://info.aana.com.au/hubfs/Exposure%20Draft%20Environmental%20Claims%20Code.pdf>.

<sup>11</sup> EDO, *Submission to the Australian Association of National Advertisers' Environmental Claims Code Review* (February 2023) <https://www.edo.org.au/publication/edo-submissionto-the-australian-association-of-national-advertisers-aana-environmental-claims-code-review/>.

<sup>12</sup> *Treasury Laws Amendment Bill 2024* (Cth). Available at Treasury, 'Climate-related financial disclosure: exposure draft legislation' <https://treasury.gov.au/consultation/c2024-466491>.

(d) *Climate Active consultation*: The Department of Climate Change, Energy, the Environment and Water is currently consulting on proposed updates to the Climate Active program. EDO made a submission to the consultation in December 2023.<sup>13</sup>

We welcome the introduction of mandatory climate-related financial disclosures and updated guidance on environmental and sustainability claims from the ACCC and Ad Standards (subject to the comments outlined in our relevant submissions). However, in our view these developments do not sufficiently strengthen protection against greenwashing, and further structural changes are still required together with more clear, consistent and efficient enforcement.

### **Structural changes**

In our initial submission, we noted several issues with the regulatory guidance on greenwashing in Australia, including that it provides insufficient clarity on key terminology and substantiation requirements, does not incorporate the current climate science and international best practice, and lacks uniformity between regulators.

In our view, these issues are not alleviated by the updated guidance from the ACCC and Ad Standards. We refer to our specific comments on the respective draft guidance.<sup>14</sup>

We appreciate that regulatory guidance may not be the most appropriate mechanism for providing substantiation, communication and verification requirements for environmental and sustainability claims, including applicable climate science. For this reason, we reiterate our initial submission recommendation 1, for the introduction of legally enforceable standards on environmental and sustainability claims. We note that on 17 January 2024 the European Parliament approved the European Union's Green Transition Amendments Directive and Green Claims Directive,<sup>15</sup> which in our initial submission we had indicated may be useful in informing the development of standards for environmental and sustainability claims in Australia.

We also welcome the review of the Climate Active program, however in our view the issues with environmental and sustainability labels, including certification trademarks, trust marks and underlying schemes, are common to many such labels and warrant broader structural changes.

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<sup>13</sup> EDO, *Submission to Department of Climate Change, Energy, the Environment and Water Climate Active Program Direction Consultation Paper 2023* (15 December 2023) <https://www.edo.org.au/wp-content/uploads/2023/12/EDO-submission-Climate-Active-Consultation.pdf>.

<sup>14</sup> EDO, *Submission to the ACCC on draft guidance for business on environmental and sustainability claims* (13 September 2023) <https://www.edo.org.au/wp-content/uploads/2023/10/20230913-Environmental-Defenders-Office-submission-to-ACCC.pdf>. EDO submission on Ad Standards' exposure draft Environmental Claims Code forthcoming.

<sup>15</sup> European Parliament, *Legislative resolution on the proposal for a directive of the European Parliament and of the Council on amending Directives 2005/29/EC and 2011/83/EU* (17 January 2024) [https://www.europarl.europa.eu/doceo/document/TA-9-2024-0018\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2024-0018_EN.pdf).

For example, as noted above, at the end of 2023 EDO assisted several clients to lodge a complaint with the ACCC regarding the use of certain statements – including in the form of trust marks – on salmon packaging and advertising in supermarkets.<sup>16</sup> That complaint highlighted the confusion and uncertainty that arises from the proliferation of third party certification schemes without sufficient detail being provided alongside the claim, noting that at least nine ‘responsibly sourced’ trademarks related to seafood products are registered by various owners on IP Australia’s database.

Our letter to ASIC in December 2023, raising concerns about the development of a sustainable finance taxonomy, also identified potential issues with industry involvement in the development of the taxonomy and relevant standards.<sup>17</sup>

In this regard, we reiterate our initial submission recommendations 3 and 4, for the review and reform of certification trade marks.

### **Enforcement gaps**

While we commend the greenwashing enforcement action taken in recent years, we consider that the piecemeal enforcement approach is not equipped to comprehensively address increasing prevalent greenwashing misconduct.

We raise examples of ACCC and Ad Standards enforcement action in recent months below to illustrate these issues and the need for clearer, more consistent and more efficient enforcement mechanisms to protect against greenwashing.

#### ACCC

Since the date of our initial submission, the ACCC has publicly reported one greenwashing enforcement action against MOO Premium Foods, which entered into a court enforceable undertaking to stop using the term “100% ocean plastics” after an investigation by the ACCC found the company’s use of the term was misleading.<sup>18</sup> EDO assisted client Tangaroa Blue Foundation in making a complaint to the ACCC about MOO Premium Foods’ use of this term in December 2022.<sup>19</sup>

This enforcement action is valuable in offering clarity to consumers and some guidance to businesses about the use of this language in similar circumstances. However, it is one of the only greenwashing actions publicly announced by the ACCC to date and was undertaken in

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<sup>16</sup> ‘Potentially false, misleading or deceptive representations relating to salmon products’ (1 December 2023) [https://www.edo.org.au/wp-content/uploads/2023/12/ACCC\\_complaint\\_re\\_representations\\_relating\\_to\\_salmon\\_products.pdf](https://www.edo.org.au/wp-content/uploads/2023/12/ACCC_complaint_re_representations_relating_to_salmon_products.pdf).

<sup>17</sup> ‘Issues with sustainable finance taxonomies – case study of Woolworths Group Limited’s green bond’ (15 December 2023) [https://www.edo.org.au/wp-content/uploads/2023/12/Letter\\_to\\_ASIC\\_re\\_sustainable\\_finance\\_taxonomies.pdf](https://www.edo.org.au/wp-content/uploads/2023/12/Letter_to_ASIC_re_sustainable_finance_taxonomies.pdf).

<sup>18</sup> ACCC, ‘MOO Premium Foods gives undertaking after ACCC investigates ‘ocean plastic’ claims’ (28 November 2023) <https://www.accc.gov.au/media-release/moo-premium-foods-gives-undertaking-after-accc-investigates-ocean-plastic-claims>.

<sup>19</sup> ‘Complaint about misleading Ocean Plastic label’ (16 December 2022) <https://www.edo.org.au/wp-content/uploads/2023/08/ACCC-Ocean-plastic-complaint.pdf>.

isolation – for example there was no accompanying enforcement or guidance regarding the use of similar terms – and following an investigation that was likely time and resource intensive.

Mick Sanders, co-owner of Moo Premium Foods, observed following the ACCC investigation into the company that other manufacturers were fearful to adopt greener sources of plastic due to legal risks, on top of cost concerns.<sup>20</sup> Greenwashing interventions should enable the fair and appropriate uptake of sustainability measures, not disincentivise them. While the ACCC’s updated guidance is useful, it still requires a case-by-case assessment, often involving resource-intensive investigations.

We consider that clear substantiation, communication and verification requirements – as set out in our initial submission recommendation 1 – would assist companies to understand their obligations in respect of environmental and sustainability claims and support more efficient, comprehensive and consistent enforcement. The introduction of clear legally enforceable standards may also ease the burden on the ACCC and ASIC and better direct the regulators’ resources to more complex issues resulting in the most significant market and/or consumer detriment.

In our view, it would also be beneficial for consumers and businesses to have greater transparency over the regulatory investigation and enforcement action taken in relation to greenwashing. The ACCC has indicated that it has several ongoing greenwashing investigations,<sup>21</sup> however there has been limited public information regarding the progress or outcome of these. We recommended that the ACCC publish information about the actions taken in relation to greenwashing in order to provide greater clarity and to emphasise the seriousness of these issues, as also recommended in our submission on the ACCC’s draft guidance for business on environmental and sustainability claims.<sup>22</sup> This may take a similar form to ASIC’s report ‘ASIC’s recent greenwashing interventions’ which outlines the regulator’s greenwashing interventions in the period 1 July 2022 and 31 March 2023.

### Ad Standards

In our experience, the lack of certainty regarding the outcome of ACCC complaints has been a factor for clients choosing to submit complaints to Ad Standards, which has a clearer timeframe for determinations which are published publicly. However, there are significant limitations to the outcomes Ad Standards can achieve, including as a result of its limited

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<sup>20</sup> The Australian, ‘Greenwashing accusations make for ‘wrong incentive structure’ on going’ (15 December 2023) <https://www.theaustralian.com.au/nation/greenwashing-accusations-make-for-wrong-incentive-structure-on-going-green/news-story/0efd5085535d22c8ee45b95e507e309c>.

<sup>21</sup> See, eg, ACCC, ‘ACCC ‘greenwashing’ internet sweep unearths widespread concerning claims’ (2 March 2023) <https://www.accc.gov.au/media-release/accc-greenwashing-internet-sweep-unearths-widespread-concerning-claims>.

<sup>22</sup> EDO, *Submission to the ACCC on draft guidance for business on environmental and sustainability claims* (13 September 2023) <https://www.edo.org.au/wp-content/uploads/2023/10/20230913-Environmental-Defenders-Office-submission-to-ACCC.pdf>.

enforcement powers and lack of alignment between its Environmental Claims Code and the Australian Consumer Law,<sup>23</sup> which persist in the current draft code.

For example, in recent months, EDO submitted several complaints to Ad Standards regarding allegedly misleading website representations. One such complaint concerned Woodside's claims on its website about the environmental impact of its seismic surveys.<sup>24</sup> Another raised concerns about the potentially misleading nature of certain statements made by Bravus on its website about its business and operations.<sup>25</sup> Ad Standards initially rejected these complaints on the basis that it did not consider websites to constitute 'advertising' under the Environmental Claims Code. EDO is concerned by this approach as websites can often contain problematic environmental and sustainability claims which should be removed or rectified as quickly as possible to minimise harm. We note that these determinations are currently the subject of appeals.

This is inconsistent with the approach of advertising regulators in other jurisdictions. For example, the UK ASA has found comments on a company's website, about the fuel efficiency and emissions reductions achieved by a pellets intended to be added to a vehicle's fuel tank, to constitute misleading advertising.<sup>26</sup>

In our experience, Ad Standards also does not have the expertise to assess complex or technical issues, which are often at the core of greenwashing misconduct. For example, in Ad Standards' dismissal of a complaint made by EDO on behalf of CommsDeclare regarding Shell Company of Australia Ltd's representations about its emissions reduction plans, it stated:

The Panel noted that it is not the Panel's role to adjudicate on highly technical issues, and would not make a judgment about whether carbon capture and storage or carbon offsetting are appropriate ways to meet net-zero targets.<sup>27</sup>

These technical issues are often central to understanding the veracity of environmental and sustainability claims, and the regulatory framework to address greenwashing must be capable of interrogating such issues and making determinations which, in turn, increase certainty and protection for businesses and consumers.

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<sup>23</sup> We refer to our observations relevant to this point in our initial submission (at pp 45-46) and in our submission to the Australian Association of National Advertisers' Environmental Claims Code Review (February 2023) <https://www.edo.org.au/publication/edo-submission-to-the-australian-association-of-national-advertisers-aana-environmental-claims-code-review/>.

<sup>24</sup> 'Complaint about website content of Woodside Energy Group Ltd' (11 October 2023) [https://www.edo.org.au/wp-content/uploads/2023/10/23.10.11\\_Ad\\_Standards\\_Complaint\\_Woodside\\_Website\\_and\\_Newsletter\\_Whales\\_and\\_Seismic\\_Testing.pdf](https://www.edo.org.au/wp-content/uploads/2023/10/23.10.11_Ad_Standards_Complaint_Woodside_Website_and_Newsletter_Whales_and_Seismic_Testing.pdf).

<sup>25</sup> 'Complaint about Adani website advertising' (27 October 2023) [https://www.edo.org.au/wp-content/uploads/2023/11/Ad\\_Standards\\_complaint\\_ARRCC\\_re\\_Bravus.pdf](https://www.edo.org.au/wp-content/uploads/2023/11/Ad_Standards_complaint_ARRCC_re_Bravus.pdf).

<sup>26</sup> ASA, 'ASA Ruling on Hamilton Direct Ltd' (27 September 2023) <https://www.asa.org.uk/rulings/hamilton-direct-ltd-a23-1185794-hamilton-direct-ltd.html>.

<sup>27</sup> Ad Standards, 'Case Report: 0280-22' (25 January 2023) [https://adstandards.com.au/sites/default/files/reports/0280-22\\_0.pdf](https://adstandards.com.au/sites/default/files/reports/0280-22_0.pdf).

We reiterate our initial submission recommendation 1, for the introduction of legally enforceable standards on environmental and sustainability claims, together with recommendation 7, that further resources be directed at greenwashing investigations and actions.

We also note the importance of third party enforcement of greenwashing, particularly in context of the limited regulatory action to date. We are concerned by the proposed modified liability approach in the mandatory climate-related financial disclosures law, which restricts the ability of third parties to enforce breaches of some types of climate-related disclosures for the first three years from implementation. We have discussed this issue in more detail in our submissions regarding the introduction of climate-related financial disclosures.<sup>28</sup>

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<sup>28</sup> EDO, *Submission to Treasury on climate-related financial disclosure* (17 February 2023) <https://www.edo.org.au/wp-content/uploads/2023/02/230224-Climate-Related-Financial-Disclosure-EDO-submission-to-Treasury-1.pdf>; EDO, *Submission to the Treasury on climate-related financial disclosure* (20 July 2023) <https://www.edo.org.au/wp-content/uploads/2023/07/230720-Climate-related-financial-disclosure-EDO-submission-to-Treasury.pdf>.