

Submission in response to Senate Inquiry into Greenwashing

prepared by

Environmental Justice Australia

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About Environmental Justice Australia

Environmental Justice Australia (**EJA**) is a national public interest legal centre. We use the law to empower communities, to protect and regenerate nature, to safeguard our climate and to achieve social and environmental justice. We are proudly non-profit, non-government, and funded by donations from the community. Our legal team combines technical expertise and a practical understanding of the legal system to protect communities and our environment. EJA has a long history in advocating for a just energy transition, and has worked closely with people, communities, and environmental organisations to encourage and compel governments to act, to transform industries, and to ensure justice for the people most affected is at the foundation of all climate solutions, today and tomorrow.

Acknowledgement of Country

We acknowledge the Wurundjeri peoples, the Traditional Owners of the lands on which our team lives and where the EJA office is located. We pay our respects to Elders past and present and recognise that this land always was and always will be Aboriginal and Torres Strait Islander land because sovereignty has never been ceded. We acknowledge the role of the legal system in establishing, entrenching and continuing the oppression and injustice experienced by First Nations people. We also acknowledge that the law has been an avenue for resistance and a critical framework of action for First Nations justice. It is an inherently complex space; we seek to contribute to using and developing laws in ways that lay foundations for just outcomes for First Nations people across the continent.

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A. Summary

1. Environmental Justice Australia (**EJA**) provides a brief submission to the Environment Communications References Committee on the Senate Inquiry into Greenwashing (2025).
2. EJA has had the benefit of reading submissions made to the Senate Committee in 2023 by environmental and legal organisations, including submissions made by the Environmental Defenders Office (**EDO**) (**EDO Submission**), The Wilderness Society (**The Wilderness Society Submission**), the Law Council of Australia (**Law Council Submission**), the National Environmental Law Association (**NELA**) (**NELA Submission**), the Climate Council of Australia (**Climate Council Submission**), Environment East Gippsland Inc (**EEG Submission**) and others.
3. EJA supports the recommendations in those submissions to:
 - (a) Introduce legally enforceable standards on environmental and sustainability claims which:
 - (i) set out the substantiation requirements for all environmental and sustainability claims;
 - (ii) for certain environmental and sustainability claims, set out the specific requirements which apply, reflecting best available scientific and technical information, including relevant international standards, and provide that uses of those claims which are inconsistent with the requirements are misleading or deceptive; and
 - (iii) set out the further substantiation, communication and verification requirements for the use of environmental and sustainability labels.¹
 - (b) Develop clear and consistent guidance materials and a classification system of key definitions, terms and standards relating to sustainability claims.²
 - (c) Develop specific guidance and legislation targeting the use of “net zero” claims and other false representations by fossil fuel companies.³
 - (d) Provide the ACCC and ASIC with further resources to investigate and take action against greenwashing and, to the extent practicable, increase transparency around those processes.⁴
 - (e) Ensure approaches to greenwashing address issues relating to supply chains and operations, and broader social and economic outcomes, particularly for those most vulnerable to the impacts of climate change.⁵ This means ensuring implementing best-practice disclosure legislation for environmental risks, similar to modern slavery legislation, to require businesses to disclose information about how their

¹ EDO Submission, Recommendation 1.

² Law Council Submission at [147].

³ Climate Council Submission, p 5; EDO Submission, pp 11-13.

⁴ EDO Submission, Recommendation 7.

⁵ Law Council Submission at [24].

practices and supply chains create or are associated with environmental risks – including in relation to potential impacts on ecosystems, biodiversity, air and water quality, and other environmental factors – and a disclosure regime that ensures that the findings are publicly available.⁶

- (f) Prioritise the regulation of sectors that have the potential to have the most significant impacts on nature and climate, for example, timber products, fossil fuel exploration, production and generation, and agriculture.⁷
- (g) Build regulators’ internal environmental expertise and strengthen relationships between regulators and environmental scientists and conservation groups to assist in the assessment of environmental claims.⁸
- (h) Review and undertake reforms to the mechanisms for review of certification trademarks (**CTMs**) to ensure that third-party schemes are not used to prop up misleading and/or deceptive environmental claims.
- (i) Amendments to the *Corporations Act 2001* (Cth) to confer express duties on directors to properly consider and assess companies’ impacts on nature and climate and take action to manage those impacts and other environmental risks.⁹ These reforms would bring Australia in line with other jurisdictions¹⁰ and provide certainty as to what is expected and required of directors.¹¹

B. Recommendations

4. Further to the matters referred to above, EJA makes the following specific recommendations to:
 - (a) Introduce guidance and legally enforceable standards aimed specifically at regulating third-party certification schemes.
 - (b) Ensure government and government-owned businesses are subject to the same scrutiny as private companies by: including them in any future sweeps undertaken by the ACCC, ASIC and any other relevant regulatory body, producing guidance on the application of the Australian Consumer Law (**ACL**) to the Crown¹², and considering whether the scope of that application should be extended.
 - (c) Create a process whereby the ACCC, ASIC, and any other relevant regulatory body, is alerted to environmental litigation outcomes that may undermine the parties’ environmental claims. It would be appropriate for findings of Australian courts relating to noncompliance with environmental laws or harmful environmental

⁶ NELA Submission, pp 2-3 [3.3].

⁷ The Wilderness Society Submission, p 4.

⁸ The Wilderness Society Submission, p 5.

⁹ NELA Submission 3 [3.4].

¹⁰ See, for example, *Companies Act 2006* (UK), s 172(1).

¹¹ See Clifford Chance, *Australia: Directors’ Duties – Nature-related Risks* (Report, May 2024) <<https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2024/05/australia-directors-duties-and-nature-related-risks.pdf>>.

¹² See, for example, *Murphy v Victoria (No 2)* [2014] VSC 404.

practices to trigger an audit of relevant public-facing claims made by the parties to those proceedings.

5. EJA welcomes the commitment of the ACCC and ASIC to make greenwashing an enforcement priority in recent years.¹³
6. Faced with the dual threats of the climate and biodiversity crises, consumers are “now, more than ever, making purchasing decisions on environmental grounds.”¹⁴
7. Accordingly, it is critical that regulators are appropriately resourced and motivated to take enforcement action against greenwashing, and legal frameworks are fit-for-purpose to tackle current and emerging threats.
8. EJA notes that other submitters, including those referred to above, have made comprehensive and detailed submissions that raise and respond to issues relating to false and/or misleading climate-related claims, and EJA supports recommendations aimed at ensuring those issues are appropriately managed. In that context, this submission focuses on issues and examples that are most relevant to the timber industry.

C. Introduce guidance and standards aimed at regulating third-party certification schemes

9. In March 2023, the ACCC reported on its findings from an internet sweep of 247 businesses and/or brands across 8 sectors during October 2022 which aimed to understand the nature and prevalence of environmental and sustainability claims made by Australian businesses (**ACCC Sweep Report**).
10. One of the key issues raised in the ACCC Sweep Report was the use of third-party certification as a potential means of misleading consumers. The report stated:¹⁵

“Several businesses did not clearly describe the nature of the certification scheme, or how it applied to their product or business. In many cases, it was unclear whether the certification applied to the entire product range, only certain products, or to business operations. It was also unclear how or why the certification was relevant to individual products.

There were also some concerns that businesses were using their certifications in a misleading or confusing way. For example, broad statements that a business is

¹³ ASIC, ‘ASIC Enforcement Priorities 2023’ <<https://asic.gov.au/about-asic/asic-investigations-and-enforcement/asic-enforcement-priorities/>>; ACCC, ‘Compliance and enforcement policy and priorities 2023-24’, <<https://www.accc.gov.au/about-us/accc-priorities/compliance-and-enforcement-policy-and-priorities>>.

¹⁴ ACCC, ‘ACCC ‘Greenwashing’ Internet Sweep Unearths Widespread Concerning Claims’ (Media Release, 2 March 2023) <<https://www.accc.gov.au/media-release/accc-greenwashing-internet-sweep-unearths-widespread-concerning-claims>>.

¹⁵ ACCC, *Greenwashing by businesses in Australia: Findings of the ACCC’s internet sweep of environmental claims* (Report, March 2023) 7.

‘certified’ may give the impression that the entire business is certified when this may not be the case.”

11. It has been observed that “[o]ver the past two decades... non-state actors have created a new type of institution of transnational environmental governance – in the shape of market-based certification programs”.¹⁶ Certification systems can be management system (process) based or performance based, and forest certification schemes combine aspects of these two approaches.¹⁷
12. The certification of timber products in Australia is a clear example of how certification schemes may be seen to legitimise environmental claims that may otherwise be false and/or misleading.
13. The opportunity for commercial gain is the main driver of deforestation globally, with illegal logging earning the title of the world’s most profitable environmental crime.¹⁸ The unlawful destruction and clearing of forests also presents a serious and urgent threat to the Australian environment and biodiversity.
14. There are two timber certification schemes in Australia: Responsible Wood (the Programme for the Endorsement of Forest Certification (**PEFC**) in Australia) and the Forest Stewardship Council (**FSC**).
15. Concerns relating to Responsible Wood certification are raised in the submission of Environment East Gippsland, where the authors state:¹⁹

“In summary, a consumer with expectations of forest sustainability when buying wood products may be shocked to discover that the ‘Responsible Wood’ logo approved by ACCC, audited by BSI, with oversight by JASANZ and endorsed by PEFC, unequivocally allows; illegal logging, logging of critically endangered species habitat, ecosystem collapse, failure of 30% of logged area to regrow, collapse of sustainable yield, run away carbon emissions, increased fire risk to the community and uneconomic taxpayer subsidies to the tune of billions.

Claims based on Responsible Wood certification do not merely mislead consumers; they have real costs and consequences for forests, biodiversity and climate.”
16. In some cases, certification of timber products results in reduced scrutiny within supply chains. For example, recent amendments to the *Illegal Logging Prohibition Act 2012*

¹⁶ Lars H Gulbrandsen, *Transnational Environmental Governance: The Emergence and Effects of the Certification of Forests and Fisheries* (Edward Elgar, 2010) p 1.

¹⁷ *Ibid* p 66.

¹⁸ Brian Huerbsch, *The Cost of Environmental Crime: Illegal Logging* (Report, 2016) 4 <<https://respect.international/the-cost-of-environmental-crime-illegal-logging/>>; United Nations Environment Programme and RHIPTO Rapid Response–Norwegian Center for Global Analyses, *The Rise of Environmental Crime – A Growing Threat to Natural Resources Peace, Development And Security* (Report, 2016) 18; Commonwealth, *Second Reading Speech for the Illegal Logging Prohibition Amendment (Strengthening Measures to Prevent Illegal Timber Trade) Bill 2024*, House of Representatives, 27 March 2024 (The Hon. Kristy Louise McBain).

¹⁹ Environment East Gippsland submission, p 10.

(Cth) and associated rules mean that importers and processors of certified timber are able to undertake simplified risk assessments to satisfy due diligence requirements.²⁰

17. A lack of regulation of third-party certification schemes risks businesses leaning on these credentials to bolster environmental claims that may otherwise be misleading and/or deceptive.

D. Ensure government and government-owned businesses are subject to the same scrutiny as private companies

18. The Commonwealth and each of the States and Territories in Australia have legislated to bind the Crown to the ACL, so far as the Crown carries on a business, either directly or by an authority of the jurisdiction concerned.²¹ This includes State-owned businesses.
19. State-owned businesses are often vested with broad powers to manage and conduct certain operations on behalf of the government²² and/or are exempt from provisions in the ACL relating to restricted trade practices²³. As such, transparency and accuracy of environmental claims made by State-owned business is essential.
20. Australian Courts have recently considered the meaning of “carrying on a business” in the context of the application of the ACL to the Crown, noting that there is a distinction between those functions of government that are purely governmental or regulatory and those that entail carrying on a business.²⁴
21. The Victorian Court of Appeal has observed that carrying on a business in this context may include the following:²⁵
 - (a) Activities constituting trade, commercial transactions, or engagements.
 - (b) The performance of a succession of acts with system and regularity, not the effecting of a solitary transaction. However, mere repetitiveness without the presence of a system and regularity might exclude the possibility of a business being carried out.
 - (c) Actions and activities that extend beyond the systems of government and concern the carrying on of a business.
 - (d) The carrying out of a function of government/governmental services in the interest of the community is not the carrying on of a business in the relevant sense.

²⁰ *Illegal Logging Prohibition Rules 2024* (Cth), rules 8 and 11.

²¹ *Competition and Consumer Act 2010* (Cth), s 2A; *Fair Trading (Australian Consumer Law) Act 1992* (ACT), s 15; *Fair Trading Act 1987* (NSW), s 3; *Consumer Affairs and Fair Trading Act 1990* (NT), s 35; *Fair Trading Act 1987* (SA), s 22; *Australian Consumer Law (Tasmania) Act 2010* (Tas), s 14; *Australian Consumer Law and Fair Trading Act 2012* (Vic), s 16; *Fair Trading Act 1989* (Qld), s 24; *Fair Trading Act 2010* (WA), s 28.

²² For example, State-owned logging agencies VicForests, Forestry Tasmania (t/a Sustainable Timber Tasmania) and the Forestry Corporation of New South Wales.

²³ For example, in Victoria, see *State-Owned Enterprises Act 1992* (Vic), s 86A and CC Act, s 51.

²⁴ *Murphy v Victoria (No 2)* [2014] VSC 404.

²⁵ At [51(d)]. See also *Sirway Asia Pacific Pty Ltd v Commonwealth of Australia* [2002] FCA 1152 [56].

- (e) An element of commerce or trade 'such as a private citizen or trader might undertake.'
22. The introduction of publicly-available guidance on this issue would go some way to addressing uncertainty. Further, any legally enforceable standards and best-practice disclosure requirements introduced in line with the recommendations referred to in subparagraphs 3(a) and (d) of this submission should clearly apply to government and government-owned businesses.
23. Consideration should also be given to extending the scope of the application of the ACL to the Crown at Federal and State/Territory levels.²⁶ It has been observed that the "carrying on a business" test in the ACL "is uncertain and [...] ill-equipped to deal with an increasing amount of government commercial activity; in particular, government procurement"²⁷, and doesn't capture functions like the delivery of large infrastructure projects.²⁸
24. Reports and commentary published by government departments that contain industry-related environmental claims should also be the subject of enhanced scrutiny. For example, certain environmental claims in a recent report produced by the Australian Bureau of Agricultural and Resource Economics and Sciences on Australia's native forest and wood production industry have been exposed for their scientific inaccuracy.²⁹ Such claims have the potential to influence consumer behaviour and should be regulated accordingly.

E. Create a process to alert regulators of environmental litigation outcomes

25. EJA submits that it would be appropriate to create a process that would ensure regulators are alerted of relevant outcomes in environmental litigation that may affect or undermine the reliability or accuracy of environmental claims made by parties to that litigation.
26. As it stands, there is no market-based review process triggered by decisions of the Courts to ensure consumers are informed of relevant findings.
27. In 2023, EJA submitted a complaint to the ACCC on behalf of the Victorian Forest Alliance (**VFA**) in relation to claims made by former State-owned logging agency, VicForests on its website (the **VFA Complaint**).³⁰ VFA raised concerns that the claims were false and/or misleading, insofar as they related to:

²⁶ See Ian Harper et al, *Competition Policy Review: Final Report* (2015) 282 (Recommendation 24); Justice Griffiths, 'Application of the Australian Consumer Law to Government Commercial Activities' (FCA) [2016] FedJSchol 12

²⁷ Ibid.

²⁸ Ibid.

²⁹ David Lindenmayer, 'Cutting through the spin – Ten logging 'myths' in the new ABARES report' (26 August 2025) <<https://johnmenadue.com/post/2025/08/cutting-through-the-spin-ten-logging-myths-in-the-new-abares-report/>>.

³⁰ See <https://envirojustice.org.au/wp-content/uploads/2023/10/Complaint-of-the-Victorian-Forest-Alliance-to-the-ACCC-public-version.pdf>

- (a) The regrowth and regeneration of logged forests in Victoria;
 - (b) Pre-harvest surveying techniques and methods used to identify threatened species in forests; and
 - (c) The climate impacts of logging and carbon sequestration.
28. The VFA Complaint was made following findings of the Federal Court of Australia and the Supreme Court of Victoria that VicForests had logged in breach of environmental laws relating to protections for threatened species and the application of the precautionary principle.³¹
 29. Despite those findings, wood that was harvested by VicForests remained in the supply chain with Responsible Wood certification.
 30. In June 2024, VicForests was abolished, and the ACCC did not indicate whether the VFA Complaint had progressed to an investigation prior to that date.
 31. Currently, the sale of illegally logged domestic timber is inadequately managed via a patchwork of provisions in the ACL, proceeds of crime criminal offences and various State and Territory laws which prohibit the removal of timber from public land, including from within National Parks and reserves³². Existing provisions do not offer a complete solution and instead may create opportunities for greenwashing.
 32. This gap in the legal framework poses a risk to business consumers within the supply chain, many of whom have obligations under internal environmental sustainability policies and external certification schemes. Further, it undermines public confidence in the domestic market.
 33. As stated in the VFA Complaint, there are recent examples of buying behaviour being influenced by the environmental impact of timber harvesting operations undertaken in Victoria by VicForests. For example, in 2020 following a ruling of the Victorian Supreme Court relating to VicForests' timber harvesting activities, a decision was made by Bunnings to end its contract with VicForests.³³ Specifically, Bunnings' Director of Marketing and Merchandise, Clive Duncan said of the decision that "we believe customers and team members have the right to expect that timber is sourced from well

³¹ See *Friends of Leadbeater's Possum Inc v VicForests (No 4)* [2020] FCA 704; *Environment East Gippsland Inc v VicForests (No 4)* [2022] VSC 668 and *Warburton Environment v VicForests (No 5)* [2022] VSC 633.

³² See, for example, *National Parks Act 1975 (Vic)* s 44A; *National Parks Regulations 2013 (Vic)*, r 48; *Forests Act 1958 (Vic)*, s 96AA.

³³ Mike Foley, 'Bunnings Ends VicForests Timber Contract Over Logging Breaches', *The Sydney Morning Herald* (online, 1 July 2020) <<https://www.smh.com.au/environment/sustainability/bunnings-ends-vicforests-timber-contract-over-logging-breaches-20200701-p5581g.html>>; Lisa Cox, 'Bunnings Stops Selling Timber Logged by VicForests after Court Ruling' *The Guardian* (online, 1 July 2020) <<https://www.theguardian.com/environment/2020/jul/01/bunnings-stops-selling-timber-logged-vicforests-court-ruling>>.

managed forestry operations”.³⁴ This decision was consistent with Bunnings’ Timber Policy and commitment to sustainable timber procurement.³⁵

34. It is appropriate that litigation outcomes trigger a regulatory response, for example, audits and enforcement action, including directions to remove or amend public-facing environmental claims where those claims are contradicted or disproven in decisions of Australian courts.

³⁴ Stephanie Anderson ‘Bunnings, Officeworks will Dump Victorian Native Timber in Two Years Unless Sustainability Proven’, *ABC News* (online, 17 September 2018) <<https://www.abc.net.au/news/2018-09-17/vic-forestry-industry-at-risk-of-collapse/10255128>>.

³⁵ Bunnings, ‘Bunnings and Timber’ (Web Page) <<https://www.bunnings.com.au/about-us/sustainability/bunnings-and-timber>>.