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RE: Sustainable Finance Strategy

Consumer Policy Research Centre and Super Consumers Australia thank the Treasury for the opportunity to comment on the Sustainable Finance Strategy Consultation paper.

We broadly support Government initiatives to engage the investment and finance sectors in the transition towards a more sustainable economy. A sustainable finance regulatory framework should not only work for consumers by preventing inherently deceptive 'green' claims, but also providing meaningful information about the genuine sustainability features of investment products. This will not only benefit consumers but will give certainty to businesses.

Our comments relate to Pillar 1 of the proposed strategy, in particular corporate sustainability disclosures (priority 1), sustainable finance taxonomy (priority 2), and investment product labelling (priority 4).

The key requirements of any sustainable finance reforms from a retail/consumer perspective are to:

- stop investment product issuers making green or sustainability claims which are not clear and meaningful for consumers,
- ensure any product labelling regime is co-designed, robust, trustworthy and effective in assisting consumers to navigate financial products, and
- enable effective oversight by ASIC.

We recommend that the Government:

- Ensure that the corporate sustainability disclosures regime and sustainable finance taxonomy set strong foundations for an effective investment product labelling system, in particular, by ensuring the integrity of the taxonomy.

- Co-design the sustainable finance reforms with technical experts, the finance and investment sectors, and consumer and environmental sectors, to ensure it is robust and widely supported.
- Develop a product labelling system which:
    - allows similar financial products to be compared,
    - is based on meaningful factors for consumers' real-world use of products,
    - is based on factors that genuinely contribute to sustainability benefits, and
    - ensures labels and information are salient, understandable and promote action.
- Clarify the meaning of common green/sustainability terms and ban the use of these terms without a basis of recognised excellence in environmental performance.
- Empower ASIC to ban or define generic sustainability claims about financial products and services.

Unsubstantiated green claims are everywhere

CPRC research into green claims has found that, across different markets, there is currently no way for consumers to verify or meaningfully compare green claims.[1]

In 2022, CPRC conducted a 'day-in-the-life' scan of green claims over a 24-hour period. CPRC found 122 green claims (online and offline) across 17 sectors, including banking and superannuation, of which only 39 had any supporting evidence or verification to give people confidence that the claim was accurate or meaningful. Many claims were unhelpful, confusing or potentially misleading. For example, one claim of '*banking you can feel good about*' was accompanied by images of happy wildlife and green technology such as windfarms. However, it did not specify what the bank was doing to meaningfully contribute to any environmental cause.

New CPRC research[2] examining green claims on social media has found that generic environmental terms such as 'clean', 'green' and 'sustainable' have no common meaning. Some social media advertisements give succinct details to back an environmental claim, however it is hard to ascertain the accuracy of other claims. Without a shared understanding of environmental and sustainability terms, it can be hard for consumers to meaningfully compare products and services. As CPRC's previous research shows, consumers are worried that many of the green claims they see are not true.[3]

[1] CPRC, *The consumer experience of green claims in Australia*, December 2022, https://cprc.org.au/green-claims/.
[2] CPRC, *Seeing Green*, November 2023, https://cprc.org.au/seeing-green/.
[3] CPRC, *The consumer experience of green claims in Australia*, December 2022.

ASIC's ongoing focus on misleading sustainability claims by financial product issuers, in particular superannuation funds[4] is an important initiative in defining what is a misleading green claim by investment product issuers. However, the current consumer law is a 'cure' that punishes funds for making misleading claims, rather than a 'prevention' which defines what is a genuine green claim.

The absence of standardised sustainability terms or categories in Australia means it is no surprise that people are concerned about the truthfulness of sustainability claims made by businesses such as superannuation funds.[5]

Robust disclosures and taxonomy are the foundations of effective product labelling

Given the current difficulties in verifying sustainability claims, the proposed sustainable finance taxonomy and corporate sustainability disclosure standards should set strong foundations for the investment product labelling regime.

Corporate sustainability disclosures should mean that superannuation funds and other investment product issuers can more clearly identify the sustainability value of their own investments, and translate that information into useful sustainability labels for superannuation and other investment products.

Similarly, the taxonomy of 'sustainable' and 'unsustainable' activities, will closely influence how clear and effective investment product labels are. The integrity of the taxonomy (that is, how it defines sustainable activities and what activities are included) is critical for any product labelling system to effectively prevent greenwashing by investment product issuers like superannuation funds.

We are concerned that the proposal to include within the taxonomy 'transitional finance' activities—which are inconsistent with longer-term emissions reduction goals—will undermine the taxonomy as a foundation for any product labelling regime.

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[4] ASIC, Media release 23-215MR *ASIC commences greenwashing case against Active Super*, 11 August 2023, https://asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-215mr-asic-commences-greenwashing-case-against-active-super.

[5] CPRC, *The consumer experience of green claims in Australia*, December 2022.

The consultation paper highlights that defining transitional activities 'involves complex scientific assessments, and difficult judgments about the policy, sectoral and technological mix' required to reach net zero. A taxonomy which includes transitional activities that are unsustainable in the longer term could have a flow-on effect of making product labels more complex and ambiguous, and changeable over time. This means the labelling system ultimately may not achieve its purpose for consumers or for sustainable funds.

The development of the taxonomy should therefore be co-designed, drawing on the expertise of technical specialists, the finance and investment sectors, and the community and environmental sectors. The voices and input of consumer (and potentially environmental) groups are currently missing from this process. The Government must ensure that a diverse range of voices inform the development and integrity of the taxonomy from its early stage, given it will underlie the product labelling system.

Key elements of an investment product labelling scheme

Consumers at a minimum should have access to clear, comparable information on a financial product or service's sustainability features. While disclosure is not the antidote to 'greenwashing' per se, it is critical that financial product issuers can substantiate and clearly describe the environmental impacts their products have and how.

By defining sustainability claims and establishing specific labelling protocols, the Government could help Australians have access to accurate information about the impact of financial products on the climate, and broader sustainability issues such as biodiversity, as well as human rights. An effective labelling scheme can also encourage improvement in sustainability performance of financial products by encouraging a 'race to the top' as product issuers seek to obtain positive ratings.

We support the Government's proposal to formally regulate sustainable investment product labelling. Product labelling standards can be an effective way to assess and delineate investment products that claim to be sustainable.

We agree with Treasury's comments to the Financial Services Royal Commission about the disadvantages of self-regulation, such as inadequate standard setting, incomplete industry coverage, inadequate monitoring and enforcement, and limited consequences for non-compliance.[6] In our view, self-regulation of standards for advertising or labelling would

[6] Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report*, Vol 1, February 2019, page 105, https://treasury.gov.au/publication/p2019-fsrc-final-report.

serve to primarily manage public image risks, rather than meet the genuine information needs of consumers. It could also lead to inconsistent standards and interpretations, with limited transparency and accountability.

A well-designed effective labelling disclosure regime would, at minimum:

- be developed through a market-wide co-design process, including with consumer representatives, to ensure it is robust and widely supported,
- allow related or similar financial products to be compared,
- be based on factors that are meaningful for consumers and align with the real-world use of products,
- be based on factors that genuinely contribute to environmental or other sustainability benefits, and
- ensure labels and relevant information are salient, easy to understand and promote action by consumers.[7]

Co-design of the taxonomy and labelling schemes is particularly important, as the Government will need to establish a clear, common foundation of key elements of each of these reforms for them to be widely supported and understood across the market.

Ban the use of unsubstantiated green terms

The product labelling, disclosure and taxonomy reforms should be bolstered by clearer regulation about what sustainability claims are lawful, and to allow more effective oversight of specific sustainability claims.

Several jurisdictions are moving to ban or set clear definitions for generic green claims, which are commonly used to make products or services sound more environmentally friendly than they are.

For example, a European Union proposal on empowering consumers for the green transition will prohibit generic environmental claims such as 'environmentally friendly' and 'carbon neutral' which are not based on recognised excellence in environmental performance.[8]

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[7] CPRC, *Submission to the Senate Inquiry into Greenwashing*, June 2023, CPRC-Submission-Senate-inquiry-into-Greenwashing-June-2023.pdf.

[8] European Commission, *Environmental performance of products & businesses – substantiating claims*, 2023, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12511-Environmental-performance-of-products-businesses-substantiating-claims_en.

Similarly, the United Kingdom Competition and Markets Authority has proposed legislating to create standardised definitions of commonly used environmental terms, to which businesses must adhere when marketing and labelling their products.[9]

We support this type of clarification of the legal use of environmental and sustainability terms, which would align Australia's regulation with leading international approaches. It could assist consumers in navigating claims by investment product issuers, and distinguish funds with a genuine impact on sustainability from those with negligible impact. Current case law shows that non-specific environmental claims can be lawful, even where they are confusing for consumers and have poor environmental impacts.[10]

ASIC should be given the power to ban and define environmental claims, to ensure that the regulator can meet current and emerging consumer expectations.[11] The Government should specifically empower ASIC to ban or define generic green claims relating to financial products and services, to ensure that regulatory approaches are addressing consumer expectations about integrity in sustainability claims. This measure would complement ASIC's existing regulatory guidance relating to advertising financial products and services.[12]

SCA and CPRC are open to discussing any aspects of this submission. If you have any questions, please contact:

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[9] CMA, *Environmental sustainability and the UK competition and consumer regimes: CMA advice to the Government*, (2022), https://www.gov.uk/government/publications/environmental-sustainability-and-the-uk-competition-and-consumer-regimes-cma-advice-to-the-government.
[10] See for example *ACCC v Woolworths Group Ltd* [2020] FCAFC 162, which confirmed that labelling disposable plates and cutlery 'biodegradable and compostable' was not misleading and deceptive conduct.
[11] CPRC, *Seeing Green*, November 2023.
[12] ASIC, RG234 *Advertising Financial Products and Services (including Credit): good practice guidance*, November 2012, https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-234-advertising-financial-products-and-services-including-credit-good-practice-guidance/.

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About us

Super Consumers Australia (SCA) is the people's advocate in the superannuation sector, advancing and protecting the interests of people on low and middle incomes in Australia's superannuation system.

The **Consumer Policy Research Centre (CPRC)** is an independent, not-for-profit, consumer think-tank established by the Victorian Government in 2016. CPRC aims to create fairer, safer and inclusive markets by undertaking research and working with leading regulators, policymakers, businesses, academics and community advocates.