

7 June 2024

To: The Senate Environment and Communications Committee
Submitted via email: ec.sen@aph.gov.au

Response to request for more information on the EU approach to greenwashing

Thank you for inviting Consumer Policy Research Centre (CPRC) to appear at the Senate hearing for the inquiry into greenwashing. During the hearing Senator Grogan requested more information on the work that the EU has undertaken in relation to greenwashing.

Amendments to the Unfair Commercial Practices Directive (UCPD)

Australia has a major gap in its consumer law compared to the EU – in Australia there is no ban on unfair business practices.¹ The EU has had a ban on unfair practices since 2005, allowing it to stop instances where companies treat customers unfairly, beyond misleading or lying to them.

The EU recently extended its unfair practices law to explicitly capture greenwashing. The Directive (EU) 2024/825 on Empowering Consumers for the Green Transition was finalised in February 2024 and will be enforced from September 2026.² The directive:

- **Bans unhelpful and vague green claims** including:
 - the use of generic environmental claims without evidence of “excellent environmental performance” relevant to the claim. Generic claims include: eco-friendly, eco, green, nature’s friend, natural, animal-friendly, cruelty-free, sustainable, climate neutral, and,
 - generic claims based on offsetting alone.
- **Identifies and bans new unfair practices** including:
 - misusing third-party certifications (e.g., logos and trust marks).
 - making excessive or unhelpful green claims including:
 - claims about an entire product when it’s only relevant to a specific aspect, and
 - presenting requirements imposed by law as a feature.
 - restricting repairability and durability by:
 - introducing a feature that limits durability, including software updates that reduce functionality on older devices.
 - misleading customers about the repairability of products
 - inducing a customer to replace consumables of a good earlier than necessary, and
 - omitting or making false claims on a durability of a product, including functionality and how it can be repaired.
- **Requires that information about durability and repairability of goods needs to be provided to customers** including:
 - how long software updates will be provided, and
 - the repairability score or information about spare parts and a repair manual

¹ The Treasury has consulted on potential unfair trading practices reform in late 2023. The outcome of this consultation has yet to be announced. <https://treasury.gov.au/consultation/c2023-430458>

² See: <https://eur-lex.europa.eu/eli/dir/2024/825/oj>

European laws have already led to stronger action against greenwashing

The EU has been able to take stronger action against greenwashing than Australia, even before introducing the specific bans against greenwashing. Using the general law against unfair trading practices:

- the EU has launched action against 20 airlines for greenwashing. The action targets, among other things, claims that airlines are moving towards net-zero greenhouse gas emissions without clear and verifiable commitments, targets or an independent monitoring system.³
- Consumer organisations in the EU have argued that claims that plastic bottles are “100% recyclable” and “100% recycled” breach the current rules on unfair commercial practices, specifically calling out the limits on recycling that mean these claims aren’t feasible.⁴

How should Australia respond?

Australia needs stronger consumer laws to stop greenwashing. Current legal protections only stop the most egregious lies in advertising, failing to address issues where a company uses vague language or highly specific accurate claims out-of-context of the total environmental impact.

Australia should

1. Amend the Australian Consumer Law to include a ban on unfair business practices.
2. As part of this reform, include a blacklist of practices that are classified as unfair. This list should include practices already identified by the EU as unfair, including:
 - a. using generic environmental claims without evidence,
 - b. making generic environmental claims on the basis of offsetting alone,
 - c. misusing third-party certifications,
 - d. making excessive or unhelpful green claims including claims about an entire product when it’s only relevant to a specific aspect, and
 - e. restricting repairability and durability.

Further information about how Australia’s consumer laws compare to the EU, US, UK and Singapore’s can be found in the CPRC report “*How Australia can stop unfair business practices: a comparative analysis of unfair trading laws in international jurisdictions*” available at <https://cprc.org.au/report/how-australia-can-stop-unfair-business-practices/>

³ See https://ec.europa.eu/commission/presscorner/detail/en/ip_24_2322

⁴ See <https://www.beuc.eu/unbottling-greenwashing>