



Australian Government



Australian  
**Small Business and  
Family Enterprise**  
Ombudsman

21 June 2023

Senator Sarah Hanson-Young

Chair

Senate Standing Committees on Environment and Communications

Parliament House

Canberra ACT 2600

*via email:* [ec.sen@aph.gov.au](mailto:ec.sen@aph.gov.au)

Dear Senator,

### **Regulating greenwashing and the specific needs of small business**

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) supports the intent of the Australian Government to address deceptive or misleading claims made by businesses regarding the environmental benefits or sustainability of their products or practices. It is important to ensure that all businesses engaging in efforts to be more sustainable are doing so on a level-playing field. However, it is equally important that any government intervention does not inadvertently impede small businesses seeking to operate more sustainably, or to provide more sustainable goods or services.

Small businesses are disproportionately burdened by regulation, lacking the resources of their larger counterparts to manage onerous, overlapping or duplicative requirements. The ASBFEO advocates across government for right-sized regulation for small and family businesses, encouraging regulators to:

- understand the full suite of regulatory requirements affecting the sector
- ensure in all circumstances regulation is the minimum effective intervention necessary to achieve the desired standard or outcome.

Clear, consistent and industry-appropriate standards for environmentally sustainable activities will help small businesses better understand what activities are considered sustainable; and in turn, reduce the risk of them making misleading and deceptive claims or greenwashing.

The ASBFEO considers that Australian Consumer Law (ACL) under the *Competition and Consumer Act 2010* is a robust and sufficient framework for regulating greenwashing, and that any additional regulation or expansion of existing laws would duplicate existing protections for consumers from misleading claims. However, the government can better support small businesses to ensure that they do not unintentionally breach these standards – ensuring consumers are protected from misleading claims and small businesses are empowered to accurately communicate their efforts towards increasing the sustainability of their business.

With that in mind, the ASBFEO offers the following recommendations on how the Australian Government can best support small businesses to avoid inadvertent greenwashing.



**1. Provide clear, industry-tailored standards and guidelines on what constitutes environmentally sustainable activities to help small businesses understand their obligations and enable effective compliance.**

Without a clear definition, different individuals or organisations may mistakenly make misleading environmental sustainability claims about activities and products. Unclear or ambiguous definitions can lead to confusion and inadvertent non-compliance, placing an undue burden on businesses. This can hinder their ability to effectively communicate legitimate environmental benefits and may discourage genuine sustainability efforts.

At the same time, it is worth noting that different industries have unique sustainability challenges and considerations; and therefore the type of ‘green’ claims made by businesses will vary significantly depending on the nature of the industry, the types of products or services involved, and the specific environmental impacts associated with those industries.

For example, the challenges faced by the fashion industry in terms of supply chain transparency and ethical sourcing may differ from those faced by the food and beverage industry in relation to packaging waste and greenhouse gas emissions. A one-size-fits-all definition of greenwashing may overlook industry-specific nuances and hinder efficient and effective regulation. The EU Taxonomy for sustainable activities provides an example of a more nuanced approach (Box 1).

**Box 1: EU Taxonomy for sustainable activities**

An example from another jurisdiction of clearly outlining sustainable activities is the European Union’s ‘taxonomy for sustainable activities’ (EU Taxonomy). The EU Taxonomy created a EU-wide classification system for sustainable activities. The primary focus of the taxonomy is defining which activities the European Union considers ‘sustainable’. This allows the EU to target policy and program measures at activities generally recognised as sustainable, as well as highlighting the EU’s priorities to producers and consumers alike.

Similarly, clear Australian guidelines on what constitutes a sustainable activity would enable government to communicate its sustainability priorities simply and effectively to stakeholders at all levels. It would also allow government to target policies and programs such as those addressing greenwashing more efficiently, while ensuring that all parties understand their obligations under existing laws.

**2. Foster collaboration between government agencies, industry bodies and small business associations to promote sustainable best practices.**

Through improved collaboration, government and private-sector stakeholders can develop resources, share best practices and facilitate knowledge-exchange to enhance sustainability efforts within the small business sector. Government engagement with industry bodies will help both parties to work out tailored solutions to industry-specific problems. The focus should be on voluntary or co-regulatory approaches rather than new compliance obligations or counterproductive prescriptions.

To advance this approach, the ASBFEO is proposing to host a symposium next year on ‘ESG for SMEs’. The symposium will address the gap in actionable information and good practices suited for SMEs and family enterprises. It will provide policymakers, industry bodies and trusted advisers



with the tools to help small businesses to operate more sustainably, or to provide more sustainable goods or services. We would be happy to provide the committee with more details as planning progresses,

**3. Implement compliance measures that are proportionate to business size and achievable based on available resources.**

A prescriptive or punitive approach is likely to hinder small businesses seeking to engage and market 'green' practices and may have the unintended consequence of undermining broader sustainability efforts. Rather, small businesses might engage in 'greenwashing' when faced a complicated regulatory framework or unduly muscular approach to enforcement.

An instructive analogy is provided by the Australian Taxation Office's compliance and enforcement pyramid. Under this model, the regulator initially makes every effort to educate and assist non-compliant businesses in becoming compliant. Civil penalties only apply if notices and guidance from the regulator do not correct behaviour; and criminal penalties only apply if wilful, deceitful or persistent non-compliance is established.

A targeted education program would allow regulators to help small businesses understand their obligations and make informed decisions about their environmental claims.

The government is well-placed to inform, guide and assist small business in their communication of sustainable practices to ensure they avoid inadvertently misleading consumers, suppliers or investors. Close and ongoing consultation with small business representatives and stakeholders is key to developing effective and pragmatic measures that meet the needs of all parties involved.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Mr Lachlan Bayliss on 02 5114 6131 or at [lachlan.bayliss@asbfeo.gov.au](mailto:lachlan.bayliss@asbfeo.gov.au).

Yours sincerely

**The Hon Bruce Billson**

Australian Small Business and Family Enterprise Ombudsman