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Submission: Sustainable Investment Product Labelling regime

As it stands, the proposed regime is at serious risk of giving legal cover to greenwashing.

Super Consumers Australia supports the objective of improving transparency and accountability in sustainable financial products. However, it is not clear that the current proposals will achieve this outcome.

The law already mandates consumer disclosures, and prohibits misleading and deceptive conduct when making sustainability claims. A regime that primarily relies on principles-based disclosure and evidentiary standards will be well received by marketers, but do nothing for consumers. It will also create regulatory complexity without addressing the underlying problems that people face when trying to navigate sustainability claims. Introducing a complex regulatory regime that is unlikely to be effective is at odds with the Federal Government's broader priority of economic efficiency and productivity.

The best way for Treasury to correct its course would be to pause talking to industry stakeholders about how they'd like to market their products and immediately undertake comprehensive consumer testing on the proposed options.

If the Government proceeds with a labelling regime, it should focus on measures that materially improve sustainable investment practices, rather than creating a regime that embeds consumer confusion.

The regime relies almost entirely on weak and often ineffective consumer protection in the form of disclosure. The Treasury paper adopts the framing of consumer protection and acknowledges that this regime is ultimately for the benefit of consumers. However, these words are not matched by substance. Generally disclosure provides very poor protection to consumers. Six years ago ASIC and the Dutch financial regulator's research on the efficacy of disclosure found

that disclosure and warnings can be less effective than expected, or even ineffective, in influencing consumer behaviour. It was based on a meta-analysis of studies measuring the efficacy of disclosure. In some instances, it showed that disclosure and warnings can backfire, contributing to consumer harm.¹ Before any disclosure-based protections are considered, Treasury must undertake rigorous consumer testing to see if they have any place in the protection regime. In the interim, efforts would be better placed on ensuring stronger regulatory oversight of sustainability claims.

The type of consumer testing that should be undertaken includes:

- testing understanding of sustainability terms
- choice experiments to test the efficacy of disclosure content and format
- understanding community expectations on thresholds, and
- what the community expects when it comes to evidentiary standards before a claim can be made.

Without robust consumer testing, there is a high risk that the regime will replicate existing disclosure frameworks, which many consumers do not engage with.

We offer the following feedback to constructively engage with the options Treasury is seeking feedback on. This is not an endorsement of the regime, which sits on poor foundations and as already explained, is in urgent need of consumer testing.

Recommendations

1. Before progressing this regime any further Treasury should undertake consumer testing of the proposed options, including:
 - a. testing understanding of sustainability terms
 - b. choice experiments to test the efficacy of disclosure content and format.
 - c. Understanding community expectations on thresholds and
 - d. What the community expects when it comes to evidentiary standards before a claim can be made.

Element 1: scope of sustainable investment product labelling

As previously iterated, the regime should apply to all financial products (as defined under the Corporations Act) that market themselves as sustainable or similar.

We also note two areas which are not proposed to be covered, which may weaken the impact of the regime:

¹ ASIC and AFM, 2019, 'Disclosure: Why it shouldn't be the default', available at: <https://download.asic.gov.au/media/5303322/rep632-published-14-october-2019.pdf>

1. **Financial services:** The regime is not proposed to apply to a ‘financial service’, such as financial advice. Given there are financial advisers marketing themselves as ‘ethical’ and advising clients to invest in ‘sustainable’ products, the Government should consider whether financial services are brought within the scope of the regime, to ensure both products and the sale of products are subject to equivalent requirements when making sustainability claims.
2. **Whole-of-business claims:** Sustainability claims by super funds and other financial institutions as a whole will not be covered by the proposed regime. This contrasts with the UK’s anti-greenwashing rule, which applies broadly to the marketing of businesses, not just products. The Government should consider whether this creates a loophole, and should be addressed by extending the regime beyond product labelling to broader sustainability claims.

The proposed non-exhaustive list of sustainability terms

Definitions should clarify the meaning of sustainability terms and ban the use of these terms without an evidentiary basis (see further under Element 4). All environmental, social and governance (ESG) elements should be within the scope of the regime. Many sustainability claims relate to social or governance issues, and excluding them could create gaps or inconsistencies in the framework.

Sustainability terms should be developed and tested with consumers. This includes commonly used terms such as those in Box 1 of the Consultation Paper, and any others commonly used in the market currently, as well as others identified through consumer research. Without consumer testing, there is a high risk that definitions will reflect industry preferences and will not align with consumer understanding and expectations.

The defined terms approach will have some chance at being effective if there is clear regulatory oversight of how these terms are used. ASIC should have the authority to:

- define sustainability terminology,
- update definitions over time, and
- prohibit the use of terms that are misleading or unsupported by credible evidence.

Element 2: Consumer facing disclosures

Mandatory consumer facing disclosures would be an important element of the regime.

However, disclosure alone should not be seen as the solution. Research has shown that disclosure can be ineffective or even counter-productive in consumer understanding and decision-making.²

² ASIC and AFM, 2019, ‘Disclosure: Why it shouldn’t be the default’, available at: <https://download.asic.gov.au/media/5303322/rep632-published-14-october-2019.pdf>

As the Consultation Paper notes, current Product Disclosure Statements (PDSs) often contain lengthy or complex information that can be difficult to interpret. For this reason, any sustainability disclosure framework must be highly standardised and focused on the information consumers find most useful.

Super Consumers is more supportive of Option 1: A prescriptive disclosure template. A fixed structure, assuming it is based on people's actual understanding, makes it easier for consumers to compare products and reduces the risk that important information is obscured by marketing language. By contrast, a principles-based disclosure framework (Option 2) would likely replicate the problems seen in existing disclosure regimes. A hybrid approach (Option 3) risks allowing salient information to be diluted by marketing or irrelevant content.

ASIC should be responsible for designing the disclosure template through consumer testing, to ensure that the information presented is as clear, relevant and understandable as possible.

Disclosures should also include information about both direct and indirect investments. Excluding indirect investments would obscure the true substance of a product and ultimately could perpetrate greenwashing and low consumer understanding.

Disclosure often fails where there is an opportunity for industry participants to make information hard to find (e.g. in a lengthy disclosure document or hidden several clicks down on a website) or hard to comprehend (e.g. with complex language or when the recipient is time pressured). Consumer testing should inform when and how consumer facing disclosure is provided. This should include testing of:

- efficacy as a standalone document,
- easily accessible on product issuer websites,
- when provided to consumers before they select the product,
- where a consumer receives financial advice, provided alongside the Statement of Advice.

Element 3: Thresholds

Potential prescribed thresholds are a key area which should be subject to rigorous consumer testing before Treasury makes a decision on whether they will apply.

On the one hand, prescribed thresholds could potentially strengthen the credibility of a labelling regime by ensuring that products labelled as sustainable meet a minimum standard of alignment with their stated sustainability objective. Without such a threshold, the regime may allow products with low levels of sustainable investment to be marketed as sustainable. This could undermine consumer confidence and increase greenwashing risks.

However, existing industry thresholds for sustainable products may not meet reasonable consumer expectations, and may increase the risk of misleading consumers. The Consultation

Paper notes that other jurisdictions have adopted thresholds in the range of 70 to 80 percent of assets aligned with sustainability objectives.

A recent example of a product being out of line with community expectations is UniSuper's Global Environmental Opportunities option, initially invested in companies and assets which derived at least 40% of their revenue from 'environmental themes', which was then reduced to 20%. A member complaint to ASIC claims that UniSuper did not explain this clearly to members.³ It is difficult to conceive of any consumers considering a product with that investment strategy 'sustainable'.

Consumer testing of any potential thresholds should explore:

- how consumers interpret sustainability thresholds,
- what level of alignment consumers expect from products marketed as sustainable,
- how threshold information should be presented, to ensure it is not misleading.

Threshold information (if any) should be a headline disclosure in the marketing of a product. Leaving this information to qualify a headline claim in a disclosure document risks breaching misleading or deceptive conduct provisions under the existing law. Making it acceptable under this regime would be a poor outcome for consumers and a significant step backwards in their protections.

Threshold calculations should include both direct and indirect investments. Treating these differently creates a truck-sized loophole for marketers by allowing products to meet the threshold while still holding significant indirect exposures that consumers would not consider sustainable.

Finally, if thresholds are part of the regime, this should include rules governing assets that fall outside the sustainability threshold. These assets should not conflict with the product's sustainability objective. The regime should clearly define:

- assets aligned with the sustainability objective,
- assets that do not conflict with the objective,
- assets that would be inconsistent with the sustainability objective.

Element 4: evidentiary assessment

Evidentiary requirements are central to the credibility of any sustainable product labelling regime.

³ [UniSuper accused of greenwashing after reducing environmental element of investment option](#), The Guardian, 20 February 2026)

Super Consumers Australia does not support relying solely on a principles-based evidentiary approach, as it risks creating inconsistent standards and making it difficult to assess the credibility of sustainability claims. It may also create a reduction in the existing protection.

The regime should include clearer evidentiary expectations and minimum standards for sustainability claims. ASIC should have the authority to prescribe and update evidentiary standards over time.

The regime should also require full portfolio holdings disclosure. This would improve transparency and allow highly-engaged consumers, as well as regulators and independent analysts, to properly assess the sustainability characteristics of products marketed as sustainable. In so doing it could provide a counterbalance to the overreliance of this regime on self-interested marketing.

Third party verification may also play a useful role in supporting product credibility. However, it should not replace strong regulatory oversight. Active supervision and enforcement by ASIC will be essential to maintaining the integrity of the regime.