

Business Consultation: Greenwashing, Bluewashing & other forms of Whitewashing

27 April 2023

**Dan Wilcock
UN Global Compact Network Australia
Sustainability & Governance Manager**



Network Australia

Session host

Dan has an extensive background in corporate criminal and regulatory investigations, compliance programs, international relations and sustainability.

He is admitted to legal practice in Australia and Canada and holds a Master of Laws in Global Sustainability and Environmental Law.

He has previously served in a number of executive roles in government and the not-for-profit sector, in areas including environmental policy, international relations, sport, competition and consumer law.



Dan Wilcock

Sustainability & Governance
Manager

UN Global Compact Network
Australia



HUMAN RIGHTS



LABOUR



ENVIRONMENT



ANTI-CORRUPTION

Agenda

1. A laundry list of ESG pitfalls
2. Legal and reputational risks to your company from greenwashing
3. International trends & developments
4. The Australian regulatory landscape
5. Discussion topics

1. A laundry list of ESG pitfalls



1. A laundry list of ESG pitfalls

***Greenwashing:** misrepresenting the extent to which a good, service or strategy is environmentally friendly, sustainable or ethical.*

- **Bluwashing:** based on the UN blue for the Global Compact
- **SDG-washing:** based on the Sustainable Development Goals
- **Greenhushing:** under-reporting sustainability credentials
- **Greenrinsing:** changing targets before they are met
- **Greenlighting:** spotlighting a positive attribute to distract from negative
- **Sportwashing:** positive feelings from sport divert attention from social & economic issues
- **Woke-washing:** adopting progressive values publicly without real commitment

Why is Greenwashing a Problem?

Greenwashing can:

1. distort information parties require to make informed decisions in the marketplace
2. erode confidence in the market for sustainability-related products
3. pose a threat to the fair and efficient operation of markets
4. undermine the achievement of societal goals (eg SDGs).



The risk is clear. If greenwash premised upon low-quality net zero pledges is not addressed, it will undermine the efforts of genuine leaders, creating both confusion, cynicism and a failure to deliver urgent climate action.

UN High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities



**“We must have zero
tolerance for net-
zero
greenwashing.”**

**António Guterres,
UN Secretary-General at COP27**

2. Legal & reputational risks




FINANCIAL TIMES
myFT

DWS Group + Add to myFT

German police raid DWS and Deutsche Bank over greenwashing allegations

Asset manager accused of misleading investors about ESG factors in its financial products



Approximately 50 officers arrived at the DWS premises and Deutsche Bank's twin towers in downtown Frankfurt mid-morning
© Alex Kraus/Bloomberg





 Save

Owen Walker in London and **Joe Miller** in Frankfurt MAY 31 2022



Legal risks

Litigation Risks

Prohibitions on misleading & deceptive conduct; false & misleading representations

- *Australian Consumer Law* (eg s18-19, 29–34, 151–160)
- *Corporations Act* (eg ss 1041E, 1041G and 1041H)
- *ASIC Act* (eg ss 12DA and 12DB)

- Regulatory action
- Private actions including class actions

3. International trends & developments



International trends & developments

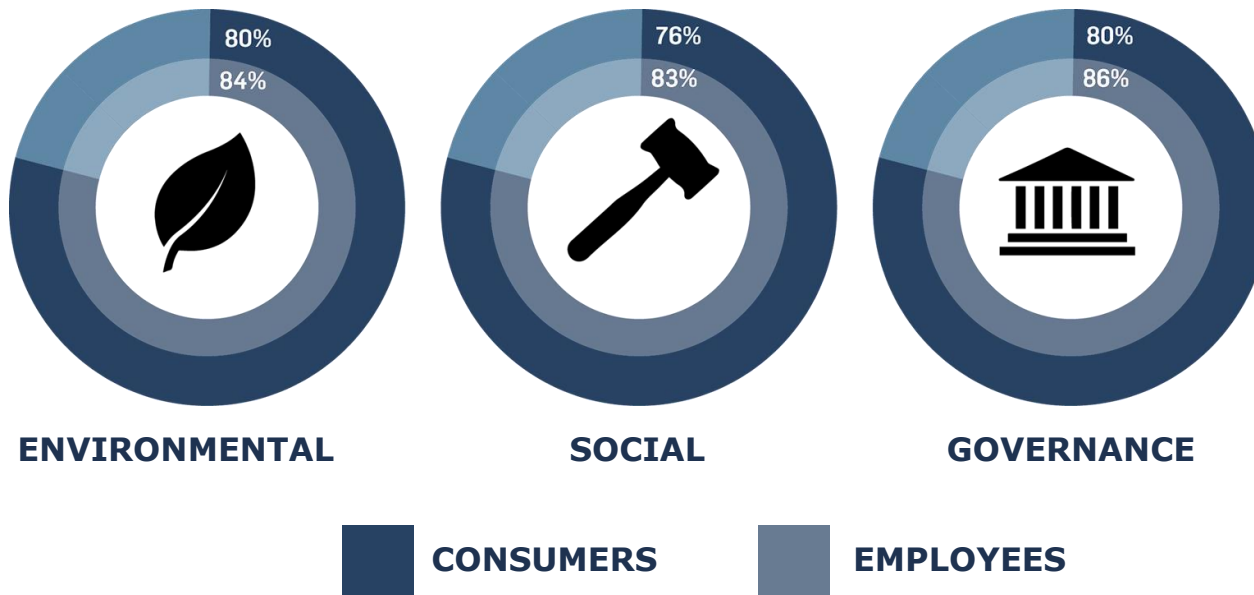
1. Increased demands for ESG information
2. Rise of net-zero commitments
3. Shift from voluntary ESG disclosure towards compulsory
4. Marketing responding to consumer demand
5. Greenwashing an international regulatory & enforcement priority
6. Litigation



The screenshot shows the top navigation bar of The Guardian website. It includes a yellow 'Support us' button with a right-pointing arrow, the 'The Guardian' logo with the tagline 'News website of the year', and a menu of categories: News, Opinion, Sport, Culture, and Lifestyle. A yellow hamburger menu icon is on the right. Below the navigation is a large image of a silver SUV driving on a road. A small 'i' icon is in the bottom right corner of the image. Below the image, the word 'Environment' is written in red, followed by the article title: 'Greenwashing' firms face steep new UK fines for misleading claims. A small 'x' icon is in the bottom right corner of the article preview.

Consumer and employee expectations

ESG COMMITMENTS ARE DRIVING CONSUMER PURCHASES AND EMPLOYEE ENGAGEMENT. I AM MORE LIKELY TO BUY FROM / WORK FOR A COMPANY THAT STANDS UP FOR:



Consumers and employees want businesses to invest in making sustainable improvements to the environment and society, not just comply with regulation, and they're prepared to reward (or penalize) brands accordingly. Overwhelming majorities of both consumers and employees said they're more likely to buy from or work for companies that share their values across the various elements of ESG.

73%

of CEOs say that consumers have the biggest impact on the way they manage sustainability

83%

of consumers think companies should be actively shaping ESG best practices

'I will discontinue my relationship with companies that treat the environment, employees, or the community in which they operate, poorly'.

PwC Consumer Intelligence Series June 2, 2021

Source: PwC Consumer Intelligence Series June 2, 2021



Investors are raising expectations

3,900

Signatories to
the Principles
for Responsible
Investment

92%

of investors say that
companies with strong
ESG performance
deserve a premium
valuation on their
share price

90%

Of investors believe
companies that
prioritise ESG
initiatives represent
better opportunities
for long-term returns
that companies do not

Global ESG assets are
on track to exceed

\$53

trillion by 2025



Bloomberg Intelligence, Edelman Trust Barometer Special Report 2021,
EY 2020 Climate and Institutional Investors Survey



Network Australia

Shift from voluntary ESG disclosure towards compulsory

- **TCFD:** Taskforce on Climate-related Financial Disclosures recommendations.
- **GRI:** the Standards of the Global Reporting Initiative
- **SASB Standards:** Standards of the Sustainability Accounting Standards Board
- **TNFD:** Task Force on Nature-Related Financial Disclosures
- **ISSB:** International Sustainability Standards Board (ISSB) is currently developing a global framework for sustainability and climate related financial disclosures
- **Alignment:** Support for international coordination to provide consistency and enable efficient data collection and reporting for organisations operating in multiple jurisdictions

International Regulatory & Enforcement Priority

- OECD Committee on Consumer Policy
- International Consumer Protection Enforcement Network
- Expanding penalties and remedies
- International Organization of Securities Commissions
- UN High Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities



...ultimately, regulations will be required to establish a level playing field and ensure that ambition is always matched by action.

UN High-Level Expert Group on
the Net Zero Emissions
Commitments of Non-State
Entities

Santos' 'clean' fuel claims challenged in court

By Jack Gramenz

Updated February 21 2023 - 11:38am, first published 11:35am



📷 Santos is accused of making misleading claims over carbon capture and storage, and making hydrogen. (Bianca De Marchi/AAP PHOTOS)

Lawyers in a dispute between a shareholder advocacy group and one of Australia's biggest energy

Litigation

- ESG litigation is increasing globally
 - E claims: greenwashing and climate issues
 - S claims: Indigenous engagement and modern slavery
 - G claims: market disclosures, privacy breaches
- Class actions –a tool to change policies and procedures of businesses
- Emerging issue in Australia
- Shareholder activism

4. Australian Regulatory Landscape



The Australian regulatory landscape

1. Consumer law – ACCC and state and territory consumer protection agencies
2. Financial Products & Services – ASIC
3. Energy – Clean Energy Regulator
4. Standards
5. Certification schemes

Tuesday 28 February 2023



23-043MR ASIC launches first Court proceedings alleging greenwashing

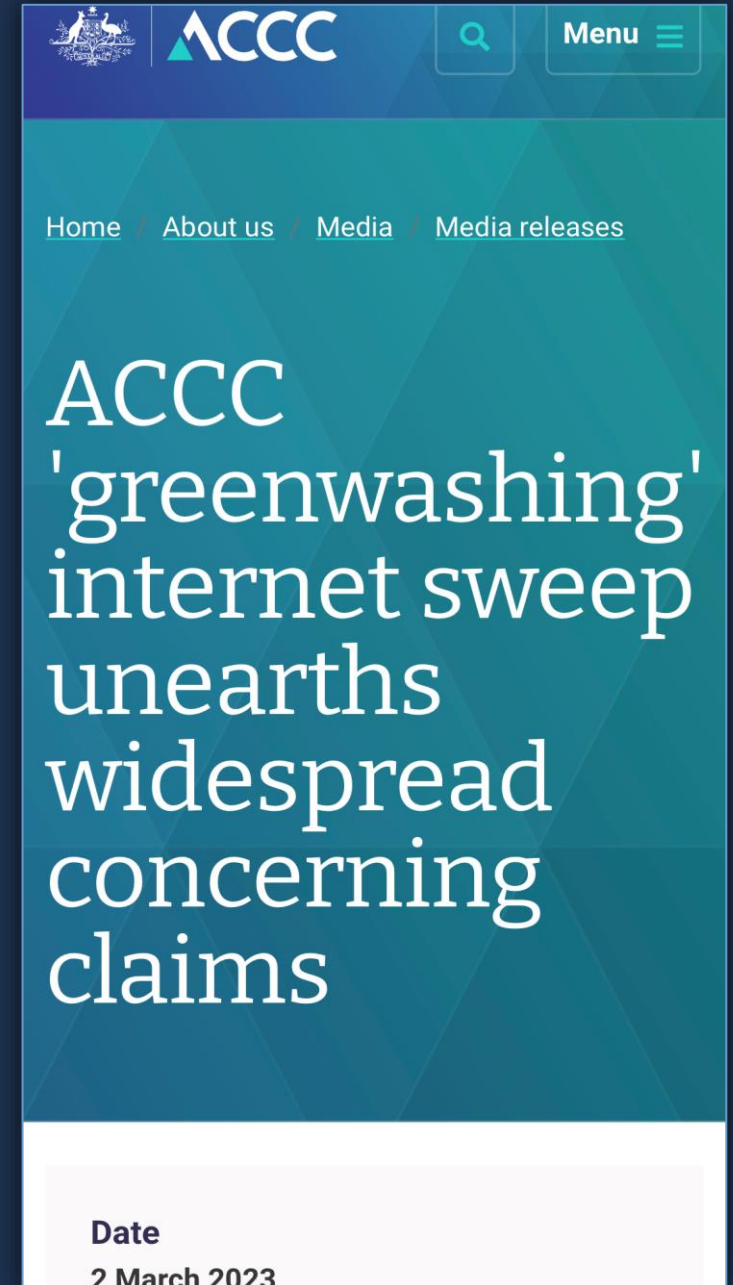
ASIC has launched its first court action against alleged greenwashing conduct, commencing civil penalty proceedings in the Federal Court against Mercer Superannuation (Australia) Limited (Mercer) for allegedly making misleading statements about the sustainable nature and characteristics of some of its superannuation investment options.

ASIC Deputy Chair Sarah Court said, 'This is the first time ASIC has taken an Australian entity to court regarding alleged greenwashing conduct, and it reflects our continuing efforts to ensure sustainability-related claims made by financial institutions are accurate.'

Consumer Law

ACCC

- Greenwashing as a current priority
 - Consumer and fair-trading issues relating to environmental claims and sustainability
- Guide to green marketing
- ACCC Internet sweep
- Forthcoming ACCC guide to consumers & businesses on carbon offsetting
- Significant remedies



The screenshot shows the ACCC website header with the logo, a search icon, and a menu icon. Below the header is a navigation bar with links for Home, About us, Media, and Media releases. The main content area features a large teal background with white text that reads: 'ACCC 'greenwashing' internet sweep unearths widespread concerning claims'. At the bottom of the page, there is a white box containing the date '2 March 2023'.

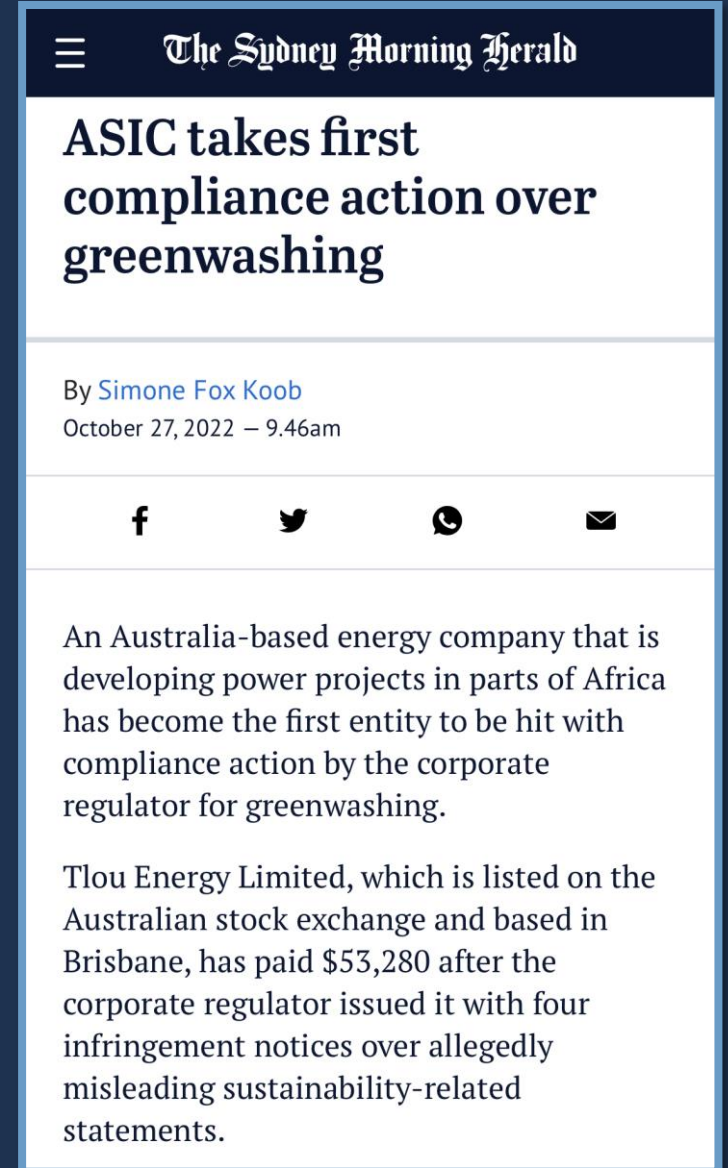
Financial Products & Services

ASIC

- Greenwashing as a current priority
- Information Sheet 271 & Regulatory Guide 65
- Review of ESG funds (2021)
- Review of climate risk disclosures by large listed companies
- 1st greenwashing compliance action - Tlou Energy (2022)
- 1st greenwashing court action - Mercer Superannuation (2023)

APRA

- Prudential practice guide on climate-related financial risk
- Climate Vulnerability Assessments



The Sydney Morning Herald

ASIC takes first compliance action over greenwashing

By [Simone Fox Koob](#)
October 27, 2022 – 9.46am

[f](#) [t](#) [s](#) [e](#)

An Australia-based energy company that is developing power projects in parts of Africa has become the first entity to be hit with compliance action by the corporate regulator for greenwashing.

Tlou Energy Limited, which is listed on the Australian stock exchange and based in Brisbane, has paid \$53,280 after the corporate regulator issued it with four infringement notices over allegedly misleading sustainability-related statements.

Energy

Clean Energy Regulator

Administration of market-based mechanisms that incentivise reduction in emissions and the promotion of additional renewable electricity generation.

Compliance priorities:

1. Accuracy of Australian Carbon Credit Units Claims
2. Accuracy of creation of Renewable Energy Certificates
3. NGER and Safeguard reporters with a history of non-compliance
4. CERT Reports: concerns about false or misleading claims in reports

Standards

Australia:

- Evolving rapidly
- Voluntary uptake of the recommendations of the Financial Stability Board's Task Force on Climate-related Financial Disclosures
- New Sustainable Finance Architecture
 - Climate Related Financial Disclosures
 - ASFI Taxonomy Project
- Future
 - Disclosure of Sustainability-related Financial Information (ISSB)
 - Taskforce on Nature-related Financial Disclosures

Certification schemes

- Certification marks used to provide more legitimacy to green claims
- Equipment Energy Efficiency Program
- Water Efficiency Labelling & Standards Scheme
- Climate Active Certification
- Caution about own brand eco logos and labels not associated with an accredited organisation



5. Discussion Topics



Discussion Topics

1. Do you have experience as a 'victim' of ESG-washing in the context of your business as a consumer of goods, services or inputs?
2. Have ESG-washing issues come up in your marketing, labels or customer engagement?
3. Have ESG-washing issues come up in a reporting, financial or investment context?
4. Who is responsible for ESG-based statements in your organisation?
5. Do you have any experience with third party certifications or trademarks for ESG issues?
6. Does your sector or industry have specific issues re ESG-washing?
7. Have you experienced discussion around greenhushing?
8. Are there any messages you would like communicated to the regulator community?
9. What resources would be useful for your business to avoid or address ESG-washing?

More information

- UN High Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities: [Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions](#)
- Consumer law: [Green marketing and the Australian Consumer Law \(ACCC\)](#)
- Financial products and services: [ASIC INFO 271](#); [RG65](#)
- Clean Energy Markets: [CER Priorities 2022-23](#)
- Centre for Policy Development: [Climate Change and Directors' Duties supplementary legal opinion \(2021\)](#)



Dan Wilcock
Sustainability and Governance Manager
UN Global Compact Network Australia

Dan.Wilcock@unglobalcompact.org.au

THANK YOU

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Network Australia