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Senate Standing Committees on Environment and Communications
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The Australasian Bioplastics Association (ABA) wishes to table this submission in relation to the above referenced Senate referred inquiry into greenwashing (the Inquiry), particularly:

- claims made by companies
- the impact of these claims on consumers
- regulatory examples
- advertising standards, and
- legislative options to protect consumers.

The Association's submission covers matters related to certified compostable and certified biobased bioplastic products, given this is the focus of the ABA. It does not address wider issues relating to greenwashing across other industries and sectors.

Inquiry Terms of Reference

The Terms of Reference for the Inquiry are noted and understood as being:

1. the environmental and sustainability claims made by companies in industries including energy, vehicles, household products and appliances, food and drink packaging, cosmetics, clothing and footwear;
2. the impact of misleading environmental and sustainability claims on consumers;
3. domestic and international examples of regulating companies' environmental and sustainability claims;
4. advertising standards in relation to environmental and sustainability claims;
5. legislative options to protect consumers from green washing in Australia; and



6. any other related matters

Introduction

Since 2006, the ABA has been the peak industry body throughout Australia and New Zealand for the bioplastics industry, specifically:

- raw material suppliers
- manufacturers
- converters, and
- distributors
- Industry Associations such as APCO, AORA and Chemistry Australia as consultant on bioplastic topics

Bioplastics are commonly defined as being certified compostable which confirms the inherent property of biodegradation, certified biobased which confirms the biobased content or both.

Certified compostable bioplastics are defined as materials that are suitable for microbial treatment at end of life in a composting environment, whether commercial or in the home.

Certified biobased bioplastics (those made using renewable resource feedstocks) reduce consumption of fossil fuel resources. Renewable resources are regenerated annually with the plant matter absorbing carbon dioxide during growth.

The Association acts as a communication focal point for media, government, environmental organisations and the public on issues relating to the family of bioplastics.

The Association supports and promotes:

- The growth and use of renewable raw materials in products and applications
- Innovation leading to lower environmental impact of durable and non-durable plastic products
- Independent third-party verification of claims, and product labelling based on the Australian Standard (AS) 4736 and AS 5810 for addressing commercial and home compostability respectively, if compostability is claimed
- Independent third party certification and product labelling for bio-based polymer products

The ABA administers voluntary verification schemes for companies or individuals wishing to verify their claims of compliance to:



1. Australian Standard 4736-2006, "Biodegradable plastics suitable for composting and other microbial treatment"
2. Australian Standard 5810-2010, "Biodegradable plastics suitable for home composting"
3. ISO 23517: 2021 'Plastics — Soil biodegradable materials for mulch films for use in agriculture and horticulture'
4. DIN EN 16785-1, 'Verification of products based on renewable raw materials'.

ToR 1: 'the environmental and sustainability claims made by companies in industries including energy, vehicles, household products and appliances, food and drink packaging, cosmetics, clothing and footwear':

Environmental and sustainability claims made by companies and the appropriate verification thereof are a critical factor in the work of the Association in administering the voluntary verification schemes for AS 4736-2006 addressing commercial compostability, AS 5810-2010, addressing home compostability, ISO 23517 addressing soil biodegradability for mulch film used in agriculture and horticulture, and verification of renewable resource content of materials and products, as described above.

Ensuring that environmental and sustainability claims made by companies are verified and credible is essential to underpinning confidence and trust in the AS certification, and the use of our logos on products which include one or both to indicate suitability for composting.

In addition, it is critical for underpinning confidence and trust in the use of the ABA logos which indicate in an easy to comprehend visual manner that compliance has been achieved.

The outcome of successful verification in meeting all of the requirements of the AS under the ABA program, is the opportunity to licence the use of the ABA intellectual property in the form of logos (as shown below) as visual confirmation and an indication to consumers that the product is verified:



The use of the logos as a visual medium conveys to consumers that a product has been tested and met all the requirements of the relevant Standard.

Currently, there are myriad claims on products relating to the environmental and sustainability claims, including their compostability, however many of these are unverified, and are therefore misleading to consumers, who in general do not have a high level of understanding of how such claims are able to be made, and do not understand that without stringent testing, evidence, or labelling to support them, they are often invalid or meaningless marketing tools.

The use of the term 'biodegradable' has been a further source of confusion to consumers. 'Biodegradable' can appear to suggest that the product is made from a natural material when that is generally not the case, or that the product will degrade harmlessly. Many biodegradable products are made from fossil-based conventional plastics. The term 'biodegradable' is meaningless unless the conditions under which biodegradation occurs, the extent of biodegradation, the timeframe for biodegradation, and the products of the biodegradation process - including any toxic or other residues - are specified.

Almost all items are biodegradable, given enough time, which could be hundreds of years or longer, however many can cause significant environmental harm in the process of biodegradation. Use of the term 'biodegradable' in isolation should be avoided.

The lack of regulations or standards around how the term can be used leaves a loophole for those wishing to promote their product as apparently being a more beneficial choice in environmental terms. It is used on the labels of many diverse items, most of which offer no benefits for the environment, and can cause harm – some more harm than conventional plastics - when they degrade into microplastics and are released into the environment.

Additionally, the lack of monitoring, action, standards and regulations relating to environmental and sustainability claims damages the reputation of the bioplastics



industry and will continue to do so unless improvements in systems and processes can be made.

The ABA would contend that material damage is occurring to our industry due to the lack of appropriate regulations and no appropriately assigned regulatory body. Unqualified claims appear to not be challenged by the ACCC, as competition is not lessened in the opinion of the regulator, therefore it does not fit their remit. Additionally, scientific claims are not in the jurisdiction of the regulator. This situation has led to a lack of action on unqualified claims as there appears to be no pathway for regulatory action to be undertaken.

Unfortunately most of the greenwashing occurring in the industry serviced by the ABA is based on loose scientific 'evidence', and by organisations offering uncertified materials, which continues unabated and unchallenged.

ToR 2: 'the impact of misleading environmental and sustainability claims on consumers':

Claims of compostability are frequently seen in the Australian market, using the umbrella term 'compostable', however the information often fails to state whether this means home compostable, or commercially compostable, or both. In addition no labelling is provided for a quick visual reference unless the product is certified compostable under the Association's voluntary scheme.

The term 'compostable' is by itself not a good indicator of whether a product is a better environmental choice or not. In some cases, it may be more appropriate for the item to be recycled via the regular recycling stream. In other cases, the item is theoretically compostable but the required conditions for this to occur cannot be achieved, because the item has been disposed of to landfill where anaerobic conditions prevent degradation, and/or there is a lack of available infrastructure to compost the materials, or the conditions of the home composting setup fail to provide the correct conditions (as in around >60% of home composting systems).

The compostability claims made by manufacturers and retailers can be confusing and misleading to consumers if they are not specific or verified, and this does not support the bioplastics or recycling industries, or the organics recycling industry. Recycling and composting industries rely on low or no contamination of the incoming streams of waste for processing to be able to create high-quality outputs (compost, soil conditioners, recycle, recycled products).

The quality of the inputs into these waste streams are critical to supporting the market for reuse and resale of products. Contamination is costly to the industries involved and reduces the quality of products for resale. It also means the item is most likely destined for landfill, so offers no environmental benefits.

Of particular concern are unverified claims of compostability on food service ware (cutlery, plates, bowls and similar). The items are not generally accepted by



composting facilities and therefore are likely to present as contamination if placed in a FOGO bin and be sent to landfill. In theory some of these items could be home composted, however many home composters do not manage to achieve the conditions required for these items to properly compost, so they would present as problematic in the home compost stream as well. In theory they are compostable, but in practice they can often end up in landfill. The conditions required for the item to biodegrade cannot be achieved in the anaerobic landfill environment.

Notably, certified compostable food service ware can be processed in the organics recycling stream if collected from a controlled 'closed loop' environment like an event, football stadium, festival and similar activities. However, the lack of consistent labelling and systems across home, work, and leisure situations can cause the items to be disposed of incorrectly as consumers are unsure of which is the most appropriate option to use in different circumstances.

The effects of this are significant; landfilled food (and to a lesser degree) garden waste produces methane in the anaerobic landfill environment, a greenhouse gas commonly stated to be at least 25 times more damaging than carbon dioxide. Therefore, reducing confusion for consumers as to what is and is not compostable, and the correct pathway for diversion of compostable materials, is key to supporting the reduction in methane emissions from Australian households, and the transition to a circular economy.

A reduction in food waste to landfill is aligned with the National Food Waste Strategy and the strategies of many States and Territories, as well as Local Governments. A reduction in methane emissions is aligned with the Climate Change Act 2022, and the decarbonisation objectives of State, Territory and local governments. Unsubstantiated claims of compostability undermines these activities and has damaging flow-on effects if products marketed as compostable but which are unverified, and later transpire to not be compostable, make their way into the organics stream.

Therefore, supporting consumers in making the correct decisions in which items to purchase, and subsequently place in which bin for disposal and why, is critical to achieving the aims of current strategies and targets. The lack of legislation, monitoring and action on environmental and sustainability claims made means there is little to no follow up or action on such claims being made.

The confusion for consumers, and misleading claims being made, contributes to a lack of traction in moving towards a circular economy, and can mean missed opportunities to circularise products, whilst simultaneously contributing to poorer outcomes for the organics and recycling industries. It also reduces confidence in, and credibility of, legitimately compostable products, which have utilised significant investment and time in development, testing, verification and appropriate marketing. This causes anti-competitive pressure on genuine



certified products. There is reputational damage to the industry which currently goes largely unchecked and unactioned.

The ABA contends that use of the Association logos on a certified compostable article - at the exclusion of all non-certified articles - would facilitate a reduction in consumer confusion over time, and an increase in diversion of food waste from landfill. Using the certified items leads to a reduction in volume to landfill from processors as they adapt their processes to deal with an increasing volume of food waste.

ToR 3: 'domestic and international examples of regulating companies' environmental and sustainability claims'

A domestic example of regulating companies' environmental and sustainability claims is that of the ABA's verification scheme and licenced use of associated logos.

As described in the Introduction to this submission, the ABA administers a voluntary scheme which requires strictly regulated verification of claims made regarding the environmental performance of products.

Only after stringent testing - undertaken by an accredited testing laboratory - has been completed, and the test reports subsequently audited for conformance to all the requirements of the standard - by an independent auditor - are products verified to have met the required standard, and producers can then request a licence to display the ABA logos (shown on page 4) on their product.

Claims of compostability accompanied by one of the ABA logos which appear to be incorrect, fail to show a valid ABA licence number, have not been verified by the auditor or show other irregularities are investigated by the ABA.

AS 4736 and ABA verification are recommended by The Department of Climate Change, Energy, the Environment and Water, in the [National Plastics Plan - DCCEEW](#).

The ABA does not possess any powers to regulate or take action against nebulous environmental and sustainability claims around compostability. However, there appears to be very limited further pathways which the ABA can use to refer matters relating to environmental and sustainability claims.

In Europe, the use of over 230 environmental labels appears to have eroded consumer trust and added to confusion. This will be included in the proposed Directive on Green Claims, which will address greenwashing by tackling false environmental claims made towards consumers, and halting proliferation of public and private environmental labels. The current EU Commission Unfair Commercial Practices Directive (UCPD), currently states that traders should not



present environmental claims in ways that are 'unfair' to consumers. The UCPD does not currently provide specific rules on environmental claims. It does not prohibit the use of 'green claims' as long as they are not unfair. The lack of robustness and regulation is being addressed via the proposed Directive on Green Claims. Therefore, it may make sense to avoid a pathway which allows for a proliferation in labels and aim to simplify labelling to assist consumers.

In the USA, Assembly Bill 1201 (AB 1201) has been in force since 1 January 2022. It enacted new restrictions on environmental marketing claims which are presented to California consumers. The pre-existing restrictions of several environmental marketing claims for plastic products (including 'biodegradable' and 'compostable' claims) were extended. Failure to comply can result in fines of up to \$2500USD per violation, or civil action including legal costs. The bill applies to California but given the difficulty in ring-fencing supplies for California, may have broader impacts across the USA.

ToR 4: 'advertising standards in relation to environmental and sustainability claims'

The Australian Competition and Consumer Commission (ACCC) 'promotes competition in markets to benefit consumers, businesses, and the community'¹ and primarily utilises the main legislative enforcement tools within the *Competition and Consumer Act 2010* (CC Act 2010 - previously the *Trade Practices Act 1974*).

Since 2010, and therefore the accession of the current legislation the ACCC is responsible for enforcing, a significant shift has taken place in markets relating to sustainability and environmental claims. The CC Act 2010 has failed to keep pace with the burgeoning market offerings for 'green', 'eco-friendly', 'sustainable', 'organic' and similarly pitched 'environmental' products and choices for consumers.

In combination with the considerable increase in product and market offerings claiming to be better environmental choices via unregulated claims, the consumer demand and willingness to pay for such items has increased, compounding the issue and allowing more products with unsubstantiated claims to pass under the radar, while many consumers continue to believe they are making a more environmentally sound choice.

How consumers shop has also changed significantly since 2010, with online purchasing becoming a normalised option for many consumers. The online

¹ [About us | ACCC](#), retrieved 29 May 2023



market more than doubled in value between January 2015 and January 2020², so discounting the effects of the Covid-19 pandemic, a steady upward trajectory in online sales has been maintained since the ACC Act 2010 came into effect, and the legislation could not have been designed to effectively take account of such externalities, which is demonstrated in the updates to the Act, although these being focussed on other aspects rather than specifically dealing with environmental and sustainability claims has not discouraged unsubstantiated environmental claims.

The ACCC appears to be limited in willingness to act and legislative tools to apply in relation to environmental and sustainability claims matters raised with them. With some of these matters requiring a reasonable-to-high level of technical understanding of composting, compostability, biodegradability and related, in the bioplastics space there has been a lack of action taken on complaints about claims made relating to compostability. Some matters have been considered outside the remit of the ACCC, but appear to simultaneously have no other agency or pathway to appropriately manage them. They are therefore at times left unactioned, damaging the reputation of the bioplastics industry and potentially causing negative impacts in the composting and recycling industries.

Matters to be addressed also require timely action to maximise efficiency and effectiveness of any enforcement undertaken. Lengthy delays leave the industry reputational damage unchecked and provide the opportunity for the sale of products with unsubstantiated claims to occur, and a quick closedown and disappearance of companies if and when they are brought to task over claims.

Regulatory bodies such as the Environment Protection Authority are assisted and guided by statutory timelines for actioning matters, however no equivalent requirement is in place for the ACCC.

The Australian Association of National Advertisers (AANA) Environmental Claims Code has been adopted, however this is a voluntary Code of Practice administered by Ad Standards. The AANA is a peak body representing the interests of advertisers, and is part of advertising and marketing self-regulation. It therefore cannot be considered appropriate to impartially assess or take action on environmental advertising and marketing claims that are not substantiated, or are confusing or misleading to consumers, due to the conflict of interest.

Overall there appears to be a gap in the monitoring and actioning of unsubstantiated environmental claims in Australia, and a lack of clarity as to which entity is responsible for managing these matters. The issue is currently not sitting comfortably within the ACCC remit, nor the AANA's. Given the ACCC

² [Online sales, January 2021 - Supplementary COVID-19 analysis | Australian Bureau of Statistics \(abs.gov.au\)](https://www.abs.gov.au/online-sales-january-2021-supplementary-covid-19-analysis), retrieved 29 May 2023



promotes competition, and the AANA advocates for advertisers, it is unlikely that the matter of environmental and sustainability claims could be appropriately and effectively managed by either organisation going forwards.

Should an appropriate agency be charged with the investigation and management of environmental and sustainability claims in Australia, a framework and appropriate legislation could be established to effectively manage the issue, which would benefit consumers, product and service providers with legitimate environmental benefits, and the environment itself. It would also assist with underpinning the transition to a circular economy by ensuring truly circular claims and achievements are being monitored. Until the gap is closed there will undoubtedly be parties who will use this to their advantage and continue to provide nebulous, unsubstantiated, or unregulated environmental and sustainability claims.

ToR 5: 'legislative options to protect consumers from green washing in Australia'

Legislative options to protect consumers from greenwashing in Australia could include:

- Clarity on which entity should currently manage complaints about environmental and sustainability claims, and why
- Updated consumer laws and advertising standards to specifically address environmental and sustainability claims, and account for the increase in online purchasing
- More robust framework and legislation to impose fines on those who make unsubstantiated environmental and sustainability claims
- Improved enforcement framework for enforcement of consumer laws by the ACCC, in this case for where claims of compostability are not substantiated
- Advertising Standards could be provided with more legislative levers and resources to enforce on greenwashing claims
- Statutory timelines for responding to and actioning complaints regarding environmental and sustainability claims
- Requirement for verified substantiation of environmental and sustainability claims where claims are made
- Improved and more frequent enforcement of existing consumer law where practicable as an interim pathway (specifically in this example regarding unsubstantiated claims of compostability raised with the ACCC, but not actioned)
- an independent entity could be established under legislation to monitor environmental and sustainability claims, and be resourced to take action on those which are confusing, unsubstantiated, misleading to consumers
- regulation of the marketing and advertising industries, moving away from self-regulation for environmental and sustainability claims



- certification/independent verification requirements for compostable products, including consistent labelling such as the ABA logos to reduce greenwash and provide improved, consistent, verified information to consumers
 - restrict the use of the term 'compostable' where it is not verified (AS 4736 and/or 5810 achieved as a minimum); accompanying ABA label recommended to assist consumers in making appropriate choices when purchasing.
-