

**Submission**

***National  
Greenwashing***

***June 2023***





### Animal Justice Party

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### The Animal Justice Party 2023

#### Images

Front cover: Sally Deng (2021) The New Republic, <https://newrepublic.com/article/163735/myth-regenerative-ranching>  
The Animal Justice Party acknowledges the First Nations peoples as the custodians of the land on which we live and work.



## About the Animal Justice Party

The Animal Justice Party (the AJP) is a political party established in 2009 to secure the interests of animals and nature through Australia's democratic institutions of government. Our vision is a planet on which animals and nature have the right to live and thrive free from negative human interference and a human society which functions with kindness and compassion within its ecological limits as a responsible member of the Earth community. The AJP seeks to foster respect, kindness, and compassion towards all species particularly in the way governments design and deliver initiatives, and the manner in which these initiatives function.

In New South Wales, the AJP has one elected representative in the Legislative Council of NSW, Emma Hurst MLC and one Councillor in local government, Matt Stellino. In Victoria, the AJP has an elected representative in the Legislative Council, Georgie Purcell MLC, and a Councillor in local government, Councillor Julie Sloan.

This submission was prepared by the National Submissions Working Group within the AJP. The working group makes this submission on behalf of the AJP with the approval and the endorsement of the Board of Directors.

## Introduction

*"Greenwashing is essentially when a company or organisation spends more time and money on marketing themselves as being sustainable than on actually minimising their environmental impact. It's a deceitful advertising method to gain favour with consumers who choose to support businesses that care about bettering the planet. Greenwashing takes up valuable space in the fight against environmental issues, like climate change, plastic ocean pollution, air pollution and global species extinctions."<sup>1</sup>*

Whilst greenwashing is not a new concept, the term first being used in 1986 by environmentalist Jay Westerveld to describe towel washing practices in hotels, the practice has become much more prevalent and its impacts more significant in recent years with the rise of the more environmentally conscious consumer. With increasing awareness of the climate crisis and a growing desire to 'do their bit,' consumers are more likely to scan products looking for certain buzz words such as 'ethical', 'carbon neutral', 'natural' and 'eco-friendly' to help guide their purchasing choices.

Whilst the sentiment is to be applauded, the reality is that many of these claims are unfounded, unproved, or based on misinformation and the regulatory bodies currently responsible for

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<sup>1</sup> <https://earth.org/what-is-greenwashing/>

overseeing labelling and advertising claims in Australia do not have an adequate framework to prevent greenwashing claims being made, nor to penalise organisations who erroneously make these claims.

One area where blatant examples of claims that employ greenwashing practices are prevalent is in food production. The impacts on the environment from land clearing and farming animals for slaughter are well documented and consumers who chose to eat meat may actively seek products which lead them to believe they are making more ethical choices for the environment whilst still allowing them to consume what they please. These consumers may make different choices if they understand the true impacts of their decisions.

This submission is guided by our mission and vision and underpinned by our policies. The AJP has policies on animals, environment and human issues<sup>2</sup>The following policies are particularly relevant to this consultation.

- Aquaculture <https://www.animaljusticeparty.org/aquaculture>
- Climate Emergency [https://www.animaljusticeparty.org/climate\\_change](https://www.animaljusticeparty.org/climate_change)
- Education <https://www.animaljusticeparty.org/education>
- Farming <https://www.animaljusticeparty.org/farming>
- Forestry <https://www.animaljusticeparty.org/forestry>
- Health <https://www.animaljusticeparty.org/health>
- Land Clearing [https://www.animaljusticeparty.org/land\\_clearing](https://www.animaljusticeparty.org/land_clearing)
- Processed Meat [https://www.animaljusticeparty.org/processed\\_meat](https://www.animaljusticeparty.org/processed_meat)
- Waste <https://www.animaljusticeparty.org/waste>

Greenwashing is a deceptive marketing tool growing in prevalence and consequence in Australia, as companies attempt to capitalise on the growing consumer demand for environmentally conscious products and services.

The purpose of this inquiry is to explore the prevalence, impacts and cost of 'greenwashing' by companies and organisations, with particular reference to:

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

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<sup>2</sup> Animal Justice Party *Policies* <https://animaljusticeparty.org/policies/>



6. any other related matters.<sup>3</sup>

Our submission tackles this inquiry by discussing the terms of reference and giving examples of the potential repercussions of greenwashing on influencing consumer decision making. Our submission is structured following the themes proposed by the government; recommendations are provided throughout our submission.

Thank you for the opportunity to contribute to this consultation.

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<sup>3</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/Greenwashing](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Greenwashing)

## **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**

For the purpose of this Inquiry, we wish to focus our contribution to those directly involving animals and the way industry specific terms are applied to those in the food system. In particular, we would like to draw attention to the growing trend of greenwashing in the beef industry.

The terms 'carbon neutral' and 'beef' would seem to be inherently opposed to each other, given the well-documented environmental impacts beef production has on the environment. These impacts can be tied to the production of the beef, but also can be a result of the large amounts of land and water it takes to raise cattle for slaughter. It is widely recognized that beef production is a high-emissions industry. This can be broken down into direct, or 'on-farm' emission from production, such as methane, manure management, pasture management, and fuel consumption and indirect emission resulting from changes in land use.

Indirect emissions generally account for a much higher portion of overall emissions than direct ones, however, the industry often fails to include these when presenting data about its emissions to the public.

In recent years, there has been a large effort on behalf of the Australian meat and livestock industry to downplay its environmental impact.

An investigation conducted by DeSmog<sup>4</sup> into the meat industry's PR and lobbying has revealed the industry has a 4-pronged plan to portray itself as a climate leader. These are:

- downplaying the impact of livestock farming on the climate;
- casting doubt on the efficacy of alternatives to meat to combat climate change;
- promoting the health benefits of meat while overlooking the industry's environmental footprint; and
- exaggerating the potential of agricultural innovations to reduce the livestock industry's ecological impact.

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<sup>4</sup> (<https://independentaustralia.net/environment/environment-display/corporate-spin-meat-industry-denies-accelerating-climate-change,15348>)

Meat products that claim to be carbon neutral, such as the brand being promoted by Coles<sup>5</sup>, have been designed to appeal to environmentally conscious consumers. In particular, Coles claims that it has been working with farmers to reduce their emissions.

The focus is reducing emission-heavy activities like pre-farm inputs (fertiliser, animal health products), on-farm fuel use, on-farm electricity use, emissions from field fertilisers, methane emissions, emissions from manure, and post-farm emissions like freight to abattoir, supermarket distribution and emissions from meat processing.<sup>6</sup>

It does not target indirect emission from land-use. This is significant as many consumers do not understand that emissions from land conversion are a significantly bigger problem, and that conversion of land to pastureland is the biggest driver of species extinction in Australia<sup>7</sup>. In fact, the Ecological Society of Australia has stated that, *'Large-scale land clearing is nullifying our carbon abatement efforts, placing native species at higher likelihood of extinction, and is actually increasing the risk of drought and bushfire...'*<sup>8</sup>

*"This significant loss of habitat has contributed to one of the worst extinction rates in the world, with no sign of slowing in the near future. Without strict, comprehensive application and enforcement, as well as explicit guidance and requirements, policies such as the EPBC Act will remain ineffective at regulating habitat loss and protecting biodiversity."*<sup>9</sup>

## **Carbon Offsets**

A significant feature of the carbon-neutral beef brand is that Coles is purchasing Australian Carbon Credit Units (ACCUs) to offset the significant proportion of the carbon that they cannot directly abate. This is despite the fact that the entire carbon credit scheme in Australia has been revealed to be inefficient, with most carbon credits approved not actually delivering new cuts in greenhouse gas emissions.<sup>10</sup>

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<sup>5</sup>[https://www.colesgroup.com.au/media-releases/?page=coles-becomes-first-major-aussie-supermarket-to-launch-own-brand-carbon-neutral-beef-](https://www.colesgroup.com.au/media-releases/?page=coles-becomes-first-major-aussie-supermarket-to-launch-own-brand-carbon-neutral-beef)

<sup>6</sup>[https://www.climateactive.org.au/sites/default/files/2022-04/Coles%20Supermarkets%20Australia\\_intial%20Cert\\_Year%201%20FY2021-22%20%28Projected%29\\_PDS.pdf](https://www.climateactive.org.au/sites/default/files/2022-04/Coles%20Supermarkets%20Australia_intial%20Cert_Year%201%20FY2021-22%20%28Projected%29_PDS.pdf)

<sup>7</sup> <https://unearthed.greenpeace.org/2021/12/15/australia-beef-deforestation-climate-brexite-trade-deal/>

<sup>8</sup> Ecological Society of Australia, (2023), Accelerating land clearing is increasing bushfires and droughts and compounding Australia's extinction crisis: 300 scientists call for immediate action, <https://www.ecolosc.org.au/news/media/accelerating-land-clearing-is-increasing-bushfires-and-droughts-and-compounding-australias-extinction-crisis-300-scientists-call-for-immediate-action-2/> Retrieved 29 May 2023

<sup>9</sup> Ward, M., Simmonds, J., Reside, A., et al. (2019) Lots of loss with little scrutiny: The attrition of habitat critical for threatened species in Australia, *Conservation Science and Practice* 2019; 1:e117. <https://doi.org/10.1111/csp2.117>

<sup>10</sup> [https://law.anu.edu.au/sites/all/files/erf\\_landfill\\_gas\\_method\\_-\\_an\\_assessment\\_of\\_its\\_integrity\\_16\\_march\\_2022.pdf](https://law.anu.edu.au/sites/all/files/erf_landfill_gas_method_-_an_assessment_of_its_integrity_16_march_2022.pdf)

In fact, the Australia Institute has said that *“Carbon credits are a core pillar of Australia’s climate change strategy. However, depending on offsets to meet emission reduction goals is mathematically impossible and a recipe for climate disaster.”*<sup>11</sup>

Businesses in Australia buy carbon credits to justify or compensate for putting emissions into the atmosphere. They essentially buy a credit from another business that has actually reduced its carbon footprint to ‘offset’ their own emissions. Therefore, the emission reduction only exists on paper. Carbon credits are a handy tool for high-emissions industries to greenwash by leveraging the efforts of other industries that are actually lowering their emissions, and branding themselves as a low-emissions business, despite making very little effort to actually reduce their emissions by investing in research or technology, or shifting production to lower-emission products – and, this is the best possible scenario.

There is, however, a danger that a business can use what’s called a ‘low integrity credit’. Low integrity credits are credits that have been shown to not represent any abatement in emissions at all, often because they are being deliberately misrepresented by developers or because, in the case of forest protection offsets, the land was never going to be cleared in the first place<sup>12</sup>.

The Armoobilla Regeneration Project in Queensland, which is the offset of choice for the Coles carbon neutral beef brand, is a great example of a low integrity credit. It has come under heavy criticism from the architect of the federal offsets scheme, Andrew Macintosh, who told the Financial Review earlier in 2022 that the forest that was the target of the regeneration scheme had experienced a significant reduction in forest growth, and that an outdated model of estimating tree growth which vastly overestimates the amount of tree growth that has taken place.<sup>13</sup> His analysis found a 5,383ha decline in woodland coverage between 2015-2021<sup>14</sup>, which would indicate that Coles is aligning itself with junk credits that are actually increasing emissions rather than reducing them.

## **REGENERATIVE AGRICULTURE, HOLISTIC GRAZING AND OTHER MISLEADING CLAIMS**

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<sup>11</sup> <https://australiainstitute.org.au/post/carbon-credits-and-offsets-explained>

<sup>12</sup> <https://australiainstitute.org.au/post/carbon-credits-and-offsets-explained/>

<sup>13</sup> <https://www.afr.com/companies/energy/query-on-coles-offsets-for-carbon-neutral-beef-20220426-p5ag8e>

<sup>14</sup> <https://www.theguardian.com/australia-news/2022/oct/30/fix-the-faults-coles-criticised-for-using-carbon-credits-from-controversial-project>

In addition to the claim of being ‘carbon neutral’, grandiose claims of ‘holistic grazing or holistic management’<sup>15</sup> or ‘regenerative agriculture’<sup>16</sup> have been adopted by the sector without substantiating their basis in fact or scale of effectiveness. The assertion is made as if they have been proven, and major retailers have been quick to capitulate. However, studies from University of Uppsala (2016) and Oxford University (2017) suggest the opposite is true.

*“Improved grazing management on grasslands can store on average approximately 0.35 tonnes of C per ha and year – a rate seven times lower than the rate used by the Savory Institute to support the claim that holistic grazing can reverse climate change...*

*...The total carbon storage potential in pastures does not exceed 0.8 tonnes of C per ha and year, or 27 billion tonnes of C globally, according to an estimate in this report based on very optimistic assumptions. 27 billion tonnes of C corresponds to less than 5% of the emissions of carbon since the beginning of the industrial revolution. Holistic grazing can thus not reverse climate change.”<sup>17</sup>*

*“The question is, could grazing ruminants also help sequester carbon in soils, and if so to what extent might this compensate? As the following numbers show, the answer is ‘not much’.”<sup>18</sup>*

Further:

*“As to the timing of grazing: there is no clear evidence that by-the-book rotational grazing is better than continuous grazing. When it comes to more ‘holistic’ variants of this approach, which rotate animals but also incorporate other management practices and objectives, the evidence is scanty, contradictory and either way the sequestration numbers involved are small.”<sup>19</sup>*

Garnett et al (2017) also notes that the term ‘holistic’ is used interchangeably with other terms including *regenerative, adaptive holistic, mob, and management intensive intermittent grazing.*

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<sup>15</sup> “Holistic management provides a framework for decision-making – rooted in the fundamentals of ecosystem processes – and with a suite of planning procedures that include planned grazing, land planning, financial planning and ecological monitoring..All together, Holistic Management equips us to understand the ‘whole’ we are managing (not controlling) and make decisions that bring forth abundant outcomes, regenerating life for all involved.” - Savory Institute, <https://savory.global/holistic-management/>

<sup>16</sup> “Regenerative Agriculture describes farming and grazing practices that, among other benefits, reverse climate change by rebuilding soil organic matter and restoring degraded soil biodiversity – resulting in both carbon drawdown and improving the water cycle.” - Regeneration International, <https://regenerationinternational.org/why-regenerative-agriculture/>

<sup>17</sup> Nordborg M., Rööös E., (2016) *Holistic Management – a critical review of Allan Savory’s grazing method, SLU/EPOK* - Centre for Organic Food & Farming, Swedish University of Agricultural Sciences & Chalmers, Uppsala; p32

<sup>18</sup> Garnett T., Godde C., (2017), *Grazed and confused? Ruminating on cattle, grazing systems, methane, nitrous oxide, the soil carbon sequestration question – and what it all means for greenhouse gas emissions*, Food Climate Research Network, Oxford Martin Programme on the Future of Food Environmental Change Institute, University of Oxford, p118.

<sup>19</sup> Ibid, p119



Coles has been quick to provide messages to consumers that it has adopted practices through its supply chain to be able to claim that it sells 'carbon neutral beef.'

*"When we announced our Sustainability Strategy just over a year ago, we said we'd work with all our stakeholders to achieve our Together to Zero emissions ambitions and to be Australia's most sustainable supermarket..."*

*Coles Finest Certified Carbon Neutral Beef is a testament to the hard work of our beef producers and their commitment to sustainable practices, and we're thrilled that they're taking this important step with us."* <sup>20</sup>

However, as the following graph points out, the task for Coles appears unrealistic at least and insurmountable at worst, given the overwhelming carbon liability from beef, derived from the dataset of a 2018 Oxford study based on the activities of 38,700 rural properties across 119 countries. <sup>21</sup>

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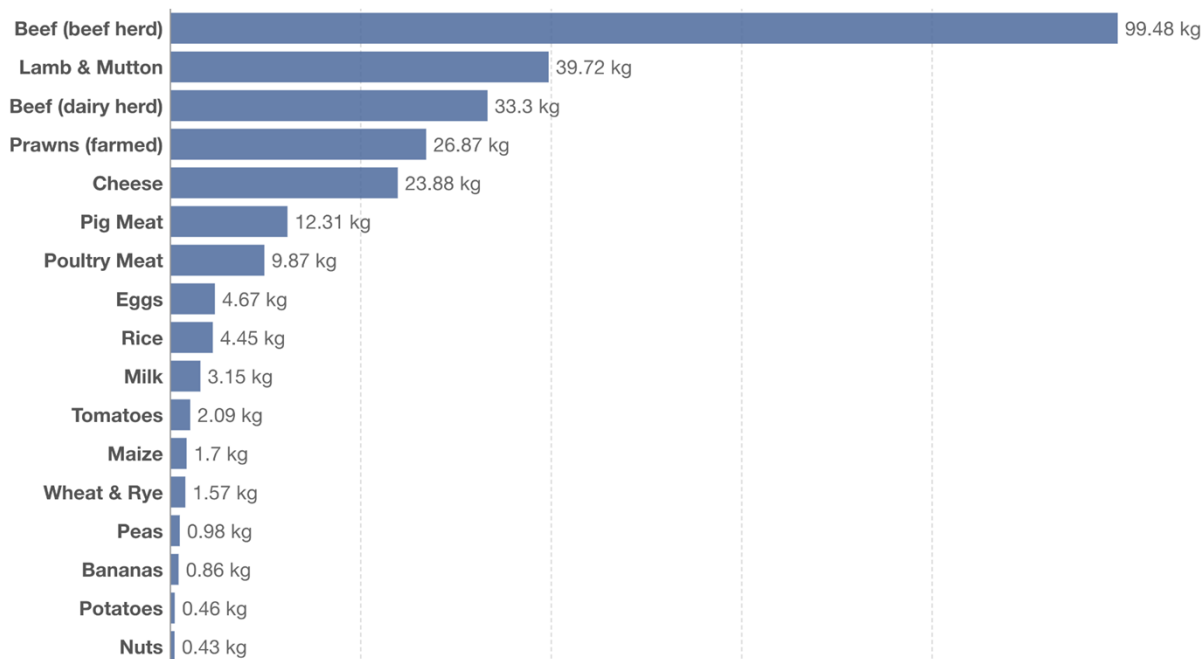
<sup>20</sup> "Coles finest certified carbon neutral beef," (retrieved 27 May 2023) <https://www.coles.com.au/about/sustainability/better-together/farmers-and-suppliers/farming/beef>

<sup>21</sup> Poore, J., Nemecek, T., (2018) Reducing food's environmental impacts through producers and consumers, <https://www.science.org/doi/10.1126/science.aaq0216>

## Greenhouse gas emissions per kilogram of food product

Our World  
in Data

Emissions are measured in carbon dioxide-equivalents<sup>1</sup>. This means non-CO<sub>2</sub> gases are weighted by the amount of warming they cause over a 100-year timescale.



Source: Joseph Poore and Thomas Nemecek (2018).

OurWorldInData.org/environmental-impacts-of-food • CC BY

**1. Carbon dioxide-equivalents (CO<sub>2</sub>eq):** Carbon dioxide is the most important greenhouse gas, but not the only one. To capture all greenhouse gas emissions, researchers express them in 'carbon dioxide-equivalents' (CO<sub>2</sub>eq). This takes all greenhouse gases into account, not just CO<sub>2</sub>. To express all greenhouse gases in carbon dioxide-equivalents (CO<sub>2</sub>eq), each one is weighted by its global warming potential (GWP) value. GWP measures the amount of warming a gas creates compared to CO<sub>2</sub>. CO<sub>2</sub> is given a GWP value of one. If a gas had a GWP of 10 then one kilogram of that gas would generate ten times the warming effect as one kilogram of CO<sub>2</sub>. Carbon dioxide-equivalents are calculated for each gas by multiplying the mass of emissions of a specific greenhouse gas by its GWP factor. This warming can be stated over different timescales. To calculate CO<sub>2</sub>eq over 100 years, we'd multiply each gas by its GWP over a 100-year timescale (GWP100). Total greenhouse gas emissions – measured in CO<sub>2</sub>eq – are then calculated by summing each gas' CO<sub>2</sub>eq value.

But the burden of proof lies with Coles to describe to its customers not only the methodology on which it relies for certification but whether the assumptions on which they are based are sound and the measures taken are able to be implemented across its entire supply chain.

It appears in the short term that Coles will be relying heavily on the ability to offset its emissions, as stated earlier, relating to infrastructure and logistics rather than actually reducing them at the point of production.

There is a strong likelihood that well-intentioned and environmentally conscious consumers will accept the *prima facie* assurance from Coles regarding its claims. However, most would not expect that what they are supporting is actually a system-wide subterfuge.

### APPROPRIATION OF GREENWASHING BY SMALL BUSINESS

In Albury, New South Wales, a farmer has used social media to grow his market share, depicting himself as a 'regenerative farmer.' While his environmental claims appear scant, he is very keen

to promote his 24 hour, exclusive digitally secured butchery to which he also supplies, as a niche service.

Interested members of the public are obliged to attend an education session which he conducts on farm to expound his narrative in order for them to qualify as his customers.<sup>22</sup> This is, in effect, a closed club for which external examination of any regenerative agriculture practices and the assumptions underpinning them remain inscrutable to consumers.

*"I'm all for any opportunity or platform to spread the message that there's value in treating animals or landscapes better. If one person thinks more about which eggs or which bacon they buy, it's been worth it!"<sup>23</sup>*

Aside from the self-serve butchery, it also seems self-serving of this farmer to suggest to well-intentioned consumers that they are able to demonstrate their care for the environment by supporting his business without strong evidence from both national and international research.

## **ASPARAGOPSIS PROMOTED TO MITIGATE ENTERIC METHANE EMISSIONS**

A recent announcement by the meat industry<sup>24</sup> and Woolworths<sup>25</sup> has celebrated the discovery that the addition of *asparagopsis taxiformis*—a type of seaweed—to the feed of cattle reduces their methane emissions from enteric fermentation (expelled through belching) by 80% or greater.

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<sup>22</sup> Bruton, J. (2023) Regenerative farmer TikToks all the boxes, The Border Mail, 28 January 2023  
<https://www.bordermail.com.au/story/8063402/thurgoona-regenerative-farmer-tiktoks-all-of-the-boxes-in-video-debut/>

<sup>23</sup> Ibid

<sup>24</sup> Meat and Livestock Australia (2022) Asparagopsis now commercially available to beef producers  
<https://www.mla.com.au/news-and-events/industry-news/asparagopsis-now-commercially-available-to-beef-producers/>,  
retrieved 28/5/23.

<sup>25</sup> Woolworths Sustainability Report (2021), [https://publish-p62269-e535518.adobecloud.com/content/dam/wwg/investors/reports/2021/195991\\_2021-sustainability-report.pdf](https://publish-p62269-e535518.adobecloud.com/content/dam/wwg/investors/reports/2021/195991_2021-sustainability-report.pdf), p43 retrieved 28/5/23

*“With farmers adding Asparagopsis to their feed, we can target two of the biggest challenges of our time: fighting climate change and growing more food with fewer resources.”<sup>26</sup>*

Despite this impressive claim, a distinction is to be drawn between grain-fed and grass-fed cattle. For those grain-fed in feedlots, the task of adding asparagopsis to feed appears to be quite straightforward given the *in vitro* results reported.

However, for those grass-fed, very little has been discussed on how cattle on pasture are to be coerced into ingesting seaweed while grazing, and in what form that would take.

Emissions from grass-fed cattle will prove to be a more important problem to solve as cattle on pasture have greater carbon emissions than their feedlot counterparts, due to their longer life and slower growth.

*“Cattle release this methane primarily by belching, though also to a lesser extent through flatulence. Studies have shown that grass-fed cattle produce 20% more methane in their lifetime than grain-fed cattle. This is due to two different factors:*

*1) cattle naturally emit more methane when digesting grass.*

*2) grass-fed cattle reach market weight more slowly than feedlot cattle, so they’re emitting methane over a longer time...”<sup>27</sup>*

One media commentator has suggested that asparagopsis be added to ‘licks’--the blocks of salt left out for pasture-raised cattle to lick in order to obtain important minerals.

If this is to be the plan, then the desired outcome will be more challenging to implement. As with any pharmacological effect the known threshold will need to be met based on *in vitro* feedlot efficacy, grass fed cattle will need to ingest 50 grams of the seaweed per day<sup>28</sup> through licking, in order for it to become and remain bioactive.

How will this be measured and how will it be applied to a herd? How will it be maintained?

The industry is silent on such matters, preferring to direct attention to the feedlot application that it can control and titrate.

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<sup>26</sup> Ibid.

<sup>27</sup> Marx Foods (2023), Grain-Fed Beef vs. Grass-Fed Beef – Greenhouse Gas Emissions, <http://newzealmeats.com/blog/grain-fed-vs-grass-fed-beef-greenhouse-gas-emissions>

<sup>28</sup> Landline - ABC Australia, (2023) *How a pill could cut methane emissions from cow burps by 90 per cent* <https://youtu.be/qtQzWEKuaQI>, Retrieved 29 May 2023.

Another commentator has suggested a soluble form could be added to water for those cattle on rangelands.<sup>29</sup> And yet, uncertainty remains over how this is to be implemented in the real world.

*“...more work is needed on how to deliver a seaweed supplement to animals fed on pastures, rather than in feedlots. The grass-fed system is a big one because we don't have a solution at the moment.”<sup>30</sup>*

How will consumers know the difference between the two and how can they be confident with this plan, given that Industry and retailers appear to have been premature with their pronouncements? How will farmers know with certainty that the animals have ingested the therapeutic amount of asparagopsis? How long will it take for this supplement to be completely adopted and used across Woolworths' entire supply chain?

Another point of nuance is that grass-fed cattle are often sent to the feedlot to be 'finished off' prior to slaughter.

Will cattle raised on pasture but finished on a feedlot, which includes asparagopsis in its grains for its final weeks of life, be sold to the consumer as meat from an animal that has received 'emissions-reducing feed'?

The consumer may well infer, incorrectly, that the grass-fed animal has received this over the entire course of its life, instead of only a fraction of it. This would be a deceptive and misleading practice for the industry and retailers to adopt.

## **SUSTAINABILITY CLAIMS TO ENABLE PERSECUTION OF WILDLIFE**

In its episode on the kangaroo industry, ABC's Landline program broadcast the following statement contained within a Kangaroo Industry Association of Australia promotional advertisement that features relaxed and happy people around a meal:

*“Today people want healthy options...Using a naturally lean option that is high in iron, protein and sustainably sourced, it's good for you and good for the environment.”<sup>31</sup>*

The term 'sustainably sourced' appears in other greenwashing narratives, and this application is equally problematic.

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<sup>29</sup> Landline - ABC Australia, (2023) *How a pill could cut methane emissions from cow burps by 90 per cent* <https://youtu.be/qtQzWEKuaQI>, Retrieved 29 May 2023..

<sup>30</sup> Ellis, M., Murphy, S., (2021) *Is asparagopsis seaweed a key way to reduce methane emissions in sheep and cattle, or a risky investment?* ABC News, <https://www.abc.net.au/news/2021-03-07/asparagopsis-seaweed-trials/13215426>, Retrieved 29 May 2023

<sup>31</sup> Landline (2022) *Roo-row: The highly divisive kangaroo industry*, Australian Broadcasting Corporation, 7/05/2022 <https://www.abc.net.au/news/rural/programs/landline/2022-05-07/roo-row:-the-highly-divisive-kangaroo-industry/13872022>

Surveying methodology for kangaroo numbers both in NSW and Victoria has never been subjected to peer review or post hoc real-world accuracy and has a propensity to grossly inflate assumptions regarding their numbers.

The methodology also ignores kangaroo social ethology, as well as biological constraints and environmental impacts to habitat, and yet the program maintains momentum, propelled by its recurring assumptions, and the belief without strong evidence, that over-abundance is a 'steady state,' and that kangaroos are a seemingly inexhaustible resource to be exploited.

If sustainability was based in fact, then one would not have observed two harvest zones in the NSW program—Cobar and Tibooburra—being closed down due to the decimated numbers or complete absence of kangaroos sighted. This would otherwise be known as a localised extinction.

*“The population estimates for two of the western / central shooting zones in the state, for the Grey Kangaroos in the Tibooburra shooting zone, the government’s population estimate for 2016 for this species in this zone was 451,594, by 2020 the population estimate had fallen to 6,859 (the quota for that year in that zone for that species was 6,782, leaving just 77 Grey Kangaroos in the whole and sizeable shooting zone by year end).*

*For the Red Kangaroo in the Cobar shooting zone the population estimate in 2016 was 437,129, by 2020 the population estimate was 102,480...*

*“...In six days of searching these shooting zones, at last and towards the end of our time there, we discovered one living Kangaroo. **So, where there is an estimated population of just under 3 million Kangaroos, we counted just one living Kangaroo**”.*<sup>32</sup>

To a reasonable person, the use of the word 'sustainable' in this context, subsequently appropriated by Industry, is not only absurd but patently false.

This egregious claim, perhaps intended to deceive and support an unsustainable industry, should never have been introduced to persuade the consumer that their choice to purchase kangaroo products is a safe and responsible one.

One only needs to recall in our recent history that the protracted persecution over decades of the *Thylacinus cynocephalus*—thylacine or 'Tasmanian Tiger'—by colonists and landholders, viewed as a threat to livestock, led to its eventual extinction in 1936.

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<sup>32</sup> Hylands, P. and A., (2023), *Creating a disaster: The Tibooburra and Cobar shooting zones in NSW*, Creative Cowboy Nature Knowledge Channel, citing data from the public register of Licences to Harm Wildlife issued by NSW Parks and Wildlife Service, <https://www.creativecowboyfilms.tv/earth/new-south-wales-licences-to-harm-protected-australian-species>, retrieved 1 June 2023

Technological solutions to the climate challenges within agriculture are complex and nuanced and require the considered attention and time of the average consumer. In the retail setting, this may well be too high an expectation.

Despite this, and in a race to preserve social licence and boost market share, Industry and retailers have prematurely latched onto singular claims that are intended to imply simple environmental credentials in the brief moments of time consumers allow to make a purchasing decision in their favour. The consumer has no chance of testing these claims and many will likely accept them at face value.

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***Recommendations:***

1. Prevent animal industry food producers and retailers from making these claims while evidence for them has been either absent, equivocal or not persuasive. In relation to emissions, the terms to be excluded in all consumer communication regarding agricultural practices should include:
    - a. Sustainable
    - b. Regenerative
    - c. Holistic
    - d. Zero emissions
    - e. Carbon neutral
    - f. Net zero
    - g. Environmentally responsible
    - h. Ethical
  
  2. Regulate and centralise environmental messaging for all food products only when and if research delivers more definitive results from strong evidence.
  
  3. Introduce a standardised language and standardised graphical representation, similar to the health star rating system, with consumer understanding as its focus. Terms utilised for the sake of brevity and space limitations on packaging need to have accompanying qualifying information at the point-of-sale based on measurable and verifiable results.
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## **2. The impact of misleading environmental and sustainability claims on consumers**

The purpose of food labelling is to communicate a message to consumers regarding the product that they're purchasing. Where this labelling is misleading, consumers are denied the opportunity to make a truly informed choice about their purchase. As a result, consumers find themselves purchasing products that ultimately do not reflect the relevant advertised attribute/s that the consumer was willing and intending to pay for.

Carbon-neutral beef labelling implies that the production of the beef produced no greenhouse gas emissions and/or even has minimal overall environmental impact; when in reality, beef production has a significant environmental impact. A steak labelled as carbon-neutral is likely to have produced considerably more emissions than other food products that a shopper might reach for as an alternative, such as a plant-based burger, or a packet of lentils.

Notably, the impact of misleading environmental and sustainability claims extends beyond individual consumers to the marketplace as a whole.

*"...greenwashing has the propensity to distort the marketplace, potentially by underpricing the actual cost of green production to the detriment of those businesses that prioritise environmentally sustainability."<sup>33</sup>*

This means over the long term, we could see a lack of incentive for companies who are interested in doing the right thing to invest in new technologies or research ways to change their operations to be more ethical as industries who have the financial resources to spend on lofty marketing campaigns that use greenwashing techniques maintain or even increase their market share. Ultimately, the consumer loses out as the availability of sustainable products declines, and they are forced into purchasing items that don't align with their ethics.

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<sup>33</sup> <https://www.holdingredlich.com/greenwashing-unsustainable-following-asic-and-acc-enforcement-action-how-your-business-can-stay-off-the-regulators-radar>

### 3. Domestic and international examples of regulating companies' environmental and sustainability claims

#### EUROPE

In March 2022, the European Commission adopted a proposal intending the creation of a “Directive on Empowering Consumers for the Green Transition”<sup>34</sup> with the following objectives:

- make green claims reliable, comparable and verifiable across the EU;
- protect consumers from greenwashing;
- contribute to creating a circular and green EU economy by enabling consumers to make informed purchasing decision;
- help establish a level playing field when it comes to environmental performance of products.<sup>35</sup>

This was further articulated by a corporate law firm, White & Case, focussing on environmental transitions and describes the “Green Claims Directive” as a “Complement to EU Consumer Protection Laws” that

*“If adopted, that 2022 proposal would expand misleading and unfair commercial practices to include, inter alia, making an environmental claim which: (i) is generic and unsubstantiated; (ii) relates to future environmental performance unsupported by clear, objective and verifiable commitments and targets and an independent monitoring system; and (iii) presents as distinctive environmental features that are already required to be presented under existing laws.”<sup>36</sup>*

#### UNITED STATES

In the United States the Federal Trade Commission appears to have taken a more conservative approach to consumer protection issuing only “Green Guides,” that are:

*“...designed to help marketers ensure that the claims they make about the environmental attributes of their products are truthful and non-deceptive...”<sup>37</sup>*

The current review was commenced in December 2022 - a 10-year hiatus from its last review in 2012.

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<sup>34</sup> European Commission, (2022) *New criteria to stop companies from making misleading claims about environmental merits of their products and services*, [https://environment.ec.europa.eu/topics/circular-economy/green-claims\\_en](https://environment.ec.europa.eu/topics/circular-economy/green-claims_en)

<sup>35</sup> Ibid.

<sup>36</sup> Monas M., (2023), *EU proposes Green Claims Directive to combat greenwashing*, <https://www.whitecase.com/insight-alert/eu-proposes-green-claims-directive-combat-greenwashing#>

<sup>37</sup> US Federal Trade Commission, <https://www.ftc.gov/news-events/news/press-releases/2012/10/ftc-issues-revised-green-guides>

## UNITED KINGDOM

The UK's Competition and Markets Authority issued a statement in 2021 whose goal was to guide, admitting that:

*“Consumer protection law does not prevent businesses from making environmental claims about their products and services, provided they do not mislead consumers. It provides a framework for businesses to make environmental claims that help consumers make informed choices. Consumer protection law therefore gives consumers important protection in relation to environmental claims.”*<sup>38</sup>

However, in 2023, it announced that it has expanded its consideration, specifying “food, drink, and toiletries – to make sure shoppers are not being misled.”<sup>39</sup>

In the absence of stronger consumer laws, legal firms have made clear statements to consumers regarding their expectations:

*“Sustainability is now firmly on the agenda for consumers and investors concerned about climate change. As the demand for eco-friendly products and services grows, so too does the risk of companies overstating their sustainability credentials in order to attract and retain customers and investors...”*

*...Government enforcement actions and civil suits alleging greenwashing are on the rise through a myriad of different laws, including securities regulations, consumer protection laws, fraud and misrepresentation statutes, and advertising standards.”*<sup>40</sup>

## AUSTRALIA

The last statement from Australian Consumer and Competition Commission was in 2011 in its publication, *Green Marketing and the Australian Consumer Law*.

In relation to environmental claims, it is quite explicit in what might contribute to misleading and deceptive conduct.

*“...Not all members of your audience will be especially educated, so claims should be clear and unambiguous. This also makes the use of technical or scientific jargon especially risky.*

*...A consumer may be unlikely to go through a lengthy decision-making process when buying a small household item, so you should consider the immediate impression made on them by your environmental claims.*

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<sup>38</sup> Global Policy Watch, 2023, *The Green Claims Global Drive: Developments in the UK, US and EU*, <https://www.globalpolicywatch.com/2023/05/the-green-claims-global-drive-developments-in-the-uk-us-and-eu/>

<sup>39</sup> Ibid.

<sup>40</sup> Norton Rose Fulbright, (2022) *Greenwashing disputes on the rise*, <https://www.nortonrosefulbright.com/en/knowledge/publications/e87c69e7/greenwashing-disputes-on-the-rise>

*...Misleading conduct can include predictions if the maker had no reasonable ground for making it, or if the prediction should have been qualified and was not.*

*...all the relevant circumstances there is an obligation to say something or if a reasonable expectation is created that matters will be disclosed, if they exist.”<sup>41</sup>*

Many of these statements mirror the concerns articulated in this submission.

In the twelve years that have elapsed since this document’s release, it is clear that the marketplace has seen the introduction of a new lexicon that implies to consumers green credentialing and claims that are proven without any substantiation.

This is a perilous position for both the marketplace and for the consumer.

With our major trading partners at various stages of adopting a firmer stance on greenwashing claims it would seem logical for our country to follow suit, not only for the benefit of domestic consumers but also to protect Australia’s international reputation in these matters.

Justifiably, the legal profession also has a laser focus on false and misleading environmental claims and, with the consequence of widespread litigation over breaches of consumer rights and investor losses.

Domestically it would seem prudent to introduce robust regulations in order to avoid the possibility of a tsunami of claims needing to be heard in our already overwhelmed Courts.

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***Recommendations:***

1. Amend Australian Consumer Law to include the consideration of contemporary greenwashing claims, with appropriate penalties for breaches.
  2. Specify types of messages that would constitute misleading or deceptive marketing practices.
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<sup>41</sup> Australian Consumer and Competition Commission, (2011) Green marketing and the Australian Consumer Law, <https://www.accc.gov.au/system/files/Green%20marketing%20and%20the%20ACL.pdf> p3-4

#### 4. Advertising standards in relation to environmental and sustainability claims

According to Ad Standards Australia, advertising standards are ‘a set of rules and principles of best practice to which the industry voluntarily agrees to be bound.’<sup>42</sup> They exist in order to ‘help industries self-regulate, meaning maintain high advertising standards and ensure consumer trust and protection for the benefit of all of the community.’ Advertisers have an obligation to be truthful in their claims and must not mislead or deceive consumers on the benefits of their products and services.

With consumers becoming more conscious about their impact on the environment, the use of environmental claims in advertising is becoming more common.

##### **Environmental Claims and Sustainability Advertising Code**

In Australia, the Environmental Claims and Sustainability Advertising Code (‘the Code’) has been developed by the Australian Association of National Advertisers (AANA), which aims to ensure that standards are maintained by advertisers and marketers when making environmental claims. However, the Code does not apply to labels or packaging for products.<sup>43</sup>

Even so, the Ad Standards Community Panel’s view is that claims regarding the sustainability of products do not breach the Code when substantiated via official regulations or Standards.<sup>44</sup> This was evidenced in a 2019 complaint against Coles, where the complainant/s argued that Coles’ advertisement of Tasmanian Salmon as “responsibly sourced” was deceptive due to the enormous harm caused to the marine environment by salmon farming. While the Panel acknowledged that this was an environmental claim, the complaint was ultimately dismissed as a result of the product having been independently certified by the Aquaculture Stewardship Council.<sup>45</sup>

The view of the Panel demonstrates that advertisers can remain compliant with the Code and Australian Consumer Law so long as environmental claims are independently certified with supporting documentation. Thus, while this may assist with ensuring that claims are technically accurate, this determination fails to take into account the broader issue of greenwashing as it relates to the overall impression purported to the consumer. Further, the Code lacks enforcement mechanisms and relies on a self-regulation system. As a voluntary set of standards, the companies are not legally obliged to comply with the Code and as a result, consumers are not sufficiently protected.

##### **Australian Consumer Law**

Conversely, Australian Consumer Law (ACL) specifically relays to advertisers that they “*should be careful that the overall impression you create about the goods or services you sell is not*

<sup>42</sup> <https://adstandards.com.au/about/self-regulation>

<sup>43</sup> <https://aana.com.au/self-regulation/codes-guidelines/environmental-claims>

<sup>44</sup> <https://adstandards.com.au/issues/environmental-claims-determination-summary>

<sup>45</sup> <https://adstandards.com.au/sites/default/files/reports/0178-19.pdf>

*misleading. In other words, it is not enough for each representation to be technically or narrowly correct. It is just as important to look at the overall impression created in the minds of average consumers in the target audience.”<sup>46</sup>*

While this is a welcome clarification in the face of increased greenwashing claims and the view of the Ad Standards Community Panel, consumers should not have to rely on legislative instruments to enforce reasonable advertising and marketing expectations. This will be elaborated on further in section 5.

### **Food and Beverages Advertising and Marketing Communications Code**

The AANA has also developed the Food and Beverages Advertising and Marketing Communications Code, with the objective of encouraging advertisers to *“develop and maintain a high sense of social responsibility in advertising food and beverage products.”<sup>47</sup>* However, this Code primarily focuses on claims relating to health, nutrition and those advertised to children. It does not specifically consider environmental or sustainability claims, and as a voluntary Code reliant on industry self-regulation, has no enforcement power.

### **Food Standards Legislation**

The Australia and New Zealand Food Standards Code is included in the Food Standards Australia New Zealand Act 1991 (Cth) and governs food packaging and labels. The primary classifications listed in the Food Standards Code are standard claims, health claims, endorsement claims, nutrition claims, certification and organic claims and puffery. It does not address environmental claims.

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### **Recommendations:**

1. Introduce tighter regulation around independent certification to prevent companies from avoiding scrutiny over environmental claims;
  2. Ensure that the same standards that apply to advertisers and marketers when making environmental claims extend to labels or packaging for products.
  3. Amend the Food and Beverages Advertising and Marketing Communications Code and the Food Standards Legislation to ensure they also apply to environmental and sustainability claims.
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<sup>46</sup> <https://www.accc.gov.au/system/files/Green%20marketing%20and%20the%20ACL.pdf>

<sup>47</sup> <https://aana.com.au/self-regulation/codes-guidelines/food-and-beverages-code/>

## 5. Legislative options to protect consumers from green washing in Australia

There are consumer laws in Australia that address labelling on products. The Australian Competition and Consumer Commission (ACCC) is responsible for administering and enforcing the *Competition and Consumer Act 2010* to regulate the consumer market in Australia.<sup>48</sup>

One area that can be subject to scrutiny under consumer protection laws is the mention on a label of 'premium or benefit claims.' According to the ACCC website,<sup>49</sup> premium claims may suggest a product:

- is safer, for example, 'non-toxic';
- offers a moral or social benefit, for example, 'free-range eggs';
- has a nutritional benefit, for example, 'fat free';
- is 'green' or environmental, for example, '100% recyclable';
- is therapeutic, for example, 'the fastest pain reliever'.

According to the Code, there is an onus on a company to '*check that the overall general impression is accurate.*'<sup>50</sup>

It could be argued that the labelling of this product as carbon-neutral is a deliberate attempt to create a 'general impression' of their product to appeal to climate-conscious consumers.

Unlike advertising standards, Australian Consumer Law (ACL) is applicable to all marketing, including food labelling. The ACCC cautions that companies should exercise special care when making environmental claims, as these are likely to be very important to consumers.<sup>51</sup>

Section 29 of the ACL is often referenced in claims of misleading and deceptive conduct. However, because this section of the ACL was not established with modern-day greenwashing practices in mind, consumers are not afforded ample protection against greenwashing claims.

### **National Greenwashing Enforcement Agency**

Without legally enforceable advertising and marketing standards, and legislation which does not consider the emerging and nuanced issue of greenwashing, the establishment of a national greenwashing enforcement agency, or a division within the ACCC that specifically deals with greenwashing claims, would be a welcome investment for Australian consumers.

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<sup>48</sup> <https://www.accc.gov.au>

<sup>49</sup> <https://www.accc.gov.au/consumers/advertising-and-promotions/false-or-misleading-claims>

<sup>50</sup> <https://www.accc.gov.au/consumers/advertising-and-promotions/false-or-misleading-claims>

<sup>51</sup> <https://www.accc.gov.au/system/files/Green%20marketing%20and%20the%20ACL.pdf>



Such an agency or division would ensure the dedicated and independent investigation and prosecution of greenwashing claims. With the rise of environmentally conscious consumers in the Australian market, an agency with the legislative authority to pointedly monitor, investigate and sanction greenwashing is critical for consumer protection and to hold companies accountable for their environmental claims.

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***Recommendations:***

1. Establish a national independent greenwashing enforcement agency, or a division of the ACCC to investigate and prosecute companies that are engaging in deceptive greenwashing practices;
  2. Require all companies to provide detailed information about environmental practices and the environmental impact of their products.
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## 6. Other related matters

Greenwashing terms are often used in conjunction with equally undefined terms intended to add to their legitimacy. Three that frequently appear in marketing are “ethically sourced”, “naturally healthy”, “sustainable” and, in relation to the quality of life and slaughter of animals in the food system, “humane.”

Although outside the scope of this Inquiry, these superficial and ill-defined claims also serve to close down any critical analysis by consumers, adding to their cognitive load, having more than one thing to consider in a brief moment of decision-making.

It is also worth noting that assessment by so-called peak bodies often do not represent the expectations of the community. Rather, these peak bodies exist to further the interests of industries they represent.

With such claims already in the marketplace, it would seem timely to examine their bona fides with a follow-up Inquiry, or task ACCC to conduct its own investigations relevant to these claims.

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### **Recommendations:**

1. Upon completion of this Inquiry, task ACCC to investigate the additional marketing practices that claim human health benefits, ethical conduct along the entire supply chain and animal welfare claims are **measured against community expectations rather than assessments of peak bodies;**
  2. Prohibit the use of such marketing claims until further information has been considered and a public report produced.
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## Conclusion

The rise of greenwashing by companies in Australia is a dangerous trend. As consumers become more environmentally conscious, companies exploit this by using overstated and unsubstantiated claims in their advertising and on the labelling of their goods regarding environmental impact to favourably differentiate their products to appeal to consumers. This results in well-intentioned consumers being misled into buying products they may have avoided had they been aware of the actual environmental impact of their choices.

The problem is compounded by the fact that regulatory bodies currently responsible for overseeing labelling and advertising claims in Australia do not have an adequate framework to prevent greenwashing claims being made, nor to penalise organisations who erroneously make these claims.

In recent years, as the environmental impact of cattle farming has become apparent to the public, the beef industry has been ramping up its efforts to promote its environmental credentials by using marketing campaigns involving buzzwords like 'sustainable', 'carbon neutral' and 'regenerative grazing'. This is occurring with very little scrutiny by regulatory bodies, the media or consumers. To make matters worse, Supermarkets like Coles are supporting farmers to overstate their environmental credentials by purchasing low integrity carbon credits to create a beef brand that appeals to conscious consumers.

This is very concerning as beef production is unsustainable, both in terms of emissions and land use, and is the biggest driver of species extinction in Australia, and our international reputation for being among the countries with highest rates of land clearing in the world. To make matters worse, the industry is planning to expand its production over the coming years, with plans to increase its domestic herd by around 5 million by 2025, largely through *'refreshed expansion efforts through larger swathes of Queensland if conditions permit.'*<sup>i</sup>

We would like to see increased scrutiny of claims by this industry and the public made more aware of the real cost to the environment of beef production, and hope that this submission provides some incentive for this to take place.

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<sup>i</sup> <https://pulse.auctionsplus.com.au/market/2023-australian-cattle-industry-forecast>