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**AdStandards.com.au**

Ad Standards Limited  
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## Case Report

<b>1. Case Number :</b>	<b>0187-22</b>
<b>2. Advertiser :</b>	<b>Jemena</b>
<b>3. Product :</b>	<b>Other</b>
<b>4. Type of Advertisement/Media :</b>	<b>Internet</b>
<b>5. Date of Determination</b>	<b>24-Aug-2022</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

AANA Environmental Code\1 Truthful and Factual  
AANA Environmental Code\2 Genuine Environmental Benefit

### DESCRIPTION OF ADVERTISEMENT

This advertisement is a sponsored article dated 22 June 2022 appearing on smh.com.au with the headline "Renewable gas can satisfy our energy hunger".

### THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

- 1. We act for the Australian Conservation Foundation (ACF). The ACF is Australia's national environmental organisation with over 700,000 supporters.*
- 2. We are writing on their behalf to ask that you investigate whether statements made in the advertorial by Jemena Gas Networks (NSW) Ltd, are in breach of the Environmental Claims Code. Details of the representations are set out at Annexure A to this complaint.*
- 3. ACF are concerned that the editorial/advertorial is misleading or deceptive for stating that:  
(1) Hydrogen is renewable and green and has zero carbon emissions when not all forms of hydrogen are renewable, and hydrogen produced with hydrocarbon gas produces greenhouse gas emissions;*



*(2) Hydrogen blended with hydrocarbon gas is renewable when there is not clear information about whether hydrogen blended with gas is renewable and what proportion of the product is renewable.*

#### *Misleading or deceptive conduct under Environmental Claims Code*

*4. Section 1 of the Environmental Claims Code relates to misleading or deceptive conduct in relation to environmental claims. Clause 1 of the Code requires environmental claims in advertising or marketing communication to not be misleading or deceptive or likely to mislead or deceive, to display disclaimers or important limitations and qualifications prominently and represent the attributes or extent of environmental benefits or limitations in a way that can be clearly understood by a consumer. Clause 2 also requires environmental claims to be relevant and explain the significance of the claim, not overstate the claim or imply the product is more socially acceptable overall. We have outlined below how we believe these advertisements breach these provisions of the Code.*

*5. The advertorial is misleading in breach of Clause 1 of the Code because of the general impression that hydrogen is green and renewable, and the failure to explain that most of the product currently being developed is not “renewable” hydrogen because it is being produced by blending with hydrocarbon gas. This raises the issue of whether the conduct viewed as a whole tends to lead a person into error.[1] There is also very little by way of qualification or disclaimers in the editorial to ensure that any misleading information is corrected or appropriately qualified. It creates the impression that “renewable” gas is a green and climate friendly product, even though hydrogen made with fossil fuels is not renewable. This breach relates to Clause 2 of the Code. The claims are like earlier advertisements which Ads Standards found misleading in relation to gas being “cleaner and greener” than other energy sources.[2] Similar claims around net zero gas in New Zealand have also been found by the equivalent NZ Advertising Standards Board to be misleading.[3] In particular the editorial suggests consumers could continue using gas without adding carbon, a very similar imputation to the representations made here that suggests blending makes good use of existing gas infrastructure.*

#### *What is renewable?*

*6. A key to these issues is the definition of renewable. The Australian Renewable Energy Authority’s definition of renewable energy is “energy produced using natural resources that are constantly replaced and never run out”.[4] It follows that hydrogen produced by natural gas or other fossil fuels are not renewable energy sources. Hydrogen produced using wind or solar that are constantly replaced is appropriately classified as renewable energy.*

*7. In this case, the representations around “renewable gas” do not contain a disclaimer that natural gas is not renewable and clarify exactly in what circumstances hydrogen can be classified as renewable. This is concerning as Jemena is seeking to overstate the benefits of hydrogen gas to ensure that the product is seen as more*



*climate friendly than it is. These types of advertisements could genuinely harm competitors who are providing renewable energy, such as solar, hydro or wind power or green hydrogen and involve minimal greenhouse gas emissions.*

*Representation 1- Not all hydrogen is renewable and has zero carbon emissions*

*8. The editorials as stated above makes broad claims that suggest hydrogen is renewable and fail to make any disclaimers around the use of the term. Hydrogen can be produced from renewable sources such as solar or wind, as well as non-renewable sources such as coal and natural gas. Hydrogen produced from renewable sources does not produce greenhouse gas emissions, but hydrogen produced with hydrocarbon gas, even when used in conjunction with carbon capture and storage technology, produces more greenhouse gases than natural gas or coal.[5]*

*9. These types of representations are important given the latest scientific information about the impact of fossil fuels including gas on global warming. The Intergovernmental Panel on Climate Change (IPCC) has found that emissions from fossil fuels are the dominant cause of global warming. The IPCC has warned that fossil fuel emissions must decline by 45% from 2010 levels by 2030 if global warming is to be limited to 1.5 degrees.[6] Warming above 1.5 degrees risks further sea level rise, extreme weather, biodiversity loss and species extinction, as well as food scarcity, worsening health and poverty for millions of people worldwide. [7]*

*10. The editorial states:*

*“We firmly believe that gas and gas infrastructure will play a critical role in Australia’s journey to net-zero emissions and will continue to do so once we arrive at the destination.”*

*There is no qualification that not all methods of producing hydrogen, including through using an electrolyser from water, are renewable and contain no greenhouse gas emissions. This is important because it gives the overall impression to consumer that all hydrogen contains no carbon emissions. Most users will not be familiar with how hydrogen is made and could be confused about the representations after reading the website. This is important as many consumers want to use products that they believe are “renewable” or low in emissions and could be misled by such broad claims that are not qualified.*

*Representation 2- hydrogen blended with gas is not renewable*

*11. The editorial then goes onto discuss the blended hydrogen gas being produced by Jemena in Western Sydney. There could be considerable confusion as to representations about blended gas and how renewable it is. It is not always made clear that blended gas only contains a small proportion of renewal gas in its current form. The product will generate significant greenhouse emissions given only 5% of the product comes from renewable sources. The editorial also includes the quote: A major advantage of renewable gas is that existing gas infrastructure can be used like an enormous underground battery*



12. None of the material produced by Jemena discusses the limitations of using gas blended with hydrogen in existing gas networks. A recent study by International Renewable Energy Agency (IRENA) found that while blending can be an option to use existing gas infrastructure it faces multiple challenge,[13] The benefits of blending in terms of reduced CO2 emissions is small, it increases gas prices, is only at pilot project scale and is not an option that is readily available. Based on this reasoning, blending is not included in their analysis of viable options as the challenges outweighed the benefits.[14]

13. The editorial sponsored by Jemena is unclear on the blending situation. It discusses using green hydrogen without explaining clearly the transition with blending to completely renewable gas:

*Jemena is now producing blend green hydrogen – producing blend green hydrogen – produced using renewable electricity – from its Western Sydney Green Hydrogen Hub into the Sydney gas network in late 2021*

*The advertorial doesn't discuss that the current blending situation uses only a small proportion of renewal gas and focuses on the future situation without making clear the transition time to the use of gas produced with completely renewable resources. This will encourage gas users to keep using gas in the meantime without considering the impact on emissions in the short term.*

1 Campbell v Backoffice Investments Pty Ltd (2009) 238 CLR 304, 319- French CJ.

2 Ad Standards, Case Report, 0202-20

3 <https://www.lawyersforclimateaction.nz/news-events/firstgas-decision>

4 Arena -what is renewable energy- <<https://arena.gov.au/what-is-renewable-energy/>- accessed 16/6/2022>

5 Robert W Howarth & Mark Z Jacobsen, "How green is blue hydrogen", (2021) Energy Science & Engineering 1:Thomas Longden et al, "Clean hydrogen- comparing the emissions and costs of fossil fuels versus renewableelectricity-based hydrogen" (2022) 306 Applied Energy 1

6 IPCC, Special Report: Global Warming of 1.5 degrees -Summary for Policymakers-C.1 <https://www.ipcc.ch/sr15/chapter/spm/>

7 IPCC, Special Report: Global Warming of 1.5 degrees -Summary for Policymakers-<https://www.ipcc.ch/sr15/chapter/spm/>

#### ANNEXURE A – Renewable gas representations

##### Editorials:

*Sydney Morning Herald- 28 June 2022 (Sponsored by Jemena)*

*The editorial notes that Jemena is now producing blend green hydrogen – produced using renewable electricity – from its Western Sydney Green Hydrogen Hub into the Sydney gas network in late 2021.*



*"Today we use natural gas, but in the future gas will be produced from primarily renewable sources such as biomethane or hydrogen from electrolysis"*

*"We firmly believe that gas and gas infrastructure will play a critical role in Australia's journey to netzero emissions and will continue to do so once we arrive at the destination."*

*A major advantage of renewable gas is that existing gas infrastructure can be used like an enormous underground battery," he says.*

*"Renewable energy can be used to generate renewable gas, which can be stored and later used to generate electricity when solar or wind aren't available, or at times of very high demand*

## **THE ADVERTISER'S RESPONSE**

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

*Thank you for notifying Jemena Gas Networks (NSW) Ltd (JGN) of the above complaint and providing us with the opportunity to respond.*

*JGN recognises the important role of the AANA Environmental Claims Code (Environmental Claims Code) and the AANA Code of Ethics for Advertising and Marketing (Ethics Code) in ensuring that rigorous standards apply to advertisers and marketers when making environmental claims.*

*JGN has carefully considered the allegations set out in the complaint and for the reasons set out below, JGN considers it has properly adhered to the guidelines set out in the Environmental Claims Code and the Ethics Code and there has been no breach of either the Environmental Claims Code or the Ethics Code.*

### **1. A DESCRIPTION OF THE ADVERTISEMENT**

**1.1** *The complaint concerns an editorial piece written by the Sydney Morning Herald (SMH) editorial team. SMH is owned by Nine.*

**1.2** *For the reasons explained in section 2 below, the complaint is not an "advertisement".*

**1.3** *Jemena sponsored the article through its media buying agency, Initiative Media. It is a "sponsored native article", and is not a paid advertorial or advertisement.*

**1.4** *Jemena's sponsorship agreement with Nine consisted of the following:*

- *An editorial piece entitled "Renewable gas can satisfy our energy hunger" written by the relevant SMH editor.*



- *The editorial was published online at <https://www.smh.com.au/environment/sustainability/renewable-gas-can-satisfy-our-energy-hunger-20220628-p5ax9z.html> on 28 June 2022 at 2:41pm and will remain online until 30 September 2022 or a date agreed between Nine and Jemena.*
- *SMH had and retained full editorial control and sign off on the text of the editorial.*
- *Jemena was identified as a sponsor of the editorial, through the use of a "Sponsored by Jemena" tag at the top of the editorial when published on the SMH website.*
- *Jemena also received section sponsorship, consisting of two digital display billboard advertisements positioned in the editorial, when published on the SMH website.*

*1.5 Jemena sponsored this editorial to contribute to the public debate and promote awareness about the future potential for renewable gas including hydrogen. Jemena's Western Sydney Green Hydrogen Hub is a project co-funded by the Federal Government's Australian Renewable Energy Agency (ARENA).*

## *2. GENERAL COMMENTS IN RELATION TO THE COMPLAINT*

*Threshold matter: the editorial is not an "advertising or marketing communication" subject to the Environmental Claims Code or Ethics Code*

*2.1 The story in question is editorial content and is not an advertorial as alleged in the complaint. It is therefore not "advertising or marketing communication" subject to the Environmental Claims Code (nor "advertising" subject to the Ethics Code, for the same reasons).*

*2.2 The Environmental Claims Code provides that an "advertising or marketing communication" is one "over which the advertiser or marketer has a reasonable degree of control". Jemena did not have control over the editorial.*

*2.3 An advertorial is an article where the sponsor and the editor collaborate on the content of the piece, and there is a shared intention for the piece to promote a product. In those circumstances, the advertiser pays for the right to have reasonable control over the content and outlook of the article.*

*2.4 By contrast, in this case, Jemena sponsored an editorial about the future of the Australian gas industry because Jemena is a participant in the gas industry and this is a sensible editorial topic for Jemena to support. To support the data in the editorial, Jemena made the executive general manager of Jemena's gas networks available to provide comments for use in the editorial. Jemena also had the opportunity to fact-check the statements that were attributed to it in the editorial. This is an ordinary part of journalistic practice.*

*2.5 Jemena's sponsorship did not come with any right to exercise control over the content of the editorial. Jemena did not have control over the other parties interviewed for the purposes of the editorial, or the comments attributed to those*



*parties. At all times, SMH, through owners Nine, retained control over the content of the editorial, and SMH had full sign off on the final text of the editorial for publication.*

*2.6 The editorial is therefore not subject to the Environmental Claims Code, as it is not an advertising or marketing communication.*

*2.7 Even though Jemena does not consider that the sponsored editorial is properly considered advertising or marketing communication, Jemena has nevertheless provided reasoning below for why the content of the editorial did not breach either the Ethics Code or the Environmental Claims Code.*

*Editorial material was clearly distinguishable*

*2.8 Section 2.7 of the Ethics Code requires advertising material to be clearly distinguishable. While Jemena maintains that the editorial is not advertising material:*

- the text at the top of the editorial clearly stated "Sponsored by Jemena", indicating Jemena's financial sponsorship; and*
- the two digital display billboard advertisements that were positioned in the editorial clearly identified Jemena, and were accompanied by the text "Advertisement". These digital display ads were only visible within the online article for a period of four weeks from the publishing date as part of Jemena's editorial sponsorship agreement.*

*The editorial is not misleading or deceptive, and is relevant, specific and clearly explains the significance of the claim*

*2.9 While Jemena did not provide the content of the editorial, Jemena considers that the wording in the editorial is not misleading, and there is no material risk that the ordinary reader of the editorial would be lead into error, and therefore misled or deceived, by the representations arising from it.*

*2.10 The readers of the editorial are likely to be a wide range of SMH readers who are interested in the energy transition from carbon-emitting energy production to carbon-neutral or renewable energy production.*

*2.11 The complaint alleges that:*

- (1) Hydrogen is renewable and green and has zero carbon emissions when not all forms of hydrogen are renewable, and hydrogen produced with hydrocarbon gas produces greenhouse gas emissions; and*
- (2) Hydrogen blended with hydrocarbon gas is renewable when there is no clear information about whether hydrogen blended with gas is renewable and what proportion of the product is renewable.*

*2.12 However, these alleged representations do not arise from the contents of the editorial.*



2.13 The editorial discusses the "multiple pathways to net zero" and identifies gas (not only hydrogen) being produced "in the future" from "primarily renewable sources such as biomethane or hydrogen from electrolysis" as important to that transition.

2.14 In this context, it describes:

- the "baby steps" the state has taken, including Jemena "starting to blend green hydrogen" and the "pilot production plan" coming online to "turn the biowaste from Sydney's wastewater sewers into renewable gas";
- uses the expression "green hydrogen", which is an widely used term in the industry to refer to hydrogen produced from water using electrolysis where the electricity is sourced from, or offset by, renewable sources of electricity (as distinct from producing hydrogen through other means);
- explains that the existing gas infrastructure could be used to store renewable gas (including, but not limited to, hydrogen); and
- describes Jemena's advocacy for a nationwide Renewable Gas Target which Jemena argues could be the "jump-start the renewable gas sector needs to truly commercialise zero-emission gases and make them available to Australian homes and businesses at scale".

2.15 The editorial is, in effect, about the future opportunities that arise from renewable gas, including hydrogen and gas from biowaste, and makes it clear that the current projects are only the first steps towards greater use of renewable gas.

2.16 The complaint makes a number of specific allegations, which are each identified and addressed in turn below.

### 3. RESPONSE TO SPECIFIC ALLEGATIONS RAISED IN THE COMPLAINT

It does not explain that not all hydrogen is renewable and has zero carbon issues, and that it fails to clarify exactly in what circumstances hydrogen can be classified as renewable.

3.1 This is incorrect. When the editorial introduces the green hydrogen, it does so by referring to "green hydrogen – produced using renewable electricity". Further on in the editorial, it refers to the fact that "renewable energy can be used to generate renewable gas". These references clearly identify that the editorial is distinguishing between renewable gas, produced with renewable electricity, and gas produced through other means.

3.2 As indicated above, "green hydrogen" is an industry accepted term to refer to gas produced from water using electrolysis where the electricity is from renewable sources or the emissions are otherwise offset.

3.3 Jemena does not consider that the editorial at any stage leaves the reader with the impression, or otherwise attempts to suggest, that all hydrogen is renewable and has zero carbon emissions.





*It fails to explain that most hydrogen currently being developed is not "renewable" hydrogen.*

*3.4 This is incorrect. The editorial does not, in fact, talk about hydrogen development generally, but only Jemena's specific project.*

*3.5 The editorial clearly indicates that Jemena is only in the very early stages of producing green hydrogen. The second paragraph of the editorial specifically states that parties have "taken the first baby steps on the road to fully renewable gas". From this statement, the reader is aware that renewable hydrogen is only in its early stages, and understands (from the very start of the editorial) that the editorial is writing about a future state where renewable gas is a significant part of Australia's energy mix.*

*3.6 It also makes clear that renewable gas is not currently a significant part of that mix, including by referring to Jemena's call for a national Renewable Gas Target which could jump start the renewable gas sector. That Renewable Gas Target is specified as "targeting just 10 per cent renewable gas by 2030". Given this, Jemena does not agree that the editorial in any way suggests that "most" hydrogen being developed is renewable.*

*The complaint likens the editorial to the "cleaner and greener" campaign considered in case 0202-20.*

*3.7 Jemena considers that there are clear differences between the editorial and that campaign.*

*3.8 First, case 0202-20 advertised the use of natural gas, and indicated that this was a cleaner source of energy when compared to other sources. In contrast, the editorial focused on the role that renewable gas can play in assisting Australia to transition to a lower emission energy system.*

*3.9 Second, case 0202-20 used the term "green" when referring to natural gas. In contrast, the editorial only uses the term "green" to identify "green hydrogen" being, as explained above, hydrogen produced from electrolysis, and where the energy used is renewable or carbon-neutral because emissions are offset.*

*It does not include a disclaimer that natural gas is not renewable.*

*3.10 Jemena considers that the editorial clearly distinguishes between current state energy production, including natural gas, which is carbon-emitting, and the future state where the intention is that gas will be produced from primarily renewable sources. This is the central theme of the editorial, and readers are not left in doubt of the fact that the current state is not zero emissions. Regardless, Jemena does not consider that a disclaimer about natural gas is necessary: the editorial focuses on the use of renewable gas in the future, and contains almost no references to natural gas. Jemena does not consider that the omission of a specific disclaimer on this point is likely to mislead or deceive any reasonable reader.*



*It fails to discuss the limitations of using gas blended with hydrogen, and the fact that blended gas still produces carbon emissions. To support this allegation, the complaint relies on the following quote: "Jemena is now producing blend green hydrogen – producing blend green hydrogen – produced using renewable electricity".*

*3.11 This is an incorrect misquote of the article, which actually states that "Jemena is starting to blend green hydrogen – produced using renewable electricity – from its Western Sydney Green Hydrogen Hub into the Sydney gas network".*

*3.12 The complaint presents "blend green hydrogen" as the product. This is not correct. The editorial uses "blend" as a verb, and presents the case that green hydrogen (correctly defined) is currently being blended into the Sydney gas network. This statement is correct. At no stage does the editorial suggest that the existing gas in the Sydney gas network is renewable, or that green hydrogen forms more than a very small portion of the gas in that network (again, the editorial uses the phrase "taken the first baby steps", which indicates that this process is in its very early stages).*

*3.13 Jemena does not consider that the editorial is likely to mislead or deceive a reasonable reader, and instead considers that the complaint has misquoted the editorial to suggest that this allegation could actually be true.*

*3.14 The complaint also suggests a concern with the statement in the editorial (attributed to Jemena) that "we firmly believe that gas and gas infrastructure will play a critical role in Australia's journey to net-zero emissions and will continue to do so once we arrive at the destination". However, the complaint then refers again to the alleged lack of a qualifier around the production of hydrogen, which does not seem relevant to this statement.*

*3.15 Jemena does not consider that the statement regarding the role of gas and gas infrastructure in the energy transition is misleading or likely to deceive in any respect. This statement aligns with both Jemena's net-zero ambitions (outlined extensively in its Group Sustainability Report) and Energy Networks Australia's Gas Vision 2050 report, and it remains correct that gas and gas infrastructure are an essential part of Australia's energy transition and future.*

*3.16 For these reasons, Jemena does not consider that the complaint can be substantiated in relation to the allegation that the editorial is misleading or is likely to deceive a reasonable reader in contravention of the Environmental Claims Code.*

*The advertising material represents the attributes and extent of the environmental benefit, and does not overstate the benefit*

*3.17 Jemena considers that the editorial does not overstate, or otherwise misrepresent, the environmental benefits of renewable gas in any way that could contravene the Environmental Claims Code.*



3.18 As set out above, the editorial is not misleading, or likely to deceive, in relation to how it presents the current and future roles of various forms of gas. The editorial notes that most current gas is natural gas, which is not purported to be renewable, and focuses on the future benefits that can be obtained from renewable gas. The editorial also clearly outlines that renewable gas, particularly green hydrogen, is only taking "its first baby steps".

3.19 In contrast to the allegations made in the complaint, Jemena considers that:

- The editorial represents that green hydrogen production is a new technology and is only just being introduced into gas supply in Australia. The Article does not suggest that the technology is further progressed than it currently is.
- The editorial clearly notes that natural gas is used for gas supply today.
- The editorial talks about how renewable energy can be used to generate renewable gas. The Article does not suggest or imply that renewable gas can be produced using another method.
- The statements made in the editorial are clearly couched in general and future-focussed language. The editorial, and the comments attributed to Jemena, outline that these are aspirational and future goals for gas producers and suppliers in Australia.
- The statements made in the editorial are modest, such as acknowledging that the proposed RGT would only be 10% by 2030, and are not overstated either expressly or by implication.

3.20 The complaint alleges that Jemena is seeking to overstate the benefits of hydrogen gas to ensure that the product is seen as more climate-friendly than it is. Jemena considers that this is not correct. The editorial clearly distinguishes between renewable gas and other forms of gas. In every instance where the editorial is referring to green hydrogen, it uses the term "renewable gas"; this statement is factually correct.

3.21 Importantly, the editorial never leads the reader to believe that natural gas is renewable or that all hydrogen is renewable. Further, the editorial does not leave the reader with the impression that the existing gas supply comprises a high portion of renewable gas, nor that existing gas supply is more climate-friendly than it is. By continuously referring to future targets and the plans of energy companies, such as Jemena, the editorial informs the reader that future gas supply could be more climate-friendly than gas supply today – that is an important distinction when considering the allegation made in the complaint.

3.22 The complaint also alleges that the editorial "focuses on the future situation without making clear the transition time to the use of gas produced with completely renewable resources". This is incorrect. The editorial expressly discusses Jemena's call for a renewable gas target, and the fact that this would only be a small portion of the gas in use in Australia. Specifically, Jemena is attributed with the comment "an RGT targeting just 10 per cent renewable gas by 2030 would come at modest cost". The natural interpretation of this statement is that this production target does not exist, and that renewable gas must be at least less than 10% of national production. It also makes clear that green hydrogen is only part of the solution to the energy transition



*(i.e. currently less than 10% of gas production, let alone all electricity generation from various sources), and that green hydrogen is not a short term solution (i.e. the proposed target of 10% is for 2030 at the earliest).*

3.23 *Jemena considers that the editorial is similar to the statements made in case 0281-21 (relating to the statement "Clean Hydrogen – A future low emissions fuel for homes, vehicles and industry"), and therefore that the treatment of the editorial should be the same. For these reasons, Jemena considers that the editorial does not breach the Environmental Claims Code.*

#### 4. ADDITIONAL REQUIREMENTS OF THE ETHICS CODE

4.1 *Ad Standards also requested that Jemena respond to all parts of Section 2 of the Ethics Code. In response, Jemena notes that, even if the editorial was considered to be advertising, the content of the editorial:*

- *did not include any discriminatory or vilifying material;*
- *did not include any exploitative or degrading material;*
- *did not display or portray violence;*
- *did not include sex, nudity or references to sex;*
- *did not include any offensive or derogatory language; and*
- *did not create or infer any health or safety advice or recommendations.*

#### 5. JEMENA'S RESPONSES TO EACH IDENTIFIED REPRESENTATION

5.1 *For the reasons outlined above, Jemena does not consider that the editorial breaches either the Ethics Code or the Environmental Claims Code.*

5.2 *To the extent that it has not already done so, Jemena also takes this opportunity to directly comment on each of the representations from the editorial identified in the complaint, which were set out in Annexure A of the notice from Ad Standards:*

*"The editorial notes that Jemena is now producing blend green hydrogen – produced using renewable electricity – from its Western Sydney Green Hydrogen Hub into the Sydney gas network in late 2021".*

5.3 *Jemena has addressed this above. As drafted in the complaint, and in Annexure A, the representation misquotes the editorial. The editorial refers to Jemena producing green hydrogen, which is subsequently blended into the existing gas network (which is known to contain natural gas from non-renewable sources). As quoted in the editorial, Jemena took baby steps by commencing blending green hydrogen produced at its Western Sydney Green Hydrogen Hub into the existing Sydney gas network in late 2021. The editorial does not refer to Jemena producing a product called "blend green hydrogen", and therefore cannot suggest that this product is somehow carbon-neutral when it is not.*



*“Today we use natural gas, but in the future gas will be produced from primarily renewable sources such as biomethane or hydrogen from electrolysis”.*

5.4 *This statement is factually correct. Today, most gas used in existing gas networks is natural gas. The editorial distinguishes this from the future state, where gas will be produced from primarily renewable sources. This transition to producing gas from renewable sources is the stated intention of Jemena, the Australian gas industry and the Australian Government. This statement is factually correct and not misleading. It also does not overstate the extent of the current position of renewable gas.*

*“We firmly believe that gas and gas infrastructure will play a critical role in Australia’s journey to net zero emissions and will continue to do so once we arrive at the destination”.*

5.5 *This statement is factually correct. Jemena does believe that gas and gas infrastructure will play a critical role in Australia's journey to net zero emissions, and Jemena has publicly made this a clear part of its future planning.*

*“A major advantage of renewable gas is that existing gas infrastructure can be used like an enormous underground battery,” and “Renewable energy can be used to generate renewable gas, which can be stored and later used to generate electricity when solar or wind aren’t available, or at times of very high demand”*

5.6 *Both of these statements are factually correct. Gas can be used to generate electricity, therefore, gas stored in gas networks does operate like an energy storage system. As the statement rightly points out, where renewable gas (i.e. gas produced using renewable electricity, as it is defined in the editorial and generally understood) is stored in gas networks, the energy created by renewable electricity sources (such as solar and wind) can be stored in the underground networks as if they are an enormous underground battery, and deployed to generate electricity when solar and wind sources are not available.*

5.7 *Each representation is factually correct, able to be supported by evidence, and does not overstate or misrepresent the current or future position. Jemena does not consider that these specific representations could be found to breach either the Ethics Code or the Environmental Claims Code.*

*I trust this detailed response addresses any concerns regarding the editorial and provides the Ad Standards Community Panel with all the information it requires for its review. If any further information is required, please do not hesitate to contact me.*

Ref. 1. <https://www.energynetworks.com.au/resources/reports/2022-reports-and-publications/delivering-the-pathway-to-net-zero-for-australia-2022-outlook/>

Ref. 2. <https://jemena.com.au/documents/reports/2021-sgspaa-group-sustainability-report.aspx>



## **THE DETERMINATION**

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches the AANA Environmental Claims in Advertising and Marketing Code (the Environmental Code).

The Panel noted the complainant's concerns that the advertisement is making misleading or deceptive claims by stating that hydrogen is renewable and that in particular hydrogen blended with hydrocarbon gas is renewable.

The Panel viewed the advertisement and noted the advertiser's response.

### **Is it an ad?**

The Panel noted the advertiser's response that the material was not advertising.

The Panel noted the definition of advertising in the Code. Advertising means: "any advertising, marketing communication or material which is published or broadcast using any Medium or any activity which is undertaken by, or on behalf of an advertiser or marketer, over which the advertiser or marketer has a reasonable degree of control, and that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct".

The Panel noted that the advertiser had chosen to sponsor the article and that it would constitute material which was being published on behalf of the advertiser. The Panel considered that the advertisement focused primarily on the advertiser's projects, views and future plans and that this would draw the attention of the public in a manner calculated to promote the organisation. The Panel then considered whether the advertiser had a reasonable degree of control over the advertisement.

The Panel noted the advertiser's response that the editorial was written by the Sydney Morning Herald and the advertiser's sponsorship of the article did not come with any right to exercise control over the content of the article.

The Panel considered that the advertiser had chosen to sponsor the article and as such had entered into a commercial arrangement with the news organisation. The Panel considered that the article did not contain references to any competing energy retailer, or any statements from organisations opposing the views presented in the article. The Panel considered that the advertiser had control over whether or not to sponsor the article, control over the information and quotes provided to the editor, and control in being able to fact check the article before publication. Overall, the



Panel considered that the advertiser did have a reasonable degree of control over the advertisement.

The Panel considered that the article did meet the definition of advertising in the Environmental Code.

### **Is an environmental claim being made?**

The Panel considered whether the advertisement made an Environmental Claim.

The Environment Code applies to 'Environmental Claims' in advertising and marketing communications.

The Code defines Environmental Claims as *“any express or implied representation that an aspect of a product or service as a whole, or a component or packaging of, or a quality relating to, a product or service, interacts with or influences (or has the capacity to interact with or influence) the Environment”*.

The Panel noted that the advertisement includes the following statements:

- The state has already taken the first baby steps on the road to fully renewable gas with Jemena starting to blend green hydrogen – produced using renewable electricity – from its Western Sydney Green Hydrogen Hub into the Sydney gas network in late 2021.
- More strides will be taken when a pilot production plant at Sydney Water’s Malabar Wastewater Treatment site comes online. It will turn the biowaste from Sydney’s wastewater sewers into renewable gas
- In the future gas will be produced from primarily renewable sources such as biomethane or hydrogen from electrolysis.
- The firm’s [Interface] manufacturing facilities in Europe and the US all use renewable gas and later this year the Australian factory, in southwest Sydney will further decarbonise its operations by purchasing renewable gas certificates as a result of the biomethane produced by Jemena at Malbar.

The Panel considered that the advertisement contains the following Environmental Claims that:

- The advertiser has started to blend green hydrogen, produced using renewable electricity, into its Sydney gas network.
- The advertiser has plans to turn biowaste from Sydney’s wastewater sewers into renewable gas.

**1 a) Environmental Claims in Advertising or Marketing Communication shall not be misleading or deceptive or be likely to mislead or deceive**



The Panel noted that the Practice Note for this section of the Environmental Code includes:

*“It is not intended that legal tests be applied to determine whether advertisements are misleading or deceptive, or likely to mislead or deceive, in the areas of concern to this Code.*

*Instead, consideration will be given as to whether the average consumer in the target market would be likely to be misled or deceived by the material.*

*Factors to consider include:*

*An advertisement may be misleading or deceptive directly or by implication or through emphasis, comparisons, contrasts or omissions. It does not matter whether the advertisement actually misled anyone, or whether the advertiser intended to mislead – if the advertisement is likely to mislead or deceive there will be a breach of the Code.*

*Environmental claims relating to future matters or commitments should be based on reasonable grounds as at the time the claim was made, even if the future matter does not come to pass. The fact that a person may believe in a particular state of affairs does not necessarily mean that there are reasonable grounds for the belief.*

*The target market or likely audience of the advertising or marketing communication should be carefully considered when making environmental claims. Therefore all advertising should be clear, unambiguous and balanced, and the use of technical or scientific jargon carefully considered.”*

The Panel noted the complainant’s concerns that the advertisement gives the general impression that hydrogen is renewable, which is misleading because the advertisement fails to communicate that the product currently being developed is not renewable as it is being produced by blending with hydrocarbon gas, and that hydrogen which is produced with fossil fuels is not renewable.

The Panel noted the advertiser’s response that the advertisement does state what is meant by green hydrogen and that this is hydrogen produced using renewable electricity, and does not state or suggest that all hydrogen is renewable and has zero carbon emissions.

The Panel considered that the average consumer reading the material would understand renewable hydrogen to mean hydrogen which has been produced using renewable energy.

The Panel considered that the article clearly defines green hydrogen as hydrogen which has been produced using renewable energy. The Panel also considered that the advertisement does not suggest that all gas is renewable, or that all gas is produced using renewable hydrogen. The Panel considered that the references to green





hydrogen are those consistent with the definition of renewable hydrogen which would be understood by the community.

The Panel noted the suggestion at the end of the advertisement that renewable gas certificates will be available for a business in South-West Sydney. The Panel considered that the entire context of the advertisement makes it clear that these certificates are related to a planned biomethane gas project, and is not a reference to renewable hydrogen gas being available.

Overall, the Panel considered that the advertisement would not mislead or deceive the target market into believing that all hydrogen gas is renewable or that renewable gas is currently in use.

#### **1 a) conclusion**

The Panel determined that the Environmental Claim was not misleading or deceptive and did not breach Section 1 a) of the Environmental Code.

**1 c) Environmental Claims in Advertising or Marketing Communication...shall represent the attributes or extent of the environmental benefits or limitations as they relate to a particular aspect of a product or service in a manner that can be clearly understood by the consumer.**

The Panel noted that the Practice Note for this Section includes:

*The environmental claim should not be extended, or implied to be extended, to a whole product or service when it relates only to one aspect of the product eg packaging or energy use, or service. For example, if the claim relates to the:*

- *packaging only, but not the use of that product, the claim should not imply that it relates to the product as well as the packaging;*
- *energy use in the manufacture of a product, the claim should not imply that it relates to the energy use in the manufacture of the packaging as well. Relevant information should be presented together.*

The Panel also noted the complainant's concern that the advertisement does not discuss the limitations of using gas blended with hydrogen in existing gas networks.

The Panel noted the advertiser's response that the advertisement clearly states that the advertiser is only in the very early stages of producing green hydrogen and that statements about targets of blended gas being 10 per cent renewable by 2030 would make it clear that current blended gas uses less than 10 per cent renewable gas.

The Panel considered that the advertisement does clearly indicate that the advertiser only has one current project using blended renewable gas and one planned



biomethane gas project. The Panel considered that the advertisement is clear in limiting the current, or near future, environmental benefits to these two projects. The Panel considered that the advertisement's references to potential future infrastructure is clearly explained as being only a possibility.

The Panel considered that the Environmental Claim represents the extent of the environmental benefit as being limited to currently small blends, and that the move to 100% renewable gas is not imminent, in a way which would be understood by the consumer.

### **Section 1 c) conclusion**

The Panel determined that the advertisement did not breach Section 1 c) of the Environmental Code.

### **2 a) Environmental Claims must... be relevant, specific and clearly explain the significance of the claim**

The Panel noted that the Practice Note for this Section includes:

*“Environmental claims should only be made where there is a genuine benefit or advantage. Environmental benefits should not be advertised if they are irrelevant, insignificant or simply advertise the observance of existing law. Advertising and marketing communication should adequately explain the environmental benefits of the advertised product or service to its target audience. It is not the intent of the advertiser making the claim that will determine whether it is considered misleading; it is the overall impression given to the consumer that is important. Advertising therefore should not inadvertently mislead consumers through vague or ambiguous wording. Providing only partial information to consumers risks misleading them. Generally a claim should refer to a specific part of a product or its production process such as extraction, transportation, manufacture, use, packaging or disposal.”*

Consistent with the discussion under Sections 1a and 1c, the Panel considered that the Environmental Claims in the advertisement are relevant and specific and clearly outlines the specifics of the Claim.

### **Section 2 a) conclusion**

The Panel determined that the advertisement did not breach Section 2 a) of the Environmental Code.

### **2 b) Environmental Claims must...not overstate the claim expressly or by implication**

The Panel noted that the Practice Note for this Section includes:



*“Advertisers and marketers should avoid making claims that expressly or impliedly overstate an environmental benefit. Consideration should be given to whether there is sufficient disclosure of any negative impacts. For example, whether negative impacts have been withheld which, if known, would diminish the positive attribute.”*

Consistent with the determination under Section 1 a), the Panel considered that the advertisement did not overstate the claims expressly or by implication.

### **Section 2 b) conclusion**

The Panel determined that the advertisement did not breach Section 2 b) of the Environmental Code.

### **Conclusion**

Finding that the advertisement did not breach the Environmental Code on any other grounds the Panel dismissed the complaint.