

Case Report

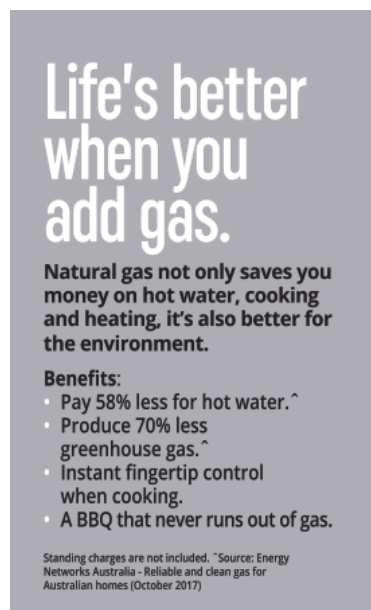
1. Case Number :	0292-22
2. Advertiser :	ATCO
3. Product :	House Goods Services
4. Type of Advertisement/Media :	Print
5. Date of Determination	25-Jan-2023
6. DETERMINATION :	Upheld – Modified or Discontinued

ISSUES RAISED

AANA Environmental Code\1 Truthful and Factual

DESCRIPTION OF ADVERTISEMENT

This advertisement is a section of text on a flyer.



THE COMPLAINT

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

The world finds itself in the midst of an ecological and anthropomorphic climate emergency brought about by our use of fossil fuels. Despite our being aware of this for decades and there being alternatives to weaning us off this practice which is

threatening our own very survival, the fossil fuel industry has corrupted our governments and continues to peddle disinformation and lies. In the cost of living crisis Australia is experiencing the gas companies are making extortionate profits while continuing to obtain massive subsidies because they have so totally corrupted our politics.

As to the specifics:

- 1. solar and wind energy is the cheapest form of energy today in Australia and internationally. The claim "pay 58% less for hot water" is blatantly untrue;*
- 2. "Produce 70% less greenhouse gas" what is this being compared to? Again blatantly dishonest.*
- 3. Recently people compared cooking 1/2 litre of water on gas and on induction, demonstrating that induction is infinitely faster. And the energy can be provided 100% from renewables.*

We see the effects of climate disruption daily more stridently around Australia and the world. The Secretary General of the United Nations and various other and respected institutions are warning us with increasing urgency to stop the use of fossil fuels. Even the usually conservative IEA has said we should be urgently reducing our reliance on fossil fuel. It is only criminal industries and governments in their pocket still pushing this destruction.

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 ATCO of the Complaint and providing ATCO with the opportunity to respond.

Your letter references both the AANA Code of Ethics for Advertising and Marketing (Code) and the AANA Environmental Claims Code (Environmental Code). ATCO acknowledges the central role played by both of these Codes in ensuring appropriate standards are maintained by advertisers for the benefit of consumers. ATCO therefore uses its best endeavours to comply with both of these Codes at all times.

A Description of the Advertisement

- 1. The Complaint relates to an A5 sized flyer distributed to select residences in White Gum Valley, Western Australia, on or around the week commencing 28 November 2022 (the Flyer).*
- 2. The Flyer was hand delivered to relevant homes (namely those along the gas main line) by ATCO staff, in order to provide those residents with: (a) advance notice that the gas mains in the area were to be replaced and upgraded; (b) information about those works; and (c) contact details for any further enquiries concerning the works.*
- 3. Publications such as the Flyer are normally delivered by ATCO around two to six weeks before works commence and again the week before works commence (and*

the particular flyer used by ATCO will depend on the timing and nature of works to be completed).

- 4. The particular Flyer in issue is not regularly distributed by ATCO and in this instance was distributed in error. The Flyer is intended to be distributed only when ATCO completes new gas mains installation or gas mains extension works and where there are existing residences in proximity of the gas main, which is rarely the case (as gas mains are generally installed in new build areas). In this instance, ATCO's flyer for replacement / upgrade works to gas mains should have been utilised.*
- 5. The Flyer was hand delivered to approximately 30 to 50 residences in White Gum Valley, and was not published online or circulated more broadly or by any other means.*
- 6. A PDF copy of the Flyer as distributed to select White Gum Valley residences on or around the week commencing 28 November 2022 is attached for reference.*
- 7. Also attached is a PDF map of the White Gum Valley area, with those locations where the Flyer was distributed marked with green dots.*

B Summary of ATCO's Response

- 8. ATCO's response to the Complaint is detailed below, including responses to the particular concerns raised by the Complainant, and the other parts of the Codes to which the Community Panel may have regard.*
- 9. In summary, the Complainant raises a number of concerns about both the gas industry generally, and the Flyer specifically.*
- 10. Insofar as the Complainant makes allegations about the gas industry, the allegations (which are strongly denied by ATCO) are not supported by any material submitted to the Panel, and are in any event outside of the Panel's ambit.*
- 11. Once those more general allegations are excluded from consideration, the Complaint essentially comes down to a submission that the benefits of natural gas listed on the underside of the Flyer are misleading or deceptive, or likely to mislead or deceive, consumers.*
- 12. Rather, the Flyer clearly references the Energy Networks Australia Reliable and Clean Gas for Australia Homes Report released in October 2017 (the 2017 ENA Report). Consumers would therefore have understood that the benefits listed in the Flyer were based upon information contained in the 2017 ENA Report, and were as compared with another source of energy as set out in the 2017 ENA Report.*
- 13. Whilst ATCO acknowledges that, before distribution, the Flyer had inadvertently not been updated so as to refer to the updated Energy Networks Australia Reliable and Clean Gas for Australian Homes Report released in July 2021 (the 2021 ENA Report), the Flyer clearly conveyed that the 2017 ENA Report was the source of the figures quoted. Those figures did not significantly change in the 2021 ENA Report.*
- 14. In any event, to the extent that the Flyer conveyed to consumers that natural gas is a cheaper source of energy than grid based electricity, and produces less*

greenhouse gas emissions than grid based electricity, that is factually correct, as supported by the National Greenhouse Accounts Factors published by the Australian Government.

15. *Finally, ATCO has now removed the Flyer from distribution and is preparing an updated flyer for distribution in similar circumstances.*
16. *ATCO respectfully submits that the Complaint should be dismissed for the following reasons:*
 - (a) *An average consumer would not have been misled or deceived, or likely to have been misled or deceived, by the Flyer because when viewed as a whole, the Flyer does not give the impression that the listed benefits of natural gas are absolute, nor that those benefits are as compared with all possible alternative sources of energy;*
 - (b) *While the 2017 ENA Report has been updated by the 2021 ENA Report, the figures in the 2021 ENA Report are not significantly different to those in 2017 ENA Report, and both reports support the general position that natural gas is cheaper and produces less greenhouse gas than grid-based electricity; and*
 - (c) *the Complaint goes beyond alleging breaches of the Codes, to also allege that the gas industry is corrupt, criminal, and dishonest. There is no foundation for these allegations, which are strenuously denied.*

C Detailed Response

The Complaint

17. *At the outset, ATCO notes that the Complaint makes various serious allegations against the gas industry, including that gas companies have ‘corrupted our politics’, are ‘blatantly dishonest’, and that ‘criminal industries and governments in their pocket still pushing this destruction’.*
18. *The Complainant offers no factual support for these statements, and ATCO rejects these allegations in the strongest terms.*
19. *ATCO submits that the Complaint should not be upheld in circumstances where such baseless and serious allegations are made. Nevertheless, ATCO responds below to those aspects of the Complaint which relate to the Codes.*

The Flyer

20. *As explained above, the intent behind the distribution of the Flyer was to notify a small number of residents in the White Gum Valley area about upcoming works to the gas mains that may have impacted their properties, including the timeframe for any required rectification works.*
21. *The front of the Flyer sets out (in larger font) that the Flyer is an “Important Notice” and that it concerns “ATCO Gas New Mains Installation”. The Flyer was distributed to residents in White Gum Valley in error as there is a different flyer that should have been utilised for these replacement / upgrade works.*
22. *The underside of the Flyer contains a small section (approximately a third of the page) headed “Life’s better when you add gas”. That section goes on to list four benefits of natural gas, by reference to the 2017 ENA Report.*

23. *ATCO acknowledges that the Flyer, which is rarely distributed, incorrectly contained a reference to the 2017 ENA Report in circumstances where that report had been updated by the 2021 ENA Report.*
24. *ATCO endeavours at all times to ensure that its advertising and other publications are up to date, responsible and accurate. For that reason, ATCO has taken steps to remove the Flyer from distribution. Prior to notification of the Complaint from Ad Standards, ATCO had already commenced an internal process of reviewing and updating its advertising and other publications.*
25. *Nevertheless, ATCO submits that the Complaint should be dismissed because, in addition to the baseless other allegations made in the Complaint (as detailed above), an average consumer who received the Flyer would not have been misled or deceived by the material, and the Flyer is not otherwise in breach of either of the Codes.*

The Environmental Code – Section 1(a)

26. *The Notice of Complaint lists section 1(a) of the Environmental Code as the issue raised by the Complainant.*
27. *Section 1(a) provides that Environmental Claims in Advertising or Marketing Communication shall not be misleading or deceptive or likely to mislead or deceive.*
28. *As set out in the Environmental Claims Code Practice Note, in assessing an advertisement, consideration should be given to whether an average consumer in the target market would be likely to be misled or deceived by the material. An assessment of the average consumer's overall impression is required. Strict legal tests are not intended to be applied.*
29. *In assessing an average consumer's impressions of the Flyer, ATCO submits that the clear purpose of the Flyer, being to notify the consumers of impending works, should be considered. An average consumer would view the Flyer in that context, rather than (for example) having received a flyer as part of a promotion for signing up with a particular retailer.*
30. *In relation to the benefits of natural gas listed in the Flyer, ATCO submits an average consumer viewing the Flyer as a whole would not have understood these to be absolute statements.*
31. *That is, an average consumer would not have understood the Flyer to mean that:*
 - (a) *a benefit of natural gas is that it costs a consumer 58% less to heat water than any other source of energy which could be used to heat water; or*
 - (b) *a benefit of natural gas is that it produces 70% less greenhouse gas than any other source of energy.*
32. *Rather, an average consumer would have understood that the listed benefits were as compared to other commercial energy offerings, ie. grid based electricity in the SWIS and, because of the prominent footnoting of the 2017 ENA Report for the first two benefits listed in the Flyer, that the listed benefits:*
 - (a) *were summaries of the position as fully explained in the 2017 ENA Report;*
 - (b) *would be qualified by the other content of the 2017 ENA Report; and*

- (c) *were as compared with another source of energy as set out in the 2017 ENA Report.*
33. *The Flyer can therefore be distinguished from a case such as Case No. 0202 of 2020 before the Community Panel, where an advertisement was found to have conveyed to consumers that gas was greener than any other form of energy used for cooking.*
34. *As for the accuracy of the Flyer's references to the 2017 ENA Report, a copy of the report is attached. ATCO notes:*
- (a) *In relation to the listed benefit of paying 58% less for hot water:*
- (i) *the second introductory page of the 2017 ENA Report sets out that gas is supplied to the home at around half the cost of electricity (a reference to the cost of gas and electricity nationally); and*
- (ii) *page 5 the 2017 ENA Report deals with the cost of gas supplied to the home as opposed to the cost of electricity in each individual State. For Western Australia, the report sets out that the cost of gas (c/kWh eq) is 42% of the cost of electricity (c/kWh), which equates to the cost of gas being 58% less than the cost of heating by electricity.*
- (b) *In relation to the listed benefit of natural gas producing 70% less greenhouse gas:*
- (i) *the second introductory page of the 2017 ENA Report states that the emission factor of gas is between one third and one sixth of mainland grid electricity (a reference to the emissions factor of gas and electricity nationally); and*
- (ii) *page 6 of the 2017 ENA Report details that in Western Australia (South Western region), the emission intensity of electricity is 0.70, whilst the emission intensity of natural gas is 0.185 (based upon the sources quoted therein), which equates to natural gas producing over 70% less greenhouse gas than electricity.*
35. *Whilst ATCO acknowledges that the 2017 ENA Report has been updated by the 2021 ENA Report, importantly, an average reader would have understood the references to the 2017 ENA Report as being a reference to a report using 2017 figures.*
36. *In any event, the referenced statistics have not significantly changed since the 2017 ENA Report. A copy of the 2021 ENA Report is attached and ATCO notes that:*
- (a) *On the second introductory page of the 2021 ENA Report, it is stated that gas is supplied to the home at around half the cost of electricity, and that gas is delivered to the home at one quarter of the emissions of grid electricity (references to the cost and emissions factor of gas and electricity nationally);*
- (b) *At page 5, the 2021 ENA Report sets out that in Western Australia the cost of gas (c/kWh eq) is 53% of the cost of electricity (c/kWh), which equates to the cost of gas (when used to heat hot water) being 47% less than the cost of heating by electricity; and*
- (c) *At page 6, the 2021 ENA Report shows that natural gas produces around 70% less greenhouse gas emissions than grid based electricity in Western*

Australia's South West, and the emissions factor of gas is around 75% less than for average national grid based electricity.

37. *In relation to the greenhouse gas emissions figures quoted in the 2017 and 2021 ENA Reports, ATCO notes that those figures are based upon the relevant National Greenhouse Accounts Factors which are updated annually and published by the Australian Government Department of Industry, Science, Energy and Resources – previously published by the Australian Government Department of the Environment and Energy (NGA Factors).*
38. *The figures in the 2017 ENA Report are based on the 2017 NGA Factors (see tables 2 and 5) and the figures in the 2021 ENA Report are based on the 2020 NGA Factors (see tables 2 and 5). The emissions figures in the NGA Factors for natural gas pipelines and electricity from Western Australia's South West Interconnected System (SWIS) did not materially change in this period, reducing from 0.70kg CO₂-e/kWh in the 2017 NGA Factors to 0.68kg CO₂-e/kWh in the 2020 and 2021 NGA Factors (see tables 2 and 5 of the 2021 NGA Factors).*
39. *For completeness, ATCO notes that in November 2022, the NGA Factors were once again updated (see the 2022 NGA Factors). The emissions factors for grid electricity in the SWIS did reduce down from 0.70kg CO₂-e/kWh (in the 2017 NGA Factors) and 0.68kg CO₂-e/kWh (in the 2020 and 2021 NGA Factors), to 0.51 kg CO₂-e/kWh in the 2022 NGA Factors (see table 1), whilst the figures for natural gas pipelines remained unchanged (see table 3).*
40. *Therefore, insofar as the Flyer conveyed an overall impression that natural gas is a cheaper alternative to grid based electricity, and that natural gas produces less greenhouse emissions than grid based electricity, this is correct and consumers will not have been misled or deceived, or be likely to have been misled or deceived by the Flyer.*
41. *As to the other benefits of natural gas listed in the Flyer (which do not appear to be the subject of complaint), ATCO submits that:*
 - (a) *the reference to fingertip control when cooking would have been understood by an average consumer to mean the ability to control the heat of a stove when cooking with a gas flame by looking at the visible flame and adjusting the heat accordingly. This is accurate and would not have misled or deceived, or be likely to have misled or deceived, consumers; and*
 - (b) *the reference to a barbeque that never runs out of gas would have conveyed to an average consumer no more than that barbeques that are plumbed with natural gas don't run out of gas half-way through cooking a meal like LPG bottles can. Again, this is accurate and would not have misled or deceived, or be likely to have misled or deceived, consumers.*

Other aspects of the Environmental Code

42. *The Complaint does not raise any other aspects of the Environmental Code but out of completeness ATCO notes:*
 - (a) *As to section 1(b) of the Environmental Code, the benefits of natural gas listed in the Flyer are subject to the clearly stated limitation that 'standing charges are not included' and, as set out above, the reference to the qualifying 2017 ENA Report as a source is prominent;*

- (b) *As to section 1(c) of the Environmental Code, by using clear language the Flyer represents the attributes of natural gas in a way that can be easily understood by the average consumer;*
- (c) *As to section 2 of the Environmental Code, the Flyer does not overstate the benefits to the environment, in that the listed benefits are plainly cross-referenced to the 2017 ENA Report as set out above. The benefits listed in the Flyer are relevant to the consumers who are intended to and actually received the Flyer, being residents impacted by the replacement of the gas mains in the area and the associated works, and consumers who may have wished to access the benefits of natural gas as opposed to grid based electricity. There is no suggestion in the Flyer that the use of natural gas is more socially acceptable than alternatives; and*
- (d) *As to section 3 of the Environmental Code, the benefits of natural gas listed in the Flyer were supported by the 2017 ENA Report as referenced in the Flyer. Whilst that report has now been updated by the 2021 ENA Report, there has not been any significant or material change in the figures as quoted, and consumers would, in any event, have understood the 2017 ENA Report would have been prepared by reference to 2017 figures. There are no additional legally mandated applicable standards that apply to the benefits listed, and no testimonials are included in the Flyer.*

AANA Code of Ethics for Advertising and Marketing

43. As requested in the Notification of Complaint, ATCO also responds as follows in relation to Section 2 of the Code.

Section 2.1 - Advertising or Marketing Communications shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.

44. The Flyer does not depict material that discriminates against or vilifies a person or section of the community as identified in section 2.1 and is not in breach of this section.

Section 2.2 Advertising or Marketing Communications shall not employ sexual appeal:

- (a) where images of Minors, or people who appear to be Minors, are used; or*
- (b) in a manner which is exploitative or degrading of any individual or group of people.*

45. The Flyer does not employ sexual appeal in any sense and is therefore not in breach of section 2.2.

Section 2.3 Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.

46. The Flyer does not present or portray violence and is therefore not in breach of section 2.3 of the Code.

Section 2.4 Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience.

47. The Flyer does not contain any sex, sexuality or nudity and is therefore not in breach of section 2.4.

Section 2.5 Advertising or Marketing Communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided.

48. The Flyer does not contain any strong or obscene language and is therefore not in breach of section 2.5.

Section 2.6 Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.

49. The Flyer does not depict material contrary to Prevailing Community Standards on health and safety and is therefore not in breach of section 2.6.

Section 2.7 Advertising or Marketing Communications shall be clearly distinguishable as such to the relevant audience.

50. The Flyer is distinguishable by the relevant audience as both a notice as to future installation of new or upgraded gas mains, which includes advertising as to the benefits of connecting to natural gas.

We trust the above response addresses any concerns regarding the Flyer. If any further information is required, please do not hesitate to contact us.

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.

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

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 included the statements:

- Natural gas...it’s also better for the environment
- Produce 70% less greenhouse gas

The Panel considered that the advertisement was making the claim that natural gas is better for the environment as it produces 70% less greenhouse 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 considered that the target market for this advertisement was general consumers in the area the flyers were distributed. The Panel considered that as this flyer was delivered directly to people’s homes, it would be reasonable for the average consumer in the target market to assume that the comparison was to whatever form

of energy they had in their home. The Panel considered that the overall impression an average consumer in the target market would have of the advertisement would be that natural gas produces less greenhouse gas than whichever form of energy they currently used.

The Panel noted that the advertisement referred to a source as substantiation for the claim. However, the Panel considered that the source only provided substantiation that the lower production of greenhouse gas was in comparison to grid electricity, and not the claim being made in the advertisement that natural gas produces less greenhouse gas than the energy used by the householder/all other forms of energy.

The Panel considered that it is not its role to assess whether natural gas is a clean or green energy source, rather it is to assess whether the overall impression an average consumer would take from the advertisement was that natural gas would produce 70% less greenhouse gasses than the form of energy they currently used.

The Panel considered that this claim is misleading as there are other energy sources which produce less greenhouse gas than natural gas.

The Panel considered the advertisement made an environmental claim and that this claim was misleading or deceptive based on the impression an average consumer in the target market would take from the advertisement as a whole.

1 a) conclusion

The Panel determined that the Environmental Claims were misleading or deceptive and did breach Section 1 a) of the Environmental Code.

Conclusion

Finding that the advertisement breached Section 1a) of the Environmental Code the Panel upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

We confirm that the flyer that was the subject of the Complaint has been removed from circulation and is no longer being distributed to households. Indeed, the flyer was removed from circulation upon ATCO being notified of the complainant's concerns.

We reiterate that ATCO acknowledges the important role played by the AANA Code of Ethics for Advertising and Marketing, and the AANA Environmental Claims Code, in ensuring appropriate standards are maintained by advertisers for the benefit of consumers, and uses its best endeavours to comply with these Codes at all times. In this instance, ATCO did not intend to mislead consumers in the flyer regarding the amount of greenhouse gas associated with the use of natural gas. Rather, and by oversight, ATCO omitted to include grid electricity as the relevant comparison point. ATCO will take active steps to ensure this issue is not overlooked in future advertisements.