



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0281-21
2. Advertiser :	Department of Industry, Science, Energy and Resources
3. Product :	Community Awareness
4. Type of Advertisement/Media :	Internet
5. Date of Determination	13-Oct-2021
6. DETERMINATION :	Dismissed
7. IR Recommendation:	Reconfirm the Original Decision

ISSUES RAISED

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

DESCRIPTION OF ADVERTISEMENT

This internet advertisement features a webpage with the heading, "Clean Hydrogen - A future low emissions fuel for homes, vehicles and industry".

It includes information on clean hydrogen and how it's being used and a video detailing the national hydrogen strategy.

THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

The 'positive energy' campaign website includes a reference to 'clean hydrogen'.

<https://www.positiveenergy.gov.au/clean-hydrogen>

Clean hydrogen is not a recognised form of hydrogen. According to the CSIRO, hydrogen is categorised by the use of colours. 'Clean' hydrogen has no scientific basis or meaning. <https://blog.csiro.au/green-blue-brown-hydrogen-explained/>

The campaign gives the impression that the hydrogen being promoted is good for the environment and zero emissions ie: 'clean'. The dictionary defines clean as 'pure' and 'free from unwanted matter'. However, the only form of hydrogen that has zero



emissions is green hydrogen. This is the only hydrogen that could be considered as clean.

The hydrogen investments being promoted by the government in this campaign are not all clean or green. While some are 'cleaner' (lower emissions) than some other forms of energy, they are not all 'clean'.

For example, La Trobe Valley hydrogen hub that is being funded as part of the campaign uses coal to create hydrogen and has the same greenhouse gas emissions as coal power. <https://www.abc.net.au/news/2021-03-12/hydrogen-from-coal-production-begins-la-trobe-valley/13241482>

In the reporting of this campaign, PV magazine pointed out that 'clean hydrogen' is the term that the government has made up and "uses to lump fossil fuel hydrogen with carbon capture and storage in with legitimately renewable green hydrogen" <https://www.pv-magazine-australia.com/2021/09/21/hydrogen-hub-shortlist-expanded-as-feds-commit-additional-150-million/>

The Environmental Claims Code states that claims cannot be 'overstated' and that 'the extent of environmental benefit, are presented in a manner that can be clearly understood by the consumer.'

The use of the word 'clean' to describe the hydrogen being promoted in this campaign overstates its environmental benefits and obscures the real types of hydrogen being used (green, blue and grey) so they are not clear to the consumer.

THE ADVERTISER'S ORIGINAL RESPONSE

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

Case reference number 0281-21

Thank you for your correspondence of 30 September 2021 to the Department of Industry, Science, Energy and Resources concerning the complaint made to Ad Standards regarding the campaign website <https://www.positiveenergy.gov.au/cleanhydrogen>.

The Department understands the complaint primarily relates to the Australian Association of National Advertisers (AANA) Environmental Claims in Advertising Code. In particular, the complaint relates to the Code's provisions (1)(a) 'Environmental Claims in Advertising or Marketing Communication shall not be misleading or deceptive or be likely to mislead or deceive' and (2)(b) 'Environmental Claims must not overstate the claim expressly or by implication.'



The Department understands the complainant has raised concerns regarding use of the term 'clean hydrogen' on the [positiveenergy.gov.au](https://www.positiveenergy.gov.au) website. In particular, the complainant asserts:

- The term 'clean hydrogen' is not a recognised term;*
- The use of the term 'clean hydrogen' is intended to mislead the public to believe that hydrogen being supported by government action does not rely on the use of fossil fuels;*
- That the term is being promoted in the campaign 'overstates its environmental benefits and obscures the real types of hydrogen being used (green, blue and grey) so they are not clear to the consumer.'*

In response, the Department provides the following information.

BACKGROUND AND PURPOSE OF THE CAMPAIGN

The Australian Government's public communication campaign is intended to ensure all Australians are aware of the progress being made to reduce emissions and increase the use of clean energy.

The campaign aims to better inform Australians about how the Government's significant investment in clean energy technologies and projects is reducing emissions while looking after Australians' way of life, such as creating new industries and jobs.

One element of the Government's actions to reduce emissions has been to support the development of an Australian hydrogen industry. The Australian Government is investing \$1.2 billion into developing hydrogen. The campaign draws attention to these investments.

COMPLIANCE WITH THE CODE OF ETHICS

In developing the campaign, the department complied with the Australian Government Guidelines on Information and Advertising campaigns. This included considering the advice of the Independent Communications Committee (<https://www.finance.gov.au/publications/compliance-advice/department-industry-science-energy-and-resources-emissions-reduction-campaign-september-2021>).

The Department is satisfied that the campaign materials comply with section 2 of the ANAA Code of Ethics, in that:

- It does not include material which is discriminatory or engages in vilification*
- It is not exploitative or degrading*
- It does not contain scenes of violence*
- It does not contain scenes of sex, sexuality, or nudity*
- It does not include offensive language*
- It does not depict scenes which contravene principles of health and safety*
- It is clearly distinguishable as advertising.*

RESPONSE TO THE COMPLAINT

In regard to the specific complaints, the Department considers that the material is neither misleading nor deceptive, and does not overstate environmental claims.



'Clean hydrogen'

The term 'clean hydrogen' is a commonly used term, and has been for several years.

Under Australia's National Hydrogen Strategy (Australia's National Hydrogen Strategy, 2019), agreed by the Commonwealth, State and Territory Governments and released in 2019, 'clean hydrogen' refers to hydrogen produced from renewable sources and from fossil fuels with substantial carbon capture and storage.

'Clean hydrogen' is also used internationally as a common term to refer to renewable and low carbon hydrogen production (e.g. European Clean Hydrogen Alliance). (European Clean Hydrogen Alliance, 2021).

Australia's investment in hydrogen as a technology capable of lowering emissions is backed by multiple studies from leading agencies including CSIRO (CSIRO Utilisation Roadmap, 2021) and the International Energy Agency (IEA) (IEA, 2019), among many other possible examples.

The term 'clean hydrogen' implies that hydrogen being supported by government action does not rely on the use of fossil fuels.

As defined above, the term 'clean hydrogen' acknowledges that some types of hydrogen may be produced using fossil fuels, with substantial use of carbon capture and storage. Consequently, the Department does not regard the use of the term as misleading.

The campaign website 'overstates its environmental benefits and obscures the real types of hydrogen being used (green, blue and grey) so they are not clear to the consumer.'

The campaign uses the term clean hydrogen. As defined above, the term is not misleading. The campaign website correctly describes the significant environmental and other benefits that will flow from the Government's investments in hydrogen (Australia's National Hydrogen Strategy, 2019), including the potential:

- to blend with or replace natural gas to heat homes and industry, and for cooking*
- for fuel cells to generate electricity to power cars, trucks, buses and trains, as an alternative to existing diesel and petrol use*
- to store clean energy and generate electricity from this energy for mining sites and remote communities*
- as an alternative industrial chemical feedstock for the manufacture of products such as ammonia, fertiliser and steel*
- to globally trade clean energy.*

To provide future customers with additional robust and transparent information on the greenhouse gas emissions associated with hydrogen production, the Australian



Government is developing a domestic Guarantee of Origin hydrogen certification scheme.

The scheme will track the carbon emissions associated with Australian hydrogen production, along with other characteristics such as the type of technology and energy source used in its manufacture.

Industry trials of the scheme will be managed by the Clean Energy Regulator through a funding commitment under the 2021–22 Budget.

Australia is also leading efforts to establish an international agreed methodology for measuring emissions from hydrogen production through the International Partnership for Fuel Cells in the Economy (IPHE).

I trust this is of use to the Community Panel.

REFERENCES

(2021, October). Retrieved from European Clean Hydrogen Alliance:

<https://www.ech2a.eu/>

Australia's National Hydrogen Strategy. (2019, November). Retrieved from Department of Industry, Science, Energy and Resources:

<https://www.industry.gov.au/data-and-publications/australias-national-hydrogen-strategy>

Australia's National Hydrogen Strategy. (2019, November). Retrieved from Department of Industry, Science, Energy and Resources:

<https://www.industry.gov.au/sites/default/files/2019-11/australias-national-hydrogen-strategy.pdf>

CSIRO Utilisation Roadmap. (2021, August). Retrieved from CSIRO: Australia's National Science Agency: <https://www.csiro.au/en/work-with-us/services/consultancy-strategic-advice-services/csiro-futures/futures-reports/co2-utilisation-roadmap>

IEA. (2019, June). The Future of Hydrogen: seizing today's opportunities. Retrieved from IEA: www.iea.org/reports/the-future-of-hydrogen

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 concern that the advertisement:

- contains references to 'clean hydrogen' which has no scientific basis or meaning
- Gives the impression that the hydrogen being promoted as good for the environment and has zero emissions, however this only relates to green hydrogen – which not all the projects on this website are



- Some hydrogen projects use coal to create hydrogen and this does have greenhouse gas emissions.

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 considered that the advertisement includes the following environmental claims:

- The use of the term 'clean hydrogen' generally, throughout the advertisement
- By using hydrogen, we can reduce dependence on imported fuel, and we can reduce carbon emissions in Australia and around the world.

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 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.*
- *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 Environmental Claims in the advertisement are limited to general claims about the potential future use of clean hydrogen and the suggestion that the use of clean hydrogen can reduce carbon emissions.

Clean Hydrogen

The Panel noted the advertiser's response that the term 'clean hydrogen' refers to hydrogen produced from renewable sources and from fossil fuels with substantial use of carbon capture and storage.

The Panel considered that the target market for the communication would be people interested in the Government's hydrogen plan who are looking for more information on the website.

The Panel considered that not all members of the target audience would know the terminology 'clean hydrogen' and would most likely interpret the phrase to be hydrogen produced with little impact on the environment. The Panel considered that this interpretation was consistent with the advertiser's definition of hydrogen produced from renewable sources and from fossil fuels with substantial use of carbon capture and storage.

The Panel noted that given the advertiser's aim of better informing the public it would be appropriate for a clear definition of clean hydrogen to be provided on this webpage so that this information could be easily found and understood by members of the public. However, the Panel noted that a definition of clean hydrogen is provided in the report 'Australia's National Hydrogen Strategy' which is referred to in the video, is available at industry.gov.au and can be accessed through a link provided in the advertisement.

Overall, the Panel considered that the average consumer in the target market would not be likely to be misled or deceived by the use of the phrase 'clean hydrogen'.

Reduce carbon emissions

The Panel noted the video embedded in the website features the voice-over stating, "By using hydrogen, we can reduce dependence on imported fuel, and we can reduce carbon emissions in Australia and around the world".

The Panel considered that the target audience for this advertisement would interpret this phrase to mean that producing more hydrogen energy in Australia would lead to an overall reduction in carbon emissions.

The Panel noted the complainant's concerns that some clean hydrogen is produced using coal, and that this process produces green-house gas emissions.



The Panel noted the advertiser's response that the advertisement is referring to clean hydrogen which is produced from renewable sources and from fossil fuels with substantial use of carbon capture and storage. The Panel considered that members of the target audience would understand that the production of fuel in Australia using these methods would still lead to less carbon emissions than currently produced to import fuel.

Overall, the Panel considered that the average consumer in the target market would not be likely to be misled or deceived by the use of the phrase "By using hydrogen, we can reduce dependence on imported fuel, and we can reduce carbon emissions in Australia and around the world".

Section 1 a) conclusion

The Panel determined that the advertisement did not breach Section 1 a) of the Environmental Claims 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."

The Panel noted the complainant's concern that the term clean hydrogen has no scientific basis and is misleading as it does not show that some of the hydrogen is produced using coal.

The Panel noted the advertiser's response that the advertisement is referring to clean hydrogen which is produced from renewable sources and from fossil fuels with substantial use of carbon capture and storage. The Panel also noted that when showing how hydrogen is produced, the video includes graphic of coal. The Panel considered that the advertisement does not suggest that all clean hydrogen referred to in the advertisement is produced from renewable sources.

The Panel considered that the claims in the advertisement were couched in general and future-focused language, were modest and were not overstated expressly or by implication.

Section 2 b) conclusion

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



Conclusion

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

REQUEST FOR INDEPENDENT REVIEW

The Panel did not take the entire 'Positive Energy' campaign into account and based its decision on flawed information about hydrogen and carbon capture and storage.

Description of Advertisement

The advertisement comprises not just the webpage <https://www.positiveenergy.gov.au/clean-hydrogen> but the entire campaign [positiveenergy.gov.au](https://www.positiveenergy.gov.au) which includes TV, outdoor, print and radio ads¹, which reference investments in 'clean' energy and technology.

The Panel did not take all this material into consideration, and I ask that all this material be taken into account as part of this review.

Audience

The Panel's determination that the target audience is only people who are looking for more information on the topic of energy does not stand up when the entire campaign is taken into consideration.

The Advertiser says in its response to the complaint that the campaign is designed to ensure "all Australians are aware of the progress being made to reduce emissions". Senate Estimates² was told that the campaign was aimed at "Australians over the age of 18" and cost \$12.9 million and included TV, cinema and online advertising. The target market is all Australians over 18 who could not possibly be expected to understand that the claims being made about investments in 'clean hydrogen' or 'clean technology' include hydrogen made with fossil fuels that create high levels of greenhouse gases.

Environmental Claims

The advertisements include the following environmental claims.

- "Australia's already invested over \$35 billion in clean energy"
- "We're investing billions in projects. Like hydrogen hubs."
- "When used as a fuel, hydrogen's only by-product is water. It produces no carbon emissions."
- "Clean hydrogen. A future low emissions fuel."
- "Australia's making positive energy"

¹ <https://www.positiveenergy.gov.au/campaign>

² <https://reneweconomy.com.au/scotty-from-marketing-splurges-12-9m-advertising-climate-policies/>



The ads show animation of hydrogen hubs, green fields, trees and cows. The word 'billions' is written in solar panels. It also shows a lake, seaweed and workers. There is no mention or depiction of fossil fuels. And no mention that more than \$1.2 billion of the government's investment is in hydrogen projects that use fossil fuels³.

Use and recognition of the term 'Clean Hydrogen'

My application stated that 'clean hydrogen' is not recognised as a scientific term, not widely used, and likely to be misinterpreted by the audience as being free of pollution or environmental harm.

To refute this, the Advertiser references itself, its own website, to show that the term 'clean hydrogen' is widely used. This only proves that the Advertiser is using the term, not that it is widely recognised or used.

Its other reference given is the little-known 'European Clean Hydrogen Alliance', which is predominantly an industry group, not a scientific group. Its members include fossil fuel producers, such as Exxon, that have a vested interest in promoting blue and grey hydrogen, not green hydrogen.

As the advertising campaign under question is aimed at "all Australians" I repeat that it is not reasonable to assume that the target audience understands that 'clean hydrogen' emits high levels of greenhouse gases and is made with fossil fuels.

In addition, if the Advertiser was trying to be clear about what hydrogen it is investing in, it would use the term most widely accepted for the hydrogen it is describing, which is 'blue hydrogen'. Blue hydrogen is made with coal or gas plus carbon dioxide capture and storage.

The term blue hydrogen is used by Exxon⁴, the CSIRO⁵, Time Magazine⁶ and Australia's largest petroleum company Woodside⁷.

Greenhouse gas emissions of 'Clean Hydrogen'

The only hydrogen that is clean, meaning free of unwanted substances or negative environmental effects, is green hydrogen, made from renewables.

The Panel finds that "hydrogen produced from renewable sources and from fossil fuels with substantial use of carbon capture and storage" could be rightly interpreted as being "hydrogen produced with little impact on the environment". If normal

³ <https://www.pm.gov.au/media/future-hydrogen-industry-create-jobs-lower-emissions-and-boost-regional-australia>

⁴ <https://energyfactor.exxonmobil.eu/science-technology/blue-green-hydrogen/>

⁵ <https://blog.csiro.au/green-blue-brown-hydrogen-explained/>

⁶ <https://time.com/6098910/blue-hydrogen-emissions/>

⁷ <https://www.woodside.com.au/what-we-do/hydrogen>



consumers did think this, they would have been greatly misled by this advertising campaign.

The ‘clean hydrogen’ being discussed is actually blue hydrogen – made with coal or gas plus carbon dioxide capture and storage. A widely-publicised peer-reviewed paper published in Energy Science & Engineering found that:

“the greenhouse gas footprint of blue hydrogen is more than 20% greater than burning natural gas or coal for heat and some 60% greater than burning diesel oil for heat”⁸.

In addition, it found that:

“to date no peer-reviewed analysis has considered methane emissions associated with producing the natural gas needed to generate blue hydrogen. Methane is a powerful greenhouse gas. Compared mass-to-mass, it is more than 100-times more powerful as a warming agent than carbon dioxide for the time both gases are in the atmosphere and causes 86-times the warming as carbon dioxide over an integrated 20-year time frame after a pulsed emission of the two gases.”

The International Energy Agency finds that “production of hydrogen is responsible for CO₂ emissions of around 830 million tonnes of carbon dioxide per year, equivalent to the CO₂ emissions of the United Kingdom and Indonesia combined.”⁹

The fact the blue hydrogen is not clean, is underscored by the Chair of the UK’s hydrogen industry association quitting over the false promotion of blue hydrogen as being clean.¹⁰

Claiming that hydrogen made with fossil fuels has little emissions, or little environmental impact, is clearly not true or even verifiable.

Carbon Capture and Storage

The Advertiser says, and the Panel accepts, that emissions from ‘clean hydrogen’ or ‘blue hydrogen’ can be reduced using “substantial carbon capture and storage” to the point where there is little effect on the environment. Again, this is not true.

The production of blue hydrogen emits methane and carbon dioxide. Carbon capture and storage (CCS) can only *potentially* capture *some* of the carbon dioxide and none of the methane. It is not possible to capture a substantial amount of carbon dioxide and, may never be possible.

⁸ <https://onlinelibrary.wiley.com/doi/full/10.1002/ese3.956>

⁹ <https://www.iea.org/reports/the-future-of-hydrogen>

¹⁰ <https://www.theguardian.com/environment/2021/aug/20/oil-firms-made-false-claims-on-blue-hydrogen-costs-says-ex-lobby-boss>



CCS is not working successfully anywhere in the world to capture enough carbon dioxide to make any fossil fuel project significantly free from greenhouse gas emissions. The world's largest CCS project, Gorgon, in WA only captured around 30% of the carbon dioxide that it promised. And it only promised to capture 80% of some emissions.¹¹

The Climate Council finds that “There is not a single carbon capture and storage project in the world that has delivered on time, on budget, and captured the agreed amount of carbon.”¹²

I add that it is not reasonable to assume that CCS will work in the future, as decades of work and billions of dollars has failed to produce one working plant at sufficient scale.

Summary

I ask that the Panel's determination be changed to show that the 'Positive Energy' campaign makes environmental claims that are misleading to the target audience. Relevant factors in the Code and Practice Note are:

“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.”

“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.

“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.”

The ads, targeted at all Australians over 18, claim that the Advertiser is investing in 'clean' technology that is reducing greenhouse gas emissions.

Further investigation shows that these technologies include blue hydrogen, which has high emissions of methane and carbon dioxide – which cannot be captured.

¹¹ <https://www.theguardian.com/environment/2021/jul/20/a-shocking-failure-chevron-criticised-for-missing-carbon-capture-target-at-wa-gas-project>

¹² <https://www.climatecouncil.org.au/resources/what-is-carbon-capture-and-storage/>



But the Advertiser does not disclose this, does not use the standard and recognised term ‘blue hydrogen’ and does not disclose that blue hydrogen can be more polluting than burning fossil fuels.

Instead, it uses the made up term ‘clean hydrogen’ that falsely paints blue hydrogen as being low in greenhouse gases and something with no negative environmental impacts.

A reasonable person seeing the advertisements for ‘Positive Energy’ would be misled into thinking that the Advertiser is investing in green technology, not highly polluting hydrogen made with fossil fuels.

INDEPENDENT REVIEW

INDEPENDENT REVIEWER’S RECOMMENDATION

I do not recommend that the Community Panel review its determination in this matter.

Complaint

Several complaints were received about the use of the term ‘clean hydrogen’ in two advertisements posted by the Commonwealth Department of Industry, Science, Energy and Resources (‘the advertiser’) as part of the ‘Australia’s Making Positive Energy’ campaign (positiveenergy.gov.au). The campaign website explains that it ‘*highlights a range of technologies and projects where the government, businesses and communities are investing to grow new industries and jobs across the country while reducing emissions*’.

The website lists 9 technologies, with a separate website page for each. One of the technologies is ‘*Clean Hydrogen*’, which uses the term ‘*clean hydrogen*’ four times without explanation or definition of the term. The four uses are:

- ‘*Clean Hydrogen: A Future Low Emissions Fuel for Homes, Vehicles and Industry*’ (title of the page)
- ‘*Producing clean hydrogen under \$2 per kilo is our priority*’ (this statement appears twice)
- ‘*Clean hydrogen is going to play an exciting role in our future*’.

The ‘Clean Hydrogen’ page hosts a 1.47sec video titled ‘National Hydrogen Strategy’ in which the term is used in the following way:

- Hydrogen is part of the clean and secure energy future to which the world is transitioning, ‘*because hydrogen is a safe, flexible and clean fuel that can be*



used to power vehicles, generate electricity and generate heat, all without carbon emissions'

- *'In Australia, we are lucky to have an abundance of natural resources to make clean hydrogen for our own use and to supply the world'*
- The energy strategy is adaptive *'with the ultimate goal of being a major global player in clean hydrogen by 2030'*

The complaint referred to in the Panel decision objected to the use of the term 'clean hydrogen', for the following reasons:

- Clean hydrogen is not a recognised form of hydrogen, and the term has no scientific basis or meaning. It is a term the government has made up.
- The only hydrogen that can be considered clean is green hydrogen, which has zero emissions. The government campaign promotes hydrogen investments that are not all clean or green – such as hydrogen created using coal at the La Trobe Valley hydrogen hub.
- The use of the word 'clean' in the government campaign overstates its environmental benefits and obscures the real type of hydrogen being used. This is not made clear to the consumer.

The advertisement was claimed to breach two requirements of the AANA Environmental Claims Code:

- An environmental claim *'must ... not overstate the claim expressly or by implication'* (para 2(b))
- An environmental claim in advertising shall represent the environmental benefits of a service *'in a manner that can be clearly understood by the consumer'* (para 1(c)).

Advertiser's response to complaint

The advertiser's response broadened the grounds of complaint to add a claim that the advertisement had breached the requirement that an environmental claim in advertising *'shall not be misleading or deceptive or be likely to mislead or deceive'* (para 1(a)). The advertiser's response combined the complainant's two lines of complaint as a single complaint, viz, that environmental benefits were overstated and not clear to consumers.

Nothing substantive turns on how the complaint issues were re-framed. Similar considerations arise under each formulation.



The advertiser explained that the purpose of the campaign was to make Australians aware that government investment in clean technology was reducing emissions, increasing use of clean energy and creating new industries and jobs. The development of an Australian hydrogen industry is an element of this government program.

The advertiser made the following specific responses to the complaint issues:

- Use of the term 'clean hydrogen' is not misleading. It is a commonly used term in Australia and internationally and refers to '*hydrogen produced from renewable sources and from fossil fuels with substantial carbon capture and storage*'. The term 'clean hydrogen' does not exclude hydrogen produced using fossil fuels.
- The government campaign does not overstate the environmental and other benefits that flow from Australia's Hydrogen Strategy. The stated benefits include home and industrial heating, energy generation, energy storage, alternative industry energy source and global energy trading.

The advertiser's response provided references to support its claims, and mentioned other government initiatives to monitor hydrogen use and benefits.

Community Panel decision

The Case Report of the Community Panel decision (dated 13 October 2021) dismissed the complaint.

The Panel considered the complaint as reframed by the advertiser (that is, whether it was misleading and made overstated claims). The main points in the Panel's reasoning were as follows:

Was the environmental claim misleading or deceptive?

After referring to the Practice Notes for the AANA Environmental Claims Code, the Panel addressed whether an average consumer in the target market would likely be misled or deceived by the website discussion of clean hydrogen and the embedded video.

The Panel considered that the advertisement made only general claims about the potential use of clean hydrogen and that this use could reduce carbon emissions. Members of the target market may not know the term 'clean hydrogen', and would most likely understand the term as referring to the use of hydrogen that had little impact on the environment. This was consistent with the advertiser's explanation that the term 'clean hydrogen' referred to hydrogen produced from renewable sources and from fossil fuels with substantial use of carbon capture and storage.



Accordingly, the Panel concluded that the average consumer in the target market would not likely be misled. The average consumer would understand that the use of the methods described in the advertisement would lead to less carbon emissions than under current practice.

The Panel nevertheless noted that it would be appropriate for the advertiser to provide a clear definition of 'clean hydrogen' on the webpage to assist the public and reduce the risk of misunderstanding.

Did the advertisement overstate the environmental claims?

The Panel found that the environmental claims were couched in general and future-focussed language, were modest and were not overstated. The advertisement did not suggest that all clean hydrogen was produced from renewable sources. In fact, the video includes a graphic of coal when explaining how hydrogen is produced.

Request for review

The complainant's request for review made the following points:

- The webpage referred to in the original complaint was part of a much larger government campaign across TV, outdoor, print and radio ads. This additional material should be taken into account.
- The entire campaign was aimed at Australians over the age of 18 and not (as the Panel observed) people looking for information on the topic of energy. This broad target market (all Australians over 18) could not be expected to understand that the term 'clean hydrogen' as used in the advertisement could include hydrogen made with fossil fuels that create high levels of greenhouse gas. The campaign does not mention that more than \$1.2 billion of government investment is in hydrogen projects that use fossil fuels.
- The campaign does not distinguish between green and blue hydrogen, in accordance with accepted usage and peer-reviewed literature. Nor does the campaign disclose that blue hydrogen is being used in the technologies referred to in the campaign, and that blue hydrogen is made with coal or gas plus carbon dioxide capture and storage (CCS).
- It is incorrect to assert, as the advertiser does, that emissions from clean hydrogen or blue hydrogen can be reduced using CCS. CCS has not worked successfully to date, and may not work in the future.



- *'A reasonable person seeing the advertisements for 'Positive Energy' would be misled into thinking that the Advertiser is investing in green technology, not highly polluting hydrogen made with fossil fuels.'*

Advertiser's response to request for review

The advertiser's response to the request reiterated its earlier response, including that the Positive Energy Campaign is intended to inform Australians that government is taking steps to reduce emissions and increase the use of clean energy. The campaign points people to resources that are available on the campaign website.

The advertiser also provided commentary on carbon capture use and storage (CCUS) as this issue was first raised in the complainant's request for review. The advertiser explained the importance attached both in Australia and internationally to CCUS in the global challenge to reduce emissions.

Analysis of the application for review

Preliminary observations

The role of the independent reviewer in the Ad Standards complaint and review process is to examine whether the Community Panel should review its decision on the basis that

- there was a substantial flaw in Panel's decision, or
- there is new and relevant evidence that was not earlier considered by the Panel.

The request for review is not specifically linked to either ground, but could be linked to both in the way the request is presented. I shall proceed on that basis.

Another preliminary matter is that a ground stated in the request for review is that the Panel considered only the website linked in the complaint, and not the entire campaign across different mediums.

In fact the Ad Standards process is limited to considering a single medium per case. I shall proceed on that basis, although the distinction has little material effect in this case. The advertisement was presented as part of a positive energy campaign that describes the environmental benefits of 'clean hydrogen'. The parties, in respectively contesting and defending that claim, have not confined their commentary to the words used in the advertisement but have referred broadly to the context in which the advertisement must be understood. To explain that broader context, both parties referred to other considerations, viewpoints and reports.

Commentary on the request for review



It is important in evaluating whether the advertisements breached the AANA Environmental Claims Code to have regard to the purpose of the advertisements and the context in which they appeared.

The context was a government sponsored campaign to explain a multi-government initiative across Australia that is claimed to have environmental benefits. An element of the campaign was the National Hydrogen Strategy, which was COAG supported. The purpose of the campaign seems to have been primarily educative. However, as a government-sponsored campaign it seems also to have a public policy objective of reassuring the public that Australian governments are taking positive steps towards a cleaner environment.

Claims of that nature are nevertheless expected to comply with the AANA Environmental Claims Code. In particular, the claims must not be misleading, deceptive, overstated or open to misunderstanding by consumers.

It is not uncommon, in that context, that there can be sharp differences of opinion among commentators regarding the accuracy and reliability of the implicit claims in the government campaign. It is commonplace that government claims that a particular initiative will benefit the public or a section of it will be hotly contested by others. The competing views will often rely on accredited research, and the findings of the researchers may not be consistent.

In my view, the accuracy and reliability of the references to 'clean hydrogen' in the positive energy campaign need to be viewed in that light. I agree with the Panel's assessment that the advertisements made only general claims to the effect that reliance on hydrogen in a range of ways in Australian business and society could lead to an overall reduction in carbon emissions.

I note that the references to 'clean hydrogen' in the advertisements have a dual meaning. On some occasions the term is used to describe hydrogen production, and on some occasions to describe hydrogen use in cars, heating, industry and other areas. The broad sense in which the term is used illustrates the advertiser's point that the positive energy campaign was designed to explain how the hydrogen strategy (along with other projects) formed part of a government initiative to make Australians aware of government investment in clean technology and reducing emissions.

The term 'clean hydrogen' has been used in other quarters (as internet searches reveal), even though there is public debate as to whether the term should be replaced by references to particular types of hydrogen (such as green and blue hydrogen).

I do not think anything turns on whether the target market for the advertisements is described as all Australians aged over 18 (as the complainant asserts), or as people looking for information on the topic of energy (as the Panel stated). While the general campaign may have been targeting all Australians, the use of multiples avenues for distributing information seems premised on the assumption that some Australians are more likely to obtain information from some avenues only. In short, the target



audience could be described as any Australians over 18 who accessed the website to learn more about the government positive energy campaign.

Conclusion

For those reasons it is my view that there was no substantial flaw in the Panel's reasoning, nor was there a relevant perspective or information that the Panel overlooked. Accordingly, I do not recommend that the Panel review its determination.

There being no recommendation for review, the Panel's decision of 13 October 2021, set out above, stands.