

## Case Report

1. Case Number :	0254-23
2. Advertiser :	Woodside Energy
3. Product :	Energy/Resources
4. Type of Advertisement/Media :	Internet
5. Date of Decision:	22-Nov-2023
6. Decision:	Dismissed
7. IR Recommendation:	Panel to Reconsider
8. Date of reviewed decision:	30-Jan-2024
9. Decision on review:	Dismissed

### ISSUES RAISED

AANA Environmental Code\1 Truthful and Factual  
AANA Environmental Code\2 Genuine Environmental Benefit  
AANA Environmental Code\3 Substantiation

### DESCRIPTION OF ADVERTISEMENT

This website page is titled 'Seismic 101' and provides information on seismic surveys.

### THE COMPLAINT

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

*Complaint about website content of Woodside Energy Group Ltd*

*1. We act for Greenpeace Australia Pacific Ltd (Greenpeace). Greenpeace is a leading independent campaigning organisation that uses peaceful protest and creative confrontation to expose global environmental problems and promote solutions that are essential to a green and peaceful future.*

*2. Our client requests that you investigate whether certain statements made by Woodside Energy Group Ltd (Woodside) in its marketing information "Seismic 101" [1] on its website, reproduced at Annexure A, are in breach of the Environmental Claims Code adopted by AANA as part of advertising and marketing self-regulation (the Code).*

*Claims by Woodside*

3. Woodside makes the following statements on its website [2] which are directed at promoting, directly or indirectly, the benefits of Woodside's approach to managing the environmental impacts of seismic surveys:

(a) "Woodside has invested in more than 30 years of scientific research with partners such as the Australian Institute of Marine Science to help inform our approach to seismic surveying and the measures we use to reduce impacts to the marine environment...

These measures include:

...

- "avoiding migration and breeding seasons for sound-sensitive marine species;
- deploying marine fauna observers to ensure work is paused if marine mammals are detected close to the survey vessel."

"For example, for Woodside's Scarborough Project, the survey area is outside of whale migration routes, ..."

(together, the Statements).

4. Our client considers that the Statements, alone or in combination, represent, expressly or by implication, that:

(a) Woodside's seismic testing for the Scarborough Project is outside the whale migration routes (Migration Route Claim); and

(b) Work will be paused if marine fauna observers detect marine mammals close to survey vessel (Observer Detection Claim).

(together, the Claims).

5. Our client considers that the Claims may breach sections 1(a), 1(b), 1(c), 2(a), 2(b) and / or 3(a) of the Code for the following reasons.

*Why Woodside's Claims breach the Code*

*Meaning of Environmental Claim*

6. The Code defines 'Environmental Claim' to mean:

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.

7. The Claims are Environmental Claims to which the Code applies because they are express representations about the interaction of Woodside's seismic surveys with the Environment (as defined in the Code). They have been published by Woodside on its website to promote its processes for seismic surveys and minimise perceived harm associated with seismic surveys.

8. The Claims imply that Woodsides' seismic surveys avoid whale migration routes, and that work will be paused in the event marine mammals are observed close to the survey vessel by the marine fauna observers. The Claims provide little if any information on the overlap of the seismic survey areas with known whale migration routes; and the use of marine fauna observers only during daylight hours while seismic surveying is conducted 24 hours per day. There are insufficient disclosures and supporting information provided to allow evaluation of the impact of the seismic surveys, which may inadvertently mislead consumers. Relevant provisions of the Code

9. Our client considers the Claims may breach the following provisions of the Code:

(a) s 1(a), which provides that Environmental Claims shall not be misleading or deceptive or be likely to mislead or deceive;

(b) S 1(b), which provides that Environmental Claims shall display any disclaimers or important limitations and qualifications prominently, in clear, plain and specific language;

(c) s 1(c), which provides that Environmental Claims 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;

(d) s 2(a), which provides that Environmental Claims must be relevant, specific and clearly explain the significance of the claim;

(e) s 2(b), which provides that Environmental Claims must not overstate the claim expressly or by implication;

(f) s 3(a), which provides that Environmental Claims shall be substantiated and verifiable. Supporting information shall include sufficient detail to allow evaluation of a claim.

#### *Migration Route Claim*

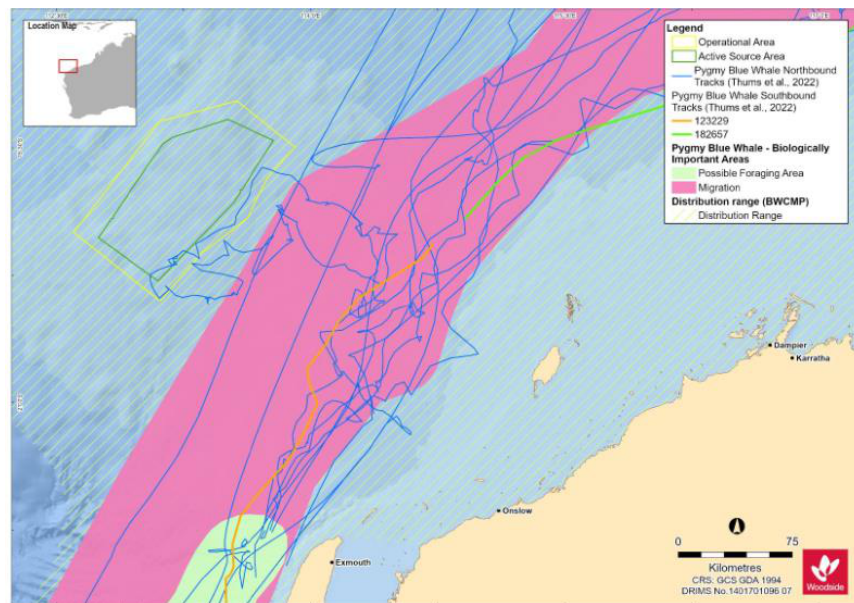
10. Woodside's Migration Route Claim may breach the Code in representing that Woodside's seismic surveys are outside whale migration routes. As discussed below, Woodside's own Environmental Plan discloses that there are reported occurrences of whales migrating outside the known migration routes and through the seismic surveying operational area of the Scarborough project.

This contradiction is not disclosed in any disclaimers or limitations of the seismic surveys or made clear on Woodside's Migration Route Claim on its website.

11. Woodside's Scarborough Seismic Environmental Plan, as assessed by NOPSEMA, discloses that peer reviewed research indicates the increased possibility of blue whale presence in and around the Operational Area. [3] The research shows that high use (in both length of time and number of whales) and low move persistence off north-west Western Australia occurred, suggesting evidence of foraging. [4]

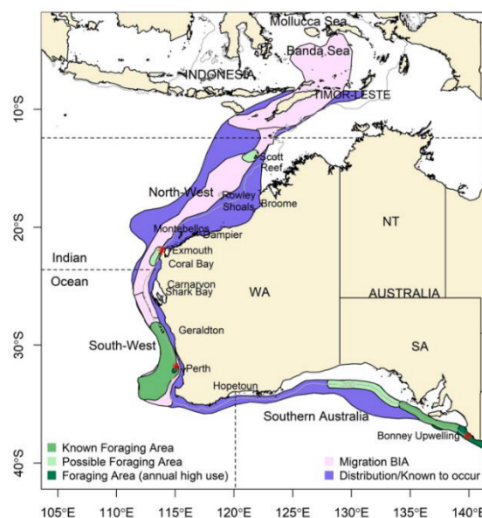
12. Further, Woodside's Scarborough Seismic Environment Plan includes the following figure which shows one of the 22 whales tracked migrates west of the pygmy blue whale biologically important area (BIA) migration route, entering the seismic survey operational area. This indicates that while the migration path represents the area

most used by whales for migration, it is evident that whales do not stay wholly within the BIA migratory path. Moreover, the small sample size used by Woodside for its Environment Plan is arguably not representative of the pygmy blue whale population, nor of the other whale species that migrate through the region which may attribute similar behaviours.



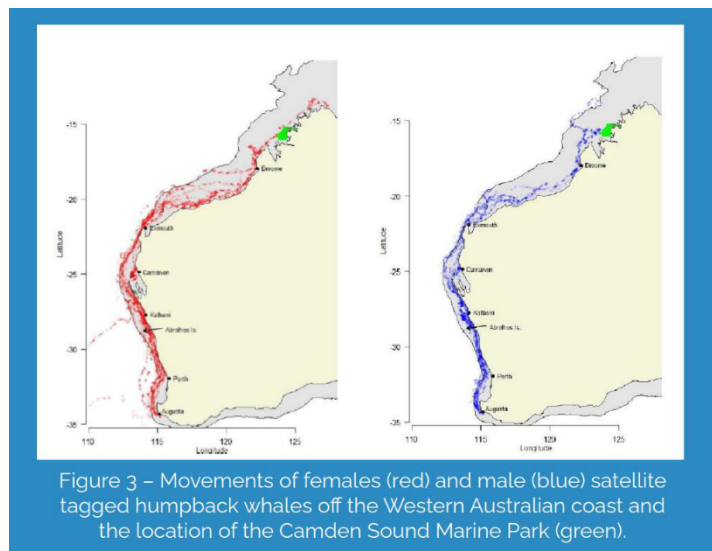
[IMAGE Source: Woodside Scarborough 4D B1 Marine Seismic Survey Environment Plan [5]

13. Known migration outside the BIA is further supported by research referenced in Woodside's Scarborough Seismic Environment Plan. [6] This research also shows that the blue whales migrate west of the BIA and through the proposed Operational Area. The figure below shows the migration BIA and the known distribution of the pygmy blue whales which is clearly to the west and outside the migration BIA. This is the same region in which the Scarborough seismic surveys are proposed.



[IMAGE Source: Thums et al. retrieved from <https://www.sciencedirect.com/science/article/pii/S2351989422000567?via%3Dihub>

14. The following figure, extracted from the Western Australian Humpback Whale Migration Route IMMA [7] (the MMPA Task Force research), shows movements of tagged humpback whales off the Western Australian coast and indicates again, that whales are tracked outside the “identified” whale migration routes. The MMPA Taskforce Research has found that there is increasing evidence of more calves being born on the Ningaloo Coast near Exmouth Gulf, which is also an identified resting area for humpback whales. It is in this area the whales have been found to migrate outside the identified whale migration route where the continental slope occurs close to the coast. [8]



[IMAGE Figure 3 – Movements of females (red) and male (blue) satellite tagged humpback whales off the Western Australia coast and the location of the Camden Sound Marine Park (green)]

15. The Migration Route Claim specifically states the survey area is outside of whale migration routes which, based on the evidence above, is not supported and, without the requisite disclaimers and qualifications, may mislead consumers.

16. For these reasons, the Woodside Migration Route Claim potentially contravenes: (a) s1(a) of the Code: it is misleading or deceptive or likely to mislead or deceive, as an average consumer would likely be misled into thinking that seismic testing will be outside the whale migration route. The omission of information showing the project area overlaps observed migration routes, and information which shows that whales

*are known to migrate outside the known route and overlap with the project area is likely to mislead or deceive.*

*(b) s 1(b) of the Code: there are no disclaimers that qualify the representation that the project in fact overlaps with known whale migration routes.*

*(c) S 2(a) of the Code: the known overlap of the project area and the whale migration route are not sufficiently specific and clear and creates an overall misleading impression that the seismic surveys for the Scarborough Project are outside whale migration routes.*

*(d) s 3(a) of the Code: the claim does not include sufficient detail to allow a consumer to evaluate and verify the claim that seismic surveys for the Scarborough Project will be outside the whale migration routes.*

#### *Observer Detection Claim*

*17. Woodside's Observer Detection Claim states that Woodside has included measures to reduce potential impacts of seismic surveys to the marine environment including the deployment of qualified marine fauna observers to ensure work is paused if marine animals are detected close to the survey vessel. The claim does not provide disclaimers or limitations concerning the work hours of marine fauna observers nor the hours of seismic survey operations. The lack of clarification or disclaimers outlining the hours of operations of both observers and seismic operations may mislead consumers to believe work will be paused at any time whales are close to the survey vessel during the seismic surveys.*

*18. In the YouTube video embedded in Seismic Surveys 101, [9] Woodside state that the role of the marine fauna observers on board the seismic vessel is to record the presence of animals like whales, dolphins and turtles to ensure that no animals sensitive to low-frequency sounds are nearby prior to starting the sound source. The YouTube video also states that the observers work only during daylight hours. [10] There is no disclosure that the seismic surveys are carried out 24 hours a day for up to 80 days. [11]*

*19. The lack of a disclaimer, limitation or qualification on the Observer Detection Claim outlining the continuation of the seismic testing during hours of darkness results in the claim being potentially misleading or deceiving. Consumers are led to believe that the operations will be paused to ensure no harm comes to marine animals. If the marine fauna observers are not working throughout the hours of darkness while the seismic surveys continue, this claim cannot be substantiated by consumers and is therefore likely to be misleading.*

*20. For these reasons, the Observer Detection Claim potentially contravenes:*

*(a) s 1(b) of the Code: the claim implies that the seismic surveys will be paused if the marine observers detect marine fauna in the vicinity of the seismic vessel. A clear qualification should be included to address the fact that the seismic surveys continue 24 hours a day while the marine fauna observers only work during daylight hours. The*



*lack of qualification or disclaimer means that the claim is not capable of standing alone without being misleading.*

*21. For the above reasons, our client considers that the Claims may breach sections 1(a), 1(b), 1(c), 2(a), 2(b) and / or 3(a) of the Code.*

*[1] Woodside Seismic 101 Retrieved from <https://www.woodside.com/media-centre/news-stories/story/seismic101> (accessed 5 October 2023).*

*[2] Woodside Energy Group Ltd, 'Seismic 101', <https://www.woodside.com/media-centre/newstories/story/seismic-101> (accessed 29 September 2023); 'Woodside Energy Fact Checker', <https://www.woodside.com/media-centre/woodside-energy-fact-checker> (accessed 28 September 2023).*

*[3] NOPSEMA Statement of Reasons relating to the Acceptance (with Conditions) of the Scarborough 4D B1 Marine Seismic Survey Environment Plan at 14. Retrieved from <https://docs.nopsema.gov.au/A855184>.*

*[4] Thums, M., Ferreira, L., Jenner, C., Jenner, M., Harris, D., Davenport, A., Andrews-Goff, V., Double, M., Moller, L., Attard, C., Bilgmann, K., Thomson, P., and McCauley, R. (2022) Pygmy blue whale movement, distribution and important areas in the Eastern Indian Ocean Retrieved from*

*<https://www.sciencedirect.com/science/article/pii/S2351989422000567?via%3Dihub>.*

*[5] Retrieved from <https://docs.nopsema.gov.au/A941007>.*

*[6] Thums, M., Ferreira, L., Jenner, C., Jenner, M., Harris, D., Davenport, A., Andrews-Goff, V., Double, M., Moller, L., Attard, C., Bilgmann, K., Thomson, P., and McCauley, R. (2022) Pygmy blue whale movement, distribution and important areas in the Eastern Indian Ocean Retrieved from*

*<https://www.sciencedirect.com/science/article/pii/S2351989422000567?via%3Dihub>.*

*[7] Marine Mammal Protected Areas Task Force Western Australian Humpback Whale Migration Route IMMA Retrieved from <https://www.marinemammalhabitat.org/wp-content/uploads/immafactsheets/AustralianNewZealandSoutheastIndianOcean/WA-Humpback-Whale-Migration-RouteAustralianNewZealandSoutheastIndianOcean.pdf>.*

*[8] Marine Mammal Protected Areas Task Force Western Australian Humpback Whale Migration Route IMMA Retrieved from <https://www.marinemammalhabitat.org/wp-content/uploads/immafactsheets/AustralianNewZealandSoutheastIndianOcean/WA-Humpback-Whale-Migration-RouteAustralianNewZealandSoutheastIndianOcean.pdf>.*

*[9] Oil and Gas 101: Offshore Seismic Surveys at Woodside. Retrieved from [youtube.com/watch?v=hXTcnd1pXBU](https://www.youtube.com/watch?v=hXTcnd1pXBU).*

*[10] Woodside Energy, Oil and Gas 101: Offshore Seismic Surveys at Woodside. Retrieved from <https://www.youtube.com/watch?v=hXTcnd1pXBU>.*

*[11] NOPSEMA Statement of Reasons relating to the Acceptance (with Conditions) of the Scarborough 4D B1 Marine Seismic Survey Environment Plan. Retrieved from <https://docs.nopsema.gov.au/A855184>.*

## **THE ORIGINAL ADVERTISER'S RESPONSE**

### **1.1 Introduction**

*The complaint relates to the following statements on Woodside's website:*

*"Woodside has invested in more than 30 years of scientific research with partners such as the Australian Institute of Marine Science to help inform our approach to seismic surveying and the measures we use to reduce impacts to the marine environment [...]"*

*These measures include:*

*[...]*

- "avoiding migration and breeding seasons for sound-sensitive marine species;*
- deploying marine fauna observers to ensure work is paused if marine mammals are detected close to the survey vessel. [...]"*

*For example, for Woodside's Scarborough Project, the survey area is outside of whale migration routes [...]"*

*(together, the Statements).*

*The notification of complaint received on 12 October 2023, provides that the complainant considers that the Statements breach the Australian Association of National Advertisers Environmental Claims in Advertising Code (the AANA Environmental Code). Ad Standards has identified Section 1 ('truthful and factual presentation'), Section 2 ('genuine benefit to the environment') and Section 3 ('substantiation') as sections of the AANA Environmental Code that may have been breached. The complainant alleges that the Statements, alone or in combination, represent, expressly or by implication, that:*

- a) Woodside's seismic testing for the Scarborough Project is outside the whale migration routes (Migration Route Claim); and*
- b) Work will be paused if marine fauna observers detect marine mammals close to survey vessel (Observer Detection Claim),*

*(together, the Claims)*

*Woodside takes compliance with the AANA Environmental Code very seriously, and firmly believes that the Statements fully comply with that code, as well as the AANA Code of Ethics and all other relevant codes and laws. The following response addresses the potential concerns and issues raised in the notification of complaint.*

#### *1.2 Preliminary issue – Application of AANA Code*

*While Woodside considers that the Statements comply with the Code, Woodside also requests, as a preliminary matter, that the Panel considers whether or not the Statements are 'advertising' within the meaning of the AANA Code of Ethics:*

- The AANA Code of Ethics defines advertisement as "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... 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, but does not include... corporate reports*



*including corporate public affairs messages in press releases and other media statements, annual report, statements on matters of public policy.”*

- *The Statements are located on a webpage, ‘Seismic Surveys 101’, which is accessible within Woodside’s online ‘Media Centre’ and is accompanied within the Media Centre by other corporate reports and media statements.*
- *In contrast to forms of advertising such as TVCs, billboards, newspaper advertisements and the like, the ‘Seismic Surveys 101’ webpage is accessible to people who navigate onto Woodside’s corporate website and sits within the Media Centre alongside other corporate and media documents.*
- *The ‘Seismic Surveys 101’ page does not promote Woodside’s products or services to consumers but instead provides an overview of scientific information, being seismic surveys and their use by Woodside, to people who may wish to navigate onto Woodside’s website.*

*In light of this definition and the above contextual factors, Woodside’s view is that the ‘Seismic Surveys 101’ page does not fall within the scope of the AANA’s Code, having regard to the definition of ‘advertisement’ and given the Statements form part of Woodside’s corporate messaging included in its online ‘Media Centre’.*

*Nevertheless, Woodside considers that the Statements are accurate, not misleading and substantiated. Without prejudice to Woodside’s position on whether the AANA Code applies, we address these matters further below for the Panel’s consideration.*

### **1.3 Outline of response**

*In summary, Woodside considers that the Statements are accurate and compliant with the AANA Environmental Code (to the extent it applies). In making the Statements, Woodside notes that:*

- *Woodside considers that even if the Statements would be interpreted by readers as a representation that “Woodside’s seismic testing for the Scarborough Project is outside the whale migration routes (Migration Route Claim)”, that representation is able to be substantiated and therefore is not misleading. The Scarborough seismic surveys are outside recognised whale migration route areas, which are areas where the majority of whales travel during migration.*
- *Similarly, even if the Statements were interpreted by readers as a representation that “Work will be paused if marine fauna observers detect marine mammals close to survey vessel (Observer Detection Claim)”, that representation is able to be substantiated and therefore is not misleading.*
- *Woodside has a number of mitigation measures in place to reduce impacts to the marine environment, one of which is deploying marine fauna observers to ensure work is paused if marine mammals are detected close to the survey vessel. As expressed in the Statements, these two measures are not the sole measures in place, but are some of the examples of measures in the “Seismic Surveys 101” page, and other mitigation measures are also available.*

### *Background to Woodside*

*Woodside is proud to be a global energy company, producing oil and gas whilst working to develop new energy products and services. Woodside utilises seismic surveys when exploring for oil and gas in offshore waters and planning the development of discovered oil and gas reservoirs, as they help identify where oil and gas reservoirs are located. Woodside's Scarborough Energy Project will develop the Scarborough gas field off the coast of Western Australia through new offshore facilities, and as part of the project, it will employ seismic surveys to assess the geology of the gas field. Woodside's seismic surveys are conducted under strict Australian and international regulations, and management controls are developed based on scientific evidence to reduce the environmental impact of seismic surveys. For the Scarborough Project, Woodside has prepared an Offshore Project Proposal which sets out Woodside's evaluation of the potential environmental impacts of the project as well as the environmental management system to reduce these risks, which include risks from seismic surveys. The environmental risk management controls include controls based on scientific evidence which are designed to reduce risks to marine mammals including whales. Please refer to the Offshore Project Proposal for more detail.*

*Woodside is proud of the contribution we make to sustainability in the communities we're part of and the markets we supply. For more than 30 years, Woodside has invested in funding research into whale seasonality, distribution and abundance in Western Australian waters. Our total investment in whale research, alongside our joint venture partners, is approximately A\$30 million, making Woodside one of the largest funders of whale research in Australia.*

*Based on a wealth of scientific studies, this collective knowledge has driven Woodside's approach to management and mitigation measures to avoid or minimise any impacts on individual whales and the broader recovery of whale populations in Australia. These measures form an integral part of Woodside's Environment Plans, which are developed over a number of years and are assessed by NOPSEMA, Australia's offshore oil and gas industry regulator. The Scarborough Project includes a number of mitigation measures, detailed in the Offshore Project Proposal which was accepted by NOPSEMA, to reduce the impacts of operations including through seismic surveys on whale populations. This includes, but is not limited to, deploying marine fauna observers and using a passive acoustic monitoring (PAM) system. The seismic survey for the Scarborough Project is outside of, and does not overlap with, the Commonwealth Government's recognised Biological Important Areas for protected marine species.*

### *Background to the Statements*

*Woodside's driving principle behind our publications including our website content is to increase transparency with the public in terms of how our operations work. The Statements were included in Woodside's website story in its 'Media Centre' to explain how seismic surveys work and to provide examples of the controls and mitigation measures Woodside has put in place in relation to seismic surveys. The Statements*

*also provide information about the use of seismic surveys in the Scarborough Project and controls in place to reduce the potential impacts of the surveys, which includes the survey area being located outside whale migration routes and undertaking monitoring.*

#### *Response to the complaint*

*We address separately in this section:*

- (a) the Migration Route Claim; and*
- (b) the Observer Detection Claim.*

#### *(1) Migration Route Claim*

*The complaint alleges that the Migration Route Claim breaches the AANA Environmental Code, as it is said to represent that “Woodside’s seismic surveys are outside the whale migration routes”. The complainant states that the Claim “is misleading or deceptive or likely to mislead or deceive as an average consumer would likely be misled into thinking that seismic testing will be outside the whale migration route”. The complainant suggests that the claim is misleading for reasons including that there are occurrences of whales migrating outside migration routes.*

*Woodside does not agree with the allegation that the Statement is misleading or deceptive or likely to mislead or deceive and breaches the AANA Environmental Code (to the extent it applies):*

- 1 The ordinary meaning of the phrase “migration routes”, as would be understood by members of the public, is the general or primary geographic area in which whales will be found during migration season and / or the principal area for a species migrating based on established patterns of behaviour.*
- 2 This ordinary meaning is consistent with the Commonwealth Government’s approach to defining Biological Important Areas (BIAs) for protected marine species. The BIAs:*
  - are areas and times used by protected marine species for carrying out critical life functions, such as reproduction, feeding, migration and resting. It specifically covers and is actually broader than areas of migration routes;*
  - are designated for marine species protected under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) and specifically covers whale species;*
  - are the accepted scientific reference source used in the industry to identify areas for critical life functions for protected species. In other words, it is standard industry practice to use the Commonwealth Environment Department’s BIAs as the basis of assessment for potential interactions and mitigation of protected marine species such as whales; and*

- are regularly updated by the Commonwealth Environment Department as new scientific information becomes available.

Woodside uses the Government's BIAs – that is, areas which include migration routes - for planning its projects, and notes that the proposed seismic survey for the Scarborough project falls outside the relevant BIA, which includes the BIA for migration routes for all species of whale (including humpback and blue whales).

The complaint asserts various implied representations, that Woodside does not accept, including that readers would consider the Statement to be misleading on the basis that there are occurrences of whales outside migration routes. Woodside's view is that the average reader would:

- understand that "whale migration routes" refers to the general or primary geographic area in which whales are likely to be found during migration season, not where every whale might possibly be present during migration; and
- not infer from the Statements that the Scarborough seismic survey will avoid every area where a whale may be present. This is especially as the relevant Statement refers specifically to "whale migration routes" and not general presence of whales, and that other measures are also taken. This is also supported by the fact that the Statements also include measures in light of that possibility, such as the observer detection measure itself.

## *(2) Observer Detection Claim*

The complainant alleges that the Statement relating to the Observer Detection Claim breaches the AANA Environmental Code as it represents that work will be paused if marine fauna observers detect marine mammals close to survey vessels but does not provide disclaimers or limitations concerning the work hours of marine fauna observers nor the hours of seismic survey operations.

Woodside does not agree that the Statement breaches the AANA Environmental Code (to the extent it applies) or that it could mislead readers.

Woodside does have measures in place such that work is paused if marine fauna observers detect marine mammals close to survey vessels. The complaint provides no basis for challenging that this occurs. The Observer Detection Claim relies on an incorrect premise that ordinary readers of the Seismic 101 FAQ would infer that (1) marine fauna observers operate 24 hours a day and (2) marine fauna observers are the only measure used for detecting whales in the survey area.

1 The Statements do not represent that marine fauna observers will operate 24 hours a day. Given that would be an improbable measure (with observation after nightfall clearly difficult), for the Statement to convey that meaning would have required an express statement to that effect. Further, the YouTube video embedded on

*the webpage containing the Statements (which readers are instructed to “watch the video to find out more”) states that the observers work “during daylight hours”.*

*2 The Statements do not represent that marine fauna observers are the only measure used for pausing work if marine mammals are detected. The language clearly states that “these measures include [...] deploying marine fauna observers”. The use of the words “measures include” and a non-exhaustive list would indicate to an ordinary reader of the Statements that deploying a marine fauna observer is just one example of various measures put in place by Woodside to reduce potential impacts to the marine environment. Woodside considers that readers would not understand, in this context, the Statement to mean that observers are the sole measure used to detect whales in the survey area.*

*In fact, Woodside utilises a range of other measures beyond marine fauna observers – the Scarborough project seismic survey Environmental Plan has committed to the use of other measures including the passive acoustic monitoring (PAM) system which operates on a 24 hour basis to detect odontocete whales. There is a shutdown requirement (including at night-time) if any sperm or beaked whale is detected by the PAM system within 2km of the seismic vessel.*

*Ordinary readers of the Statements would understand them to mean that Woodside undertakes a number of measures designed to reduce the risk of potential impacts to whales and other marine fauna while seismic testing is occurring.*

*The ‘Seismic Surveys 101’ page is seeking to make digestible content on a highly technical matter, and so while it does not provide an exhaustive list of measures in place, there are additional sources easily accessible on Woodside’s website to provide additional details*

### *(3) Context of the Statements*

*We note for completeness that, while Woodside does not consider the Statements to be misleading for the reasons noted above, if members of the public were inclined to look further, there is substantiating information that is readily available on Woodside’s website to support the information in the statements. While Woodside considers that the Statements are clear and not misleading, this context further facilitates readers finding more detailed substantiation of the Statements, and as noted in the AANA Environmental Claims Code Practice Note, the substantiating information does not need to be included in the advertising or marketing communications itself.*

*The ‘Seismic Surveys 101’ webpage is accessible to members of the public who navigate onto Woodside’s corporate website and sits within the Media Centre alongside other corporate and media documents. Once on Woodside’s website, there are a number of other sources easily accessible to the general public which provide additional information about seismic surveys and Woodside’s environmental risk management processes, including information about the Scarborough Project and its geographic location, as well as the Scarborough Environmental Plan which provides further detail about the survey area. This is also in addition to the link to the external government resource on seismic surveys contained within the article containing the*

*Statements. Further, and specifically addressing concerns raised in relation to the Observer Detection claim, Woodside has published other materials which highlight that our seismic operations run for 24 hours a day, including the information sheet for the Scarborough 4D baseline marine seismic survey. Please refer to: [consultation-information-sheet---scarborough-4d-marine-seismic-survey.pdf](#) (woodside.com). This broader context is important to inform how users will understand the Statements in light of how the Statements are accessed.*

#### *AANA Environmental Code*

*Woodside firmly believes that the Statements fully comply with all sections of the AANA Environmental Code, notwithstanding that Woodside does not consider the Statements to be advertising.*

*- Section 1 (Truthful and factual presentation, not misleading or deceptive): We do not consider that readers of the Statements would be likely to be misled or deceived by the advertisement. Readers of the Statements would understand that “whale migration routes” refers to the general or primary geographic area in which whales are likely to travel during migration season, not where every whale might possibly be present during migration. Further, consistent with this interpretation, the statement that the Scarborough Project seismic survey occurs outside of whale migration routes is factually correct and able to be substantiated by Woodside. In response to the Observer Detection Claim, Woodside does have measures in place such that work is paused if marine fauna observers detect marine mammals close to survey vessels. The complaint provides no basis for challenging that this occurs. The Observer Detection Claim relies on an incorrect premise that ordinary readers of the Seismic 101 FAQ would infer that (1) marine fauna observers operate 24 hours a day and (2) marine fauna observers are the only measure used for detecting whales in the survey area which is addressed in detail above.*

*- Section 2 (‘genuine benefit to the environment’): We do not consider that the Statements, either expressly or by implication or omission, overstates or misrepresents the extent of the environmental and economic benefits from Woodside’s business. These Statements are specific, the significance is clearly explained, and do not understate the potential environmental impact of seismic surveys nor overstate the environment benefit of the mitigation measures. As above, the Scarborough seismic surveys are located outside relevant whale migration routes, so we do not consider that the overall impression that the seismic surveys for the Scarborough Project are outside whale migration routes is misleading.*

*- Section 3 (‘substantiation’): We consider that we have a sufficient basis for each statement in the Statements, and each statement has been verified and substantiated by supporting evidence. In addition, to assist members of the public there is ample supporting evidence with more detail that is easily accessible to readers of the Statements on Woodside’s website, as well as in links contained within the article containing the Statements. This includes, but is not limited to, more detailed information about the Scarborough Project and the environmental management*



*processes in place for the project. As noted in the AANA Environmental Claims Code Practice Note, the supporting information does not need to be included in the advertising communications itself, and as such Woodside considers there to be adequate information available to readers to understand and substantiate the Statements.*

#### *Compliance with AANA Code of Ethics*

*While the Notifications did not raise any concerns under the AANA Code of Ethics, and noting that Woodside does not consider the Statements to be advertising within the AANA definition, nonetheless Woodside also firmly believes that the Statements fully comply with all sections of that Code. Compliance with Section 1 of the AANA Code of Ethics has been addressed through the responses provided above in relation to compliance with the AANA Environmental Code. Addressing each part of Section 2 of the AANA Code of Ethics separately:*

- Section 2.1 (Discrimination or vilification): The Statements did not portray people or depict material in a way which discriminates against or vilifies a person or section of the community.*
- Section 2.2 (Exploitative or degrading): The Statements did not employ sexual appeal or exploitive or degrading material.*
- Section 2.3 (Violence): The Statements did not present or portray violence.*
- Section 2.4 (Sex, sexuality and nudity): The Statements did not present or portray sex, sexuality or nudity.*
- Section 2.5 (Language): The Statements did not use strong or obscene language.*
- Section 2.6 (Health and safety): The Statements did not encourage or condone unhealthy or unsafe behaviour.*
- Section 2.7 (Clearly distinguishable advertising): As noted above, Woodside does not consider the Statements to be advertising. However, if the Panel considers that the Statements is advertising, then Woodside considers the Statements to be clearly distinguishable as advertising and commercial in nature given their location on Woodside's own website. Members of the public access the Statements on Woodside's website, and the Statements are labelled as part of Woodside's 'Media Centre', so in line with the AANA Code of Ethics Practice Note, Woodside considers that members of the public would not consider the Statements to be independent or news content, and no further disclosure or distinguishing element is required.*

*For completeness, the AANA Code for Advertising and Marketing Communications to Children, the AANA Food and Beverages Code Marketing and Communications Code and the AANA Wagering Advertising Code are not relevant to the Statements.*

#### *Conclusion*

*For the reasons set out above, Woodside firmly believes that the Statements fully comply with the AANA Environmental Code, AANA Code of Ethics and all other relevant codes and laws, and respectfully submits that the complaints should be dismissed*

#### **THE ORIGINAL DECISION**

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

The Panel noted the complainant's concern that the material published by Woodside Energy Group Ltd (Woodside) on its website contains misleading environmental claims.

The Panel viewed the web page complained about and noted Woodside's response.

### **Is the material advertising?**

The Panel noted Woodside's response that the material was not an advertisement.

The Panel noted that the definition of advertising in the Environmental Code is:

- a. any 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,
- b. but does not include
  - labels or packaging for products
  - corporate reports including corporate public affairs messages in press releases and other media statements, annual reports, statements on matters of public policy and the like
  - in the case of broadcast media, any material which promotes a program or programs to be broadcast on that same channel or station.

The Panel noted that the material was published in the Media Centre section of the website, a section primarily dedicated to corporate reports and media statements.

The Panel considered that the web page included information about the way Woodside conducts seismic surveys, and that the material was presented as a public affairs statement about its policies and survey methods.

The Panel noted that the Environmental Code excludes "corporate reports including corporate public affairs messages in press releases and other media statements, annual reports, statements on matters of public policy and the like" from the definition of advertising.

The Panel considered that taking into account the placement of this page in the Media Centre section of the website and the nature and presentation of the information, the material was a statement on matters of public policy rather than an advertisement.

## **Decision**

Finding that the material does not meet the definition of “advertising” under the Code, the Panel determined that the Environmental Code does not apply and the Panel dismissed the complaint.

## **INDEPENDENT REVIEW**

### **Request for review**

Our client contends that the Panel, in reaching its decision, misinterpreted the definition of “advertising” in the Code and its subsequent application to the statements the subject of the Complaint. It is contended that this misinterpretation led to an invalid decision in relation to the statements.

### Appeal of Community Panel Decision Case Number 0254-23

1. We act for Greenpeace Australia Pacific Ltd (Greenpeace). Greenpeace is a leading independent campaigning organisation that uses peaceful protest and creative confrontation to expose global environmental problems and promote solutions that are essential to a green and peaceful future.

2. Our client requests that you review the decision of the Ad Standards Community Panel (the Panel), Case number 0254-23, notification of which was received 4 December 2023. The decision was regarding a complaint requesting an investigation into whether certain statements made by Woodside Energy Group Ltd (Woodside) in its marketing information “Seismic 101” on its website (the Complaint), are in breach of the Environmental Claims Code adopted by AANA as part of advertising and marketing self-regulation (the Code). The original Complaint is reproduced at Annexure A.

3. Our client contends that the Panel, in reaching its decision, misinterpreted the definition of “advertising” in the Code and its subsequent application to the statements the subject of the Complaint. It is contended that this misinterpretation led to an invalid decision in relation to the statements.

### The Panel’s decision

4. In its Final Case Report, reproduced at Annexure B, the Panel considered whether the material referred to in the complaint could be construed as advertising within the

meaning of the Environmental Code. In making its decision the Panel relied on the definition of advertising from the Environmental Code [1], specifically:

a. any 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,

b. but does not include

- labels or packaging for products
- corporate reports including corporate public affairs messages in press releases and other media statements, annual reports, statements on matters of public policy and the like
- in the case of broadcast media, any material which promotes a program or programs to be broadcast on that same channel or station.

5. In its decision, the Panel noted that:

*“...the material was published in the Media Centre section of the website, a section primarily dedicated to corporate reports and media statements.”*

6. Further, the Panel found that

*“the web page included information about the way Woodside conducts seismic surveys, and that the material was presented as a public affairs statement about its policies and survey methods.”*

7. Finally, the Panel noted that

*“the Environmental Code excludes “corporate reports including corporate public affairs messages in press releases and other media statements, annual reports, statements on matters of public policy and the like” from the definition of advertising.”*

8. The Panel considered that *“taking into account the placement of this page in the Media Centre section of the website and the nature and presentation of the information, the material was a statement on matters of public policy rather than an advertisement.”* This led to the Panel determining that the Environmental Code did not apply and dismissing the complaint.

Grounds for Appeal: A substantial flaw in the Community Panel’s decision in that there was a clear misinterpretation of the Code.

9. It is our client's contention that the Panel erred in finding that the material did not meet the definition of "advertising" under the Code. Further, the Panel misinterpreted the definition and application of the Code.

10. While we agree that the definition of advertising was reproduced accurately, we respectfully submit that the Panel did not take into account the accompanying AANA Code of Ethics Practice Note [2] (the Practice Note) which provides comprehensive detail on which material is intended to be covered by the definition of advertising in the Code.

11. In addition, Woodside are continuing to run Facebook adverts [3] that link directly to the webpage that is the subject of our complaint. We respectfully reiterate that the Panel misinterpreted the definition and application of the Code.

12. In the alternative, the Panel should consider that advertising is directing people straight to the webpage that is the subject of our complaint.

The AANA Code of Ethics Practice Note

13. The objectives of the Practice Note include [4]:

This Practice Note is provided as a guide to interpretation to assist advertisers, their agencies and the community. The interpretations in this Practice Note are based on the AANA's intent in relation to the Code and relevant determinations of the Ad Standards Community Panel.

This Practice Note must be applied by the Ad Standards Community Panel in making its determinations.

14. When considering what is included in the definition of "advertising", the Practice Note [5] states:

*Advertising includes consumer public relations communication. Material produced for use in the media or by the media can be presented in a variety of formats, including video, infographics, question and answer articles, photos, audio or online.*

*The following are excluded from the definition of advertising:*

- *corporate reports including corporate public affairs messages in press releases and other media statements, annual reports, statements on matters of public policy*
- *any form of editorial content such as independent review content, editorial blog content or claims made in the context of editorial content*
- *corporate social responsibility (CSR) programs.*

15. The Practice Note goes on to clarify that:

*Consumer public relations material, as distinct from corporate reports, that is reproduced as public facing content (e.g. a press release posted on a brand's consumer facing website) would be covered by the Codes because the brand owner has retained a reasonable degree of control over the material and it was used in a manner intended to directly promote a product or service.*

#### Application of the Practice Note to the material the subject of the Complaint and the Panel's decision

##### The location of the material

16. It is our contention that the statements the subject of the Complaint are found in the public facing section of the website labelled "Media Centre" and can therefore be properly categorised as material produced for the use in the media, specifically, online consumer public relations communications.

##### The nature of the material

17. The Panel stated that the material was a statement on matters of public policy rather than an advertisement. It is our respectful submission that the nature of the material has been incorrectly categorised and that the Code has been misinterpreted.

18. We contend that the material the subject of the Complaint should be properly categorised as consumer public relations material. The material has been placed on Woodside's consumer facing website in an endeavour to address the negative impacts of seismic testing and mollify consumers by promoting Woodside's approach to seismic testing in a manner intended to directly promote seismic surveying and gas production.

##### Application of the Code to the material

19. The material the subject of the complaint goes to informing consumers and promoting Woodside's approach to seismic surveys used to produce its product, namely gas. This is clearly a marketing communication under the reasonable control of Woodside where the potential customers of the product are physically present in Australia and the marketing communication is directed to those customers. It clearly promotes Woodside's organisation or line of conduct and the product it sells.

20. Therefore, we respectfully request the independent review of the Complaint and an application of the Code to the material the subject of the Complaint applying the categorisation outlined above.

1 Ad Standards Community Panel Decision (2023) at 16.

2 ANNA Code of Ethics Practice Note 2021. Retrieved from <https://f.hubspotusercontent00.net/hubfs/5093205>



/AANA\_Code\_of\_Ethics\_PracticeNote\_Effective\_February\_2021.pdf?utm\_campaign=Self-Reg-Codes&utm\_source=AANA&utm\_medium=web&utm\_term=self-reg&utm\_content=ethics-notes.  
3https://www.facebook.com/ads/library/?active\_status=all&ad\_type=all&country=ALL&view\_all\_page\_id=213725895315890&search\_type=page&media\_type=all.  
4 ANNA Code of Ethics Practice Note 2021 at 2. Retrieved from  
https://f.hubspotusercontent00.net/hubfs/5093205/AANA\_Code\_of\_Ethics\_PracticeNote\_Effective\_February\_2021.pdf?utm\_campaign=Self-Reg-Codes&utm\_source=AANA&utm\_medium=web&utm\_term=self-reg&utm\_content=ethics-notes.  
5 AANA Code of Ethics Practice Note 2021 at 15. Retrieved from  
https://f.hubspotusercontent00.net/hubfs/5093205/AANA\_Code\_of\_Ethics\_PracticeNote\_Effective\_February\_2021.pdf?utm\_campaign=Self-Reg-Codes&utm\_source=AANA&utm\_medium=web&utm\_term=self-reg&utm\_content=ethics-notes.

### **Independent Reviewer's recommendation**

I recommend that the Community Panel review its determination made on 22 November 2023. In my view there were additional matters the Panel should have considered in reaching its decision that the statements complained about were not an advertisement or marketing communication to which the Environmental Claims Code applied.

I note that Ad Standards currently has before it another application for review of a Community Panel decision that raises much the same issue as in the present case (Case 0269-23, dated 6 December 2023). That case concerns a complaint about statements made in a website hosted by Adani Australia Pty Ltd (trading as Bravus). The Community Panel similarly decided that the statements complained about were not an advertisement or marketing communication to which the Environmental Claims Code applied. There is further mention below of the Panel's decision in the other case.

### **Issue in dispute**

The issue in dispute in the present case is the meaning of the phrase 'Advertising or Marketing Communication' in the AANA Environmental Claims Code. The Community Panel decided that the material complained about did not fall within that term and, accordingly, the Code did not apply to the material. The substance of the complaint was therefore not examined by the Panel.

The complainant, Greenpeace Australia Pacific Ltd, represented by the Environmental Defenders Office, contests the Panel's view.

The material complained about was text on a website hosted by Woodside Energy Group Ltd (the advertiser). The website content was titled 'Seismic 101' and provided information about seismic surveys the advertiser conducts as part of offshore exploration and mapping for oil and gas extraction. The website explains the measures the advertiser puts in place to reduce impacts to the marine environment, including the risk that seismic surveys will harm whales and other marine fauna.

The complaint alleged that the website contained marketing information that was in breach of the Environmental Claims Code. The marketing statements have been described as the 'Migration Route Claim' and the 'Observer Detection Claim'. Briefly, it is alleged that the website wrongly conveys that seismic surveys are conducted outside whale migration routes; a qualification or disclaimer should have been included to inform consumers that the survey area overlaps areas in which whale movements have been observed. Further, it is alleged that the website misrepresents the work of marine fauna observers on board survey vessels, by not explaining that observers work only during daylight hours yet surveys are carried out 24 hours a day for up to 80 days.

The complaint alleged that these representations breached several provisions of the Environmental Claims Code – section 1(a) (environmental claims must not be misleading or deceptive); 1(b) (claims must include necessary disclaimers and important qualifications); 1(c) (environmental benefits should not be misrepresented); 2(a) (environmental claims must be relevant and understandable); 2(b) (environmental claims must not be overstated); 3(a) (claims must be substantiated and verifiable).

The advertiser's response raised as a preliminary objection that the website statements were not an advertisement but were part of the advertiser's corporate messaging. Lest that objection was not upheld, the response dealt at length with the substance of the complaint. Briefly, the advertiser claimed that the statements accurately conveyed that the survey areas were outside recognised whale migration route areas, and that onboard marine observers were not the only measure adopted to detect whale movements. The response explained the steps that were taken to ensure the accuracy of the website statements, including preparation of environmental and project plans and compliance with government regulatory requirements.

The Panel upheld the advertiser's preliminary objection in deciding that the website statements were not an advertisement but were presented by Woodside as a public affairs statement about its policies and survey methods.

Environmental Claims Code

The Environmental Claims Code aims to ensure that advertisers and marketers *‘develop and maintain rigorous standards when making Environmental Claims and to increase consumer confidence to the benefit of the environment, consumers and industry’*.

The Code applies to *‘Environmental Claims in Advertising or Marketing Communication’*. The essence of the Code is that environmental claims must be true, accurate and able to be substantiated.

Three key terms in the Code are defined as follows:

**Advertising or Marketing Communication** means:

- a. any 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,
- b. but does not include
  - labels or packaging for products
  - corporate reports including corporate public affairs messages in press releases and other media statements, annual reports, statements on matters of public policy and the like
  - in the case of broadcast media, any material which promotes a program or programs to be broadcast on that same channel or station

**Environmental Claim** means 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.

**Medium** means any medium whatsoever including without limitation cinema, internet, outdoor media, print, radio, telecommunications, television or other direct-to-consumer media including new and emerging technologies.

The terms ‘advertising’ and ‘medium’ are similarly defined in other codes the AANA applies – the Code of Ethics, Children’s Advertising Code, Food and Beverages Advertising Code, Wagering and Advertising Code and Voluntary Code of Practice for Motor Vehicle Advertising.

The Codes are supplemented by Practice Notes that provide guidance on interpreting and applying the Codes. The Practice Notes are to be applied by the Community Panel.

The Practice Note for the Code of Ethics (adopted in February 2021) contains guidance on 'Public Relations Communication':

Advertising includes consumer public relations communication. Material produced for use in the media or by the media can be presented in a variety of formats, including video, infographics, question and answer articles, photos, audio or online.

The Practice Note goes on to repeat the qualification in the Code that 'advertising' does not include corporate reports and public policy statements. The distinction between advertising and non-advertising content is further explained in the Practice Note:

- statements on corporate websites and in social media are given as examples of public policy statements that fall outside the definition of advertisement
- by contrast, material that may fall within the definition is '*consumer public relations material ... that is reproduced as public facing content (eg, a press release posted on a brand's consumer facing website) [because it is] used in a manner intended to directly promote a product or service*'.

There is no similar guidance in the Environmental Code Practice Note, which was earlier adopted in May 2018. The AANA commenced a public review of the Code and Practice Note in November 2022. An Exposure Draft for a new Environmental Claims Code was released on 18 January 2024, with comments invited by 22 March 2024.

The Exposure Draft does not contain any changed wording that is directly relevant to this review. Two points are nevertheless noteworthy. Firstly, the draft draws attention to increased consumer concern about business environmental claims and to stamping out greenwashing practices (misrepresenting the environmental impact of a product, service or company). Secondly, the current Practice Note comments that while the Code does not apply to '*labels and packaging*', an image of a label contained within an advertisement is considered to be an element of the advertisement.

#### Observations on construing 'advertising or marketing communication'

The issue in contention in this case should be evaluated with regard to the following considerations.

- The term 'advertising' is broadly defined in the AANA Codes. In other contexts that term is sometimes understood more narrowly – for example, as publicising a product, service or event to promote commercial sales or attendance. The broader definition in the Code is reflected in several ways – the extended phrase is

*‘advertising or marketing communication’; the phrase applies to ‘any material which is published or broadcast using any Medium or activity’; and the purpose of the advertisement may be to promote ‘a product, service, person, organisation or line of conduct’.*

- The activities falling within the term may expand over time. Thus, an advertisement may be promoted *‘using any Medium or any activity’*. The term *‘Medium’* is defined to mean *‘any medium whatsoever’*, including but not limited to traditional publication methods (print, radio, television and cinema) as well as the internet and *‘new and emerging technologies’*.
- The broad scope of the term ‘advertisement’ is tempered by a list of material that is ordinarily excluded in applying the Codes – such as labels and packaging, corporate reports, media statements and *‘statements on matters of public policy and the like’*. Those excluded items are likely to be the main point of contention in deciding whether an item is an advertisement.
- There may often be room for doubt (or disagreement) as to whether an item is an advertisement or, on the other hand, an item falling within the excluded list. An example of this ambiguity given in the Environmental Claims Practice Note is that a label is not ordinarily an advertisement, yet the Code may apply to the label text if it is contained as an image in an advertisement. The same could be said of other items in the excluded list: a corporate report or statement that would otherwise fall outside the Code may be classified as an advertisement if an advertiser draws attention to the report or statement in a separate document that promotes its products, services or the organisation itself.
- The inherent ambiguity in applying the concept of ‘advertisement’ means that it is important to take account of the context for a particular statement. Put another way, ‘advertisement’ is similarly defined in all AANA Codes, but each Code applies to statements made in widely differing contexts. For example, the Practice Note for the Children’s Advertising Code points out that a mention of personalities or characters popular with children will be relevant in assessing if a statement is advertising that targets children. Similarly, the prominence the Environmental Claims Code gives to ensuring that environmental claims are rigorously assessed will be relevant in deciding if a corporate message is an advertisement to which the Code applies.

#### The submissions in this case

The advertiser was the first party to raise the issue of whether the statements about seismic surveys on its website was an advertisement. Its submission to Ad Standards made the following points:

- The statements are located on a webpage, 'Seismic Surveys 101' that is accessible within Woodside's online 'Media Centre'.
- The Media Centre contains other corporate reports and media statements.
- Items in the Media Centre are displayed only to those who navigate onto Woodside's corporate website.
- The 'Seismic Surveys 101' webpage does not promote Woodside's products or services to consumers but is designed to provide an overview of scientific information for people who wish to access this material on the website.
- Together, those points indicate that the webpage is part of Woodside's corporate messaging.

The decision of the Community Panel noted those points in reaching its decision that the material in the webpage was not an advertisement to which the Code applies. This finding was briefly expressed:

The Panel considered that the web page included information about the way Woodside conducts seismic surveys, and that the material was presented as a public affairs statement about its policies and survey methods. ... The Panel considered that taking into account the placement of this page in the Media Centre section of the website and the nature and presentation of the information, the material was a statement on matters of public policy rather than an advertisement.

The complainant responded to the advertiser's claims and the Panel's decision in a submission dated 15 December 2023. The submission made the following points:

- The Panel did not refer to (or take into account) the Code of Ethics Practice Note which (as noted above) explains that consumer public relations material that is reproduced in public facing content such as a press release may be an advertisement as it is used to promote a product or service.
- Woodside runs Facebook adverts that link directly to the Seismic Surveys 101 web page. In that way, Woodside advertising is directing people to the web page and the discussion of seismic surveys.
- The webpage is designed as consumer public relations material that is directed to consumers through a public facing website in an endeavour to address the negative impacts of seismic testing and to mollify consumer concern.
- Together, those points indicate that the webpage is a marketing communication that is directed to consumers and clearly promotes Woodside as an organisation and its conduct and products.

In the similar and later case noted above (Case 0269-23), the Community Panel did refer to the discussion of 'consumer public relations material' in the Code of Ethics



Practice Note. The Panel decided in that case that the website material complained about was not an advertisement but was a corporate public affairs message.

#### Analysis of the application for review

I preface my analysis by noting that it is not the role of the Independent Reviewer to review the merits of the Panel's determination or to substitute a new ruling. The Reviewer is limited to recommending that a Panel review its earlier determination for one of three reasons – new and relevant evidence, a substantial flaw in the Panel's decision or reasoning, or a flaw in the Panel's process of determination.

I have reached the view in this case that the Panel should reconsider its decision that the information presented in the Seismic Surveys 101 is not an '*advertisement or marketing communication*' to which the Code applies.

On a narrow basis, I believe the Panel should expressly address three contentions raised in the complainant's response to the Panel's determination. The complainant had not earlier made these points as it was unaware that the complaint would be dismissed on the jurisdictional basis that the material complained about was not an advertisement. The three contentions are:

- consideration should be given to the explanation in the Code of Ethics Practice Note that material in a corporate website may be categorised as an advertisement if it is designed to influence consumers to think favourably of the organisation and its conduct
- the argument for classifying the website material as an advertisement is strengthened by the fact that Woodside has drawn attention to this material in Facebook postings
- the broader term in the Environmental Claims Code is '*advertising or marketing communication*', and the Woodside website content is a marketing communication.

More broadly, I believe the case for classifying website material of this kind as an advertisement is more compelling than the Panel's reasoning conveys in this case. While the merits of individual cases are for the Panel to resolve, I observe that the ground may be shifting in evaluating whether corporate website statements should be classified as advertisements. While, on the one hand, it is clear that corporate annual reports, media statements and product labels will not ordinarily be classified as advertisements (because of the way 'advertisement' is defined in the Code), it is less clear that statements vindicating corporate conduct are to be regarded as public policy statements rather advertisements that promote the corporation and its conduct.

Corporate reputation is nowadays closely linked to a corporation's demonstrated stance on reducing environmental harm. It follows that a statement promoting a

corporation in a positive light can potentially be regarded as a marketing communication that aims to benefit the corporation.

I note one other comparable Ad Standards case. Case 0281-21 dealt with a complaint about a Commonwealth Government website that explained technologies and projects adopted by government and industry to reduce environmental emissions. The complainant objected to the way that 'clean hydrogen' was described on the website. During the consideration of this complaint, no objection was taken to classifying the Government website statements as an advertisement to which the Environmental Claims Code applied.

In summary, my view is that there were additional matters that should have been considered by the Community Panel, as outlined in the complainant's response to the Panel determination. I recommend the Panel reconsider its determination that the Woodside website page was not an '*advertisement or marketing communication*' to which the Environmental Claims Code applies. If the Panel changes its ruling, it will then need to separately consider whether the statements on the website breach any of the standards in the Code.

## **THE DECISION ON REVIEW**

The Ad Standards Community Panel (Panel) noted the request for review of its decision and considered the findings of the Independent Reviewer. The Panel noted that the Independent Reviewer considered that it did not give sufficient weight to the following elements:

- the explanation in the Code of Ethics Practice Note that material in a corporate website may be categorised as advertising
- The fact Woodside has drawn attention to the material in social media
- The inclusion of the term 'marketing communication' in the definition of advertising
- That the Panel has previously considered website content to be advertising.

## **Is the material advertising?**

The Panel noted that the definition of advertising in the Environmental Code is:

- a. any 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,
- b. but does not include
  - labels or packaging for products

- corporate reports including corporate public affairs messages in press releases and other media statements, annual reports, statements on matters of public policy and the like
- in the case of broadcast media, any material which promotes a program or programs to be broadcast on that same channel or station.

The definition of Advertising in the Practice Note for the Code of Ethics, which applies to all AANA codes, provides further guidance on what is considered a corporate report:

*“Corporate reports are not covered by the Codes. This includes:*

- *Corporate public affairs messages in press releases and other media statements;*
- *Annual reports; and*
- *Statements on matters of public policy and the like, such as:*
  - a. corporate/stakeholder websites, social media or career sites;*
  - c. internal company communication, sustainability reports, investor documents;*
  - d. submissions, position statements, comments on policy issues; and*
  - e. direct communications to audiences in their capacity as commercial stakeholders of the company.*

*Consumer public relations material, as distinct from corporate reports, that is reproduced as public facing content (e.g. a press release posted on a brand’s consumer facing website) would be covered by the Codes because the brand owner has retained a reasonable degree of control over the material and it was used in a manner intended to directly promote a product or service.”*

The Panel noted that it must have regard to the Practice Note as well as the Code. The Panel noted that the material was published linked to the home page of the website. The Panel carefully reconsidered whether the material was advertising or excluded corporate report material.

Noting the recommendations of the Independent Reviewer, in particular regarding the additional guidance provided by the Practice Note, the Panel considered that it needed to determine whether the likely audience of the website was stakeholders or the general public.

The Panel noted that the review request had included reference to sponsored Facebook advertisements from the advertiser which linked to this webpage, which had not been available to it at its initial consideration of the complaint. The Panel noted that at the time of reconsideration the link did not show any sponsored posts

linking to the specific webpage but noted that the advertiser's Facebook page, sponsored posts and website posts all link to the website, and that the webpage in question was linked from the homepage of the website.

The Panel then considered the content of the webpage. The Panel considered that the title "Seismic surveys:101: What is marine seismic exploration?" was not a question directed towards corporate stakeholders so much as a title suggesting that the article would provide information to anyone who wished to know more about the topic.

The Panel considered that the content of the page, including the video, had a simple, informative tone which could be and appeared intended to be understood by members of the public new to the topic.

The Panel noted the independent reviewer's further recommendations that the Panel give additional weight to the fact that the definition of advertising includes marketing communications, and that the Panel has on other occasions considered webpages to constitute advertising.

The Panel noted that it is likely that determinations as to whether the content of webpages were directed at corporate stakeholders or the public constituted an advertisement would need to be made on a case-by-case basis taking into account a range of factors.

In this instance, the Panel considered that the links to the website from social media and the basic "101" content of the webpage combined meant that the webpage could be considered consumer public relations material, rather than a corporate report.

It follows that on reconsideration the Panel found that the Material did not fall within the exclusions in the definition of advertising, did constitute advertising, and the provisions of the Environmental Claims Code applied.

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

The Panel then considered whether the advertisement made an Environmental Claim.

The Environmental Claims 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 in particular, the complainant had identified the following claims:

- Migration route claim – Woodside’s seismic testing for the Scarborough Project is outside the whale migration routes
- Observer detection claim – work will be paused if marine fauna observers detect marine mammals close to survey vessel.

The Panel considered that the migration route claim is made through the wording “for Woodside's Scarborough Project, the survey area is outside of whale migration routes”.

The Panel considered that the observer detection claim is made through the statement “deploying marine fauna observers to ensure work is paused if marine mammals are detected close to the survey vessel”.

In addition to the two claims above, the Panel considered that the webpage as a whole was making an implied claim that marine fauna populations would not be impacted by the seismic survey.

This is in part through the text, “Available evidence shows that, when properly planned and mitigated, seismic surveys do not result in impacts to marine fauna populations, although the seismic sound source has the potential to temporarily affect an individual whale's hearing, behaviours and communication.” combined with listed controls which give the impression that the surveys have been properly planned and mitigated.

### **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.”*

#### Migration route claim

The Panel noted the complainant’s concern that the claim is misleading because there are whales migrating outside of known migration routes, and that there are limitations to the advertiser’s published research due to the small sample size.

The Panel noted the advertiser’s response that the ordinary meaning of the phrase “migration routes” as would be understood by members of the public is the primary area where whales will be found during migration season based on established patterns of behaviour, and that the webpage does not make the claim that no whales are likely to be present in the area of the seismic surveys.

The Panel noted that it is not a scientific body, and its role is to determine whether an average consumer in a target market is likely to be misled or deceived by the material. The Panel noted that it is not its role to determine the validity of substantiation and research provided by the advertiser, but that its role is to consider whether the claims made are based on evidence which the average consumer would consider to be reasonable.

The Panel considered that the average consumer would consider whale migration routes to refer to the areas known to be where whales primarily are during migration. The Panel considered that the advertiser had provided evidence that these areas had been avoided during surveys. The Panel considered that the advertisement does not make any implied or actual claims that no whales will be in the area when migrating, or that all whales will migrate in the identified areas.

The Panel considered that the claim that the survey is outside of whale migration areas was not misleading or deceptive or likely to mislead or deceive.

#### Observer detection claim

The Panel noted the complainant’s concern that the advertisement does not provide disclaimers or limitations that the observers only work during daylight hours, but seismic surveys are carried out 24 hours a day. The Panel further noted the complainant’s concern that the claim could mislead consumers into believing the operations will be paused if fauna are present.

The Panel noted the advertiser’s response that most people would understand that observers would not operate 24 hours a day, and that the statement that they only



work during daylight hours is made within the embedded video on the identified webpage.

A minority of the Panel considered that the impression of the advertisement is that the marine observers are present whenever the seismic survey is active. A minority of the Panel considered that the use of the word “ensure” in the claim led to the impression that observers were able to guarantee that work is paused whenever fauna are present in the survey area.

The majority of the Panel considered that the advertisement does not state that observers are present at all times that the surveys are operational. The Panel considered that the observers are listed as just one measure that is being taken to protect marine mammals. The Panel also noted that the qualification that the observers work only during the day was mentioned in the video on the same page as the other information.

Overall, the Panel considered that the claim that work will be paused if marine fauna observers detect marine mammals close to survey vessel was not misleading or deceptive or likely to mislead or deceive.

#### Marine fauna populations would not be impacted by the seismic survey

A minority of the Panel considered that the implied claim that marine fauna populations would not be impacted by the seismic surveys was misleading, as the advertiser could not guarantee that no harm would come to the whale populations.

The majority of the Panel considered that the overall impression of the advertisement was that the advertiser was implementing a number of measures to ensure that marine fauna populations would not be impacted by the surveys. The Panel considered that the advertiser had clearly stated the short-term effects that surveys may have on individual whales, but also provided substantiation that reasonable steps had been taken to ensure that the whale populations were not impacted. Overall, the Panel considered that the advertisement was clear in its messaging about the measures that were implemented and an average consumer was unlikely to be misled into thinking that seismic surveys without such measures would be safe, or that no individual animals could be harmed by the surveys.

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

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

**Section 1 b) Environmental Claims in Advertising or Marketing Communication shall display any disclaimers or important limitations and qualifications prominently, in clear, plain and specific language;**

The Panel noted that the Practice Note for this Section of the Code states:

*“A disclaimer can clarify, expand or reasonably qualify a representation but should not contradict, diminish or retract it. As a general guideline, the main body of the advertisement, apart from the disclaimer, should be capable of standing alone without being misleading.”*

For the reasons provided under Section 1 a) above, the Panel considered that the advertisement as it stands is not misleading or deceptive and does not require any additional disclaimers or qualifications.

#### **Section 1 b) conclusion**

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

**Section 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 of the Code states:

*“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.”*

For the reasons provided under Section 1 a) above, the Panel considered that the advertisement as it stands is not misleading or deceptive and accurately represents the extent of the limitations of the measures taken.

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

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

**Section 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.”*

For the reasons provided under Section 1 a) above, the Panel considered that the advertisement as it stands is not misleading or deceptive and is sufficiently specific and clearly explains the significance of the claims.

**Section 2 a) conclusion**

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

**Section 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.”*

For the reasons provided under Section 1 a) above, the Panel considered that the advertisement did not overstate the claim 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.

**Section 3 a) Environmental Claims...shall be able to be substantiated and verifiable. Supporting information shall include sufficient detail to allow evaluation of a claim**

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

*Advertisers and marketers should have a reasonable basis for making a claim and therefore should hold appropriate, balanced, comprehensive and credible evidence to substantiate all express and implied claims. Information to support a claim may include, but is not limited to, documentary evidence or data evidencing conformity with an identified standard, research, studies, or an expert independent audit. There is no requirement to use third party verification or certification before an environmental claim is made. An advertiser's own internal procedures may be able to provide the necessary substantiation.*

*In testing the validity of any claim the Community Panel will only rely on information/material provided by the advertiser and the complainant. The Community Panel may seek expert advice to assist in the consideration of material provided in relation to the complaint. It is not the intent for the Community Panel to act as an arbiter of scientific fact, or of philosophical approaches to understanding or addressing environmental concerns.*

The Panel noted that the information provided by the advertiser meant that the Environmental Claims in the advertisement were substantiated and verifiable.

**Section 3 a) conclusion**

The Panel determined that the advertisement did not breach Section 3 a) of the Environmental Claims Code.

**Conclusion**

On reconsideration, the Panel found that the material did constitute advertising. The Panel found that the advertisement did not breach any Section of the Environmental Code and dismissed the complaint.