

# Case Report

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| <b>1. Case Number :</b>                 | <b>0185-24</b>   |
| <b>2. Advertiser :</b>                  | <b>Australian Department of Climate Change, Energy, the Environment and Water (DCCEEW)</b> |
| <b>3. Product :</b>                     | <b>Energy/Resources</b>  |
| <b>4. Type of Advertisement/Media :</b> | <b>Mail</b>  |
| <b>5. Date of Decision:</b>             | <b>28-Aug-2024</b>   |
| <b>6. Decision:</b>                     | <b>Dismissed</b>   |
| <b>7. IR Recommendation:</b>            | <b>Reconfirm the Original Decision</b>   |

## 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 pamphlet advertisement features the title, "Powering Illawarra's future" with the text "Final area for offshore wind announced". The front page includes a QR code to use to find more information and an image of an ocean with the caption, "Image Digital rendering to illustrate how offshore wind turbines may look 20km from shore".



## THE COMPLAINT

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

*I believe that without Advertising Standards, we are being manipulated and ostensibly lied to. I also believe that the government and any of its departments should be held to the same standard as any commercial business. Therefore, on receiving the leaflet from the Department of Climate Change, Energy, the Environment and Water, I have to say I was shocked at what was presented pertaining to be truthful and factual, especially since it pertains to Environmental Aspects and Environmental Claims.*

*I will deal with each specific aspect concerning the brochure in the next part. However, the front cover raised particular concerns, even though it had a disclaimer. Since it is clearly breaching this point, "shall not be misleading or deceptive or be likely to mislead or deceive."*

*Firstly, the scale and detail of the turbines is based on no factual analysis since there are formulas that derive the height and scale of objects from shore. The representation does not follow that.*

*Secondly, they are not even real wind turbines, they are pencil drawings that have been scaled up. They do not represent real item in any way, especially concerning the width of the turbines. Also six base stations are supposed to be in the mix, the size of oil rigs, not one is visible.*

*I have added a true-scale rendering of wind turbines 20km from shore.*

*If this disclaimer is seen a 'get out' why even bother putting turbines there?*

*I will address the rest of the brochure that is:*

- *vague, ambiguous or unbalanced.*
- *is not supported by evidence that is current and reflects legislative, scientific and technological developments*
- *does not 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. Relevant information should be presented together.*
- *Does not reflect the level of scientific or authoritative acceptance of matters relating to any claim; claims should not imply wide acceptance if this is not the case. Where evidence is inconclusive this should be reflected in the Advertising or Marketing Communication.*
- *Also, it does not clearly explain the significance of the claim.*

## THE ADVERTISER'S RESPONSE

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

*The complaint relates to a brochure developed by the Department of Climate Change, Energy, the Environment and Water (DCCEEW), to support community consultations in the Illawarra region of New South Wales (NSW) being considered for potential offshore wind development.*

*The community was consulted on the proposed Illawarra area during a public consultation process from 14 August to 15 November 2023.*

*The department identified a need for enhanced community outreach and consultation about the government's regulatory process and offshore wind for the Illawarra region. This was based on experience from consultation for three previous offshore wind area proposals (Gippsland and Southern Ocean in Victoria, and Hunter in NSW), and considering the increase in misinformation regarding offshore wind in Australia. Information about the consultation was shared on department channels, including the DCCEEW website and social media channels. Paid promotion was also undertaken in local newspapers and radio, and social media. At the time of the release of the proposed area, 157,000 flyers were delivered to local households and businesses near the proposed area to provide information regarding the proposal, the government's regulatory process and how people can make a submission.*

*Following community consultation, on 15 June 2024 the Minister for Climate Change and Energy announced the declaration of an area in the Pacific Ocean off the Illawarra for offshore renewable energy, including offshore wind.*

*Following this declaration, a second brochure (the subject of this complaint) was distributed to 157,000 households and businesses near the declared area from 17 June 2024. It provided notification to the community regarding the declaration of the area and next steps under the regulatory process, further information regarding offshore wind, as well as linking to [detailed online information](#) about offshore wind.*

*The complaint alleges breaches of the following AANA Environmental codes:*

*1 Truthful and Factual*

*a) not misleading or deceptive*

*c) extent of environmental benefit*

*2 Genuine Environmental Benefit*

*a) relevant, specific and clearly explained*

*c) not imply social acceptance*

*3 Substantiation*

*a) claims able to be substantiated and verifiable*

*The brochure does not breach the AANA Environmental codes in that it is:*

- *truthful and factual*
- *sets out the community benefits of offshore wind and the results of community consultations*
- *provides links to online information with substantiated information.*

*The complaint misunderstands the status of the declaration by implying that the declaration breaches current environmental law. The complaint misrepresents the best scientific information on the impacts and benefits of offshore wind. It further misrepresents the purpose and accuracy of visualisations included in the brochure and online.*

*A detailed response to each complaint is provided below.*

***Complaint: The announcement on the proposed site in the Illawarra was made late on Friday 14 June to avoid the main news cycle. The brochure was in my letter box on the Monday or Tuesday after.***

***Response:*** *The media release from the Minister for Climate Change and Energy, the Hon Chris Bowen MP was issued on Saturday 15 June 2024, [Joint media release: Reliable renewables to power regional jobs and provide energy security for homes and industry, with an offshore wind zone declared off the Illawarra | Ministers \(dceew.gov.au\)](#). There was an event in the Illawarra on Saturday 15 June 2024 at which the Minister announced the declaration of the Illawarra offshore wind area. The brochure was distributed to local residents from Monday 17 June.*

*Decisions by media outlets to report on the announcement prior to the Minister's media release being issued, or the Minister's announcement media conference, are beyond the control of the department.*

***Complaint [internal brochure pages]:***

- *"Distance from shore: More than 20km in response to community concerns". This breaches 2.iv which states "not imply that a product or service is more socially acceptable on the whole." It is an untruth since when this was open to public consultation over 14,200 people submitted with 65% voting against.'*
- *"Avoids significant environmental areas." This breaches 2.viii "does not 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". Specifically the area identified breaches the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act).*

**Response:** The brochure and [linked website](#) clearly set out the consultation process and the number of submissions received, along with the consultations held with local communities, Commonwealth, state and local governments, First Nations people and existing industries including shipping, defence, fishing, and other marine users.

Over the course of consultation community members raised concerns regarding:

- environmental impacts, particularly on whales and birds
- visual amenity
- the safe management of shipping to and from the Port of Kembla
- impacts on commercial and recreational fishing.

Submissions also supported:

- a local source of clean, renewable energy
- action to address climate change
- employment opportunities and potential benefits to the local community and First Nations people from this new industry.

Submissions received were reviewed to ensure that the range of different comments and issues raised were identified, and not simply on the basis of support or opposition. Submissions received from organisations or groups represented a large number of members (sometimes in the thousands), as compared to submissions received from individuals. The public submissions and a summary of submissions is [available online](#).

Following consideration of the feedback the Minister for Climate Change and Energy declared an area which:

- is smaller than originally proposed
- is 20 km offshore to reduce visibility from the coast (10 km further out than originally proposed)
- allows space for the safe management of shipping to and from Port Kembla
- avoids significant environmental areas including marine parks, a Biologically Important Area for the Little Penguin, Shelf Rocky Reef Key Ecological Feature and Southern Right Whale migration and reproduction area, and
- is large enough to support development of offshore wind in the Illawarra.

The declaration of the area is the start of a multi-year planning process that will require compliance with environmental legislation. This process is summarised in the brochure and [set out in detail](#) online.

Developers of future offshore wind project proposals must undertake extensive environmental assessments and obtain approval under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act). This includes rigorous assessment of any impacts, including to whales and other marine life. Project proposals that have unacceptable environmental impacts will not be able to proceed to construction. Where the Minister for Environment is not satisfied that the studies submitted are adequate or do not demonstrate that a project will be able to avoid or mitigate

*environmental impacts to an acceptable level, approval under the EPBC Act will not be provided and a project will be unable to proceed to construction.*

*The declaration of an area has no environmental impact – it defines an area where development may occur subject to licensing processes, further investigations, assessments, consultation, and approvals. The declaration does not permit or authorise any activity to occur. As the declaration has no environmental impact, it cannot breach the EPBC Act.*

**Complaint [back cover – community benefits]**

- *Reliable, clean and secure energy. This breaches 1.ii, as it is “vague, ambiguous or unbalanced.” Namely, it doesn’t cover the fact of non-production [sic] of wind power if no wind. It does not cover any ocean degradation or other effects on the environment such as light pollution.*
- *consistent renewable energy when other sources are not available. This breaches 1.iv as it is not supported by evidence that is current and reflects legislative, scientific and technological developments. Namely, it doesn’t cover the fact there is no energy if the wind doesn’t blow. It gives no guidance to Scope 1 or Scope 2 emissions for the life of the installation.*
- *reduced pollution, including greenhouse gas emissions, to help combat climate change. This breaches 1.viii as it does not 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. Again, does not cover scope 1 or 2 emissions.*

**Response:** *The brochure is factual and detailed information is provided in the linked website.*

[Offshore wind is reliable, secure and clean.](#) *Offshore wind turbines are a proven commercial technology, with significant amounts of deployed capacity across the world. The Illawarra region is well suited for offshore wind due to a range of factors including strong, consistent winds. Offshore wind has [10 – 15% more capacity](#) than an equivalent onshore wind farm.*

*The complainant is incorrect about the direct emissions (scope 1) and indirect emissions (scope 2) from offshore wind turbines. As explained online, [offshore wind farms save more carbon in their operations than they emit during their manufacture.](#) Working out how long it takes for a turbine to displace the amount of carbon used in its manufacture, operation and decommissioning is called the ‘carbon payback’ period. The carbon payback period of offshore wind turbines can vary depending on several factors such as turbine type and location. Studies have determined the carbon payback period for offshore wind turbines ranges from 5 to 12 months.*



Offshore wind turbines have a normal lifespan of around 25 years. It may be possible to extend their useful life to 30 to 40 years with enhanced maintenance. Therefore, after the carbon payback period, offshore wind turbines can generate clean energy for many years with virtually no emissions, significantly offsetting any carbon produced during their manufacture.

**Complaint [front cover image]** ... the front cover raised particular concerns, even though it had a disclaimer. Since it is clearly breaching this point, “shall not be misleading or deceptive or be likely to mislead or deceive.” Firstly, the scale and detail of the turbines is based on no factual analysis since there are formulas that derive the height and scale of objects from shore. The representation does not follow that. Secondly, they are not even real wind turbines, they are pencil drawings that have been scaled up. They do not represent real item in any way, especially concerning the width of the turbines. Also six base stations are supposed to be in the mix, the size of oil rigs, not one is visible. I have added a true-scale rendering of wind turbines 20km from shore.

**Response:** Visualisations were produced by the department in response to community requests for visual representations of offshore wind turbines. They are intended as a generic representation of turbines based on the largest currently in operation at present, not as a depiction of an operational offshore wind farm. Details on the number and size of offshore substations (base stations) will not be available until feasibility studies are undertaken to determine the number and size of turbines for an approved project. The language on the flyer and the department’s website clearly states that images depict what offshore wind turbines may look like, and does not purport to depict an operational offshore wind farm.

Visualisations are necessary as there are no existing offshore wind farms in Australia. The DCCEE website sets out all [assumptions used in the development of images](#) showing what offshore wind turbines in the declared Illawarra offshore wind area may look like:

- The images are based on a grid of turbines with 2 km by 2 km spacing
- The modelled turbines are based on the United States National Renewable Energy Laboratory’s 15 MW offshore wind turbine reference model as well as the largest wind turbine on the market today.
- The reference turbines in the imagery have the following characteristics:
  - Total height (tip height): 268 m
  - Hub height (height to turbine nacelle): 150 m
  - Blade length (radius of turbine): 118 m
  - Minimum blade height above sea level: 30 m

The source images are taken using a camera with a full frame (35.6mm x 23.8mm) sensor, and a lens with a 50 mm focal length. This is generally accepted as the image format most closely representing what the human eye sees and is therefore recommended as the specifications for wind turbine visualisations.

The turbine visualisations are generated using [WindPro Photomontage](#). This is an industry standard software package for generating visual renders of wind turbines. The rendering process uses inputs of geolocated photos, digital elevation models of terrain, and geolocated model turbines using the specifications set out above and on the [DCCEEW website](#).

Any prospective developer that receives a feasibility licence will undertake a range of scientific studies to determine the optimal location, size and arrangement of turbines.

Prospective developers will also need to consult on the location and placement of any future turbines as part of their licence requirements. It is likely individual projects will differ from the visualisations shown.

Real-world visibility will be dependent on factors such as time of day, cloud cover, atmospheric conditions such as mist or haze, as well as the exact location, size, orientation, and layout of turbines.

No information is available on who developed the alternative visualisation provided by the complainant, or what assumptions it is based on. It appears to be based on outdated information, with wind turbines assumed to be located 10km from the shoreline (see [“Will I Be Able to See the Offshore Turbines?” | Responsible Future](#)). As noted above, turbines will now be a minimum of 20km offshore. The DCCEEW website notes the distance from the shore to the declared area for a number of localities:

- Bald Hill 20 km
- Stanwell Park 21 km
- Thirroul Beach 22 km
- Sandon Point 22 km
- Bulli Rockpool 22 km
- Bellambi Point 21 km
- Wollongong Lighthouse 22 km
- Port Kembla (outer harbour boat ramp) 21 km
- Shellharbour (South Beach) 23 km
- Minnamurra Point 24 km
- Kiama Lighthouse 25 km
- Gerringong (Werri Beach) 30 km
- Culburra Beach 48 km

### **Additional response**

The Department of Climate Change, Energy, the Environment and Water note that the Community Panel has requested additional information and substantiation of the below claims so that they can be clearly understood by the consumer:



- 1. One rotation of one offshore wind turbine provides as much energy as an average rooftop solar installation generates in one day.*
- 2. Offshore wind offers reliable, clean, secure and consistent renewable energy when other sources aren't available.*
- 3. The government is investing in targeted science to improve the environmental data used in decision making.*
- 4. Offshore wind farms reduce pollution, including greenhouse gas emissions, to help combat climate change.*

*The department's response to these claims is detailed below:*

### ***1. Energy provided by one rotation of one offshore wind turbine***

*The department has compared the amount of energy generated by one rotation of an offshore wind turbine to a rooftop solar installation to give the community a familiar reference point.*

*For any electric power generator, total energy generated over time is measured in megawatt-hours (MWh) or kilowatt-hours (kWh): 1MWh = 1,000 kWh.*

*The department uses the International Energy Agency (IEA) 15 MW Reference Wind Turbine (RWT) for offshore wind energy modelling calculations. The rotation speed of the RWT is 7.5 revolutions per minute (rpm) at full power.*

*A 15 MW wind turbine operating continuously at full power for 60 minutes generates 15 MWh, equal to 15,000 kWh. Therefore, the RWT generates 250 kWh per minute (15,000 kWh / 60 min), and one rotation of the RWT produces 33.33 kWh energy output (250kWh / 7.5rpm)*

*The alternating current (AC) energy output of solar power systems is calculated by multiplying the direct current (DC) capacity of the system, the average peak sun hours in the location where the system is installed, and the overall system efficiency.*

*The average DC capacity of a rooftop solar power system in Australia is approximately 8.8 kW (Clean Energy Australia Report 2023). In Wollongong, a typical rooftop solar power system receives approximately 4.8 peak sun hours per day averaged over a calendar year. After system losses such as PV panel shading, resistive losses in wiring and connectors, DC to AC conversion etc, a typical rooftop solar installation operates at approximately 80% (0.8) overall system efficiency.*

*An average rooftop solar system in Wollongong therefore produces approximately 33.79 kWh energy output per day (8.8 kw x 4.8 peak sun hours x 0.8 efficiency).*

*Therefore, one rotation of one offshore wind turbine generates 33.33 kwh which is equivalent to the amount of energy an average rooftop solar installation generates in one day (33.79 kwh).*

## **2. Offshore wind offers reliable, clean, secure and consistent renewable energy when other sources aren't available.**

*The Australian Energy Market Operator (AEMO) manages the National Electricity Market (NEM) which provides electricity to customers on the east coast and in southern states of Australia.*

*AEMO defines reliability as the ability of the electricity system to produce and transport adequate electricity to meet consumer demand. Similarly, the electricity system is secure if it is operating within defined technical limits and can be returned to within those limits even if a major power system element is disconnected.*

*Australia's electricity laws require that AEMO plan the power system in a way that helps governments achieve targets that reduce greenhouse gas emissions, as well as being secure and reliable.*

*About 90% of Australia's coal fired power stations are planning to retire by 2035. This may impact the reliability and the security of the NEM. Over 24% of New South Wales's electricity in the last 12 months was generated by renewables ([AEMO, 2024](#)). More renewable energy, from sources such as offshore wind, will be needed to replace retiring coal fired power stations, to mitigate the risks of reliability gaps, and to achieve Australia's target of 82 per cent renewables by 2030.*

*Wind resources offshore are stronger and more consistent than winds onshore, and offshore wind turbines are much larger pieces of infrastructure compared to onshore wind turbines. Therefore, offshore wind turbines are a more reliable source of electricity and can generate more electricity than onshore wind turbines.*

*Solar and wind complement each other with solar generating energy during the day and wind able to generate energy throughout the night. A mix of renewables contributes to increased diversity in energy generation which makes the NEM more reliable and secure.*

*See the answer to question 4, for more information on why offshore wind is clean.*

## **3. The government is investing in targeted science to improve the environmental data used in decision making**

*The Australian Government is investing in research about the potential environmental impacts of offshore wind.*

*This will ensure our decision makers and the offshore wind industry have the best available information to inform their decisions. Research is currently being conducted by the National Environmental Science Program, including projects on Southern Right Whales, Blue Whales and migratory shorebirds.*

*In addition, the Australian Government is investing \$134.2 million to strengthen and streamline environmental approval decisions on priority projects, including renewables and critical minerals projects. This includes more than \$65 million for targeted scientific studies to improve environmental data and regulatory guidance used in decision-making. This will help to close ecological knowledge gaps which are slowing the delivery of renewable energy projects. For example, it will provide a better understanding of the impacts on birds and marine life, such as whales, from wind farms, and inform guidelines on how to best avoid, mitigate and regulate these impacts.*

#### **4. Offshore wind farms reduce pollution, including greenhouse gas emissions, to help combat climate change.**

*Over the past 12 months in NSW, electricity has been generated from the burning of coal (72%), solar (11%), onshore wind (9%), hydro (4%), gas (2%) and other (2%) ([AEMO, 2024](#)).*

*The generation of electricity from a coal fired power station emits thousands of kilograms of pollutants per year into the atmosphere including carbon dioxide, nitrous oxides, sulphur dioxides, fine particulates etc. The short term phases of manufacture, construction and decommissioning of offshore wind farms generates pollutants including carbon dioxide, however, there are no ongoing emissions from offshore wind farms when they are operational and generating energy.*

*Fossil fuels, including coal, are known to be one of the largest contributors to carbon dioxide emissions, which is a cause for global warming and climate change. Using electricity from offshore wind to replace electricity from coal fired power stations will result in lower emissions of pollutants, including carbon dioxide which leads to climate change.*

*The time taken for a wind turbine to displace the amount of carbon dioxide generated in its manufacture, operation and decommissioning is called the payback period. Studies have shown that the payback period for offshore wind turbines range from 5 to 12 months.*

*Offshore wind turbines have a lifespan of around 25 years but can be extended to 30-40 years with proper maintenance. Therefore, after the carbon payback period, offshore wind turbines can generate clean energy for many years with virtually no emissions, significantly offsetting any carbon produced during their manufacture.*

*The Australian Government has committed to lifting renewable energy supply to 82 per cent by 2030. It is intended that offshore wind will work alongside other forms of*

*renewable energy, such as solar and onshore wind, to secure Australia's energy supply and help us achieve net zero emissions of greenhouse gases by 2050.*

## **THE DECISION**

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 misleading environmental claims.

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

### **Does the advertisement make an Environmental Claim?**

The Panel considered whether the advertisement made an Environmental Claim.

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

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

The Panel noted that the advertisement was a brochure about a proposed development which made a number of statements about the environmental impact.

The Panel noted that the advertisement makes the following Environmental Claims:

- **Claim one:** The wind turbines will be placed more than 20km from shore in response to community concerns and to minimise visual impacts. This includes a visual representation of what the wind turbines may look like 20km from shore. (**Distance and Scale Claim**)
- **Claim two:** One rotation of one offshore wind turbine provides as much energy as an average rooftop solar installation generates in one day (**Rotation Energy Claim**)
- **Claim three:** The area where the turbines will be placed avoids significant environmental areas (**Placement Claims**)

- **Claim four:** Offshore wind offers reliable, clean, secure and consistent renewable energy when other sources aren't available (**Reliable and Clean Claim**)
- **Claim five:** The environment will be protected, and companies granted feasibility licences must undertake environmental assessments, obtain environmental approval before any projects can proceed, and avoid or mitigate any environmental impacts. (**Environmental Protection Claim**)
- **Claim six:** The government is investing in targeted science to improve the environmental data used in decision making (**Targeted Science Claim**)
- **Claim seven:** offshore wind farms reduce pollution, including greenhouse gas emissions, to help combat climate change (**Reduce Pollution Claim**)

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

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

*"It is not intended that legal tests be applied to determine whether advertisements are misleading or deceptive, or likely to mislead or deceive, in the areas of concern to this Code. Instead, consideration will be given as to whether the average consumer in the target market would be likely to be misled or deceived by the material."*

The Panel considered that the average consumer in the target market for this advertisement would be adults living in the local community, who received the pamphlet in the mail.

The Panel noted the complainant's concern that the brochure is "vague, ambiguous, or unbalanced" and is "not supported by evidence that is current and reflects legislative, scientific and technological developments".

Claim one – Distance and Scale Claim

The Panel noted the claim that the wind turbines will be placed more than 20km from shore in response to community concerns and to minimise visual impacts.

The Panel also noted that this claim was supported by a visual representation of what the wind turbines may look like 20km from shore.

The Panel noted the complainant's concern that the graphic does not accurately represent what the wind turbines will look like 20km from shore and does not say anything about the six base turbines which are the size of oil rigs.

The Panel noted the advertiser's response that the visualisations on the websites are renderings by necessity, as there are no existing offshore wind farms in Australia to use images of. The Panel further noted the advertiser's response that the advertiser's website sets out all assumptions used in the development of the images including the measurement of the website and the process used to ensure that the renderings were as accurate as possible.

The Panel noted that image of the turbines in the advertisement included the caption, "Digital rendering to illustrate how offshore wind turbines may look 20km from shore.", as well as a QR code and link to further information on the advertiser's website.

The Panel noted that the website provided further information on how this visualisation was created, as well as the limitation to the rendering such as the location, size and arrangement of turbines not being known or approved as yet.

The Panel considered that the advertiser had taken reasonable steps to create the visualisation and to provide further information detailing the limitations of the visualisation.

The Panel considered that an average consumer in the target market would not be misled or deceived by the claim.

#### Claim two – Rotation Energy Claim

The Panel noted the claim that one rotation of one offshore wind turbine provides as much energy as an average rooftop solar installation generates in one day.

The Panel noted that the advertiser's response which details the process used to make these calculations.

The Panel noted the website linked to from the brochure includes a page titled "offshore wind facts" and the following information:

*"Offshore wind is a source of high-capacity, reliable renewable energy. In the UK, which has a total installed capacity of 13.7 gigawatts of offshore wind energy, offshore wind is expected to produce enough electricity to meet the needs of nearly half of UK homes by the end of 2023. The first offshore wind farm started operating in the UK in 2000.*

*The term capacity factor indicates how fully a plant's capacity is used, depending on the wind conditions. Improvements in turbine technology and wind conditions further offshore can improve capacity factor. Capacity factors are generally 10 to 15% higher for offshore wind relative to onshore wind."*



The Panel considered that the advertiser had provided enough information to explain how these calculations had been made.

The Panel considered that an average consumer in the target market would not be misled or deceived by the claim.

#### Claim three – Placement Claim

The Panel noted the claim that the area where the turbines will be placed avoids significant environmental areas.

The Panel noted the advertiser's response that the advertisement and linked website material clearly shows that care has been taken when selecting the site to avoid significant environmental areas including marine parks, a biologically important area for the little penguin, Shelf Rocky Reef key ecological feature and Southern Right whale migration and reproduction area.

The Panel also noted the advertiser's response and information in the brochure and website states that this is the start of a multi-year planning process that requires compliance with environmental legislation.

The Panel considered that the advertiser had provided details as to how significant environmental areas would be avoided and considered that an average consumer in the target market would not be misled or deceived by the claim.

#### Claim four – Clean & Renewable Energy Claim

The Panel noted the claim that offshore wind offers reliable, clean, secure and consistent renewable energy when other sources aren't available.

The Panel noted the advertiser's response provides links to the advertiser's website which provides further information supporting the claims made in the advertisement, and details that this claim was made based on information from the Australian Energy Market Operator.

The Panel noted the website linked to from the brochure includes a page titled "offshore wind facts" and the following information:

*"Working out how long it takes for a turbine to displace the amount of carbon used in its manufacture, operation and decommissioning is called the 'carbon payback' period. The carbon payback period of offshore wind turbines can vary depending on several factors such as turbine type and location. A number of studies determined the carbon payback period for offshore wind turbines ranges from 5 to 12 months.*

*Offshore wind turbines have a lifespan of around 25 years but can be extended to 30-40 years with proper maintenance. Therefore, after the carbon payback period, offshore wind turbines can generate clean energy for many years with virtually no emissions, significantly offsetting any carbon produced during their manufacture.”*

The Panel considered that the advertiser had provided sufficient information to support the Environmental Claim and an average consumer in the target market would not be misled or deceived by the claim.

#### Claim five – Environmental Protection Claim

The Panel noted the claim that the environment will be protected, and companies granted feasibility licences must undertake environmental assessments, obtain environmental approval before any projects can proceed, and avoid or mitigate any environmental impacts.

The Panel noted the advertiser’s response that developers must undertake extensive environmental assessments and obtain approval under the Environment Protection and Biodiversity Conservation Act 1999, which will be reviewed by experts from the Nature Positive Regulations Division of the department.

The Panel considered that the advertisement and website provided clear information about the advertiser’s plans to protect the environment and steps developers will need to take to ensure the environment is protected.

The Panel considered that an average consumer in the target market would not be misled or deceived by the claim.

#### Claim six – Targeted Science Claim

The Panel noted the claim that the government is investing in targeted science to improve the environmental data used in decision making

The Panel noted that the advertiser’s website outlines the technologies and research used by the advertiser in assessing environmental impacts. The Panel also noted the advertiser’s response detailing the current programs the advertiser has invested in, and the amount of money the Australian Government is currently investing in environmental approval decisions.

The Panel considered that an average consumer in the target market would not be misled or deceived by the claim.

#### Claim seven - Reduce Pollution Claim

The Panel noted the claim that offshore wind farms reduce pollution, including greenhouse gas emissions, to help combat climate change.

The Panel noted the advertiser's response which details the payback period of wind turbines – the amount of time taken to displace the amount of carbon dioxide generated in its manufacture, operation, and decommissioning.

The Panel considered that most people in the target audience would recognise that reducing greenhouse gas emissions will help combat climate change.

The Panel considered that an average consumer in the target market would not be misled or deceived by the claim.

### **1 a) Conclusion**

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

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

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

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

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

The Panel noted the complainant's concern that the brochure does not represent the attributes or extent of the environmental benefits or limitations as they relate to a particular aspect of the product in a manner that can be clearly understood by the consumer.

For the reasons provided under Section 1 a) above, the Panel considered that the advertisement does represent the attributes or extent of the environmental benefits or limitations in a manner that can be clearly understood by the consumer qualifications.

## **Section 1 c) conclusion**

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

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

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

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

The Panel noted the complainant’s concerns that the advertisement does not reflect the level of scientific or authoritative acceptance of matters relating to the claims.

Consistent with the discussion under Section 1a the Panel considered that the Environmental Claims in the advertisement are relevant and specific and clearly outline the specifics of the Claim and adequately explains the environmental benefits to its target audience.

### **2 a) Conclusion**

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

### **2(c) Environmental Claims not imply that a product or service is more socially acceptable on the whole.**

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

*“Consideration should be given to the relationship of the environmental claims to other aspects of a product/service. For example, advertisers should use care not to imply a product or service is more socially acceptable overall by implying another non-environmental attribute/detriment is of lesser importance.”*

The Panel noted the complainant's concern that the claims in the advertisement imply wide acceptance in the community when this is not the case.

The Panel noted the advertiser's response that the brochure is one method of communication which points consumers to further information available on the advertiser's website. The Panel also noted the advertiser's response that the claims in the advertisement were made after public consultation with over 14,200 people which is reflected in the material in the advertisement and on the advertiser's website.

Consistent with the discussion under Section 1a the Panel considered that the Environmental Claims in the advertisement do not incorrectly imply that a product or service is more socially acceptable on the whole.

## **2 c) Conclusion**

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

## **3 a) Environmental Claims in Advertising or Marketing Communication...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.*

*Factors to consider include:*

- *The use of broad or unqualified general claims of environmental benefit should be avoided unless supported by a high level of substantiation or associated with a legitimate connection to an authoritative source. Examples of claims that may be problematic unless properly qualified include: "green",*

*“environmentally friendly”, “environmentally safe, “energy efficient”, “recyclable”, “carbon neutral, “renewable or “green energy”*

- *The use of unqualified general claims of environmental benefit should be avoided unless supported by a high level of substantiation or associated with a legitimate connection to an authoritative source.”*

The Panel noted the complainant’s concern that the advertisement does not clearly explain the significance of the claim and is not supported by evidence that is current and reflects legislative, scientific and technological developments.

Consistent with the discussion under Section 1a the Panel considered that the Environmental Claims in the advertisement were substantiated and verifiable.

### **3 a) Conclusion**

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

#### **Conclusion**

Finding that the advertisement did not breach any other section of the Environmental Code the Panel dismissed the complaint.

#### **INDEPENDENT REVIEWER**

##### **Request for review**

Thank you for your response on case number 0185-24.

I would like the case re-reviewed with an independent panel, for the following reasons:

- there is a major flaw in the decision
- there was a flaw in the process
- there is new evidence available, which has significant bearing on the decision.

In summary:

##### There is a major flaw in the decision

My complaint centred around a pamphlet used to advertise the proposed windfarm off the Illawarra, not the website that supported it. I do not believe this has been adequately addressed.



### There was a flaw in the process

My complaint took 3 months to resolve, I was never contacted. Looking at the effort from the DCCEEW and in a conversation on the phone, (my six follow ups) it was my impression that they had more than one attempt to explain themselves. I don't think the basis of the complaint was critically examined, nor the responses from DCCEEW. Even basic googling refutes their justifications.

### There is new evidence available, which has significant bearing on the decision.

It also centred on the misrepresentation of the imagery this has not been satisfactorily addressed and will prove to be false.

The statement that the windfarm was moved due to community consultation will prove to be false.

### There is a major flaw in the decision

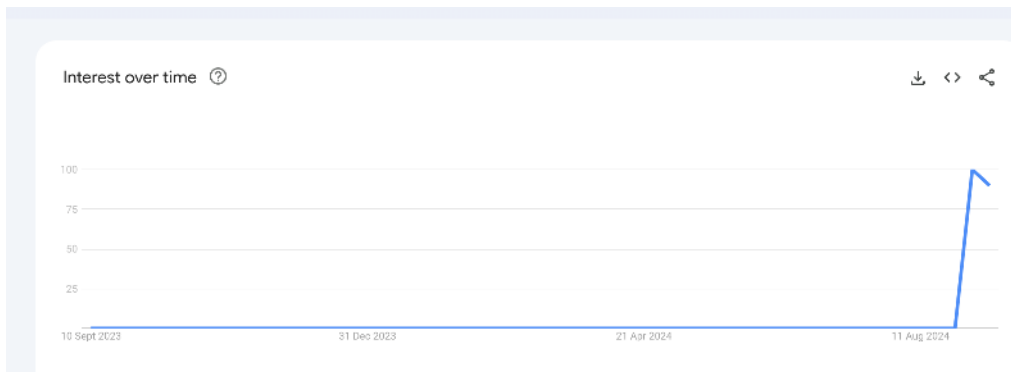
My complaint centred around a pamphlet used to advertise the proposed windfarm off the Illawarra, not the website that supported it. I do not believe this has been adequately addressed.

- Using your own language: "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."

Adding a QR code or link to a website, does not absolve the DCCEEW from making the claims in the pamphlet and explaining them elsewhere, which was their whole justification.

Firstly, I am pretty shocked that as the ANAA, you would think this reasonable. As you would be aware the average response rate to a pamphlet is between 0.5% to 2%. So, 98% would not go to the website and treat the claims, which are biased, not balanced and misleading, as fact.

Secondly, looking at google trends, in a simple search, it would appear there was little interest in going to the website. Here's a snapshot of interest in the DCCEEW – none.



Thirdly, the is not adequate for the audience many of which are elderly or have limited usage of the internet. In fact the whole delivery of information or lack of has been designed to ‘hide’ what is going on.

I quote from an interview at Community Consultation night, that *‘no online or social media was used to promote this’*, and they used *‘newspaper, radio and the flyers’*. Because they have to *‘appease a wide audience including the ‘elderly’*”. The local MP was there, and this was run by someone from the DCCEEW. So, in their own words they use this medium because they do not expect the elderly to go online. Therefore, the justification that all the inaccuracies can be dealt with online, is simply not credible, since it doesn’t meet the threshold for a specific audience.

In short, with the constant reference back online the response proves that the leaflet is misleading and inaccurate with the statements in makes in that medium.

So please go back to my original complaint and re-review the leaflet and my direct claims, as to what a normal person would perceive and your own advertising guidelines.

Distance and scale claim:

Firstly, these are wildly inaccurate. Secondly the response from the DCCEEW is weak since the say *Visualisations are necessary as there are no existing offshore wind farms in Australia.*

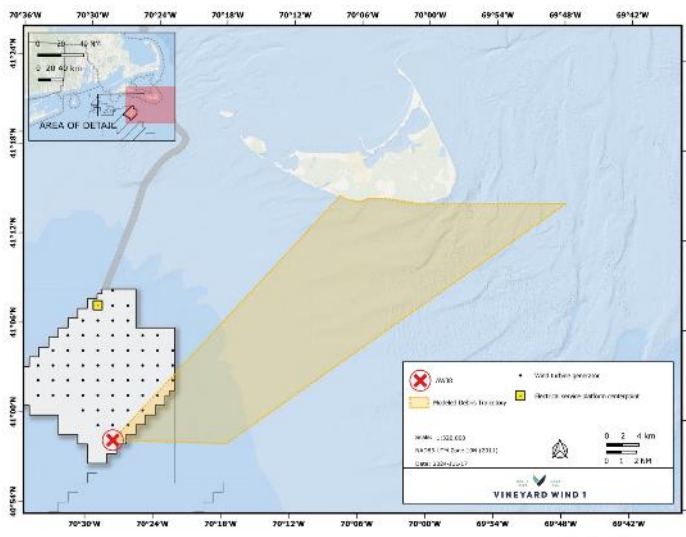
Yet, there are around the world. Vineyard Wind 1 is located in federal wind energy area OCS-A-0501, **15 miles south of Martha's Vineyard. 15 miles is 24kms from shore.**

Here they use Haliade-X turbines that are smaller than those proposed in the Illawarra.



Does the rendering look accurate now? No, it's patently false and misleading.

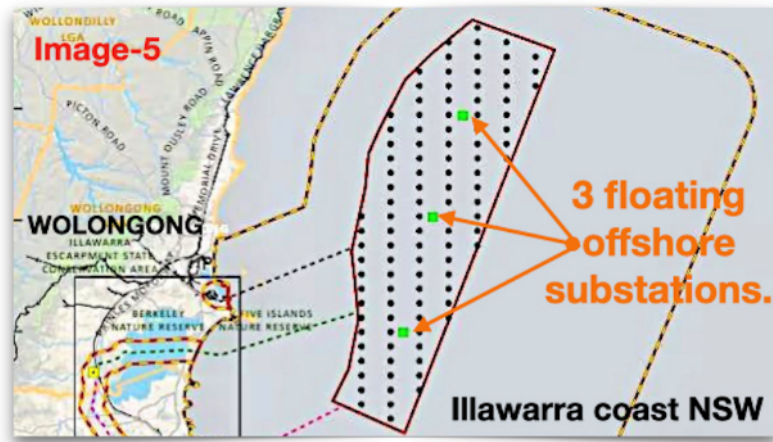
And here's a map proving scale



To the second inaccuracy from the DCCEW.

*Details on the number and size of offshore substations (base stations) will not be available until feasibility studies are undertaken to determine the number and size of turbines for an approved project.*

Well, here's a map with their position, why was this not used?



Simply, it is more dis-information from the dept.

To the statement Offshore wind is reliable, secure and clean

It is not reliable or secure or clean

A notable example is the MORECATS project in the Netherlands, which was shut down in 2019 due to technical issues.

Another example is the Wind DIRECT project in China, which was closed in 2020 due to environmental concerns.

Another example: Officials with Vineyard Wind and the turbine's manufacturer GE Vernova are investigating how the 107-meter blade folded over, but the project's been shut down indefinitely until federal regulators can figure out what went wrong.

Even from an area for generation of 1GW this is what you need:

- Nuclear → 3.3 km<sup>2</sup>
- Solar → 117-194 km<sup>2</sup>
- Wind → 673-932 km<sup>2</sup>

Which power source, Nuclear, Solar or Wind, do you believe is more environmentally friendly based on this data?

Rotation claim

How can this be accepted as fact when there's no methodology in the brochure?

Even the response from the DCCEEW is flawed:

*"Offshore wind is a source of high-capacity, reliable renewable energy. In the*

*UK, which has a total installed capacity of 13.7 gigawatts of offshore wind energy, offshore wind is **expected** to produce enough electricity to meet the needs of nearly half of UK homes by the end of 2023. The first offshore wind farm started operating in the UK in 2000.*

*The term capacity factor indicates how fully a plant's capacity is used, **depending** on the wind conditions. Improvements in turbine technology and wind conditions further offshore can improve capacity factor. Capacity factors are generally 10 to 15% higher for offshore wind relative to onshore wind."*

So even googling the latest statistics this assertion is false:

On average, energy that is provided by UK suppliers mostly comes from gas (around 41%). Renewable sources, such as wind power are used to produce around 30% of the energy provided while the percentage figures for coal and nuclear power respectively are around 13% and 11%.

So how can the figure be accurate?

#### Placement claim

Another misleading statement proven to be false due to new evidence

Thirdly, the statement that the area has been "moved to more than 20km in response to community concerns".

Firstly, as pointed the majority of submissions do not want this so it is already false. ."  
*It is an untruth since when this was open to public consultation over 14,200 people submitted with 65% voting against.'*

Secondly, let's define community, "a group of people living in the same place or having a particular characteristic in common."

So, let's go back to the information night, previously mentioned, and here's the reason the distances were changed. It's moved because of the shipping lanes and the department of defence in Nowra, not due to the community.

#### The other points examined

Again, NONE of the claims were clearly explained in the pamphlet and need the website which does not answer all the justification points sent through.

The brochure is misleading and should be treated as such.

#### **Independent reviewer's recommendation**

I do not recommend that the Community Panel review its decision in this matter regarding alleged breaches of the AANA Environmental Claims Code.

#### The initial complaint and Panel decision

Ad Standards received a complaint about a brochure published by the Australian Department of Climate Change, Energy, the Environment and Water ('the advertiser'). The brochure was titled 'Powering Illawarra's future'. 157,000 brochures were delivered to local households and businesses in the Illawarra region of New South Wales.

The brochure provided information about a Government announcement in June 2024 that a proposal for an offshore wind development near the Illawarra coastline had been cleared to proceed to the next stage of development, environmental evaluation and licensing approval. The Government announcement and distribution of the brochure followed a regional public consultation process that was held in August to November 2023.

The Ad Standards Community Panel accepted that the brochure made seven environmental claims. These were assessed by the Panel against five of the nine standards in the Environmental Claims Code:

- an environmental claim shall not be misleading or deceptive (section 1(a) of the Code)
- the environmental benefits of a claim shall be represented in a manner that can be clearly understood by the consumer (1(c))
- an environmental claim must be relevant, specific and clearly explain the significance of the claim (2(a))
- an environmental claim must not imply that a product or service is more socially acceptable on the whole (2)(c))
- an environmental claim must be able to be substantiated, verifiable and capable of evaluation (3(a)).

The Panel found that none of the seven environmental claims in the brochure breached any of those five standards. The Panel generally accepted the points made in the lengthy submission from the advertiser.

The discussion in the Panel's reasons mostly analysed the seven environmental claims against the first Code standard (misleading or deceptive). The Panel's reasoning on that standard was carried over in dismissing the complaint against the other four Code standards.

#### Request for review



The complainant has applied for review on each of the three grounds for independent review of a Panel decision:

- a substantial flaw in the Panel's process for making a decision
- a substantial flaw in the Panel's decision
- new and relevant evidence that could have a significant bearing on the Panel's decision.

The advertiser has made a short submission addressing new issues the complainant raised in the request for review.

#### Substantial flaw in process

The complainant is dissatisfied they were not contacted (by Ad Standards, it seems) in the three months taken to resolve the complaint. During that period the advertiser '*had more than one attempt to explain themselves*'. I take it the complainant is referring to the fact that the Community Panel decision includes a section, 'Additional response', which reproduces a second submission from the advertiser after the Community Panel '*requested additional information and substantiation*' of four claims made in the advertiser's initial submission.

I do not regard that process as a 'substantial flaw' in the Panel's decision. The complaint process is set out clearly on the Ad Standards website. It explains that both the complainant and the advertiser will have an opportunity to present their view. I do not think it is necessarily unfair or inconsistent with that process that the Panel asks an advertiser to substantiate one of its claims. This may in fact buttress the thoroughness of the Panel process.

The complaint process does not envisage that a complainant will have an opportunity to comment on an advertiser's response to their complaint. The independent review process provides an opportunity for that to occur.

The complainant also alleges, '*I don't think the basis of the complaint was critically examined*'. I take up this point below, where I express my view there was no substantial flaw in the Panel's decision.

#### Substantial flaw in decision, including relevant new evidence

I will address these two grounds together, as the request for review presents much the same arguments on both.

Five matters are separately raised in the request for review.

***The complaint was about a brochure, not a website:*** The complainant comments that the complaint was about a brochure and not the website that supports it. The complainant elaborates by observing that few people receiving a pamphlet will either

read it or follow through to a website, and backs up this point by referring to a Google snapshot.

The complainant rightly observes that a link to a website will only be justifiable if the information on the website is accurate and aligns with the claims in the brochure. The accuracy issue is examined below.

The complainant is also critical of the way the advertiser undertook consultation with the community, particularly the elderly. This is not a matter that can be separately considered in this review, which is concerned only with the adequacy of the Panel's assessment of the complaint about an advertisement.

The website is referred to twice in the brochure. The Panel decision referred to the website numerous times, both in noting the advertiser's references to it and in explaining some of the Panel findings that the environmental claims in the brochure did not breach the Code standards.

The advertiser's response to the request for review comments that it is routine for government and commercial advertising to link to websites to provide additional information to inform consumers and to provide a factual background to advertising claims. It would be impractical, the advertiser comments, to provide all relevant information in a single advertising product. The advertiser also observes that its own detailed analytics on website visits does not match the complainant's reliance on 'quick google trends' data.

The question arising in this review is whether the Panel has correctly addressed the complaint, which was about an advertising brochure. In my view there was no substantial flaw in the Panel's decision as to how it addressed the complaint issues and referred to the website.

The lengthy Panel reasons (nine pages) make it clear the Panel was assessing seven advertising claims in the advertiser's brochure. Each claim is separately examined and the discussion focusses on the language used in the brochure. The information on the website that is referred to in the Panel decision is mostly of a more technical nature that explains the claims made in the brochure. Overall, I do not see any flaw in how the Panel went about examining the complaint and explaining the Panel decision.

***The brochure contains an inaccurate image of the proposed windfarm:*** The complainant makes several related allegations: the depiction of the wind turbines is inaccurate; the depiction does not include the base stations; the overall visual impact from the coastline will be greater than the advertisement and website suggests; and the advertiser has misleadingly claimed that more accurate imagery cannot be provided at this stage. The complainant provides an image of an overseas windfarm to reinforce the complaint that the imagery was inaccurate.

This aspect of the complaint is referred to in the Panel's decision as the 'Distance and Scale Claim'. The Panel referred to the advertiser's explanation of the assumptions on which the images of the turbines were developed, and noted that more information was available on the website on how the visualisation was created. The Panel concluded that *'the advertiser had taken reasonable steps to create the visualisation and to provide further information detailing the limitations of the visualisation'*.

It is clear the complainant does not accept the advertiser's explanation as to how the wind turbines will appear from the shoreline. It is likely this debate will continue in other forums while the offshore wind development goes through other development, evaluation and licensing stages. It is possible that more precise (and possibly different) visualisations will be prepared and debated.

The immediate question, however, is different and narrower – was there a substantial flaw in the way the Panel assessed the complaint about the advertiser's environmental claim? In my view the Panel was justified in examining the way the advertiser addressed this issue in the brochure and the website, and in accepting the advertiser's explanation. The explanation was transparent as regards the evidence and assumptions on which it was based. There was no contradictory evidentiary or scientific analysis before the Panel. Consequently, my view is that there was no substantial flaw in the Panel's reasoning.

***The brochure wrongly claims that offshore wind is reliable, secure and clean:*** The Panel finding that the advertiser had not made a misleading or deceptive environmental claim on offshore wind energy was principally based on the explanation given on the advertiser's website to support its claim about 'offshore wind facts'. The Panel earlier explained that the test it applied, drawn from the AANA Practice Note to the Code, was whether an average consumer in the target market would be likely to be misled or deceived by the advertising material.

Applying that test the Panel considered that the advertiser had provided sufficient information to support its claims about offshore wind energy. The Panel also noted the complainant's assertion that the claims in the brochure were *'not supported by evidence that is current and reflects legislative, scientific and technological developments'*.

The complainant disputes the Panel finding by referring to three examples of offshore wind developments that were discontinued on technical and environmental grounds.

Overall, I do not think the complainant has taken this debate to another level, but has reinforced only that there is a vibrant public debate about windfarms and about this particular proposed development. It is likely the debate will be taken forward in other forums.

For present purposes, my view is that the complainant has not established there was a substantial flaw in the Panel's decision. Again, I think the Panel was justified in assessing the complaint about the environmental claim in the way that it did.

***The brochure makes an inaccurate claim about the capacity of an offshore wind farm:*** The complainant disputes an explanation given by the advertiser and relied upon by the Panel to explain the potential energy generation from an offshore windfarm. The complainant presents alternative figures relating to United Kingdom energy sources, derived from a Google search.

While the complainant disputes the accuracy of the advertiser's energy projections, my view is that the complainant has not established a substantial flaw in the Panel's reasoning. For example, the complainant has not pointed to any settled science before the Panel that it had ignored.

***The brochure wrongly explains why the location of the windfarm was changed:*** The complainant disputes the comment in the brochure that the proposed wind turbine site has '*moved more than 20km in response to community concerns*'. The complainant disputes this on two grounds – that a majority of the community surveyed were opposed to the windfarm (presumably at any distance); and that the reason for the move was not community concern but '*because of the shipping lanes and the department of defence in Nowra*'.

The Panel did not examine this issue other than to note the proposal to move the turbines beyond a distance of 20km.

On balance, my view is that it is unnecessary for this matter to be remitted to the Panel for further consideration. The brochure spells out the issue more fully by noting the large number of submissions and discussions with the community. The brochure comments that the proposed development was amended as a consequence, including to '*allow space for the safe management of shipping to and from Port Kembla*' and to '*avoid significant environmental areas*'.

I do not believe the Panel is likely to regard this aspect of the brochure as being misleading or deceptive and, accordingly, do not recommend that it be remitted to the Panel for further consideration.