



Environmental Defenders Office

3 April 2024

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ACCC
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Via email: rami.greiss@accc.gov.au

Complaint about potential greenwashing by Santos Ltd

1. We act for Comms Declare and Lock the Gate. Comms Declare represents more than 95 ad agencies and hundreds of communications professionals who have declared they will not promote:
 - the growth of fossil fuels
 - high greenhouse gas pollution as ‘business as usual’
 - deception, distraction or spin around science or climate actions.

Comms Declare encourages agencies to work for the good of the climate, in recognition that Australia is a major exporter of fossil fuels. It runs the annual F-list awards and the Fossil Ad Ban campaign¹.

Lock the Gate is a national grassroots organisation made up of over 120,000 supporters and almost 200 local groups who are concerned about risky coal mining, coal seam gas and fracking. These groups are located in all parts of Australia and include farmers, First Nations Peoples, conservationists and urban residents.

Their vision is of health, empowered communities which have fair, democratic processes available to them to protect their land and water and deliver sustainable solutions to food and energy needs. It is also to protect Australia’s national, cultural and agricultural resources from inappropriate mining and to educate and empower all Australians to demand sustainable solutions to food and energy production.

¹ The creative industries have helped fossil fuels for too long – it’s time to stop the promotion of pollution, www.commsdeclare.org.

2. Our clients request that the Australian Competition and Consumer Commission (**ACCC**) investigate whether statements made by Santos Ltd in its advertisement, an excerpt of which is found at **Annexure A (the Representation)**, is potentially in breach of ss 18, 29 and 33 of the Australian Consumer Law (**ACL**) (Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*) for the reasons set out below.

Statements made by Santos

3. The statements our clients are concerned about were made by Santos in a local paper, the Quirindi Advocate that reaches locals in the Narrabri and surrounding areas (see **Annexure A**). The target audience for the advertisement is the local community including farmer and Traditional Owners in the Narrabri region, many of whom are opposed to the project.

Representations

4. Our clients consider that the Statements, alone or in combination, represent that:
 - (i) Santos Narrabri Gas Project will keep the lights on providing essential electricity for households in NSW (**Lights on Representation**)
 - (ii) Santos Narrabri Gas Project is essential to deliver critical gas supply to the East Coast market (**Essential Gas Representation**).

(together, the **Representations**).

5. For the reasons set out below, our clients consider that the making of the Representations may constitute misleading or deceptive conduct in contravention of section 18 of the ACL. In the alternative, our clients consider that the Representations may also raise concerns in relation to sections 29 and 33 of the ACL.
6. We refer to the ACCC, Making Environmental Claims, - A guide for business, December 2023 (**Green Claims Guide**) and the relevant principles particularly:
 - (i) Principle 2: Have evidence to back up your claims, including reasonable grounds for making a future representation;
 - (ii) Principle 3: Do not hide or omit important information;
 - (iii) Principle 4: Explain any conditions of qualifications on your claim; and
 - (iv) Principle 5: Avoid broad and unqualified claims.
7. The reasons the representations are misleading or deceptive is:
 - (i) Santos Gas Project is unlikely to be used to generate electricity. In the past 12 months, NSW used gas for only 2% of its electricity generation and is unlikely to invest in significant amounts of gas generation due to the cost.

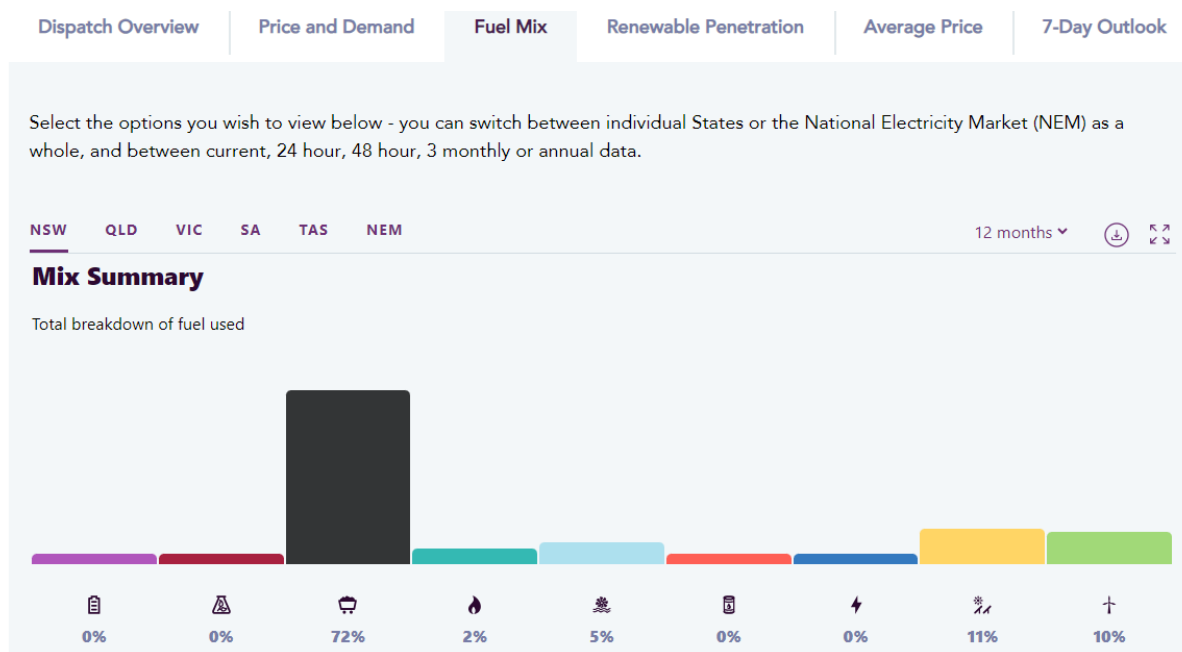
- (ii) The Santos Gas Project has yet to start operating and still faces significant issues before it can provide critical gas supplies to East Coast gas markets.

We have outlined below in more detail the reasons we allege the representations are false or misleading.

Reasons the representations are misleading

Lights on representation

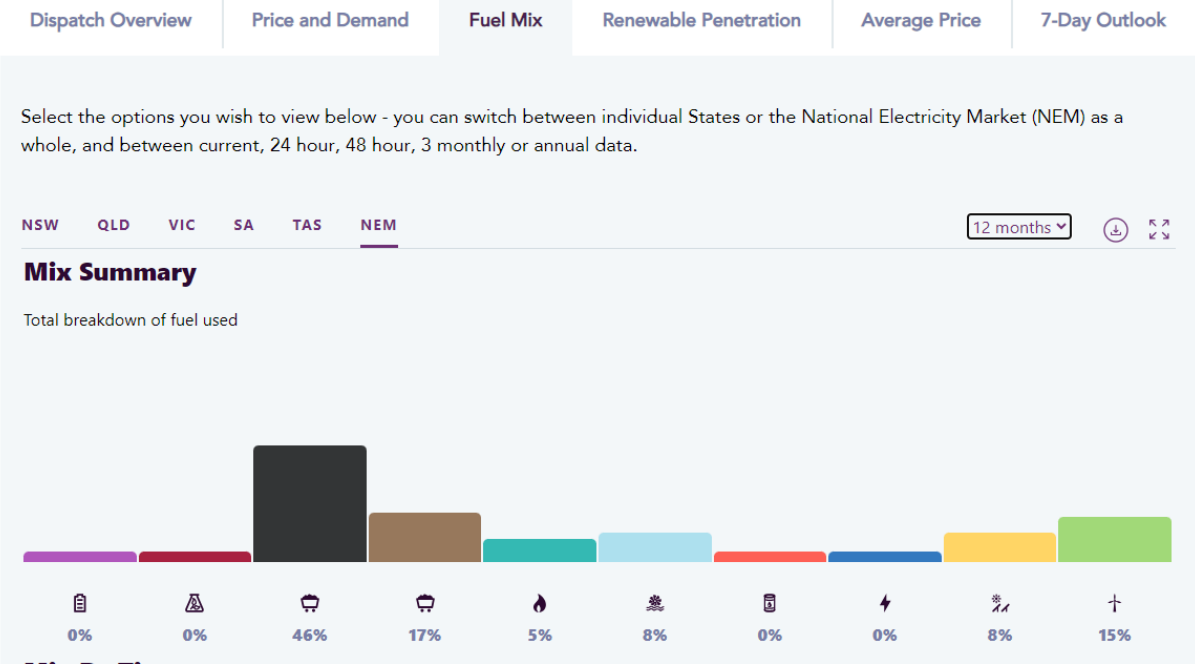
8. Santos makes a broad and unqualified claim in the advertisement that its gas will be keeping the lights on. The representation conveys the impression that gas will be used to generate electricity to keep on the lights in people’s homes, particularly in NSW. Relevantly, the advertisement is also in a local paper and targeted to a regional community affected by the project in NSW. Santos’s website makes a similar broad claim “Santos’s Narrabri Gas Project could supply NSW homes, small businesses, major industries and electricity generators with up to half the state’s natural gas needs and bring substantial economic benefits to Narrabri and the region”.² We note that the proposition on the website is much broader and relates to the overall use of gas as energy for the State rather than focusing on gas used to generate electricity. There are no limitations or qualifications relating to this claim.
9. The National Electricity Market keeps regular data on the fuel mix that supports electricity generation in each state.³ The most recent data for example for NSW shows the following:



² Santos, Narrabri Gas Project, <https://narrabrigasproject.com.au/about/narrabri-gas-project/>.

³ AEMO, Data Dashboard, <https://aemo.com.au/energy-systems/electricity/national-electricity-market-nem/data-nem/data-dashboard-nem>.

10. The Australian Energy Market Operator (AEMO) data raises a significant question as to whether Santos can argue has evidence or a reasonable basis for claiming that their gas will be keeping the lights on when the project is delivered. Based on the data, very little of NSW’s electricity or even the national electricity is generated with gas. When this breakdown of fuel used is changed to national figures in the chart above, the percentage becomes slightly higher at around 5% (see chart below). There is therefore insufficient evidence to support such a broad and unqualified claim that gas is keeping the lights on.



11. There are also significant demand changes expected as Australia undergoes its energy transition that suggests there is little basis for any future representation that gas will be used to keep the lights on. According to a report published by the Institute for Energy Economics and Financial Analysis, Gas’s Role in the Transition⁴, (IEEFA Report), gas usage for electricity generation has almost halved in recent years, dropping 47% from 2012-2022 and is expected to drop a further 34% to 2030. At the same time, renewable energy use for electricity has increased by 2.5 times, with AEMO forecasting this will grow to 83% by 2030.⁵ The report confirmed the AEMO’s data (produced above), that the amount of gas Australia needs for electricity generation by 2030 is very small, around 4%.⁶ As part of the shift to renewables, gas for baseload power is likely to close due to the cost, and renewables will be supplemented by gas peaking plants that will operate for 4-14% of the year, or possibly replaced by battery storage.⁷

⁴ IEEFA Gas’s role in the transition at pg. 3. Retrieved from [Gas's role in the transition | IEEFA](#).
⁵ IEEFA, [Gas Role in the Transition](#), pg. 3.
⁶ IEEFA, [Gas Role in the Transition](#), pg. 3.
⁷ National Energy Market, [https://opennem.org.au/facilities/nem/?selected=JEERB&tech=gas_ocgt&status=operating&size=more than 30 mw](https://opennem.org.au/facilities/nem/?selected=JEERB&tech=gas_ocgt&status=operating&size=more%20than%2030mw).

12. In light of the above data, there is insufficient evidence for Santos to make such a broad and unqualified representation. It is therefore highly likely to mislead the target audience of regional consumers that Santos’s gas project is mostly about providing gas for electricity generation.

Essential Gas representation

13. Santos also suggests in its Essential Gas representation that its Narrabri Gas project is essential to deliver critical gas supply to the East Coast market. As set out above, gas demand is tipped to fall due to the increased use and cheaper cost of renewables. AEMO in the 2024 Gas-Statement of Opportunities⁸ found:

“Since publication of 2023, Gas Statement of Opportunities, gas consumption has noticeably declined across all sectors, with emerging indications of fuel-switching from gas to electricity. The reduction in gas consumption has coincided with noticeably higher retail gas prices compared to recent years and some of the warmest winter temperatures on record. Forecast gas consumption for commercial, residential and industrial users is expected to decline over the outlook period to 2043.”

14. A recent report commissioned by the Grattan Institute⁹ (the Grattan Report) states that characterising gas as a “transition fuel” is redundant. Coal-fired electricity generators are not being replaced by gas when they are retired but by renewable energy and storage. In relation to industry, the Grattan Report states that there is no time to switch from coal to gas and then gas to renewable hydrogen. It has found that companies are instead waiting for zero-emissions alternatives to become cheaper.¹⁰

15. As stated above, the Narrabri Gas project is yet to commence and recently was the subject of Federal Court action by the Gomeroi People who are Traditional owners impacted by the Santos project.¹¹ The Gomeroi case has reaffirmed that there is a public interest in the mitigation of greenhouse gas emissions. The case considered what must be taken into account when assessing the public interest of a proposal. The National Native Title Tribunal now needs to reconsider its original decision which approved the future acts associated with the project. The future of the development of the project is therefore still unresolved. The pipeline to connect the gas to the market is also yet to be approved or built. Given the lack of certainty of the approval or timing of the project, it is unclear when or if gas supplies will in fact become operational.

⁸ AEMO 2024 Gas Statement of Opportunities at 6. Retrieved from [2024 Gas Statement of Opportunities \(aemo.com.au\)](https://aemo.com.au).

⁹ A. Reeve, E. Sucking and T Wood “Getting off gas: Why, how and who should pay?” 2023), pg. 6 available at: [Getting off gas: why, how, and who should pay? \(grattan.edu.au\)](https://grattan.edu.au).

¹⁰ A. Reeve, E. Sucking and T Wood “Getting off gas: Why, how and who should pay?” 2023), pg. 6 available at: [Getting off gas: why, how, and who should pay? \(grattan.edu.au\)](https://grattan.edu.au).

¹¹ *Gomeroi People v Santos NSW Pty Ltd and Santos NSW* (Narrabri Gas) Pty Ltd [2024] FCAFC 26.

16. AEMO identifies several major gas projects that will soon become operational, all which will improve the East Coast Gas supply network including Victoria's Western Outer Ring Main, East Coast Grid Expansion Stage 1 and 2, Iona Underground Storage facility, as well as additional production forecasts from Gippsland area.¹² There are also other projects under development in the area, such as Port Kembla gas-fired power station.¹³ There is therefore a likelihood that the project will not in fact be providing 50% of NSW gas supply as argued during the planning approval process, as other projects will come in faster to meet any small increase in demand for gas in the short term.

Potential legal contraventions

17. Section 18 of the ACL states:

A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

18. The statements are likely to also raise concerns about potential breaches of s29 of the ACL. Section 29 relevantly states:

(1) A person must not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services:

(b) make a false or misleading representation that services are of a particular standard, quality, value or grade; ...

(g) make a false or misleading representation that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits; or

(h) make a false or misleading representation that the person making the representation has a sponsorship, approval or affiliation.

19. Further, the statements are likely to raise concerns about potential breaches of s33 of the ACL.

Section 33 relevantly states:

A person must not, in [trade or commerce](#), engage in conduct that is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity of any [goods](#).

Is the newspaper advertisement in trade or commerce?

¹² AEMO, [2024 Gas Statement of opportunities](#), pg. 5.

¹³ Andrew Forrest's Squadron Energy quietly pulls plans for Port Kembla gas-fired power station, <https://www.abc.net.au/news/2023-11-23/andrew-forrest-squadron-energy-port-kembla-gas-fired-power/103143070>.

20. In order to establish a breach of the ACL, it is also necessary to show the conduct was in trade or commerce. Our clients are of the view that the advertisement is in trade or commerce for the reasons outlined below.

21. The legal test as to whether something is in trade or commerce is:

*the conduct of a corporation towards persons, be they consumers or not, with whom it ... has or may have dealings in the course of those activities or transactions which, of their nature, bear a trading or commercial character. Such conduct includes, of course, promotional activities in relation to, or for the purposes of, the supply of goods or services to actual or potential customers be they identified persons or merely an unidentifiable section of the public ...*¹⁴

22. We are of the view that the advertisement has a commercial character as it very much seeks to promote Santos to the local community as an important gas provider for NSW.

Request to Investigate

23. Our clients note the ACCC's Compliance and Enforcement Priorities for 2023-2034, which include 'consumer, product safety, fair-trading and competition concerns in relation to environmental claims and sustainability'.¹⁵ Our clients are of the opinion that Santos's behaviour potentially represents a 'false and misleading claim [that] undermine[s] consumer trust and reduce[s] confidence in the market' and therefore is referring it to the ACCC for investigation.¹⁶

24. Further, our clients note the ACCC's focus on environmental claims that may distort competition.¹⁷ Our clients are concerned that Santos's claims, which overstate the role of their gas in the market, may impact on competition in the energy market by reducing investment in, and development of renewable industries who are competing for market share with gas.

25. Lastly, our clients consider that an investigation into Santos's behaviour is aligned with the ACCC's investigation into industry or sector environmental and sustainability claims that may be false, misleading, or have no reasonable basis, often referred to as 'greenwashing'.¹⁸ The ACCC's Chair, Gina Cass-Gottlieb, discussed the impact of misleading claims about environmental or sustainability credentials in a speech last year to the Committee for Economic Development Australia, and noted the ACCC's establishment of a new internal taskforce focused on sustainability which will examine and seek to influence a range of issues where environmental and sustainability issues intersect with the application of competition and consumer law.¹⁹

¹⁴ *Concrete Constructions (NSW) Pty Ltd v Nelson* (1990) 169 CLR 594 (**Concrete Constructions**), 602 (Mason CJ, Deane, Dawson and Gaudron JJ).

¹⁵ ACCC, [2023-2024- Compliance and Enforcement Priorities](#).

¹⁶ Ibid.

¹⁷ AFR (2022), [ACCC says it's ready to pursue greenwashers](#) (accessed 29 June 2023).

¹⁸ ACCC, [Greenwashing by businesses in Australia](#) (accessed 29 June 2023).

¹⁹ CEDA Speech, [2023-24 Compliance and Enforcement Priorities](#) 7 March 2023 (accessed 29 June 2023).

26. If you have any further queries, please do not hesitate to contact me by email on kirsty.ruddock@edo.org.au or by phone at (02) 2 7229 0031.

Yours faithfully

Environmental Defenders Office

A handwritten signature in black ink, appearing to read 'KR', followed by a long, wavy horizontal line.

Kirsty Ruddock

Managing Lawyer

Safe Climate (Corporate and Commercial)

ANNEXURE A – Santos Advertisement

The ad was printed in the Quirindi Advocate on March 20, 2024



NEWS

NARRABRI GAS PROJECT

**GOOD FOR
KEEPING THE
LIGHTS ON**

The Santos Narrabri Gas Project is essential to deliver critical gas supply to the east coast market.

Santos [santos.com](https://www.santos.com)

The Quirindi Advocate, Wednesday, March 20, 2024 1