Environmental Defenders Office

28 July 2025

Rami Greiss
Executive General Manager
Consumer and Fair Trading Division
ACCC
23 Marcus Clarke St
CANBERRA ACT 2601

Via email: [redacted]

Dear Rami,

ACCC Complaint about potential misleading claims by NSW Mining

1. We act for Climate Integrity. Climate Integrity is a not-for-profit advocacy group whose purpose is to close the corporate climate integrity gap in Australia by advocating for science, transparency, accountability and justice in the transition to zero emissions.

2. Our client requests that the Australian Competition and Consumer Commission (**ACCC**) investigate statements made by **NSW Mining** in its advertisement published in **@The Coal Face** newspaper and on its website dedicated to 'Mining Responsibly'[1], relating to the need and future of coal (together the **Representations**). The statements that form the basis of the Representations, set out in Annexure A, are 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)).

3. **NSW Mining**, or the **NSW Minerals Council** is a peak industry association representing the state's mineral industry, including companies involved in coal, gold, copper, and other minerals.[2] NSW Mining's advertisement advocates there is the need for coal for many years to come, without clarifying the environmental costs of doing so. Given the lack of clarification, disclaimers or limitations, the Representations may mislead consumers into considering critical products and services will disappear and there will not be a stable electricity supply without coal.

Potential misleading claims

4. A summary of the claims in the advertisement (Annexure A) and why they are potentially misleading is set out in the table below:

[1] NSW Minerals Council, 'Mining Responsibly' .
[2] NSW Minerals Council, 'Mining in NSW' .

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	Claim	Why it is potentially misleading
1.	"Coal is needed for energy security"	Half of the current energy supply are other energy sources[3]. As Australia's coal fired assets age and become less reliable and more costly, coal is being phased out in Australia, and globally.[4]
2.	"Powering homes & businesses"	Misleading as it implies that coal is the only energy source and ignores that approximately half of Australia's current energy supply is from other sources.[5]
3.	"Charging devices"	As above in relation to Claim 2.
4.	"NSW Coal is high-quality"	Likely to mislead the average consumer since the descriptor 'high quality' suggests there is less environmental impact and NSW coal is supplying higher quality coal used for steelmaking rather than thermal coal.
5.	"Our coal is needed for many years to come, while the world develops other energy sources"	Coal is being phased out in Australia and globally in the next 10 years. Furthermore, other energy sources, such as renewable energy, have already being developed and are expected to represent 82% of the energy market by 2030.[6]

Claim 1 – "Coal is needed for energy security"

5. This statement is misleading as it suggests that energy security depends on coal, overlooking the role of other energy sources. In Australia, approximately half of the energy supply comes from non-coal sources; globally, there is a strong shift towards low-emission energy sources, reducing reliance on coal.

Australia

6. In 2024, black and brown coal represented 55.5% of Australia's energy supply in the national electricity market. This is a steep decline from 2008, where it represented 85.6%.[7] Current forecasts suggest that 90% of the National Electricity market's coal fleet will retire by 2034-35, with all coal generators retired by 2037-38. Furthermore, as most of Australia's coal fired power stations are ageing, with many over 40 years old, their ability to produce reliable electricity has dropped dramatically.[8] They are currently unable to meet energy security and contributing to increased electricity costs and, accordingly, it is misleading to describe them as providing energy security. For example, Nexa Consulting recently analysed the performance of the Eraring power station and found that its high downtime and frequent unplanned outages affecting its performance and availability when needed.[9] Forecasts suggest that by 2030, 82% of Australia's electricity supply will come from renewables.[10] Coal is currently not providing reliable energy security and instead is being phased out, due to the cost of replacing

[3] Open Electricity, 'Tracker-NEM' (2024).
[4] Climate Council, 'Lights Out: Ageing Coal and Summer Blackouts' (January 2025).
[5] See Open Electricity, 'Tracker-NEM' (2024).
[6] Timothy Weber & Andrew Blakers, 'Why build nuclear power in place of old coal, when you could have pumped hydropower instead?', *The Conversation* (March 2025).
[7] Open Electricity, 'Tracker-NEM' (2024).
[8] Climate Council, 'Lights Out: Ageing Coal and Summer Blackouts' (January 2025).
[9] Nexa Advisory, 'The case for closing Eraring in 2027' (February 2025).
[10] Timothy Weber & Andrew Blakers, 'Why build nuclear power in place of old coal, when you could have pumped hydropower instead?', *The Conversation* (March 2025).

coal fired electricity with coal generators, when renewables are much cheaper and do not contribute to climate change during energy production. In fact, the future grid is expected to be made up of renewable electricity supported by battery energy storage systems, pumped hydro energy storage and gas turbines to meet Australia's net zero goals.[11]

Globally

7. Coal is no longer 'needed' for global energy security due to the transition to low-emissions energy sources and the declining role of coal in global energy markets. According to the 2023 (updated) *IEA Net Zero Roadmap Report* [12], the Net Zero Emissions by 2050 (NZE) scenario projects a significant shift away from unabated fossil fuels, with coal demand declining sharply, in favour of low emissions energy sources.[13] In their NZE scenario, coal demand is forecasted to drop by 45% by 2030,[14] whilst the share of electricity generation from renewables is expected to rise to nearly 60% by the same year.[15]

8. Furthermore, the 2024 *IEA Report on Coal* found that global coal demand peaked in 2024, [16] it is expected to plateau through 2027 before declining rapidly, due to the increased renewable power generation.[17] The report also highlights that China, the world's largest coal consumer, is rapidly diversifying its power sector, in favour of nuclear, solar and wind energy, which further reduces its reliance on coal. [18]

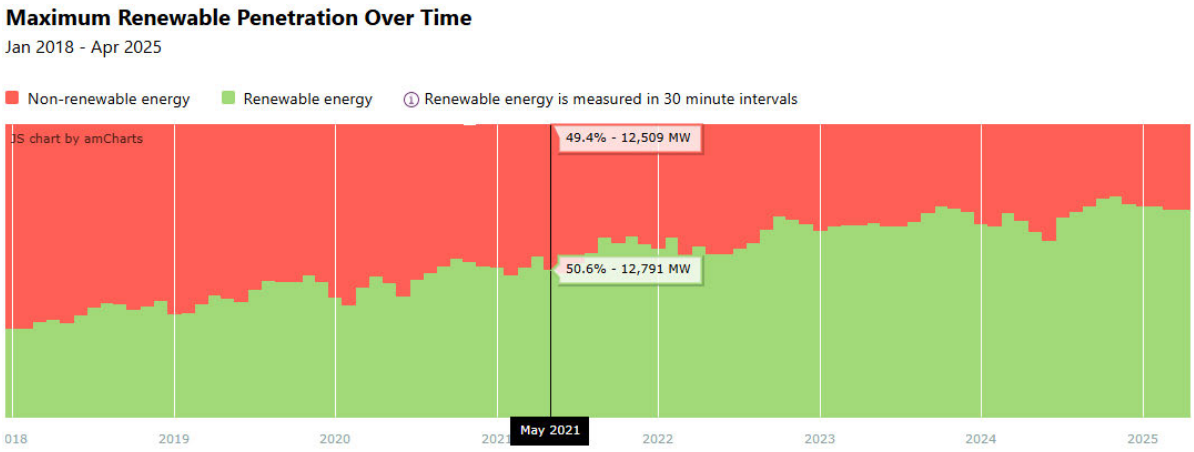
9. In 2023, the COP 28 UN Climate Change Conference at Dubai confirmed this direction by agreeing, as part of the Global Stocktake, for all parties to the Paris Agreement to take actions to triple renewable energy capacity, double energy efficiency and accelerate efforts towards the phase down of unabated coal power, phasing out inefficient fossil fuel subsidies and other measures to drive the transition away from fossil fuels in our energy system.[19] Consequently, the European Union and 25 countries (including Australia), issued a call to action, committing to ensuring that their national climate plans do not include any new unabated coal projects.[20] This collective effort further demonstrates the global shift away from coal as part of the move toward low-emission energy sources. We provide further information about the shift in coal markets for Australia below under claim 5.

Claims 2 and 3 – Coal is responsible for powering our lives

10. The representations forming the basis of claims 2 and 3 convey that coal is responsible for 'powering homes and businesses' and 'charging devices'. As outlined above in relation to Claim 1, approximately half of the energy supply in the national electricity market originates from other sources . The sources of energy powering our electricity are constantly evolving. In

[11] Climate Change Authority, 'Sector Pathways Review-Electricity and Energy' (2024), p.7.
[12] IEA, 'Net Zero Roadmap: A Global Pathway to keep the 1.5 C goal in reach (update)' (2023).
[13] Ibid pp.72-75.
[14] Ibid, p.75
[15] Ibid, p.109
[16] IEA, 'Coal 2024: Analysis and forecast to 2027' (2024).
[17] Ibid, p.7.
[18] Ibid, pp.7-8.
[19] United Nations Climate Change, 'Cop 28: What was achieved and What happens next?' (January 2024).
[20] Powering Past Coal Alliance, *'25 Countries and the EU launch Call to Action for No New Coal in National Climate Plans'* (November 2024).

fact, the mix of coal in the national electricity market varies by day depending on weather conditions, and whether the figures account for solar PV use. For example, on 9 April 2025, the national electricity market was powered by 30% of electricity from solar, 5% by hydro and 4% by wind, with around 36% powered by black coal and 21% by brown coal.[21] However, in terms of overall total energy generation, renewable generation is much greater, as these figures consider use of solar PV at source (rather than just the solar PV re-exported into the grid). Australia reached its maximum renewable penetration of 75.6% on 6 November 2024 of total energy generation, when distributed PV provided 43% of energy, hydro 1%, utility-scale solar 19%, wind 11%.[22] In comparison on that date, fossil fuel energy sources were only 24% with 17% black coal, 6% brown coal and 1% gas. As AEMO has documented, the renewable energy penetration has increased significantly over time from around 30% in 2018 up to 71% in March 2025, see graph below.[23]



11. The representation about coal powering our energy is misleading as it does not take account the growth of renewable energy including the number of households or businesses powered by solar PV. As explained above, Australia has now reached over 70% renewable energy generation. This situation as mentioned above is rapidly evolving and likely to continue to change as Australia's renewable penetration continues to grow and renewable energy storage is added to the mix. For example, much solar battery storage is yet to come online, but is likely to be finalized as it becomes more lucrative to supply this storage to the grid. Recent research by Bloomberg New Energy Finance predicted Australia could be on the cusp of a utility scale battery boom, propelled by 'high volatility in the power market, government policies that support batteries and expected coal plant closures.'[24]

Claim 4 – NSW coal is 'high-quality'

11. While the term "high-quality" in the industry refers to energy efficiency,[25] the average consumer, may interpret it as coal used in steelmaking, or as more environmentally friendly coal, as discussed below. Australian coal is generally higher in energy content, compared to

[21] AEMO, 'NEM Data Dashboard: Fuel Mix' (9 April 2025).
[22] AEMO, 'NEM Data Dashboard: Renewable Penetration' (2025).
[23] Ibid.
[24] Bloomberg New Energy Finance, 'Australia on the Cusp of Big Battery Boom, According to BloombergNEF report' (March 2025).
[25] IEFFA background briefing, 'Australian Export Coal Quality' (November 2015).

some overseas coal, meaning that less coal is required to be burned to generate electricity, and therefore depending on the type of generator, fewer emissions. However, Australia's coal sometimes has a higher ash content than Indonesian coal, often double the amount which means it has double the ash pollution. Coal ash is often stored around power stations, where it can contaminate, nearby air and water with significant public health impacts from the toxic chemicals such as arsenic, selenium and mercury which have toxic effects on humans.[26] The term "high quality" is therefore quite misleading in the context it is used as it generally suggests all black coal is synonymous with high quality implying it is better for the environment, when this is not the case.

12. Around 12% of the coal produced in NSW is metallurgical coal, the remaining 88% being thermal coal. [27] It is sold at a higher premium to reflect the quality and use of the coal for steelmaking, in fact at 87% above thermal coal prices on average over the period from 2000 to 2023.[28] The statement around high quality coal is misleading as it conflates all black coal produced in NSW as high quality, in comparison to brown coal which is generally less efficient or other overseas coal that may be less energy efficient. In essence, the thermal coal produced in NSW is relatively energy efficient and low-ash, but is nevertheless still thermal coal. All types of thermal coal are still the single largest contributor to man-made global temperature increase, accounting for about one third of the 1 °C temperature rise above pre-industrial levels already observed.[29] In fact thermal coal is responsible for two thirds of the emissions from the energy sector globally. This is why the UN Secretary-General, as well as IEA in their net zero pathways, have stated that there should be "no new coal" if we are to reach net zero by 2050.[30] As commentators have noted, most of the coal generation used in Australia does not involve emissions reduction technologies (unlike China) and therefore Australia has the most emissions intensive coal fired power generation in the world, behind even India, regardless of the quality of its coal.[31]

13. The ad actively directs viewers to a website called "responsiblemining.com.au". The page is not NSW mining's home page, but rather a website dedicated to its 'responsible mining practices'.[32] This is reinforcing the impression that NSW coal is not only superior but also mined responsibly. As a result, the average consumers would likely be led to believe that NSW coal remains both essential and environmentally responsible. Since NSW Coal, is not clean, nor an environmentally friendly energy supply for the reasons outlined above, this would likely be misleading.[33]

12. Furthermore, *Australia has the most emissions intensive coal-fired power generation in the world, behind even India,* hence, suggesting it is of high-quality, without specifying that it is

[26] Dr William Schlesinger, 'Coming from an ash pile near you', *Cary Institute of Ecosystem Studies* (April 2015).
[27] NSW Treasury, 2024 Update Supplement- NSW Response (January 2024), p.4.
[28] Ibid.
[29] Principles for Responsible Investment & UNEP Finance Initiative, 'Thermal Coal Position' (13 February 2024).
[30] Ibid. and IEA, 'Net Zero Roadmap: A Global Pathway to keep the 1.5 C goal in reach (update)' (2023), pp.75-76.
[31] IEEFA, 'Background Briefing: Australian Export Coal Quality' (November 2015).
[32] NSW Minerals Council, 'Mining Responsibly'.
[33] Client Earth, 'Coal is not clean: Exposing Greenwashing in the Coal Industry' (May 2021).

referring to energy efficiency of the coal itself rather than how it is combusted or other environmental impacts of coal, may be misleading.[34]

Claim 5 – Australian coal is needed while the world is developing other energy sources

13. This claim is misleading for two reasons:
    a. It suggests that 'our' coal (i.e. NSW Coal) will be required to supply energy (locally and globally) for many years to come; and
    b. It implies that the world has not yet 'developed' other alternative energy sources.

Sub-claim (a)

Australia

14. Current forecasts suggest that 90% of coal NEM's coal fleet will retire by 2034-35, with all coal generators retired by 2037-38.[35] Australia's current plan is that by 2030, 82% of Australia's electricity supply will come from renewables.[36] Thus, coal is not expected to be needed for 'many years to come' and is instead actively being phased out. Further information about the UN resolutions to move away from coal were outlined above in paragraph 9.

Globally

16. Australia exports most of its coal to Asia, including China, India, Japan and Korea.[37] The IEA found that whilst global coal demand peaked in 2024, it is expected to plateau through 2027 before declining rapidly, due to the increased renewable power generation.

17. Indeed, China, the world's largest coal consumer, is leading the transition, as it diversifies its power sector, in favour of nuclear, solar and wind energy.[38] China increased its installations of solar and wind energy 13-fold and stated that they will phase down from coal by 2026.[39] Other nations with plans to diversity from coal include Hong Kong which plans to phase out of coal by 2035, and Vietnam by 2040.[40] Korea has also announced plans to phase out 75% of the country's coal-fired power plants by 2039 to align with global decarbonisation trends.[41] Japan has previously pledged to phase out unabated coal fired plants by 2035, and recently said it will phase out inefficient coal plants by 2030, although its decarbonisation progress is more mixed.[42]

19. Therefore, it is very unlikely that NSW Mining can substantiate their claim that Australian Coal is needed for many years to come whether it be locally or internationally, when there are plans to remove coal fired power in many of our trading partners.

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[34] IEFFA, 'Background Briefing: Australian Export Coal Quality' (November 2015).
[35] AEMO, '2024 Integrated System Plan' (June 2024), p.49.
[36] Timothy Weber & Andrew Blakers, 'Why build nuclear power in place of old coal, when you could have pumped hydropower instead?', *The Conversation*, (March 2025).
[37] IEA, 'Global coal demand is set to plateau through 2027' (December 2024).
[38] Ibid.
[39] PwC, 'Net Zero Economy Index: Asia Pacific's Transition'.
[40] Ibid.
[41] Korea Pro, 'Why south Korea's ambitious plan to phase out coal faces serious headwinds' (November 2024); Pulse, 'Korea mulls more ambitious greenhouse gas reduction targets' (February 2025).
[42] Argus, 'Japan to phase out inefficient coal plants by 2030' (October 2024).

Sub-claim (b)

Australia

20. Since 2018, renewable energy has represented at least 20% of Australia's energy supply. Six years later, in 2024, it increased to 38.9%[43] and as stated above over 70% renewable energy penetration at times.[44] Hence, the world has developed other energy sources, and these energy sources are expected to dominate the energy market by 2030, with forecasts showing they are expected to represent 82% of Australia's energy supply.[45] Thus, Australia does not need to continue to use coal for its energy sources, and it is well on track to transition to renewables.[46]

Globally

21. In 2023, coal represented less than 25% of the world's energy consumption, 75% coming from other energy sources. Hence, the 'world' has clearly developed and is currently relying on non-coal sources of energy.[47]

22. If by 'other energy sources', the average consumer is to imply 'renewable energy sources', the claim would remain misleading. Indeed, renewable energy sources are already developed and represented 14% of the world's energy consumption in 2023.[48]

23. Furthermore, according to the 2023 (updated) *IEA Net Zero Roadmap Report*[49], the Net Zero Emissions by 2050 (NZE) scenario found that the share of electricity generation from renewables is expected to rise to nearly 60% by 2030.[50]

Potential legal contraventions

24. 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.*

25. 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; …*

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[43] Open Electricity, 'Tracker-NEM' (2024).
[44] AEMO, 'NEM Data Dashboard: Renewable Penetration' (2025).
[45] Timothy Weber & Andrew Blakers, 'Why build nuclear power in place of old coal, when you could have pumped hydropower instead?', *The Conversation* (March 2025).
[46] AEMO, '2024 Integrated System Plan' (June 2024), pp.49-54.
[47] Our World Data, 'Energy Mix' (2024).
[48] Ibid.
[49] IEA, 'Net Zero Roadmap: A Global Pathway to keep the 1.5 C goal in reach (update)' (2023).
[50] Ibid, p.109.

(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.

26. 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 Ad in trade or commerce?

27. To establish a breach of the ACL, it is also necessary to show the conduct was in trade or commerce. Our client considers that this newspaper advertisement is in trade or commerce for the reasons outlined below.

28. 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 …*[51]

29. Perry J in *ACCC v Homeopathy Plus! Australia Pty Limited* [2014] FCA 1412, summarised the relevant law on what is trade or commerce, including the findings of the Full Court in *Tobacco Institute of Australia Ltd v Australian Federation of Consumer Organisations Inc* [1992] FCA 630. Foster J upheld in relation to the advertisement, being by peak body similar to NSW Mining that it was in trade or commerce on the following basis:

> *The material was... published extensively nation-wide. The advertisement was prominent and eye-catching and described itself as an advertisement. Even the most cursory reading of it would, in my view, have been sufficient to convey to an ordinary reader a message favourable to the consumption of cigarettes as an article of commerce. The advertisement was persuasive in tone. It sought to allay fears which it suggested were commonly and erroneously held that the inhalation of tobacco smoke in the air could be harmful. The name of the appellant, appearing as the authoriser of the advertisement, would, in my view, when coupled with its obvious message, be quite capable of conveying to such a reader that the appellant had a commercial interest in assuaging community concerns about the harmful*

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

effects of inhaling environmental tobacco smoke. The general tenor of the advertisement, its wide exposure, and the name of the appellant combined to create an irresistible impression that it was promotional material designed to advance the course of cigarette smoking and to assist in the sale of cigarettes".[52]

30. For the reasons above, Climate Integrity respectfully urges the ACCC to investigate the statements made by NSW Mining, described above. If you have any further queries, please do not hesitate to contact me by email at kirsty.ruddock@edo.org.au or by phone at (02) 2 7229 0031.

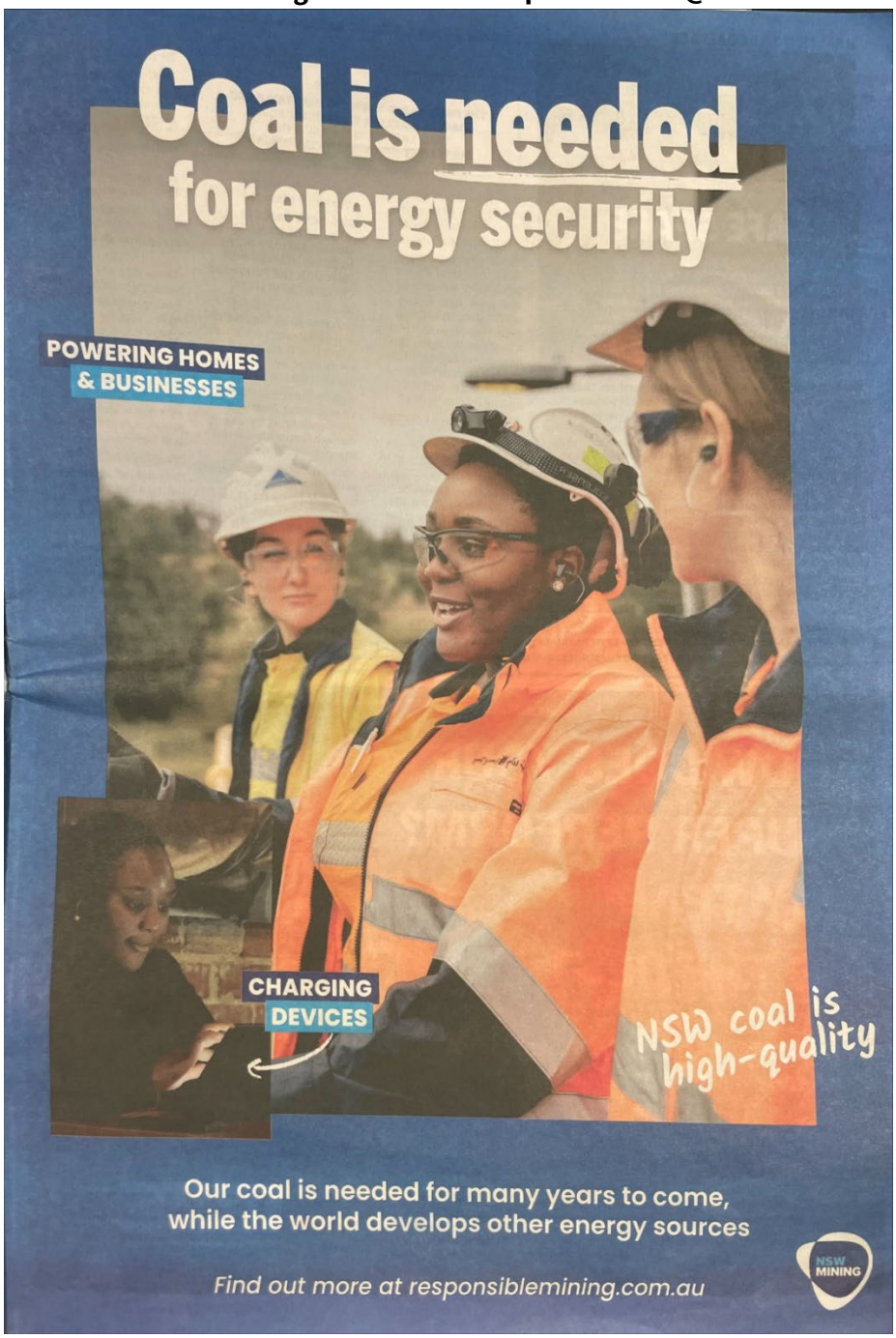
Yours sincerely,
Environmental Defenders Office

Kirsty Ruddock
Managing Lawyer

Reference number: SE-09567

[52] ACCC v Homeopathy Plus! Australia Pty Limited [2014] FCA 1412 [295] (Perry J).

Annexure A: NSW Mining's advertisement published in @The Coal Face



NSW Mining website -[Mining Responsibly | NSW Mining](#) at Smarter Mining

We are achieving this with smart jobs and tech. That includes mining high-quality NSW coal that's essential for making steel,needed for building homes, city construction and infrastructure.

And our NSW coal is also going to be needed for reliable electricity for many years in NSW and around the world, as all countries build their renewable energy networks over time.