

Introduction

Amid concerns about climate change and Australia’s shift toward renewable energy, the role of natural gas in the nation’s energy transition has been an important area of debate.

The Labor government announced the Future Gas Strategy on 9 May 2024, where “gas will remain an important source of energy through to 2050 and beyond.” While the gas industry has been supportive, environmental activist groups have criticised the Labor strategy, calling it a setback on the Australian government’s integrity and communities’ rights and interests.

As a result of the ongoing debate, the industry and activist groups have been keenly awaiting the Federal Court decision in the proceedings launched by the Australasian Centre for Corporate Responsibility (ACCR) in 2021 against Santos¹ in the Federal Court where it was alleged that Santos was “greenwashing” the impact of its gas and blue hydrogen.

The Federal Court handed down its decision on 17 February 2026 and, as is now well publicised, the ACCR was wholly unsuccessful and has been ordered to pay Santos’ costs.

Among other things, the court found statements by Santos about it being a “clean energy” company and “blue hydrogen” being clean energy were not (in the context the statements were made) misleading or deceptive. So, does this mean the debate about the role of gas in the energy transition, and whether gas is clean energy, has now finally been resolved?

What Were the Key Issues in the Case?

ACCR is an incorporated not-for-profit organisation, and according to their website, a “shareholder advocacy and research organisation,” which uses “shareholder strategy to enable investors to escalate engagements with heavy-emitting companies in their portfolios.” ACCR was a shareholder in the respondent; Santos Limited is a leading producer and supplier of natural gas in Australia.

In the Federal Court proceedings, ACCR alleged that statements made in Santos’ investor day presentation, annual report and climate change report were misleading or deceptive. These claims were brought under section 1041H of the *Corporations Act 2001* (Cth) and sections 18 and 33 of the *Australian Consumer Law (ACL)*.

ACCR’s allegations included that Santos had made misleading statements about its 2030 and 2040 emissions reduction targets. This article does not address these issues, instead exploring the alleged representations around natural gas as “clean energy” and that Santos could produce clean or zero-emission hydrogen in the form of blue hydrogen,² and what this judgment means for the role of gas in the energy transition debate.

In summary, ACCR’s allegations covered:

- **Clean energy claims** – Santos was alleged to have made a number of statements in its 2020 annual report, representing itself to be a “leading clean fuels company”³ and provider of “clean energy,”⁴ while (on ACCR’s case) omitting information about the release of significant quantities of greenhouse gases (GHG) during both the extraction and end use of natural gas.⁵ ACCR argued that these representations were misleading or deceptive because natural gas cannot properly be described as “clean fuel” or a source of “clean” energy.⁶
- **Blue hydrogen claims** – ACCR also argued that Santos made statements in several documents representing that it would be able to deliver “zero-emissions” or “clean” hydrogen – suggesting its hydrogen could be produced with “no emissions” because all production emissions would be captured by carbon capture and storage (CCS).⁷

Santos rejected ACCR’s allegations, saying its statements were neither misleading nor deceptive. It argued that its clean energy claims did not suggest natural gas produced no emissions but simply that natural gas was cleaner than coal and diesel.⁸ It also maintained that its blue hydrogen claims were not representations that hydrogen could be produced without emissions. Instead, these terms were used descriptively – interchangeable with labels like “clean,” “zero emissions” or “carbon neutral” – to denote production of hydrogen from natural gas with CCS, resulting in no net emissions.⁹

1 *Australasian Centre for Corporate Responsibility v Santos Ltd* [2026] FCA 96.

2 Blue hydrogen refers to hydrogen manufactured from fossil fuels in circumstances where the carbon is captured and stored using CCS, whereas green hydrogen refers to hydrogen produced from renewable energy or other renewables-based solutions.

3 *Australasian Centre for Corporate Responsibility v Santos Ltd* [2026] FCA 96 at [501].

4 *Ibid* [501].

5 *Ibid* [503].

6 *Ibid* [504].

7 *Ibid* [529].

8 *Ibid* [537].

9 *Ibid* [546].

The Federal Court’s Judgment

In any argument about misleading or deceptive conduct under the ACL, it is necessary to identify the audience who is reading or hearing the statements to assess whether that person would have been misled. The parties held significantly different views on how to define the target audience for Santos’ disclosures and sustainability statements. Ultimately, the court adopted a middle position, concluding that the audience comprised a broad and diverse group of individual and institutional investors without any assumed scientific training but with an interest in climate change and the issues surrounding these issues for fossil fuel companies.¹⁰

- **Clean energy claims** – Having reviewed the publications, Markovic J found that the 2020 annual report employed the term “clean” to convey that natural gas was a cleaner energy than coal and diesel rather than to suggest that the consumption of natural gas produced no GHG.¹¹ While Her Honour did reject the argument that the target audience would be familiar with all of Santos’ relevant publications, it was accepted that they would be familiar with at least one such publication.¹² Her Honour also found that Santos’ description of itself as a clean fuels company was not misleading as the context was Santos’ future targets and transition plan.¹³ Her Honour’s decision on these representations particularly underscored the importance of the audience and context in determining the representation that arises from statements.
- **Blue hydrogen claims** – Markovic J considered expert evidence presented by both sides and opined that there was no settled meaning of the terms “clean hydrogen” and “zero emissions hydrogen” within the Australian energy industry at the relevant time.¹⁴ Further, Her Honour held that these terms were used interchangeably to refer to “blue hydrogen” by various government agencies, energy companies and other industry players.¹⁵ On this basis, it was found that the representations were not liable to mislead as a reasonable member of the target audience would have understood that in referring to “clean” and “zero emissions hydrogen”, Santos was referring to the production of hydrogen from natural gas with CCS and offsets.¹⁶

Accordingly, the Federal Court found that, when viewed from the standpoint of the relevant target audience, the representations made by Santos in the context of its “transition to a lower-carbon future” and “from natural gas to hydrogen” were not misleading or deceptive.¹⁷

Key Takeaways

The *ACCOR v Santos* decision offers important judicial insight into the debate over whether natural gas can be described as “clean energy.” It is significant that, in the context that arose in this case, Santos’ statements about clean energy would be understood to be clean relative to coal and diesel.

However, this does not mean that in all contexts, describing natural gas as clean energy will not be misleading, and certainly, if the context (including the audience) supported the understanding that ACCOR alleged, such statements might well be misleading and deceptive. As a result, significant care should still be taken when describing any energy produced using gas as “clean energy.” Further, it also means that while the court accepted that in the context where it was used – relative to coal and diesel – describing gas as clean was not misleading, it does not seek to resolve the debate about whether gas, which does release GHG when consumed, should be part of the energy transition. We expect that debate will continue.

The case is also important in relation to statements about blue hydrogen as clean energy. Santos’ references to clean fuel and zero emission hydrogen were found not to be misleading or deceptive, as they were presented within the company’s broader narrative of transitioning toward a lower-carbon future and positioning itself as a “clean fuels company.” Equally significant was the fact that these statements were directed at an investor audience capable of interpreting them within that contextual framework. As a result, this again means there remains risk in describing blue hydrogen as clean hydrogen or zero-emissions hydrogen, as a change in the context could very easily change the representation that is found to arise.

The broader message is clear: the validity of calling natural gas “clean” is still not a fixed truth but centres around a contextual judgment – one shaped by disclosure, audience and a business’s surrounding decarbonisation story.

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¹⁰ Ibid [494], [498]-[499].

¹¹ Ibid [519].

¹² Ibid [517].

¹³ Ibid [521].

¹⁴ Ibid [554]-[562].

¹⁵ Ibid [562].

¹⁶ Ibid [563].

¹⁷ Ibid [521].