

Background

In August 2021, ACCR commenced proceedings in the Federal Court alleging that Santos Ltd has breached the *Corporations Act 2001* (Cth) and the *Australian Consumer Law* by engaging in misleading or deceptive conduct around representations contained in its [2020 Annual Report](#). In light of Santos' internal documents, ACCR has expanded its case to also include representations contained in Santos' [2020 Investor Day Briefing](#) and [2021 Climate Change Report](#).

ACCR alleged misleading or deceptive conduct by Santos arising from Santos' representations to the effect that:

1. Santos has a clear and credible pathway to achieve "net zero" Scope 1 and 2 greenhouse gas emissions by 2040 ('Net Zero Claim').¹
2. Santos is a producer of "clean energy", and that natural gas is a "clean fuel".

Today, ACCR provided further important details of the Net Zero Claim, and made new allegations of misleading or deceptive conduct in relation to Santos' representations to the effect that:

3. Santos has a clear and credible pathway to reduce its Scope 1 and 2 emissions 26-30% by 2030 (from its 2019-20 financial year baseline).
4. Hydrogen produced from natural gas with carbon capture and storage (**blue hydrogen**) is "clean" and "zero emissions".

ACCR is not able to share the Amended Concise Statement at this time. Unfortunately, Santos has opposed the document being made freely available on the Federal Court website.

At the present time, the Amended Concise Statement is available to members of the public by applying to the Federal Court using the process outlined at <https://www.fedcourt.gov.au/services/access-to-files-and-transcripts/court-documents>

Net Zero Representations

In the Annual Report, Climate Change Report and Investor Day Briefing, Santos made a number of statements that it had a clear and credible pathway to achieve "net zero" emissions by 2040.

A large amount of this reduction is anticipated to come from future carbon capture and storage (CCS) processes and blue hydrogen.

However, ACCR alleges that Santos failed to disclose that it intends to pursue oil and gas growth and exploration opportunities beyond 2025 that would *increase* its greenhouse gas emissions.

ACCR also alleges that Santos failed to disclose that its net zero plans depend upon a range of undisclosed and/or unreasonable qualifications and assumptions to reduce or offset Santos' Scope 1 and 2 emissions. In particular, in new allegations, ACCR says that Santos failed to disclose that:

- its Net Zero Roadmap does not account for expected production and/or emissions growth from oil and gas exploration opportunities beyond 2025;

¹ Scope 1 emissions are direct emissions from sources owned or controlled by Santos, for example, emissions from fuel, flare and vent; Scope 2 emissions are indirect emissions from the generation of purchased/acquired energy consumed by Santos.

- the 'CCS Expansion' portion of the Net Zero Roadmap actually reflects offsets which Santos will apparently seek to procure. It does not represent modelled reductions in Santos' own emissions, but instead is a nominal number making up the difference to net zero;
- the 'Hydrogen with CCS' portion of the Net Zero Roadmap also reflects offsets which Santos will apparently seek to procure. Again, it does not represent modelled reductions in Santos' Scope 1 and 2 emissions, but instead depends upon Santos receiving offsets for reducing its customers' Scope 1 and 2 emissions through the sale of blue hydrogen;
- the 'Hydrogen with CCS' portion of the Net Zero Roadmap also assumed that Santos would blend 30-50% hydrogen into the natural gas network, whereas Santos had no reasonable basis for assuming it could blend more than 10%.

This calls into question whether Santos had reasonable grounds to assert it has a "clear and credible" plan to reach net zero emissions by 2040.

Gas as Clean Energy Representations

Santos made a number of statements in its 2020 Annual Report that the natural gas it produces is a "clean fuel" and provides "clean energy".

ACCR says that these representations convey that the extraction of natural gas, and the generation of energy using that natural gas, does not have a material adverse effect on the environment and does not release material amounts of greenhouse gases into the atmosphere.

ACCR says that the Annual Report failed to disclose that the extraction, processing and use of natural gas releases significant quantities of carbon dioxide and methane into the atmosphere, gases which are key contributors to climate change and global warming.

Over the period covered by the Annual Report, Santos was responsible for the direct emission of approximately 7.74 million tonnes of CO₂ equivalent through its operations, with the end-use of the natural gas it supplied resulting in the emission of approximately 28.6 million tonnes of CO₂ equivalent. These figures were also not included in its Annual Report.

NEW Blue Hydrogen is "Clean" and "Zero Emissions" Representations

In the Annual Report, Climate Change Report and Investor Day Briefing, Santos made a number of statements that the blue hydrogen it intends to produce is "clean" and "zero emissions".

In a new allegation, ACCR says these representations convey that any emissions generated by the production of blue hydrogen would be captured by CCS, such that there would be zero emissions from blue hydrogen production.

ACCR claims that Santos failed to disclose that blue hydrogen production will increase its Scope 1 and 2 emissions, and that it is not practical or commercially viable to capture all of those emissions using CCS.

The Corporations Act and the Australian Consumer Law

This Federal Court case argues that by making the above representations, Santos has engaged in conduct that was misleading or likely to mislead in relation to a financial product – its shares – in contravention of section 1041H of the *Corporations Act 2001* (Cth).

It also argues that Santos engaged in conduct in trade or commerce that was misleading or likely to mislead in contravention of section 18 of the *Australian Consumer Law*.

Further, the case argues that in making the representations relating to gas being a 'clean' fuel or energy source, and blue hydrogen is 'clean' or 'zero emissions', Santos engaged in conduct in trade or commerce that was liable to mislead the public as to the nature, characteristics, suitability and quality of its products (natural gas and blue hydrogen) in contravention of section 33 of the *Australian Consumer Law*.

Why is this Important?

Investors have a right to complete, open and honest information relating to a company they are investing – or considering investing – in.

Accurate information about how our company is responding to the global energy transition to zero emissions is critical to investors' ability to assess the viability of their investment and their financial and reputational exposure.

Misleading information can leave investors vulnerable to major losses and potentially skew the market unfairly in favour of companies failing to adequately respond to the risks posed by the energy transition, and unfairly away from companies that are acting responsibly.

Further, by concealing opportunities for smart investment, misleading information may impede an effective and timely response to climate change.

Relief Sought From The Court

Through this case, the Australasian Centre for Corporate Responsibility is asking the Federal Court to:

1. Make declarations that Santos has engaged in misleading or deceptive conduct, or conduct that is likely to mislead or deceive;
2. Grant an injunction prohibiting Santos from engaging in the same misleading or deceptive conduct in the future;
3. Grant an injunction requiring Santos to issue a corrective statement regarding the environmental impacts of its operations.