

Investor Briefing - Santos Ltd 2023 AGM

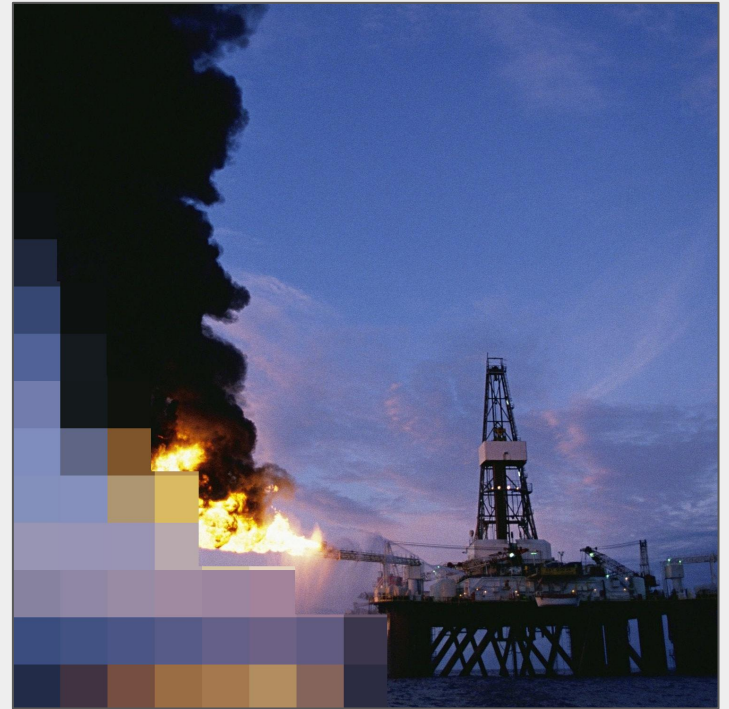
Legal update

Remuneration: analysis and recommendations

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Legal update



ACCR v Santos: Federal Court Proceedings

- In 2021 ACCR commenced proceedings against Santos in the Federal Court. ACCR claimed that in its 2020 annual report and subsequently, Santos engaged in misleading and deceptive conduct in its representations about gas as "clean energy", and in relation to its claims to have a "clear and credible" plan to reduce its Scope 1 and 2 greenhouse gas emissions 26-30% by 2030 (from its 2019- 20 financial year baseline) and to achieve net zero emissions by 2040.
- Pleadings have been exchanged, and the discovery process largely completed.
- At the direction of Justice Lee, the Judge recently appointed to the matter, the parties are now engaged in a court-supervised exercise to reduce as far as possible the relevant facts in dispute.
- The matter is due to be relisted towards the end of May 2023. It is likely that a hearing date of any questions still in dispute will be set at that time.

Santos NA Barossa Pty Ltd v Tipakalippa [2022] FCAFC 193

- On 2 December 2022 the Full Court of the Federal Court upheld a single judge’s decision to set aside a decision of the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) to accept a drilling environmental plan lodged by Santos NA Barossa Ltd (Santos), in relation to the sinking of eight gas wells for the Barossa Project in the Timor Sea directly north of Tiwi Islands.
- The applicant for judicial review of NOPSEMA’s decision, Mr Dennis Tipakalippa, is a Tiwi Islands traditional owner and elder with unregistered traditional interests in the surrounding sea. Mr Tipakalippa claimed that Santos failed in its duty to consult him and other Tiwi Islands traditional owners under the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (Cth) (Regulations). Mr Tipakalippa contended that Santos should have consulted with him and others under the Regulations because of his and others’ “interests or activities [that] may be affected by the activities to be carried out under the environment plan” (Reg 11A(1)(d)).
- The Tiwi Islands are held as Aboriginal Land under the *Land Rights Act 1976* (Cth). There is neither a native title claim nor determination over the sea country surrounding the island, however there was plenty of evidence of Tiwi Islanders’ traditional and cultural use of those waters before NOPSEMA. Santos did not dispute that evidence in its original submissions to NOPSEMA.

Santos NA Barossa Pty Ltd v Tipakalippa [2022] FCAFC 193

- Santos consulted the Tiwi Islands Land Council, but did not consult Mr Tipakalippa and other Tiwi Islanders at all.
- The Full Federal Court concluded that Mr Tipakalippa and other Tiwi Islanders had "interests" within the meaning of reg 11A, and further held that; “Santos did not address these matters in the Drilling EP as we consider they should have been because of the mistaken approach adopted by Santos and NOPSEMA to the concept of “interests” in reg 11A(1)(d)... [79].”
- In response to Santos and NOPSEMA's submission that the Court's interpretation of "interests" renders the relevant legislation "unworkable", the Full Court said; “We see no particular difficulty with the proposition that the First Nations peoples who have a traditional connection to the sea, and to the marine resources it holds, which may be affected by Santos’ activities under the Drilling EP are reasonably ascertainable.”
- The Full Court emphasised that the problem in this case was with Santos' and NOPSEMA's misunderstanding of the Regulations, and Santos' failure to follow the regulations, rather than any unworkability in the Court's interpretation of the Regulations.

Santos Ltd

Remuneration: analysis and recommendations



Santos remuneration: CEO Growth Incentive rewards growth rather than shareholder value

The CEO Growth Incentive is a A\$6 million ad-hoc bonus, that sits outside the Santos Executive remuneration framework. It is based on undisclosed 'strict performance conditions' for a range of projects.

It appears to be encouraging behaviour that is putting shareholders' best interests at risk, as well as raising legal compliance questions.

Major Growth Projects (60%)			Emissions reduction, net-zero plan and energy transition (40%)
Barossa	Dorado and/or Pikka	Backfill resources	
<ul style="list-style-type: none"> Key activities have been stopped by court and regulatory action since Santos failed to properly consult with traditional owners. Multiple vessels have been mobilised and subsequently idled. No credible information has been provided about cost or schedule impacts. 	<ul style="list-style-type: none"> Dorado FID was postponed in August 2022. Providing an incentive to persist with a marginal project may not be in shareholders' best interests. Pikka added to scheme in 2022. 	<p>It is not clear what this is or how it will be assessed.</p>	<p>ACCR is currently litigating related to these matters. It would be inappropriate to comment further.</p>

Santos remuneration: Other observations

- Despite a Full Federal Court ruling that Santos neither understood nor complied with its legal consultation obligations with Tiwi Traditional Owners, the 'Landholder, Community and Traditional Owner Relationships' scorecard metric was scored as 'threshold'.
- IIGCC recommends¹ that oil and gas companies remuneration includes scope 3 targets and does not incentivise production. Santos' remuneration report does not meet either of these requirements.
- The Long Term Incentive is based on four separate measures. Three of these are sound, but benchmarking against the S&P Global 1200 Energy Index (GEI) does not align with shareholder experience where the oil and gas sector underperforms the broader market.
- For investors who see oil and gas benchmarking as useful, Santos underperformed peers. In 2022, Santos' TSR was 17% (AUD basis). WDS, BPT, SHEL, CVX and XOM delivered a TSR of between 29% and 100%

ACCR voting intention: Against Santos remuneration report

Santos remuneration: Lack of responsiveness to valid investor concerns

- In 2021, 25.3% of votes were cast against the remuneration report, resulting in a 'first strike'. This is a serious signal that investors are not satisfied with the remuneration structure.
- Rather than making changes to address these concerns, the 2022 report includes a section dedicated to defending the structure.
- The CEO Growth Incentive has become more flexible with the inclusion of Pikka, which is now an alternative for Dorado.
- ACCR sees this response as insufficient and justifies a vote against the re-election of Yasmin Allen.
- As Chair of the People Remuneration and Culture Committee, Ms Allen holds particular responsibility for the Remuneration Report and the response to the 'first strike'.



ACCR voting intention: Against the re-election of Yasmin Allen

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