

# Response to Equity Generation Lawyers Letters

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24 May 2023

## Human Rights Allegations

Some of our investors and financiers have recently received a letter from Equity Generation Lawyers on behalf of up to nine individuals (Claimants) alleging breaches of the human rights of Tiwi Island, Larrakia and Gomeri people arising from Santos' Barossa Gas Project, Darwin LNG Life Extension Project and Narrabri Gas Project.

***Santos categorically rejects the allegations of human rights breaches in their entirety and reserves its rights in relation to this matter.***

Amongst other things, the letters to investors ask each recipient to:

*“immediately begin to effectively exercise its leverage, or increase its leverage, on Santos to stop development of the Barossa, DLNG and Narrabri projects, or if this is not achieved within a reasonable time, divest.”*

The letters to financiers ask them to exit loans and not proceed with any future approvals for these projects.

Santos notes the Claimants have not sought to have their grievances determined or remedied in a court of competent jurisdiction where Santos could properly respond. It should be noted that Equity Generation Lawyers do not act on behalf of, or represent Tiwi Island, Larrakia or Gomeri people as a whole, with these people numbering in the tens of thousands.

Santos has a long history of positive Indigenous engagement and cultural heritage management. Our operations have co-existed with farmers, fishermen, Traditional Owners and other land users for decades. Santos has over 90 agreements in place across Australia that relate to native title, Aboriginal land rights and cultural heritage management, involving six Aboriginal Land Councils and 23 Traditional Owner groups.

Santos increased its permanent Indigenous workforce by 20 per cent in 2022 and is focused on increasing Indigenous participation in its business. Indigenous Australians now make up 1.4 per cent of our Australian workforce and more than 20 per cent of our Australian apprentices and trainees identify as Indigenous. In 2022, Santos increased its direct spend with Australian Indigenous businesses by more than 50 per cent spread across 29 businesses.

Santos has established an Indigenous Advisory Panel to review, advise upon and inform our engagement and partnerships with Indigenous people, and to further opportunities for greater Indigenous participation. The Panel is made up of selected representatives from Traditional Owners and Aboriginal Land Councils in areas where we operate.

Our Board-endorsed [Human Rights and Modern Slavery Policy](#) states that:

*“Santos is committed to supporting and respecting the protection of internationally recognised human rights as set out in the United Nations International Bill of Human Rights and works to align with the UN Guiding Principles on Business and Human Rights and the Voluntary Principles for Security and Human Rights in our practices and procedures.”*

Through our policies and practices, Santos recognises the role of governments, across our operations, in protecting human rights. In Australia, federal, state and territory governments have in place legal frameworks, which Santos follows, to allow Indigenous people to actively participate in the assessment processes for resources projects that may affect them or their territories.

Santos is engaged in lawful regulatory processes for the Barossa, Darwin LNG Life Extension and Narrabri projects. These processes involve consultation with Indigenous people and other stakeholders, including consideration of their feedback in finalising various project plans. For Narrabri, Santos is also responding to an appeal in the Federal Court involving consideration of native title issues. Santos respects these legal processes

and will exercise its rights and obligations in accordance with all Australian laws. These lawful regulatory and court processes should not be interfered with, undermined or prejudiced in any way.

Barossa and Narrabri gas projects will secure affordable, reliable energy for customers in Asia and Australia over coming decades. These projects have compelling national interest benefits.

Barossa and Darwin LNG combined are of vital importance to Northern Territory jobs, business opportunities and its economy, with the Northern Territory's Budget 2023-24 stating:

*"the growth outlook is heavily influenced by the timing of activity associated with the Barossa project."*

In addition, the Barossa Project is expected to generate several billions of dollars in federal tax revenues over the life of the Project.

Gas from Barossa is factored into energy security plans in Japan and Korea, which are heavily reliant on Australian LNG to power their economies.

Santos is developing projects focused on the dual objectives of providing energy security and decarbonising the energy system in Australia and our customer countries in Asia. Gas is a critical part of ensuring an orderly, just and faster energy transition globally. This is because gas makes renewables possible by providing affordable firming for electricity generation. Gas also provides the feedstocks and high-temperature heating essential for materials such as ammonia, steel, cement and polymers which are the pillars of modern civilisation.

The gas we produce continues to be demanded by our customers and decarbonising gas will be critical to the world achieving its emissions reduction goals.

The International Energy Agency's May 2023 report "Emissions from Oil and Gas Operations in Net Zero Transitions" states:

*"In the NZE Scenario, the global average emissions intensity of oil and gas supply falls by more than 50% between 2022 and 2030... Five key levers are used to achieve this reduction in emissions intensities: tackling methane emissions, eliminating all non-emergency flaring, electrifying upstream facilities with low-emissions electricity, equipping oil and gas processes with carbon capture utilisation and storage (CCUS), and expanding the use of low-emissions electrolysis hydrogen in refineries."*

Santos is pursuing carbon capture and storage (CCS) projects including the Bayu-Undan CCS Project which, subject to securing regulatory approvals, will make Barossa and Darwin LNG one of the lowest-carbon LNG projects in the world. As required under the Australian Government's Safeguard Mechanism, Barossa will be net-zero reservoir emissions from commencement of production through the use of offsets and once available, CCS.

Narrabri is 100 per cent committed to the Australian east coast domestic gas market where new supply is desperately needed to meet demand and ease cost of living pressures and energy input costs for Australian manufacturers.

## **Supporting Information**

### **Barossa Gas Project**

In March 2018 the National Offshore Petroleum Safety & Environmental Management Authority (NOPSEMA) accepted the Offshore Project Proposal for the Barossa Gas Project. In July 2020 the National Offshore Petroleum Titles Administrator awarded Santos a production licence that authorises the recovery of gas from Barossa. These legal authorities underpinned Santos' final investment decision in March 2021 for the US\$3.6 billion Barossa Gas Project.

The Barossa Gas Project operational area lies entirely in Commonwealth offshore water and is approximately 130km from Seagull Island which is part of the Tiwi Islands, with the Barossa gas export pipeline approximately 7km offshore at its closest point to the Tiwi Islands.

While there are no native title rights or claims over the Barossa operational area, consultation with Tiwi Island people about Barossa commenced in 2016. Current consultation on various Barossa activities includes the Drilling and Completions Environment Plan, NOPSEMA's prior acceptance of which was set aside by the Federal Court last December.

Santos is conducting consultation in accordance with the guidance of the Court and the May 2023 *NOPSEMA Guideline: Consultation in the course of preparing an environment plan* (as well as the prior NOPSEMA interim Guideline of December 2022).

As part of the consultation process, Santos is conducting on-country clan consultation sessions with Tiwi Island people. The most recent consultation sessions in April/May 2023 were attended by over 800 Tiwi Island people. Some of the Claimants are attending these sessions with their legal representatives, the Environmental Defenders Office (EDO), which is representing them in relation to consultation and other ongoing matters. The EDO has publicly stated its objective to stop the Barossa Gas Project.

Some of the Claimants are or may be relevant persons under the *Commonwealth Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations* (Environment Regulations) which govern approvals for Barossa. Santos is not required by law to obtain the agreement or consent of relevant persons in relation to Barossa activities. Relevant persons have a right to be consulted in the course of Santos preparing or revising its environment plans and to receive sufficient information for them to make an informed assessment of the possible consequences of the proposed activities on their functions, interests or activities. This includes information about the environmental impacts and risks of the proposed activities. In finalising its environment plans, Santos must assess the merits of any objection or claim about any adverse impacts of the activities under the environment plans and demonstrate that risks and impacts will be reduced to as low as reasonably practicable and an acceptable level. Consultation activities under the Environment Regulations are currently in progress.

Santos is, separately, implementing the requirements of a January 2023 General Direction from NOPSEMA to undertake an assessment to:

*“identify any underwater cultural heritage places along the Barossa pipeline route... to which people, in accordance with Indigenous tradition, may have spiritual and cultural connections that may be affected” by Barossa pipelaying activities.*

As required under the Direction, Santos has engaged independent experts to undertake this assessment. The experts are currently analysing the seabed along the pipeline route and obtaining information from Tiwi Island people who have such spiritual and cultural connections. When the assessment is completed, a report will be provided to NOPSEMA and to people who provided information.

## **Darwin LNG Life Extension Project**

Darwin LNG Plant has been producing and selling LNG to customers in Asia since 2006 and supports approximately 180 local employees, contractors and suppliers. Santos is planning to undertake a major shutdown and maintenance program for the plant prior to first production from the Barossa Gas Project, planned for 2025.

Santos is seeking regulatory approval for the Darwin Pipeline Duplication Project (DPD) which, if approved, will enable extension of the Barossa pipeline to Darwin and repurposing of the existing Bayu-Undan to Darwin pipeline for transportation of carbon dioxide to the proposed Bayu-Undan CCS Project.

A referral for the DPD was submitted to the Northern Territory Environmental Protection Authority (EPA) in December 2021 and was accepted in January 2022. Following a public consultation period, more than 300 submissions were received from stakeholders. The EPA determined in April 2022 that the DPD would be subject to a Tier 2 assessment, requiring submission of a Supplementary Environmental Report. Santos has taken into consideration the submissions received during public consultation and is currently progressing through this approvals process which involves further public consultation, including with Indigenous groups and representative bodies.

A range of other secondary approvals required to conduct the DPD and Darwin Life Extension projects will be sought at the appropriate time. Santos will comply with all Northern Territory and Commonwealth approvals requirements for these projects, including consultation processes.

Santos has an agreement for Darwin LNG with the Larrakia people executed in 1999. In 1998, the National Native Title Tribunal had approved the compulsory acquisition of any native title rights and interests for the construction of Darwin LNG, but the company (at the time Phillips Oil Company) recognised the long-term benefits of an agreement with Indigenous people. The agreement provides for employment opportunities for the Larrakia people as well as environmental and site protection safeguards. Santos continues to work constructively and consultatively with representatives of the Larrakia people through the Wickham Point Liaison Committee.

## **Narrabri Gas Project**

In September 2020, the Narrabri Gas Project received Development Consent from the NSW Independent Planning Commission following an extensive whole-of-government assessment conducted by the NSW Department of Planning Industry and Environment. The Commission found that:

*“On balance, and when weighted against the relevant climate change policy framework, objects of the EP&A Act, ESD principles and socio-economic benefits, the potential impacts associated with the Project are manageable, and the risks of adverse impacts on the environment are low. The likely benefits of the Project warrant the conclusion that an appropriately conditioned approval is in the public interest.”*

In relation to greenhouse gas emissions the Commission stated that:

*“it had regard to the likely extent of the emissions resulting from the Project, and the matters raised by the department in its assessment... The Commission considers that these emissions are justified because of the strategic alignment of the Project with the NSW Gas Plan and the NSW Energy Package MOU.”*

A judicial review of the decision was sought in the NSW Land and Environment Court, which dismissed the appeal in October 2021. In November 2020, Narrabri received approval from the federal environment minister under the *Commonwealth Environment Protection and Biodiversity Conservation Act*. This decision was not challenged.

Santos has been consulting with the Gomeroi people since 2012.

In March 2022, the Cultural Heritage Management Plan (CHMP) for Narrabri was approved by the NSW Department of Planning and Environment. This followed consultation with over 580 Registered Aboriginal Parties, the Gomeroi native title applicant group and five Local Aboriginal Land Councils. Gomeroi people have been involved in every stage of CHMP development and remain actively involved in implementation of the CHMP, including through working and advisory groups.

In August 2022, six Gomeroi Cultural Heritage Officers (CHOs) with the appropriate cultural authority conducted cultural heritage clearances for Narrabri appraisal drilling in accordance with the protocols agreed under the CHMP. All planned activities and associated site protection measures were signed off by the Gomeroi CHOs and technical advisers.

This demonstrates the positive relationships that Santos has with Gomeroi people who have cultural authority in the Narrabri Gas Project area. It should be noted there are approximately 40,000 people across NSW who identify as Gomeroi, 19 of whom make up the Gomeroi native title applicant group.

Operations will be located on around 1,000ha of the 95,000ha project area. The Project area is mostly located in state land in a section of the Pilliga set aside by the New South Wales Government for uses including logging and extractive industries. The Gomeroi native title claim area covers a large area of New South Wales of approximately 110,000 km<sup>2</sup> of which Narrabri operations are expected to cover approximately 10 km<sup>2</sup>.

Santos commenced formal negotiations under the *Commonwealth Native Title Act* in 2015. After extensive consultation, including over 35 meetings and site visits with the Gomeroi native title applicant group and its legal advisers, the parties were unable to reach agreement and Santos lodged a Future Act Determination Application with the National Native Title Tribunal in accordance with Australian law.

In December 2022, the Tribunal determined that the ‘future act’, being grant of production licences by the NSW Government, could proceed. The Tribunal found that Santos actively and appropriately engaged in discussions with the Gomeroi from the time negotiations commenced and consistently demonstrated its willingness to reach agreement. The Tribunal’s decision stated that:

*“There is no basis for finding that at any time since the notification day, or before that day, Santos failed to negotiate in good faith, with a view to obtaining the Gomeroi applicant’s agreement to the proposed grants.”*

It should be noted that the Gomeroi native title applicant was replaced with a different group of individuals in September 2022 by orders of the Federal Court.

In February 2023, the Gomeroi native title applicant group exercised its appeal rights and its application is currently before the Federal Court. Santos will be guided by the Court’s decision and exercise its rights and responsibilities in accordance with Australian laws.

Santos remains committed to working constructively with the Gomeroi native title applicant group and other Gomeroi people, including through the Narrabri Local Aboriginal Land Council. Santos remains open to negotiating voluntary agreements for both Narrabri and the Hunter Gas Pipeline, for which consultation is ongoing.

## **Indigenous Engagement and Partnerships**

Santos seeks to comply with laws and regulations in each of our operating regions. Santos has a Local and Indigenous Communities Policy in which we expressly commit to:

- + *“working proactively with Traditional Owners / clans and Indigenous communities to ensure they are fully informed prior to accessing land and to address any issues raised promptly and transparently;*
- + *applying best practice in the assessment, identification and protection of cultural heritage; and*
- + *identifying suitable commercial opportunities for Indigenous businesses, as well as opportunities to employ and upskill Indigenous people.”*

Last year, Santos hosted the inaugural annual CEO Traditional Owners forum, bringing together the Santos Executive team and 10 Traditional Owner representatives from across Australia to speak openly about how we can work together to shape a better future. An outcome of the forum was the establishment of the Santos Indigenous Advisory Panel to review, advise upon and inform our engagement and partnerships with Indigenous people.