Environmental Defenders Office

4 August 2022

The Trustee for HESTA
P.O. Box 615
Carlton South VIC 3053

By email: dblakey@hesta.com.au; nroxon@hesta.com.au
responsibleinvestment@hesta.com.au; hesta@hesta.com.au

Dear HESTA Trustees,

RE: HESTA's INVESTMENTS IN WOODSIDE AND SANTOS MAY AMOUNT TO A BREACH OF THE LAW

1. The EDO acts on behalf of Rod Campbell-Ross and Sue Campbell-Ross who are members of HESTA.

Summary of member concerns

2. The purpose of this letter is to set out our clients' concerns that by continuing to invest members' funds in gas companies (namely Woodside and Santos), the Trustees of HESTA and its directors may be in breach of their obligations under section 52[1] of the *Superannuation Industry (Supervision) Act 1993* (Cth) (**SIS Act**) (**Trustee breaches**) and s 52A(2) of the SIS Act (**Director breaches**). These potential breaches arise as a result of how the Trustee is managing the climate risks to the fund. In particular:

   a. HESTA has failed to adequately interrogate the net zero claims/emissions reduction representations made by companies in which member funds are invested, namely Woodside and Santos (**Issue 1**);

   b. HESTA has recently voted against shareholder proposals requesting Woodside and Santos to disclose plans for how aligning capital allocation to oil and gas assets will meet a net zero by 2050 scenario (**Issue 2**);

   c. According to its latest portfolio holdings disclosure,[2] HESTA had $228 million invested in Woodside and $190 million in Santos. HESTA has failed to divest from Woodside and Santos (**Issue 3**) despite the fact that it knew, or ought to have known, that:

      i. Woodside and Santos are expanding their gas production in a manner that is inconsistent with the climate goals of the Paris Agreement and a net zero emissions by 2050 pathway; and

      ii. continued investment in gas companies pursuing new gas projects is an investment in a stranded asset that creates an unreasonable financial risk to members in the long term.

[1] Subsections (2),(6),(8)(a).
[2] Dated 31 December 2021.

T +61 2 9262 6989
E sydney@edo.org.au
F +61 2 9264 2414
W edo.org.au
Suite 8.02, Level 8, 6 O'Connell Street Sydney, NSW 2000
ABN: 72002 880 864

3. Our client is also concerned that HESTA may also have engaged in misleading or deceptive conduct under s 1041H of the *Corporations Act 2001* and ss 12DA, 12DB(1)(a) and (e) of the *Australian Securities and Investment Commission Act 2001* (Cth) (**ASIC Act**) by making a number of representations (set out in **Annexure A**) which, alone or in combination, convey that:

   a. HESTA is a leader on climate action and investment in clean energy;

   b. HESTA's corporate and investment strategy are aligned with the Paris Agreement;

   c. HESTA is reducing its portfolio emissions and aims to reach net zero by 2050;

   d. HESTA's investment decisions are in line with the United Nations Sustainable Development Goal 13 (Climate Action) and Goal 7 (Affordable and Clean Energy);

   e. HESTA's investment strategy (including its consideration of climate) will help deliver long-term value for HESTA members;

   f. HESTA is committed to reducing its environmental impact; and

   g. HESTA has been engaging with those companies in which it is invested (including Woodside and Santos) to transition them in line with the Paris Agreement.

   (collectively, the **Representations**).

4. The Representations are misleading or deceptive or likely to mislead or deceive members or potential members in circumstances where:

   a. HESTA continues to invest in Woodside and Santos, which are major contributors to global warming;

   b. neither Santos nor Woodside's net zero pathway involves a Paris-aligned reduction in scope 3 emissions[3] in circumstances where scope 3 emissions amount to over 85% of these companies' total emissions;

   c. Woodside's net zero/emissions reduction representations are heavily dependent on carbon offsets. Absent these offsets, analysis reveals that Woodside's Scope 1[4] and 2[5] emissions are predicted to rise by 2030;[6]

   d. Santos' net zero representations are dependent on Carbon Capture and Storage and blue hydrogen (hydrogen produced through the burning of natural gas which is then allegedly abated through carbon capture and storage) that are the subject of a current legal challenge alleging that such representations are misleading or deceptive; and

   e. notwithstanding their apparent net zero representations, Woodside and Santos have plans to scale up and/or expand their fossil fuel projects, leading to increased emissions. Such actions are contrary to the International Energy Agency (IEA)'s

---

[3] Scope 3 emissions are defined by the GHG Protocol's Corporate Accounting and Reporting Standard as indirect emissions from a company's upstream and downstream activities and emissions associated with outsourced/contract manufacturing, leases or franchises not included in scope 1 and scope 3 emissions.

[4] Scope 1 emissions are defined by the GHG Protocol's Corporate Accounting and Reporting Standard as a company's direct emission sources.

[5] Scope 2 emissions are defined by the GHG Protocol's Corporate Accounting and Reporting Standard as emissions from the consumption of purchased electricity, heat or steam.

[6] Australian Centre for Corporate Responsibility, 2022, 'Woodside Petroleum Ltd – Assessment of 2021 Climate Report', Available at: https://www.accr.org.au/research/woodside-petroleum-ltd-assessment-of-2021-climate-report/ at page 15.

statements that to achieve net zero by 2050 no new oil or gas fields should be approved for development from 2021.[7]

Applicable law

Duties of superannuation trustees

5. As you are aware, section 52 of the SIS Act integrates various mandatory covenants into the governing rules of all super funds. Such covenants relevantly include:

   a. to exercise, in relation to all matters affecting the entity, the same degree of care, skill and diligence as a prudent superannuation trustee would exercise in relation to an entity of which it is trustee and on behalf of the beneficiaries of which it makes investments;

   b. to perform the trustee's duties and exercise the trustee's powers in the best financial interests of the beneficiaries;

   c. to formulate, review regularly and give effect to an investment strategy for the whole of the entity, and for each investment option offered by the trustee in the entity, having regard to, relevantly:

      i. the risk involved in making, holding and realising, and the likely return from, the investments covered by the strategy, having regard to the trustee's objectives in relation to the strategy and to the expected cash flow requirements in relation to the entity;

      ii. the ability of the entity to discharge its existing and prospective liabilities;

      iii. any other relevant matters; and

   d. to exercise due diligence in developing, offering and regularly reviewing each investment option

   (collectively, the **Trustee Duties**).

Duties of directors of corporate superannuation trustees

6. Section 52A of the SIS Act requires that directors of corporate superannuation trustees:

   a. exercise the same degree of care, skill and diligence as a prudent superannuation entity director would exercise;

   b. to perform their duties and exercise their powers in the best financial interests of the beneficiaries;

   c. to exercise a reasonable degree of care and diligence for the purposes of ensuring that the corporate trustee complies with the Trustee Duties

   (collectively, the **Director Duties**).

7. The 2017 Legal Opinion of Noel Hutley SC and James Mack concluded that climate change risk were a material financial risk, and that *"it is incumbent upon a trustee director, in an appropriate case, to consider climate change risk in order to satisfy the requirements of s 52A(2)(b) in relation to due care, skill and diligence, s 52A(2)(c) in relation to the best interests of*

[7] Net Zero by 2050 A Roadmap for the Global Energy Sector. International Energy Agency, May 2021. https://www.iea.org/reports/net-zero-by-2050

beneficiaries and at s 52A(2)(f) in relation to ensuring the corporate trustee carries out the s 42 covenants."[8] The supplementary opinion released in 2021 further stated that to discharge their Director Duties, directors of superannuation trustees must understand the risk posed by climate change to investments and manage any identified risk.[9] In particular, *"if a risk is too great for a particular investment objective, a superannuation trustee will need to consider divestment or a reallocation of funds to less risky investment options/asset classes."*[10]

<u>Misleading or deceptive conduct</u>

8. Section 1041H of the *Corporations Act 2001* (Cth) provides that:

> *A person must not, in this jurisdiction, engage in conduct, in relation to a financial product or a financial service, that is misleading or deceptive or is likely to mislead or deceive.*

9. Section 12DA of the ASIC Act similarly provides that:

> *A person must not, in trade or commerce, engage in conduct in relation to financial services that is misleading or deceptive or is likely to mislead or deceive.*

10. Section 12DB of the ASIC Act further provides that:

> *A person must not, in trade or commerce, in connection with the supply or possible supply of financial services, or in connection with the promotion by any means of the supply or use of financial services:*
>
> *(a) make a false or misleading representation that services are of a particular standard, quality, value or grade; or*
>
> …
>
> *(e) make a false or misleading representation that services have sponsorship, approval., performance characterises, uses or benefits.*

11. By providing superannuation benefits to members, HESTA:

    a. "deals in a financial product" within the meaning of s 1041H(2)(a) and s 1041H(2)(b)(vi) and (x)[11]; and

    b. provides a financial service within the meaning of s 12BAB(1)(g) of the ASIC Act[12] in relation to a financial product within the meaning of s 12BAA(7)(f) of the ASIC Act.[13]

12. Conduct is misleading or deceptive or likely to mislead or deceive if *"the impugned conduct viewed as a whole has a tendency to lead a person into error."* This takes into account the conduct in its entirety (including its context) and considers how the conduct affects the

---

[8] Noel Hutley SC and James Mack, 2017, "Memorandum of Opinion: Superannuation fund Trustee Duties and Climate Change Risk". Available at: https://www.envirojustice.org.au/sites/default/files/files/20170615%20Superannuation%20Trustee%20Duties%20and%20Climate%20Change%20(Hutley%20%26%20Mack).pdf; at [10].

[9] Noel Hutley SC and James Mack, 2021, "Memorandum of Opinion: Superannuation fund Trustee Duties and Climate Change". Available at: https://equitygenerationlawyers.com/wp/wp-content/uploads/2021/04/Hutley-SC-Mack-Superannuation-Trustee-Duties-and-Climate-Change-Memo-2021.pdf at [5].

[10] Ibid, at [7].

[11] *Australian Securities and Investments Commission v MLC Nominees Pty Ltd* [2020] FCA 1306 at [40]

[12] Ibid at [44].

[13] Ibid at [43].

audience's impression of the good or service, which in this case involves how HESTA invests members' funds.

Trustee and Director Breaches

13. Our client is concerned that HESTA may be liable for Trustee Breaches and Director Breaches in circumstances where:

    a. HESTA has failed to adequately interrogate the net zero claims/emissions reduction representations made by companies in which member funds are invested, namely Woodside and Santos (**Issue 1**);

    b. HESTA has recently voted against shareholder proposals requesting Woodside and Santos to disclose plans for how aligning capital allocation to oil and gas assets will meet a net zero by 2050 scenario (**Issue 2**);

    c. HESTA has failed to divest from Woodside and Santos despite the fact that it knew, or ought to have known (**Issue 3**), that:

        i. Woodside and Santos are expanding their gas production in a manner that is inconsistent with the climate goals of the Paris Agreement and a net zero emissions by 2050 pathway; and

        ii. continued investment in gas companies pursuing new gas projects is an investment in a stranded asset that creates an unreasonable financial risk to members in the long term.

<u>Issue 1:</u> HESTA's failure to interrogate Woodside and Santos' net zero claims/emissions reduction representations

<u>Woodside's net zero/emissions reduction representations</u>

14. As at the date of this letter, Woodside's publicly expressed commitments include:

    a. 15% reduction in net equity Scope 1 and 2 emissions by 2025 to the baseline gross annual average equity scope 2 and 3 GHG emissions over 2016-2020 (**Woodside Baseline**);

    b. 30% reduction in net equity Scope 1 and 2 emissions by 2030 relative to the Woodside Baseline;

    c. "Aspiration" of net zero for net equity Scope 1 and 2 emissions by 2050, if not sooner; and

    d. targeting investment of US$5 billion in new energy products and lower carbon services by 2030 (allegedly in an effort to reduce Scope 3 emissions).

    collectively, **Woodside's Climate Representations**.

<u>Santos' net zero/emissions reduction representations</u>

15. As at the date of this letter, Santos' publicly expressed commitments include:

    a. 30% reduction in absolute Scope 1 and 2 emissions by 2030 compared to the Santos and Oil Search combined 2019-20 equity Scope 1 and 2 baseline of 5.9 MtCO2e (**Santos Baseline**);

b. 40% reduction in the intensity of Scope 1 and 2 emissions by 2030;

c. use CCS technology to accelerate the economic feasibility of hydrogen and deliver a step change in emissions reduction;

d. reduce customers' Scope 1 and 2 emissions by at least 1.5 million tonnes per annum of CO2 emissions by 2030 through the supply of 'clean fuels' (apparent Scope 3 emissions reduction target); and

e. achieve net-zero Scope 1 and 2 emissions by 2030.

<u>HESTA's failures</u>

16. Our client is concerned that HESTA has failed to interrogate the veracity of Woodside and Santos' Climate Representations. Notably this includes identifying and addressing the following issues:

a. neither Woodside nor Santos' Scope 3 emissions reduction plans are consistent with the Paris Agreement or aligned to key industry guidance on Scope 3 emissions reduction targets;

b. Woodside's Scope 1 and 2 emission reduction targets are heavily dependent on the use of carbon offsets;

c. Santos' emission reduction targets and net zero plans are representations based on use of Carbon Capture Utilisation and Storage (CCUS) and blue hydrogen, and therefore may be misleading or deceptive; and

d. Santos and Woodside's capital allocation strategies may not be aligned with the Paris Agreement.

<u>Failure to have a Paris-aligned Scope 3 emissions reduction target</u>

17. To achieve recognition by the Science-Based Targets Initiative, *all* companies involved in the sale or distribution of natural gas and/or other fossil fuels are required to set near- and long term Scope 3 targets for the use of sold products consistent with the level of decarbonisation required to keep global temperature increase to 1.5 °C.[14] Similarly, the Investor Group on Climate Change's (IGCC) guidance on climate transition plans states that *"fossil fuel producers in particular should set short, medium and long-term targets that apply to Scope 3 emissions."*[15] More recently, the March 2022 exposure draft of the 'IFRS Sustainability Disclosure Standard S2 Climate-related Disclosures' provides that in disclosing information regarding climate-related targets, organisations should state the amount of the entity's emission target to be achieved through emission reductions within the entity's entire value chain (i.e. include scope 3 emissions).

18. Woodside and Santos' Scope 3 reduction plans/targets are not Paris-aligned for the reasons set out below.

[14] Science Based Targets initiative. (2021, October). SBTi criteria and recommendation s. (TWG-INF-002) (Version 5.0)[Online]. Available: https://sciencebasedtargets.org/resources/files/SBTi-criteria.pdf

[15] IGCC, Corporate Climate transition plans: A Guide to investor expectations, March 2022. Available at: https://igcc.org.au/wp-content/uploads/2022/03/IGCC-corporate-transition-plan-investor-expectations.pdf

19. **Woodside** fails to specify any Scope 3 emissions reduction target. Instead, it commits to investment in unspecified "new energy products and lower carbon services by 2030" such as hydrogen, ammonia and CCUS. This is problematic for the following reasons:

    a. Emissions reduction plans that are dependent on so-called "low-carbon" technology such as blue hydrogen (hydrogen derived from the burning from fossil fuels which are then "abated" through Carbon Capture and Storage) or CCS/CCUS are contentious and are currently the subject of a legal challenge by the Australian Centre for Corporate Responsibility (ACCR).[16] ACCR is arguing that net zero representations that are dependent on blue hydrogen and CCS are misleading or deceptive because CCS has not been proven to be economically viable, and because CCS itself results in emissions through incomplete CO_2 capture and the release of fugitive methane emissions.

    b. Woodside's failure to include a Scope 3 emissions reduction target is at odds with the conduct of its peers and competitors. Key competitors including BP, BHP, Chevron, Equinor, Exxon, Shell and Total Energies have all committed to a Scope 3 emission reduction target.[17]

    c. Woodside's decision not to include a Scope 3 emissions reduction target is at odds with the expectations of 49.63% of voting shareholders which supported a 2020 resolution which asked the company to set Paris-aligned targets including a Scope 3 target.

20. In relation to **Santos**, rather than committing to a percentage reduction in Scope 3 emissions as per the industry guidance, it has committed to reducing customers' Scope 1 and 2 emissions by 1.5 million tonnes per annum of CO2e by 2030. This is problematic because:

    a. Certification and industry bodies do not accept targets that specify reduction by a mass of GHGs because they fail to provide accurate and comparable data on emissions reduction. The Science Based Target Initiative states that *"companies shall not set targets to reduce emissions by a specified mass of GHGs (e.g., "to reduce emissions by 5 million tonnes by 2030") or targets that benchmark performance against sector average values. This is because such targets are not transparent about changes in emissions performance. Also, sector-benchmarked targets may also change over time with changes in sector performance, reducing the ability to track long-term changes in performance."*[18]

    b. A scope 3 emissions reduction target of 1.5 MtC02e by 2030 amounts to a mere 3.84% of Santos' 2021-21 Scope 3 equity emissions[19] (on the conservative assumption that there is no change in Santos' scope 3 emissions by 2030), and is woefully inadequate to meet the Paris Agreement. In *Milieudefensie v Royal Dutch Shell,* the Hague District Court found that to meet the Paris Agreement, a reduction target of 45% in CO2 scope 1, 2 and 3 emissions by 2030 relative to 2010 was required.[20]

[16] *Australian Centre for Corporate Responsibility v Santos*
[17] Australian Centre for Corporate Responsibility, 2022 at page 8.
[18] Science Based Targets Initiative (2021) SBTi Corporate Manual, at page 30.
[19] Santos reported Scope 3 equity share emissions (use of sold products) in 2020-2021 of 39 MtCo2e.
[20] Although the court accepted that a reduction by Royal Dutch Shell of 45% in scope 1, 2 and 3 emissions relative to *2019 levels* was also broadly in line with the Paris Agreement,[20] and this was ultimately the order that was made.

Woodside's reliance on carbon offsets

21. Woodside's Scope 1 and 2 emission reduction targets are heavily dependent on the use of carbon offsets. Again, this goes against industry guidance, which states that offsets should not be used as an alternative to absolute reductions, but only for residual or unavoidable emissions.

22. For example, under its Net Zero Corporate Standard, the Science-based Targets initiative does not accept the use of offsets to contribute towards near-term emissions reduction targets, with credits only being accepted in relation to the neutralisation of residual emissions or to finance additional climate mitigation beyond absolute reduction targets.[21] Similarly, the IGCC states that *"over-reliance on offsets and nature-based solutions potentially delays efforts to abate emissions within a company's value chain and may not account for the limited land and space available to host additional tree coverage or overestimates carbon storage potential."* The Climate Action 100+ Net Zero Company Benchmark states that *"the use of offsetting or carbon credits should be avoided and limited if at all applied"* in its scoring methodology for the decarbonisation strategy indicator.[22] According to the Australian Centre for Corporate Responsibility, absent the offsets, Woodside's Scope 1 and 2 equity emissions would actually grow to 2030[23] as a result of its plans for scaling up of gas projects. Woodside's scaling up of new fossil fuel projects is further discussed at paragraphs 31 to 33 below.

Santos 'reliance on CCU and blue hydrogen

23. Santos relies on unproven CCS technology and blue hydrogen (which it has controversially referred to as "clean energy") to achieve its emissions reduction targets. As noted above, these representations are currently the subject of Federal Court proceedings, alleging that Santos' statements are misleading or deceptive.

Woodside and Santos' capital allocation strategies may not be Paris-Aligned

24. When assessing Woodside and Santos for alignment with the Paris Agreement, Climate Action 100 found that, as at 31 December 2021, neither company met any of its criteria in relation to capital allocation, namely that the company is working to decarbonise its capital expenditures, and that the company discloses the methodology used to determine the Paris alignment of its future capital expenditures.

25. Since December 2021 both Woodside and Santos have released new capital allocation strategies which they claim are "Paris-aligned":

    a. Woodside announced that it will allocate US$5 billion in new energy products and lower carbon services by 2030 and has adopted a lower hurdle rate for new energy projects (with an Internal Rate of Return of greater than 10%) compared with oil and gas projects (with IRRs of 15% and 12% respectively). It is also targeting 12% of its 2021-2030 investment in hydrogen.

    b. Santos argues that by investing US$1.9 billion to $3.8 billion in hydrogen and ammonia hubs, Santos is in line with the required level of investment in hydrogen and hydrogen-based fuels under the IEA Sustainable Development Scenario (SDS)

[21] Science Based Targets initiative. (2021, October). SBTi criteria and recommendation s. (TWG-INF-002) (Version 5.0)[Online]. Available: https://sciencebasedtargets.org/resources/files/SBTi-criteria.pdf
[22] Investor Group on Climate Change, Corporate Climate Transition Plans: A guide to investor expectations, p. 8.
[23] Australian Centre for Corporate Responsibility, 2022.

and Net Zero by 2050 Scenario (NZS), being 3.7% under the SDS and 4.8% under the NZS.

26. Woodside and Santos' representations that their capital allocation is "Paris-aligned" is flawed and potentially misleading because they: (1) fail to take into account the percentage of committed and sustaining capital to new oil and gas projects relative to investment in so-called "clean energy"; and (2) rely on blue hydrogen and CCU/CCS – technologies whose net zero credentials are currently being legally challenged.

27. Climate Analytics' analysis shows that to be in line with the IEA's NZS, Australia's LNG exports will need to fall 25% below 2020 levels by 2030, and by 50% by 2035.[24] To be aligned with the IPCC's P1 and P2 1.5°C warming scenarios, global oil and gas production must fall by 30% from 2020 to 2030, and by 54% by 2040.[25] However, rather than moving to decarbonise and reduce production, Santos and Woodside are ramping up gas production and making major capital investment into new gas projects. It is estimated that between 2020 and 2027, Santos and Oil Search's annual oil and gas production will increase by over 17%, and Woodside and BHP's will increase by approximately 13%.[26] Both Santos and Woodside are currently pursuing new gas projects with total capex costs reaching well into the tens of billions.[27] The companies' planned increases in production will lead to increases in emissions over the next 5 to 10 years, with Santos' annual emissions from 2026 to 2029 estimated to be more than 25% above a combined Santos and Oil Search 2020 baseline, and Woodside's annual emissions estimated to increase by at least 11% from 2020 to 2027 (including BHP Petroleum).[28]

28. In addition to the above, both Woodside and Santos' capital allocation strategies rely heavily of blue hydrogen and CCU and CCS technology. There are serious concerns that such technologies are not, in fact, net-zero or carbon neutral. This has already been discussed at paragraphs 19 and 23 above.

<u>Issue 2:</u> HESTA voting against Shareholder proposals in relation to effective net zero strategies

29. In April and May 2022, HESTA voted against shareholder proposals requesting Santos and Woodside provide information that demonstrates how the companies' capital allocation to oil and gas assets will align with a scenario in which global energy emissions reach net-zero by 2050, facilitating the efficient managing down of these assets.

<u>Issue 3:</u> HESTA's failure to divest from Woodside and Santos

30. HESTA's failure to divest from Woodside and Santos could amount to a Trustee Breach and/or Director Breach in circumstances where:

    a. Woodside and Santos are both scaling up gas production leading to increased GHG emissions thereby exacerbating climate change and its impacts; and

[24] https://climateanalytics.org/media/gas_is_new_coal_nov_2021_1_1.pdf
[25] https://productiongap.org/wp-content/uploads/2021/11/PGR2021_web_rev.pdf
[26] https://www.marketforces.org.au/wp-content/uploads/2022/03/2022-03-STO-WPL-investor-briefing.pdf.
[27] Ibid.
[28] Ibid.

b. continued investment in Woodside and Santos is an investment in stranded assets that could lead to negative member financial returns.

Woodside's scaling up of gas production

31. Woodside has recently announced the development of the Scarborough gas field, the construction of a new LNG processing plant (Pluto 2), expanding the capacity of an existing LNG processing Plant (Pluto 1) and the installation of a 430km pipeline connecting the gas field to two LNG processing plants (**Scarborough to Pluto Train 2 Project**). The project is expected to start exporting gas by 2026.

32. Analysis by Climate Analytics has estimated that total cumulative Scope 1 and 3 emissions from the project will be 1.37 billion tonnes of GHG from 2021-2055, which is equivalent to 18 and 3.6 years respectively of Western Australia's 2005 emissions.[29] Climate Analytics estimates Scope 1 emissions will account for approximately 2.7% of 2005 WA 2020 emissions, rising to 5% from 2026 (an increase in emissions equivalent to around 2.3% of 2005 WA emissions). Climate Analytics further estimates that in 2030, if unabated, the Pluto project Scope 1 emissions would be 80% above 2020 levels, and even if Woodside's reductions were achieved in practice, emissions would still be nearly 50% above 2020 levels.

33. With 64% of emissions reduction measures under the project's Greenhouse Gas Abatement Plan (GGAP) relying on abatement actions that do not take place until after 2040, Woodside is planning to extract and produce gas unencumbered, for most of the field's 30 year expected life.[30] Further, woodside's reliance on carbon offsets to offset the majority of the project Scope 1 emissions is not economically viable - Climate Analytics estimates that by 2050 the cost of offsets could range from 21% to 71% of Woodside's LNG export revenue. Further, and significantly, Woodside's GGAP does not include a plan as to how to abate Scope 3 emissions. Scope 3 emissions from the project are estimated to be nine times the already significant Scope 1 emissions.[31]

Santos' scaling up of gas production

34. Rather than decreasing its greenhouse gas emissions as required under its net zero plan, analysis of Santos' 2021 Climate Change Report by the Institute for Energy Economics and Financial Analysis reveals that Santos' total (Scope 1, 2 and 3) emissions rose by 53% in 2020-21, and by 94% since 2016-2017. [32]

35. As the holder of the largest number of offshore exploration permits, and the largest offshore area under exploration,[33] Santos has announced that it will be spending US$1.15billion - $1.3billion on new oil and gas projects,[34] including, relevantly:

---

[29] Hare et al (2021) Climate Analytics, 'Warming Western Australia: How Woodside's Scarborough and Pluto Project undermines the Paris Agreement.' Available at: https://climateanalytics.org/publications/2021/warming-western-australia-how-woodsides-scarborough-and-pluto-project-undermines-the-paris-agreement/#:~:text=The%20project%20would%20result%20in,emissions%20increases%2C%20rather%20than%20decreases, at page 1.
[30] Ibid at page 2.
[31] Ibid.
[32] IEEFA, 'Santos 2022 Climate Change Report- A Reality Check', https://ieefa.org/wp-content/uploads/2022/04/Santos-2022-Climate-Change-Report-A-Reality-Check_April-2022.pdf
[33]Ibid at page 2
[34]Ibid at page 1.

a. **Narrabri Gas coal seam gas project in northern New South Wales**, whereby Santos could extract up to 200 terajoules (TJ) of gas per day over 20 years through unconventional gas extraction.[35] If combusted, 200 TJ of gas would release 10,000 tonnes of CO2-e. On top of this, experts have highlighted the project's significant potential impacts on Aboriginal cultural heritage, groundwater, and local bush and farmland.

b. **Barossa Gas Project**, being an offshore gas project being progressed by Barossa Joint Venture comprising Santos as the operator (and 62.5% stakeholder in joint venture). The Barossa is a new source of gas that will extend for 15-20 years some 300km offshore from Darwin, near the Tiwi Islands. It is estimated that the project when extracted, developed and burned would release 16.5 million tonnes of carbon dioxide annually.[36] The project is currently the subject of a challenge by Tiwi Islander Elder on the basis of lack of consultation with the relevant Traditional Owners.[37]

c. **Beetaloo Basin projects**, where Santos is currently undertaking exploration activities in the Beetaloo Basin with a view to seeking further approvals to conduct commercial production in the area. It has been involved in disputes with pastoralists and traditional owners over the shale fracking operation that have delayed some of the exploration.[38]

36. According to Market Forces, on a conservative estimate, Santos' increasing oil and gas production plans would lead to an over 20% increase in annual emissions to 2029 above a 2020 baseline that combines Santos and Oil Search production that year.[39]

Stranded assets likely to cause negative member returns

37. As the world de-carbonises, there is a real and foreseeable, and potentially substantial, risk that investment in gas projects is investment in "stranded capital." The IEA defines "stranded capital" as investment in fossil fuel infrastructure that is not recovered over the operating lifetime of the asset because of reduced demand or reduced prices resulting from climate policies. [40] This then prompts a reduction in the value of equity in gas companies such as Woodside and Santos in circumstances where future revenue generated by these companies is reduced.[41]

38. According to the IEA's Net Zero by 2050 pathway, supply of natural gas is estimated to peak in the mid-2020s, and thereafter continue to fall, with an annual average decline of just under 3% from 2020 to 2050,[42] with natural gas use 55% lower in 2050 than in 2020. [43] As a result of the reduction in use and demand, the IEA estimates that between 2020 and 2050 natural gas traded as LNG falls by 60% and trade by pipeline falls by 65%, with declines by more than 4% per year on average during the 2030s, causing some gas fields to be closed prematurely. As a result, the IEA states that no new natural gas fields or LNG facilities need to be approved

[35] NS Energy, 'Narrabri Gas Project', https://www.nsenergybusiness.com/projects/narrabri-gas-project/
[36] See www.stopbarossagas.org
[37] See https://www.edo.org.au/tiwi-islands-barossa-gas-drilling-challenge/
[38] See https://ntindependent.com.au/santos-agrees-to-pay-400k-to-rallen-over-beetaloo-basin-gas-wells/
[39] noting merger between the two companies was implemented on 17 December 2021. See https://www.marketforces.org.au/investor-demands-for-santos-to-wind-down-oil-and-gas-production-increase-to-15/
[40] IEA (2021) net zero by 2050 A Roadmap for the Global Energy Sector, First Edition, May 2021 at page 102.
[41] IEA (2021) net zero by 2050 A Roadmap for the Global Energy Sector, First Edition, May 2021 at page 102.
[42] Ibid at page 57.
[43]Ibid at page 101.

or built beyond that which is already approved as of 2021.[44] This message is reinforced by analysis undertaken by Wood Mackenzie on behalf of the IGCC, in which Wood Mackenzie concludes that:

> *"Under the 1.5°C scenarios explored in this report, Australian gas will have a diminishing role in the transition to net-zero emissions, particularly from the 2030s onwards. By 2050, Australia is forecast to have minimal LNG exports or domestic gas demand, suggesting new projects carry a substantial risk of stranding should key policy and market changes materialise".*[45]

39. In light of the above and the long-term horizon over which super trustees invest member funds, there is a real risk that continuing to invest in Woodside and Santos equities may amount to a breach of Trustee and Director Duties.

Misleading or deceptive conduct

40. Our client is concerned that the representations set out in **Annexure A**, alone or in combination convey that:

    a. HESTA is a leader on climate action and investment in clean energy;

    b. HESTA's corporate and investment strategy are aligned with the Paris Agreement;

    c. HESTA is reducing emissions and aims to reach net zero by 2050;

    d. HESTA's investment decisions are in line with the United Nations Sustainable Development Goal 13 (Climate Action) and Goal 7 (Affordable and Clean Energy);

    e. HESTA's investment strategy (including its consideration of climate) will help deliver long-term value for HESTA members;

    f. HESTA is committed to reducing its environmental impact; and

    g. HESTA has been engaging with those companies in which it is invested (including Woodside and Santos) to transition them in line with the Paris Agreement.

    (collectively, the **Representations**).

41. The Representations are misleading or deceptive or likely to mislead or deceive members or potential members for the reasons set out in paragraphs 16 to 39 above, being (in summary):

    a. HESTA continues to invest in Woodside and Santos, which are major contributors to global warming;

    b. neither Santos nor Woodside's net zero pathway involves a Paris-aligned reduction in scope 3 emissions in circumstances where scope 3 emissions amount to over 85% of these companies' total emissions;

    c. neither Santos nor Woodside's net zero pathway involves a reduction in scope 3 emissions in circumstances where scope 3 emissions amount to over 85% of these companies' total emissions;

---

[44] Ibid at 1102 – 103.

[45] Investor Group on Climate Change (IGCC), 2022, 'Changing pathways for Australian gas: A 1.5°C scenario analysis of new Australian gas projects,' Available at: https://igcc.org.au/wp-content/uploads/2022/04/IGCC-Changing-pathways-for-Australian-gas-FINAL.pdf at page 13.

d. Woodside's net zero/emissions reduction representations are heavily dependent on carbon offsets. Absent these offsets, analysis reveals that Woodside's Scope 1 and 2 emissions are predicted to rise by 2030;[46]

e. Santos' net zero representations are dependent on Carbon Capture and Storage and blue hydrogen and are currently subject to a legal challenge alleging that such representations are misleading or deceptive; and

f. notwithstanding their apparent net zero representations, Woodside and Santos' have plans to scale up and/or expand their fossil fuel projects, leading to increased emissions. Such actions are contrary to the International Energy Agency's (IEA) statements that to achieve net zero by 2050 no new oil or gas fields could be approved for development and no new coal mines, or mine extensions could be approved from 2021.[47]

Requested action

42. In light of the above, our client considers that the appropriate way in which HESTA can avoid these significant liability risks arising as a result of potential breach of Trustee Duties, Director Duties and misleading or deceptive conduct, is to **divest from Woodside and Santos.**

43. As interim steps, our client requests that no later than **COB on 18 August 2022**, pursuant to s 1017C of the Corporations Act, HESTA provides our client with the following information, being information that our client reasonably requires for the purposes of making an informed judgment about the management and the financial condition of the superannuation entity:

    a. a substantive response to the issues set out in this letter, including, namely:

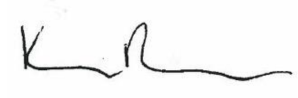
        i. the basis on which HESTA considers that continued investment in Woodside and Santos (in light of the issues raised in this letter) is not a breach of Trustee and Director duties; and

        ii. the basis on which HESTA makes the Representations.

44. Our client reserves her rights to take further action in respect (but not limited to) the issues set out in this letter, including, potentially raising these issues with relevant regulators and/or considering other possible actions such as commencing proceedings.

Yours faithfully,

Environmental Defenders Office



Kirsty Ruddock
Managing Lawyer
Safe Climate (Corporate & Commercial)

Anna Gudkov
Senior Solicitor
Safe Climate (Corporate & Commercial)

---

[46] Australian Centre for Corporate Responsibility, 2022.
[47] International Energy Agency, 2021, 'Net Zero by 2050 A Roadmap for the Global Energy Sector. International Energy Agency,' Available at: https://www.iea.org/reports/net-zero-by-2050

Annexure A: HESTA Representations

HESTA website

- "At HESTA, we consider climate change risks in our investment decision making, as failing to do so will likely have negative impact on the retirement outcomes of our members."[48]
- "HESTA has an important role to play in the transition to a low-carbon economy aligned with the goals of the Paris Agreement. And we believe this creates important investment opportunities that will help deliver long-term value for HESTA members."[49]
- "From solar energy and wind farms to recycled water, if it's good for the planet, we're invested in it"[50]
- "Investing for long-term performance requires a long-term perspective on how investments improve the planet and society. Superannuation is a lifetime strategy. HESTA invests for the whole journey."[51]
- "From solar energy and wind farms to recycled water. We've established ourselves as an industry leader in climate action"[52]

Annual Report 2020-2021

- "At HESTA, we recognise the importance of investing responsibly and supporting a fairer and more sustainable world. This approach is crucial to our success as we realise the global impacts of climate change and COVID-19. These issues have sparked a profound transition in how we live and work"
- "This is why we have developed the HESTA Climate Change Transition Plan, which outlines our strategy to achieve net-zero carbon emissions in our portfolio by 2050. This plan is about so much more than avoiding climate risk: it will help us pursue the substantial investment opportunities arising from the transition to a low carbon future."
- "At HESTA, we support this call for accelerated action, which is critical to manage the long-term systemic financial risks of climate change. At the same time, we believe there will be investment opportunities for those who adapt first. At HESTA, our climate change transition plan is guiding our commitment to adapt and achieve a carbon neutral portfolio by 2050."
- "…this pathway [HESTA's Climate Change Transition Plan] seeks to align our actions and investments with the goals of the Paris Agreement…This is an exciting piece of work that reaffirms our ongoing commitment to leadership in responsible investment and can help protect and enhance the long-term performance of our members' investments, while driving meaningful change and contributing to a healthier planet and society"

---

48 https://www.hesta.com.au/about-us/hesta-impact/un-sustainable-development-goals/climate-action
49 Ibid.
50 https://www.hesta.com.au/campaigns/change-your-super-change-the-future
51 https://www.hesta.com.au/about-us/hesta-impact/invest-with-purpose
52 https://www.hesta.com.au/members/your-superannuation/why-join hesta?gclid=Cj0KCQjwhqaVBhCxARIsAHK1tiOpZRMbiu4-hvo7Msq4X1fxO7xqD5xwiuRuVCIUOrOS9iNxVTa8VaAaAmsyEALw_wcB&ef_id=Cj0KCQjwhqaVBhCxARIsAHK1tiOpZRMbiu4-hvo7Msq4X1fxO7xqD5xwiuRuVCIUOrOS9iNxVTa8VaAaAmsyEALw_wcB:G:s&s_kwcid=AL!6613!3!514700352718!b!!g!!%252Bhesta&ecid=S~P~DirectAcquisition~Google~2019~94911284549:%252Bhesta

Climate Change report

- “HESTA has an important role to play in the transition to a low-carbon economy in line with the goals of the Paris Agreement. We believe there are sustainable investment opportunities we can make that will create long-term value for you.”
- “Direct engagement and collaboration with other asset owners to amplify our voice is a strong focus for us. We use ongoing dialogue with high emitters and other industries dependent on fossil fuels to encourage them to transition their business models to be viable in a low carbon economy”
- “We use our influence to drive companies to better understand, manage and reduce their carbon emissions”
- “We will….align our target with the aim of the Paris Agreement to limit global warming to well below 2℃”
- “We seek to invest in and advocate on opportunities that have a positive impact on the environment and society”
- “Our approach of active ownership enables us to use our shareholder voice to influence high emissions companies that we are invested in to transition over time.”
- “Seven of these companies have already committed to net zero by 2050 and have set targets to reduce emissions over time.”
- [HESTA’s actions in response to climate change including] “aligning our carbon emission reduction targets with the Paris Agreement ambitions of ‘net zero by 2050’”
- “Our portfolio emissions reduction targets seek to reduce carbon exposure in the portfolio with the next decade. This aligns with the ambition of ‘net zero by 2050’ and also mitigates the key near-term risks identified in the event of a disorderly transition”
- “Our approach of active ownership mitigates against the risk of a carbon target constraining our investment universe.”
- “We also note that many major emitters are already moving to set their own ‘net zero’ commitments and reduce emissions. Taking advantage of this natural decarbonization of the economy will reduce the impact of constraint and improve our ability to find opportunities in those companies leading the transition.”
- “Through active ownership, or corporate stewardship, we can influence companies in which we invest to help ensure they are well positioned for a low carbon future. We seek to use collaborative approaches through engagement, voting and advocacy, working in unison with other asset owners and managers to strengthen our voice.”
- “HESTA has become a climate champion as part of the Better Futures Australia initiative.”

Climate Change Statement

- “HESTA has an important role to play in the transition to a low-carbon economy in line with the Paris Agreement goals, and we think there are important investment opportunities for us that will help deliver long-term value for HESTA members.”

- "To manage climate-related financial risks and align our actions with the goals of the Paris Agreement we have introduced carbon reduction targets for the HESTA investment portfolio, to reduce emissions by 33% by 2030, and to align the portfolio with the aim of 'net zero' by 2050."
- "We engage with companies to ensure they are considering how climate change will impact their operations, to ensure their business models align with a transition to a low-carbon economy, achieve 'net zero' emissions and more broadly to encourage them to contribute to climate stability. We exercise our voting rights as part of our stewardship activities and hold companies accountable when they fail to consider climate change risks and how they might impact shareholders"

Responsible Investment Policy

- "HESTA acknowledges that as a 'universal owner' we are exposed to the externalities associated with individual portfolio companies. Therefore, to deliver strong financial returns for our members' financial futures, we must address financial and non-financial considerations and advocate for necessary changes to the financial system"
- "Active ownership or stewardship is the means by which investors most directly influence companies, markets, and economies and in turn society and the environment as a whole. We do this as part of our responsibility to protect and enhance long-term investment value for members by promoting sustainable value creation in the organisations we invest in."
- "As a large superannuation fund, we recognise our influential position in the market and our responsibility to use our voice responsibly to address systemic issues that are at odds with maintaining and building sustainable financial markets and generating long-term performance. That's why we promise our members that we will be gutsy advocates driving meaningful change for generations to come."
- "We believe companies must consider climate change risks alongside traditional financial and business risk factors. We see this as fundamental for protecting value for shareholders"
- "we expect companies to act in a sustainable and responsible way considering how their business contributes to system-wide issues and their implications in the health of the economy, environment and society where they operate now and in the future. This includes considering and managing in the present risks that might emerge in the long term."

Stewardship Statement

- "HESTA believes environmental, social and governance (ESG) issues can impact investment risks and returns. Our active ownership approach, which considers these issues alongside traditional financial and business risks, can improve long-term investment returns for members."

HESTA's advertising

- "Change your super, change the future" ad - https://bigdatr.com/au/ad/ac2341386930

HESTA Director representations

- “I would be devastated to think that there’s anything I would leave off the table for the next generation. If we know that these things are issues right now, let’s be the generation that solves them, let’s not kick them down the road.”[53]

[53] https://www.afr.com/life-and-luxury/arts-and-culture/this-super-fund-boss-says-it-s-time-baby-boomers-pulled-their-weight-20211112-p598gv